

Queensland



ANNO UNDECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 42 of 1962

**An Act to Consolidate and Amend the Law relating to
the Alienation, Leasing and Occupation of Crown
Land**

[ASSENTED TO 28TH DECEMBER, 1962]

BE it enacted by the Queen's Most Excellent Majesty,
by and with the advice and consent of the Legislative
Assembly of Queensland in Parliament assembled, and by
the authority of the same, as follows:—

PART I.—PRELIMINARY

1. (1) This Act may be cited as "*The Land Act of* Short title
1962."

(2) This Act shall come into operation on a date Commence-
to be fixed by the Governor in Council by Proclamation ment of Act
published in the *Gazette*.

2. This Act, including every Proclamation, Order in Severability
Council, rule, regulation, or by-law hereunder, shall
be read and construed so as not to exceed the legislative

power of the State to the intent that where any enactment hereof or provision of any Proclamation, Order in Council, rule, regulation, or by-law hereunder would but for this section have been construed as being in excess of that power, it shall nevertheless be a valid enactment or provision to the extent to which it is not in excess of that power.

Division of
Act

3. This Act is divided into Parts and Divisions of Parts as follows :—

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PART V.—BRIGALOW LEASES (ss. 150–153);

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Division III.—Surrender of Leases by arrangement (s. 169);

PART VII.—SALES BY AUCTION (ss. 170–197)—

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Division III.—Special Grants (ss. 208–213);

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DEVELOPMENT OF CROWN LAND AND LAND
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*Division II.—Agreements for Development
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PART X.—ANCILLARY PROVISIONS (ss. 224–333)—

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Predecessor* (ss. 236–241);

Division III.—Rent (ss. 242–249);

*Division IV.—Destruction of Trees on Holdings,
&c.* (s. 250);

*Division V.—Destruction of Prickly-pear and
other Noxious Plants* (ss. 251–268);

Division VI.—Additional Areas (s. 269);

*Division VII.—Amalgamations, Subdivisions,
&c.* (ss. 270–272);

*Division VIII.—Subleases, Mortgages, Transfers
and other Dealings* (ss. 273–293);

Division IX.—Partnership Agreements (s. 294);

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PART XI.—GRANTS, RESERVES AND RESERVATIONS
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*Division I.—Deeds of Grant in Trust and
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(ss. 371–381);

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(ss. 382–385);

[The following abbreviations are used in the marginal notes to this Act:—

1910—“*The Land Acts, 1910 to 1962*”;

1927—“*The Land Acts Amendment Act of 1927*”;

1929—“*The Land Acts Amendment Act of 1929*”;

1934—“*The Land Acts Amendment Act of 1934*”;

1952—“*The Land Acts Amendment Act of 1952*”;

1957—“*The Land Acts and Other Acts Amendment Act of 1957*”;

1958—“*The Land Acts and Other Acts Amendment Act of 1958*”;

1959—“*The Land Acts and Other Acts Amendment Act of 1959*”;

1959, No. 2—“*The Land Acts and Other Acts Amendment Act of 1959, No. 2*”;

1962—“*The Land Acts Amendment Act of 1962*”;

1925, Reg.—“*The Land Regulations of 1925*”;

Reg.—A regulation under the repealed Acts made in the year or on the date related thereto in the margin.]

Repeals and Savings

4. (1) The Acts mentioned in the Schedule to this Act are repealed to the extent therein indicated. The said Acts are herein referred to as the “repealed Acts.” Repeals and savings

(2) All leases of land and road licenses granted or issued under the repealed Acts, and subsisting at the commencement of this Act, shall be deemed to have been granted or issued under the provisions of this Act relating to the tenure or class or mode of a class of tenure hereunder which is analogous thereto and shall in all respects continue in force and be held under and subject to this Act :

Provided that—

- (a) nothing in this Act shall extend or be deemed to extend the term of any subsisting lease which was granted under the repealed Acts for a term of years ;
- (b) the repeal of the repealed Acts shall not affect in any way the jurisdiction of the Court to hear and determine the matter of the annual rent of any subsisting lease for any rental period commenced before the commencement of this Act ;
- (c) the tenures of all subsisting prickly-pear development grazing homesteads, prickly-pear development grazing farms, development grazing homesteads, development grazing farms, perpetual lease prickly-pear selections and perpetual lease prickly-pear development selections held under the repealed Acts, shall be converted under the relevant provisions of Part IV. ;
- (d) every subsisting prickly-pear selection and prickly-pear development selection held pursuant to "*The Land Acts, 1910 to 1962,*" and "*The Prickly-pear Land Acts, 1923 to 1959,*" shall, during the subsistence of the term of lease, continue to be subject to those Acts except as modified by this Act ;
- (e) every subsisting stud holding comprising land which was opened under the provisions of section 16A of "*The Land Acts Amendment Act of 1927,*" and every subsisting forest grazing lease shall, during the subsistence of the term of lease, continue to be held upon the terms, conditions and stipulations to which the lease was subject under the repealed Acts ;
- (f) notwithstanding the repeal thereof by this Act the repealed Acts shall be deemed to continue in force to the extent necessary to give operation and effect to the provisions of this proviso.

(3) (a) All applications for land made under the repealed Acts prior to and pending at the commencement of this Act shall be deemed to have been made under the analogous provisions of this Act.

(b) If at the commencement of this Act any person has been allotted priority of selection of any portion of land pursuant to the provisions of section fifty-five of "*The Land Acts, 1910 to 1962,*" and the land has not been selected, such person's occupation and improvement of the land shall continue and the opening and selection of the land shall be effected subject to and in accordance with the relevant provisions of "*The Land Acts, 1910 to 1962,*" as if such Acts had not been repealed, but any lease issued after the commencement of this Act to any such person, pursuant to the approval by the Court of an application by him, shall be issued under, subject to and in accordance with the analogous provisions of this Act for the class or mode of a class of selection specified in the opening notification.

(c) Every application to select land approved by the Court before the commencement of this Act in respect whereof a license to occupy was not issued under the repealed Acts shall be deemed to be pending at the commencement of this Act and, where the selector has not made any payment required to be made by him for improvements on the land, the time within which this Act prescribes that such payment shall be made, shall commence to run on the date of the commencement of this Act.

(4) In the case of any pastoral lease, settlement farm lease or grazing selection under the repealed Acts which expired prior to the commencement of this Act—

(a) if the land or part of the land comprised therein is open for selection at the commencement of this Act with priority of application to the late lessee, the late lessee may exercise that right and the land be applied for as if the relevant provisions of "*The Land Acts, 1910 to 1962,*" had not been repealed, save that after approval of the application by the Court the lease shall be issued and held subject in all respects to this Act ;

(b) if the land comprised therein has not been dealt with by the Minister, the late lessee's right of priority of application pursuant to section seventy-two of "*The Land Acts, 1910 to 1962,*" shall be deemed to be a right to

receive an offer of a new lease pursuant to Division II. of Part VI. and the lease shall be deemed to be an expired lease under this Act.

In this subsection the term "late lessee" has the meaning assigned to it by Division II. of Part VI.

(5) All Crown land held at the commencement of this Act under occupation license granted under the repealed Acts shall be deemed to be granted and held under the analogous provisions of this Act and shall in all respects be subject to this Act accordingly.

(6) Any application pursuant to the provisions of section 175B of "*The Land Acts, 1910 to 1962*," received by the Minister before the date of the commencement of this Act and not dealt with by the Governor in Council, shall be deemed to be an application made pursuant to section two hundred and seven of this Act and shall proceed or continue to be dealt with accordingly.

(7) Every sale of Crown land to which the provisions of sections one hundred and fifteen to one hundred and twenty, both inclusive, one hundred and seventy-five, 175A or one hundred and ninety-three of "*The Land Acts, 1910 to 1962*," applied and in respect whereof a deed of grant shall not have issued prior to the commencement of this Act shall be deemed to be a sale under the analogous provisions of this Act and shall in all respects be subject to this Act accordingly.

(8) Every application made for conversion of tenure pursuant to the provisions of "*The Land Acts and Other Acts Amendment Act of 1957*," or "*The Land Acts and Other Acts Amendment Act of 1959*," and received by the Minister before the commencement of this Act, and which has not lapsed, shall be deemed to have been made under the analogous provisions of this Act and shall in all respects be subject to this Act.

(9) Every application received by the Minister pursuant to section 128A of "*The Land Acts, 1910 to 1962*," and not referred to the Court, shall be referred to the Court and heard and determined or, if already referred to the Court but not heard and determined, shall be heard and determined in terms of the analogous provisions of this Act.

(10) Every application made under Part IX. of "*The Land Acts and Other Acts Amendment Act of 1958,*" or under Part VIII. of "*The Land Acts and Other Acts Amendment Act of 1959,*" and not dealt with, every notice in writing relating to an application under the said Part IX. or Part VIII., given by the Minister to a lessee in respect whereof the time prescribed for giving to the Minister a notice of election (or the extension, if any, of such time granted by the Minister) has not expired at the commencement of this Act, and every election relating to an application under the said Part IX. or Part VIII., made by a lessee within the period of three months immediately prior to the commencement of this Act, shall be deemed to be an application, notice or election, as the case may be, under the analogous provisions of this Act and shall be subject in all respects to the provisions of Division I. of Part VI.

(11) Every application for a permit to destroy trees made under the repealed Acts and not dealt with at the commencement of this Act shall be deemed to have been made under the analogous provisions of this Act and every permit to destroy trees subsisting at the commencement of this Act shall be deemed to have been issued under and shall be subject in all respects to the provisions of Division IV. of Part X.

(12) Every notice to destroy noxious plants or prickly-pear issued pursuant to any provision of the repealed Acts and in force at the commencement of this Act, shall be deemed to have issued under the provisions of Division V. of Part X. and those provisions shall apply accordingly.

(13) (a) Subsisting leases granted by trustees and approved by the Minister pursuant to the provisions of subsection (2) of section one hundred and eighty-five of "*The Land Acts, 1910 to 1962,*" shall be deemed to have been granted under the provisions of Division II. of Part XI. and shall in all respects be subject to those provisions :

Provided that the term of any such lease granted for a period in excess of twenty years shall not be lessened solely in consequence of the maximum term provisions of this Act.

(b) Every mortgage or sublease of a lease of a reserve subsisting at the commencement of this Act, shall, subject to such mortgage or sublease having before the commencement of this Act been approved by the Minister, be deemed to be a mortgage or sublease, as the case may be, of such lease for all the purposes of this Act.

(c) Every mortgage of a deed of grant in trust, approved by the Governor in Council prior to and subsisting at the commencement of this Act shall, unless the mortgagee, prior to issuing any process or taking any remedy against the trustees in default, elects to come under the provisions of section three hundred and fifty-one of this Act continue to be subject to the provisions of subsection (3) of section one hundred and eighty-five of "*The Land Acts, 1910 to 1962*," as if such subsection had not been repealed.

(d) Every deed of grant in trust to which the provisions of the repealed Acts applied, subsisting at the commencement of this Act, shall be deemed to have been granted under the provisions of Part XI. and in all respects shall be subject to those provisions accordingly.

(14) The repealed Acts shall, notwithstanding their repeal by this Act, be deemed to continue in force to the extent necessary to commence and finalise any procedure, matter, thing, hearing or payment of money not commenced, finalised or paid at the commencement of this Act in respect of a resumption of land made pursuant to any provision of the repealed Acts before the commencement of this Act.

(15) (a) Subject to this Act, all Proclamations, Orders in Council, regulations, rules, and by-laws made, all notifications published, all appointments made, including appointments of trustees of lands granted in trust or of reserves, all forms promulgated, all registers kept, all districts, counties and parishes constituted, and

all things lawfully done under the repealed Acts and in force or subsisting at the commencement of this Act, shall continue to be of full force and effect, and shall, so far as is consistent with this Act, be deemed to have been made, published, promulgated, kept, constituted or done under the analogous provisions of and for the purposes of this Act.

(b) Every mortgage, charge, sublease, easement, agreement or order affecting a holding and registered under the repealed Acts and subsisting at the commencement of this Act, shall be deemed to be a mortgage, charge, sublease, easement, agreement or order, as the case may be, with respect to such holding for all the purposes of this Act, and shall have the same effect as if it had been registered under this Act.

(c) The said repeal shall not affect the previous operation of the repealed Acts, or any acquisition of land, act, right, agreement, grant, or title validated or confirmed thereby, or anything duly done or suffered thereunder, or any pending inquiry, hearing, appeal, or other legal proceeding, but, subject to this Act, the same may proceed as if this Act had not been passed.

(16) Nothing in this section shall be construed so as to limit the operation and effect of "*The Acts Interpretation Acts, 1954 to 1962.*"

5. In this Act, unless the context otherwise indicates or requires, the following terms have the meanings set against them respectively, that is to say :—

"Agricultural Bank"—The Corporation of the Agricultural Bank under and within the meaning of "*The Co-ordination of Rural Advances and Agricultural Bank Acts, 1938 to 1951*" ;

"Commission"—The Commission, called the Land Administration Commission preserved, continued in existence, and constituted by and under this Act ;

Commissioner	“ Commissioner ”—The Land Commissioner for the district in which the land in question is situated : the term includes a Deputy Land Commissioner ;
Committee	“ Committee ”—With reference to a mentally sick person, includes the Public Curator ;
Contiguous	“ Contiguous ”—With reference to holdings, includes holdings which are only separated by a road or roads, or by a watercourse or other natural feature insufficient to prevent the passage of stock ;
Country land	“ Country land ”—All Crown land which is not town land or suburban land ;
Court	“ Court ”—The Land Court preserved, continued in existence, and constituted by and under this Act ;
Crown land	“ Crown land ”—All land in Queensland, except land which is, for the time being— (a) lawfully granted or contracted to be granted in fee-simple by the Crown ; or (b) reserved for or dedicated to public purposes ; or (c) subject to any lease or license lawfully granted by the Crown : Provided that land held under an occupation license shall be deemed to be Crown land ;
Cultivation	“ Cultivation ”—The actual breaking of the soil to prepare a seed bed followed by the planting or sowing of seeds or plants for a crop but not breaking the soil for the natural regeneration of indigenous grasses ; or the destruction and the resultant burning of scrub and the sowing of improved pasture species at the earliest practical time thereafter, although the soil may not have been broken ;
Deed of Grant	“ Deed of grant ”—Save in Division I. of Part II., includes a certificate of title ;
Department	“ Department ”—The Department of Public Lands, including any sub-department or branch thereof ;

- “ Destruction ”—With reference to noxious plants, entire destruction by extirpation, or eradication, or otherwise and, with reference to trees or scrub, cutting down, felling, ringbarking, pushing over, poisoning, or destroying by any means whatsoever. Destruction
or destroy
- “ Destroy ” shall have a correspondingly inclusive meaning ;
- “ Developmental work ” or “ Work of development ”—Work in the nature of clearing of undergrowth and useless vegetation, lawful destruction of trees, filling, reclamation and any other work which has the effect of increasing or maintaining the carrying capacity or productivity of land or making it suitable for habitation, but which is not an improvement as defined by this Act; Develop-
mental work
or Work of
development
- “ Division ”—Division of a Part ; Division
- “ District ”—A district constituted, or deemed to have been constituted, under this Act ; District
- “ District Land Office ”—In relation to any district or any land in any district, the office of the Land Agent for such district ; District
Land
Office
- “ Full Court ”—The Full Court of the Supreme Court of Queensland ; Full Court
- “ Holding ”—The land held from the Crown by any lessee; Holding
- “ Improvements ”—Any building, yard, fence, well, bore, reservoir, artificial watercourse or watering-place, apparatus for raising, holding or conveying water, garden, orchard, plantation, cultivation, or any erection, construction or appliance being a fixture for the working or management of a holding or of any stock depastured thereon or for maintaining or increasing the natural capabilities of the land. Improve-
ments

For all the purposes of this Act, and notwithstanding anything contained in “ *The Water Acts, 1926 to 1961,* ” an artesian well or sub-artesian well, whether constructed before the commencement of that Act or

constructed or enlarged, deepened, or altered pursuant to a license of fixed duration granted under that Act, shall be deemed to be an improvement upon the holding whereon it is situated ;

- Land Agent** “ Land Agent ”—The land agent for the district in which the land in question is situated : the term includes any officer for the time being performing any of the duties of the office of land agent ;
- Land Ranger** “ Land Ranger ”—Includes an Assistant Land Ranger or Cadet Land Ranger ;
- Lessee** “ Lessee ”—The holder under the Crown of a lease under this Act: the term includes a selector or, in the case of any tenure under this Act other than a selection, any person who, having complied with all requirements of this Act prescribed to be complied with by him before the issue of the lease, is awaiting the issue of the lease;
- Living Area** “ Living Area ”—Such an area of land as having regard to the following matters—
- (a) the district in which the land is situated ;
 - (b) the nature of the country, its potential for development, and distance from transport facilities and markets ;
 - (c) whether the land concerned is best suited for pastoral, agricultural, dairying, orchard or mixed farming purposes, as the case may be ;
 - (d) occurrence of variable seasons,
- will be sufficient to enable a competent person to derive from the working of the land, according to the use for which the land is best suited, an income adequate to ensure a reasonable standard of living for himself, his wife and infant children, as well as to provide a reserve with which to meet adverse seasons and the cost of developing and maintaining the land at a high rate of production throughout average seasons ;

- “ Local Authority ”—The term includes a joint local authority and Brisbane City Council ; Local Authority
- “ Marsupial-proof ”—With reference to fencing, of such character as to prevent the passage of dingoes and marsupials as defined respectively by “ *The Stock Routes and Rural Lands Protection Acts, 1944 to 1962* ” ; Marsupial-proof
- “ Minister ”—The Minister for Public Lands and Irrigation or other Minister for the time being charged with the administration of this Act : the term includes any Minister performing temporarily the duties of the Minister administering this Act ; Minister
- “ Noxious plants ”—Prickly-pear, zamia (cycadaceous plants), desert poison bush (*Gastrobium grandiflorum*), African box thorn (*Lycium ferocissimum*), bathurst burr (*Xanthium spinosum*), galvanised burr (*Bassia birchii*), noogoora burr (*Xanthium pungens*), crofton weed (*Eupatorium Adenophorum*), mint weed (*Salvia reflexa*), weir vine (*Ipomoea calobra*), groundsel (*Baccharis halimifolia*), and any other plant which the Governor in Council, by notification published in the *Gazette*, declares to be a noxious plant for the purposes of this Act : the term includes the fruit, seeds, and any viable part of any such plant ; Noxious plants
- “ Occupation license ”—An occupation license issued or deemed to be issued under Part III. ; Occupation license
- “ Part ”—Part of this Act ; Part
- “ Pastoral lease ”—A lease of land under and subject to Divisions I. and II. of Part III.: the term includes a pastoral holding, preferential pastoral holding or pastoral development holding, the lease whereof was issued otherwise than pursuant to Part III. ; Pastoral lease
- “ Pastoral lessee ”—The lessee of a pastoral lease ; Pastoral lessee
- “ Prickly-pear ”—Prickly-pears (*Opuntia*) and all other plants belonging to the plant family *Cactaceæ* : the term includes the fruit, seeds and any viable part of any such plant ; Prickly-pear

Public
Curator

“Public Curator”—The Public Curator of Queensland under and within the meaning of “*The Public Curator Acts, 1915 to 1957*”;

Public
purposes

“Public purposes”—Any of the following objects or purposes, namely :—

Abattoirs	Memorials and memorial halls
Aboriginal reserves	Museums
Aerodromes	Orphanages
Agricultural and horticultural societies	Parks, gardens, and recreation grounds
Approaches	Pasturage reserves
Asylums and industrial homes	Police purposes
Baths	Port and harbour purposes
Bridges	Prisons and lock-ups
Buildings	Public halls
Camping-places	Quarries, ballast grounds, and gravel pits
Canals	Racecourses
Cemeteries, mortuaries and burial places	Railway purposes
Charitable institutions	Roads and stock routes
Departmental and official purposes	Scenic purposes
Drainage	Scientific purposes
Easements and rights of way	War memorials or soldiers' memorial halls
Educational institutions	State schools
Electrical works	Stock control and health
Exhibition and show grounds	Stock holding paddocks
Experimental farms	Technical schools
Ferries, fords, and crossings	Townships
Fire Brigades	Tramway purposes
Forestry and forest products	University and college purposes
Grammar schools	Watercourses
Health purposes	Watering-places
Hospitals	Wharves, jetties, slips, quays, and landing-places
Landing grounds for aircraft	Works for obtaining, conserving, distributing, or utilising water ;
Libraries	
Local government functions or purposes	
Magazines	
Markets	

Quarter day

“Quarter day”—The first day of January, the first day of April, the first day of July, and the first day of October respectively in any year ;

- “Rabbit-proof”—With reference to fencing, of such character as to prevent the passage of rabbits ;
- “Registered bailiff”—A person who being the *bona fide* manager, agent or bailiff of a lessee, executor or administrator of a deceased lessee, committee of the estate of a mentally sick lessee, the Public Curator when authorised to act under the provisions of Part IIIA. or Part IV. of “*The Public Curator Acts, 1915 to 1957,*” mortgagee in possession, or trustee in bankruptcy (in this definition called “the appointer”) and being qualified as prescribed to be thereunto appointed, has been appointed by the appointer to be his registered bailiff by an instrument of appointment signed by the appointer and made and registered as prescribed ;
- “Registrar”—The Registrar of the Land Court, including a deputy registrar of such Court ;
- “Registrar of Dealings”—The officer of the Department charged with the duty of recording dealings affecting lands under this Act ;
- “Registrar of Titles”—The term includes the Deputy Registrars of Titles for the Central District and Northern District respectively under and within the meaning of “*The Real Property (Local Registries) Act of 1887*” ;
- “Reserve”—Includes any land which for the time being is reserved and set apart, or deemed to be reserved and set apart, under this Act for a public purpose ;
- “Road”—Any road, whether surveyed or unsurveyed, dedicated, or notified or declared in any manner howsoever to be a road for public use, and any road comprised of land taken, pursuant to any enactment, for the purpose of a road for public use.

The term includes—

- (a) any road, street, esplanade, reserve for esplanade, parade, promenade, avenue, crescent, drive, lane, highway, pathway, footway, thoroughfare, track or stock route; and

(b) any part of any road or any bridge, causeway, culvert or other works in, on, over or under any road or any part of any road within the meaning of this definition;

Selection “**Selection**”—In relation to any land, an application to select such land which, having been accepted by the Commissioner or the Committee of Review, has been approved by the Court: the term includes the land the subject of such an application and, where necessary, any land under agricultural selection, settlement farm lease or grazing selection tenure, held or deemed to be held under the provisions of this Act;

Selector “**Selector**”—In relation to any land, the applicant to select such land, whose application having been accepted by the Commissioner or the Committee of Review and approved by the Court is, subject to this Act, entitled to a lease of the land.

The term includes—

(a) in the case of a deceased selector, his executor or administrator, or, if there is not a grant of probate or administration, the person entitled to entry of transmission of the selection in the records of the Department;

(b) in the case of a mentally sick selector, the committee of his estate;

(c) in the case of a bankrupt selector, his trustee in bankruptcy;

**Simul-
taneous
applications** “**Simultaneous applications**”—(Without limiting the meaning of the expression in cases of applications which are in point of time simultaneous) all applications for the same land which are lodged at or before the time stated in the notification declaring the land open shall be deemed to be simultaneous;

Stock route “**Stock route**”—Any road or route ordinarily used for the purpose of travelling stock or declared under any Act or law to be a stock route;

“Suburban land”—All Crown land set apart ^{Suburban land} (whether before, on or after the commencement of this Act) as such ;

“This Act”—Includes Proclamations, Orders in ^{This Act} Council, rules, regulations and notifications made, issued or given under this Act ;

“Town land”—All Crown land set apart ^{Town land} (whether before, on or after the commencement of this Act) as such.

PART II.—ADMINISTRATION

Division I.—General Provisions

6. (1) Subject to this Act, the Governor in Council ^{Grants and leases (1910, s. 6)} may, in the name of Her Majesty, grant in fee-simple, or demise for a term of years or in perpetuity, or deal otherwise with any Crown land within Queensland.

(2) The grant or lease shall be made subject to such reservations and conditions as are authorised or prescribed by this Act or any other Act, and shall be made in the prescribed form, and being so made shall be valid and effectual to convey to and vest in the person therein named the land therein described for the estate or interest therein stated.

(3) The rights of the Crown in gold and other minerals, helium and petroleum, and the reservations with respect to the same which are to be contained in all Crown grants and leases, are declared and prescribed in “*The Mining on Private Land Acts, 1909 to 1956,*” and “*The Petroleum Acts, 1923 to 1958.*”

(4) In addition to any reservation authorised or prescribed by this Act or any other Act in any grant or lease made after the commencement of this Act, there may be reserved for any public purposes, whether specified or not, a part of the land comprised therein of an area to be specified, but without specifying the part of the land so reserved.

And it is hereby declared, subject to the next following subsection, that all such reservations in all grants and leases made before the commencement of this Act are valid to all intents and purposes.

(5) On and from the commencement of this Act all lands which were granted by the Governor in Council, in the name of Her Majesty, in fee-simple subject to the reservation in favour of the Crown that :—

“ We do hereby reserve unto us, Our Heirs and Successors, all such parts and so much of the said land as may hereafter be required for making Public Ways, Canals, or Railroads, in, over, and through the same, to be set out by Our Governor for the time being of Our said Territory, or some person by him authorised in that respect ; and also, all Sand, Clay, Stone, Gravel, and indigenous Timber, and all other materials, the natural produce of the said land which may be required at any time or times hereafter for the construction and repair of any Public Ways, Bridges, Canals, and Railroads, or any Fences, Embankments, Dams, Sewers, or Drains necessary for the same, together with the right of taking and removing all such materials ; and we do hereby further reserve unto Us, our Heirs and Successors, the right of full and free ingress, egress, and regress, into, out of, and upon the said land, for the several purposes aforesaid,”

shall be and are hereby discharged from such reservation.

The Registrar of Titles is hereby empowered to make any necessary entries or endorsements in the register books, as he deems fit, and to do and execute all such other acts, matters and things as he may deem necessary and proper to record the discharge from any deed of grant or certificate of title of such reservation.

(6) The power under this Act of the Governor in Council, in the name of Her Majesty, to grant in fee-simple, or demise for a term of years or in perpetuity any Crown land within Queensland includes power to make such a grant or demise to the Commonwealth of any Crown land in Queensland acquired by the Commonwealth by agreement between the Commonwealth and the Governor in Council (who is hereby thereunto authorised) or between the Commonwealth and any person or authority thereunto authorised by any other Act of the Parliament of this State.

Grant or lease may issue in name of deceased person (1910, s. 7)

7. In any case in which a person who is entitled, or if he had longer lived would have become entitled, to have a grant in fee-simple or a lease of Crown land issued to him dies before such grant or lease is actually issued, or before his right to have it issued has accrued, the Governor in Council may nevertheless (and in the latter case upon the happening of the event on which the right to have it issued accrues) issue such grant or lease to and in the name of such deceased person as if he were still alive.

Every grant or lease so issued shall be as valid as if the deceased person had been living at the time of its issue, and shall have the same effect, as between the several persons entitled to the land comprised therein, as if the deceased person had died immediately after its issue.

8. (1) In any case in which a person is entitled to have a grant in fee-simple issued to him as trustee, other than as a trustee of land granted in trust for a public purpose, the Governor in Council shall not issue such grant until such person has deposited in the office in Brisbane of the Department an instrument, in duplicate, declaring the trusts upon which the land the subject of the grant shall be held by such person.

Issue of
grant to
trustee
(1961, s. 2)

Every such instrument shall be signed by such person, shall be attested by a witness, and shall refer to the description to be given in the grant of the land or shall give such other description as may be necessary to identify the land.

(2) Upon the forwarding to the Registrar of Titles of the grant for entry of the duplicate thereof in the register book kept by him, pursuant to the provisions of "*The Real Property Acts, 1861 to 1960*," there shall also be forwarded to him both copies deposited in the office in Brisbane of the Department of the instrument declaring the trusts upon which the land the subject of the grant shall be held by the grantee.

The Registrar of Titles shall have and may exercise with respect to such instrument the powers and authorities conferred upon him by section one hundred and twelve of "*The Real Property Acts, 1861 to 1960*," and may refuse to enter the duplicate of the grant in the aforesaid register book until the requirements of any requisition made by him under that section in respect of the instrument have been complied with to his satisfaction.

The Registrar of Titles shall not make any entry of such trusts in the aforementioned register book but he shall retain in his office for safe custody and reference one copy of such instrument and he may make with respect to such instrument such memorial, entry or noting in or on the grant, including the duplicate thereof entered in the aforementioned register book, as he deems necessary or expedient for referring thereto.

Surrender
and issue of
fresh deed
when road
opened or
closed, &c.
(1910, s. 8)

9. (1) Whenever by reason of—
- (a) the opening or closing of a road through or adjoining any land held in fee-simple ;
 - (b) a sale, pursuant to Division III. of Part VIII.; or
 - (c) a sale, pursuant to section three hundred and fifty-nine of this Act, of the whole or part of a reservation,

the description of the land as comprised in the subsisting instrument of title has ceased to be the appropriate description of the land to which, after such opening and closing or sale and any consequent alterations of boundary, the owner is entitled, the owner may surrender to the Crown his title to the land; and upon such surrender a fresh deed or fresh deeds of grant shall be issued comprising the land to which, after such opening or closing or sale the owner is entitled.

In any fresh deed of grant issued by reason of the closure of a road, the Governor in Council may reserve the right to resume for public purposes an area equal to that comprised in the road so closed on payment of a sum per acre for the land resumed equal to that paid per acre for the land comprised in the closed road.

When
boundaries
inaccurate

(2) When it is found, upon resurvey of any portion of land held in fee-simple, that the measured lengths of the boundaries thereof do not agree with the lengths of the boundaries as described in the existing instrument of title, and where no doubt exists as to the boundaries of the land intended to be granted, or where the boundaries of the land have shifted or altered by reason of erosion or by gradual and imperceptible degrees, the owner of such portion may, with the approval of the Minister, surrender to the Crown his title to the land, and thereupon a fresh deed of grant containing a corrected description of the boundaries of the land shall be issued to him.

(3) When issuing any fresh deed of grant pursuant to this section, the Governor in Council may, if it appears appropriate so to do, amend or alter the description of the land contained therein. The Registrar of Titles shall thereupon cause to be made any necessary entries or endorsements in the register book concerned and do and execute all such other acts, matters and things as may be necessary and proper to record the fresh deed of grant.

(4) When land proposed to be surrendered under this section is not under "*The Real Property Acts, 1861 to 1960*," no fresh deed of grant shall be issued until after the provisions of that Act relating to the bringing of land under that Act have been complied with.

Land to be brought under Real Property Act

(5) The Registrar of Titles shall enter on the fresh deed of grant any and every mortgage, charge, encumbrance, lease, easement or other transaction which is entered on the surrendered instrument of title at the date of the surrender thereof and all notings made by him and appearing on such surrendered instrument at such date, save any such entry or noting duly cancelled prior to such date.

Endorsement of existing mortgage, &c.

Every such entry or noting shall be made without demand for or payment of any fee, anything in any Act to the contrary notwithstanding.

(6) For the purposes of this section, "owner" includes any person entitled to an estate of freehold in possession: Provided that, if any person is not absolutely entitled to the land, the fresh grant shall be to the same persons and for the same estates respectively as the persons and estates included in the surrendered instrument of title.

Owner

10. (1) No deed of grant whenever issued, and no instrument in which any particulars correspond with those contained in the relevant deed of grant, shall be void by reason only of want of certainty in any particulars, misdescription of the land, or misnomer of the grantee in the deed or by reason only that the person named in the deed as grantee is not entitled to the grant, or that the estate intended to be granted is erroneously stated in the deed, or that the grant is otherwise defective owing to error or omission in the preparation of the deed, in any case where the Governor in Council, by Order in Council, published in the *Gazette*, declares the matters intended to be corrected and the description, name, estate, or matter substituted or added.

Correction of misdescription, &c., in grant by subsequent instrument (1910, s. 9)

(2) Notice of intention to make such an Order in Council, stating the name of the grantee and of the party, if any, applying for the Order, and the proposed corrections or additions shall be published twice in the *Gazette* and in a newspaper circulating in the locality in which the land is situated, and the Order in Council shall not be made until at least thirty days after the completion of such publication.

(3) For the purposes of this section, the Minister may, in his discretion, cause to be made, before a Judge of the Supreme Court, inquiry as to the interests of any person who may be affected or who represents that he will be affected by any proposed Order, and may refer accordingly any application for such Order, and any claim in opposition thereto, for the report thereupon of such Judge at the cost of the party or parties ; and such Judge shall thereupon have power to summon and examine the parties and all witnesses where evidence is deemed necessary, and to report to the Minister upon the matter.

(4) Every Order in Council under this section shall be registered in the office of the Registrar of Titles.

(5) When an Order in Council has been made and registered under this section, every grant or instrument to which the Order relates shall operate and be construed as if it had been originally issued or executed as amended by the Order.

(6) It shall be sufficient in any action or proceeding for the party relying on any Order in Council under this section to prove its registration without showing compliance with any other provision of this section.

(7) Where subsequently to the making of an Order in Council under this section, the Crown issues a fresh deed of grant for the land in question or any part thereof, nothing in the Order in Council shall affect such fresh deed or any title to the land comprised therein or claimed thereunder.

Waiver of
breach of
condition
in grant
(1910, s. 10)

11. No title to land shall be held bad by reason of the breach or non-performance of any condition contained in the deed of grant of such land in any case where the Governor in Council, by notification published in the *Gazette*, declares that no proceedings will be at any time taken on behalf of the Crown for voiding the grant by reason of such breach or non-performance.

Any such notification may be in general terms applying to all conditions, or may be limited to conditions of particular classes or a particular class of cases or a particular case only.

12. (1) The land comprised in any deed of grant may be described by means of a map or plan, stating such particulars as are necessary to sufficiently describe the land, and delineated upon the deed of grant. Description of land in grant

(2) Before the issue of any deed of grant of any land, the proper deed fee and assurance fee shall be paid, and no such grant shall be issued until such fees are paid. Fees to be paid before issue of grant (1910, s. 11)

13. (1) The land comprised in any lease may be described by means of a map or plan, stating such particulars as are necessary to sufficiently describe the land, and delineated upon the instrument of lease. Description of land in lease (1910, s. 12)

In any pastoral lease it shall be sufficient if the land comprised therein is defined according to the best description of such land and of the boundaries thereof which is procurable, notwithstanding that such description has not been prepared after actual survey. No such lease shall be liable to be set aside by reason only of the imperfection of any such description if the land is defined in the lease with reasonable certainty.

(2) If at any time it becomes necessary or expedient to correct any instrument of lease by reason that— Correcting leases

- (a) the boundaries of the land intended to be demised are not set forth in such instrument with sufficient certainty ;
- (b) such instrument is defective owing to error or omission in the preparation thereof ;
- (c) from a survey of the land more accurate knowledge has been obtained ;
- (d) a determination has been made by the Court, pursuant to section thirty-nine of this Act, upon a dispute as to boundaries ;
- (e) the Governor in Council (who is hereby thereunto authorised) has approved of the mutual exchange, as agreed upon by the lessees of contiguous holdings, of areas respectively abutting upon a part of the boundary of such holdings which is common to both ;
- (f) the Governor in Council has approved of the inclusion in a holding of an area of adjoining Crown land ; or

(g) certain facts having arisen or appeared since the issue of such instrument, the Governor in Council deems a correction of such instrument necessary or expedient, the Governor in Council may by Order in Council declare the matters intended to be corrected and the description or matter substituted or added in such instrument.

(3) Every such Order in Council shall be registered in the appropriate register kept in the Department.

(4) When an Order has been made and registered under this section, every lease or instrument to which the Order relates shall, subject to any directions in that behalf contained in the Order, operate and be construed as if it had been originally issued or executed as amended by such Order.

(5) It shall be sufficient in any action or proceeding for the party relying on an Order in Council under this section to prove its registration without showing compliance with any other provision of this section.

Obligation to perform conditions of leases and licenses

14. (1) Subject to this Act the lessee of a holding or holder of a license under this Act shall perform all of the conditions of the lease or license which by this Act or by the lease or license are required to be performed by him and for any failure so to do shall be liable to the prescribed penalty (if any) and the lease shall be liable to be forfeited or the license to be determined as prescribed.

(2) (a) The Minister, with the approval of the Governor in Council and the consent of the lessee, may delete or vary or amend any developmental or improvement condition (including the condition of fencing or other improvement) of a lease, but (except as prescribed by paragraph (c) of this subsection) the Minister shall not make any such variation or amendment affecting the time within which any such condition of a lease is to be performed whether in whole or in part.

(b) Any such deletion, variation or amendment of a condition of a lease shall be published in the *Gazette* and thereupon—

(i) in the case of an amendment or variation the condition as amended or varied shall be binding upon the lessee as a condition of his lease;

- (ii) the Registrar of Dealings shall cause a noting of the deletion, variation or amendment to be entered upon the instrument of lease and in the appropriate register kept in the Department.

(c) The Minister, as he deems fit, may extend the time within which any developmental or improvement condition (including the condition of fencing or other improvement) of the lease or license may be performed, or with the consent of the licensee, may delete, vary or amend any developmental or improvement condition attached to the license.

(3) Any—

(a) forbearance by the Minister with respect to—

- (i) enforcing the due performance of any condition of the lease or license which by this Act or by the lease or license is required to be performed by the lessee or licensee; or
- (ii) taking action under Division X. of Part X. in respect of any breach of condition of the lease; or

(b) extension of time to perform any developmental or improvement condition attached to a lease or license under this Act,

shall not constitute a waiver of any such condition or in any way authorise, justify or excuse any non-performance by the lessee or licensee concerned of the same or any other condition of the lease or license.

(4) In this section the expressions “lessee of a holding” and “holder of a license” respectively include any person who acquires the holding or license by transfer or devolution of law or under any testamentary instrument.

15. (1) A person under the age of eighteen years shall not be qualified to apply for, acquire, hold or purchase land under any tenure or to apply for, acquire or hold any license under the provisions of this Act.

Minimum age at which land may be applied for or held (1959, s. 62)

(2) Notwithstanding any Act or rule or practice of law, any person of the age of eighteen years but under the age of twenty-one years may acquire, transfer, mortgage or otherwise deal with any lease or license

Dealings by minors (1959, No. 2, s. 19)

under this Act or any interest therein to the same extent and as fully and effectually in law as if he were of the age of twenty-one years, and every transfer, mortgage, sublease, or document evidencing any other dealing with a lease or license under this Act, or any interest therein whereto such person is a party, shall be legally binding upon such person and enforceable by or against him accordingly.

Dealings by
aliens

16. An alien shall not be qualified to apply for, acquire, or hold land under any tenure under this Act, including under any license or under a demise, pursuant to section one hundred and seventy-six of this Act, unless he has first obtained a permit under "*The Alien Acts, 1867 to 1958,*" entitling him to hold chattels real in Queensland.

This section does not apply to an alien who purchases from the Crown any land made available for sale for an estate in fee-simple.

Districts,
counties,
parishes,
town and
suburban
land
(1910, s. 13)

17. (1) The Governor in Council may, from time to time, by Order in Council—

- (a) constitute any part of the State as a district, county or parish and give a name to such district, county or parish ;
- (b) include in any district, county or parish any part of the State which is not included in any district, county or parish ;
- (c) abolish a district, county or parish and join such abolished district, county or parish, or any part thereof, to another district, county or parish ;
- (d) alter the boundaries of districts, counties or parishes by excluding from one any part thereof and including the part so excluded in another ;
- (e) alter the name of any district, county or parish.

(2) The Governor in Council may, from time to time, by notification published in the *Gazette*, set apart any Crown land as town land or suburban land.

18. The Governor in Council may, from time to time, by notification published in the *Gazette*, declare any plant to be a noxious plant for the purposes of this Act.

Declaration
of noxious
plants
(1910, s. 13A)

Division II.—Land Administration Commission

19. (1) This Act shall be administered by the Minister and, subject to the Minister, by the Land Administration Commission.

Land
Administra-
tion
Commission
(1959, s. 7)

(2) The Commission shall consist of a chairman who shall be designated the "Chief Commissioner of Lands", and two other members.

(3) Persons shall be appointed and hold office respectively as the Chief Commissioner of Lands and other members of the Land Administration Commission under, subject to and in accordance with "*The Public Service Acts, 1922 to 1960*," and shall be officers of the Department.

(4) For the purposes of "*The Public Service Acts, 1922 to 1960*," the Chief Commissioner of Lands shall be the permanent head of the Department unless and until some other person is defined by the regulations under those Acts to be that permanent head.

(5) The Land Administration Commission established under "*The Land Acts and Other Acts Amendment Act of 1959*," is hereby preserved, continued in existence, constituted under this Act, and shall be and remain the Land Administration Commission for all purposes of this Act.

(6) The persons appointed and holding office respectively as the Chief Commissioner of Lands and other members of the Commission (including any person appointed to and holding any such office temporarily) immediately prior to the date of the commencement of this Act shall, without any further appointment or authority other than this section (but under, subject to and in accordance with "*The Public Service Acts, 1922 to 1960*"), continue to hold (in terms of their appointments thereto respectively) their offices respectively as Chief Commissioner of Lands and members of the Land Administration Commission.

Powers and duties of the Commission (1959, s. 9)

20. Subject to the Minister, the Land Administration Commission shall be charged with the proper and effective administration of Crown lands and of all laws relating thereto (save any such laws prescribed by this Act or some other Act to be administered by some other person or authority) and shall control, manage, supervise and carry on the administration of the Department and in particular shall from time to time—

- (a) advise the Minister on matters pertaining to the administration of Crown lands and make to him such recommendations and reports respecting such matters as the Minister may require or as the Commission deems necessary or expedient ;
- (b) make such inquiries and investigations pertaining to the administration of Crown lands as the Minister may direct or as the Commission deems necessary or expedient ;
- (c) do, exercise and perform other functions, powers and duties as required, from time to time, by the Governor in Council.

Powers of inquiry and investigation (1959, s. 9 (2))

21. For the purpose of any inquiry or investigation, the Commission and each and every member thereof shall have and may exercise the powers of a Commission under and within the meaning of "*The Commissions of Inquiry Acts, 1950 to 1954*," save the provisions thereof which are thereby expressed to be limited in their application to a Judge of the Supreme Court.

References to the Land Administration Board (1959, s. 10)

22. References in any Act or law to the Land Administration Board shall be taken to refer to the Land Administration Commission.

Powers of Minister and Governor in Council (1959, s. 11)

23. (1) Whenever under any provision of this Act or of any other Act relating to the administration of Crown lands, the Minister is empowered or required to exercise or discharge any power, authority, function or duty, the same may be exercised or discharged by him after giving due consideration to the recommendation of the Commission, and any such provision shall be construed accordingly.

(2) If the Minister does not approve of any report or recommendation of the Commission he may remit it to the Commission for reconsideration.

(3) In considering and dealing with any matter which is the subject of a report or recommendation by the Commission, the Minister may act in accordance therewith or may take such other action as he or the Governor in Council considers to be proper in the public interests.

(4) (a) The Minister may from time to time, in relation to any matters or class of matters, by instrument in writing under his hand delegate all or any of his powers, authorities and functions under this Act as may be specified in the instrument (other than this power of delegation) to the Commission, any member thereof or other officer of the Department so that any delegated power, authority or function may be exercised or, as the case may be, shall be performed by the delegate with respect to the matters or class of matters specified in the instrument. Power of delegation

(b) The Minister may subject any such delegation to such conditions or limitations as he deems fit.

(c) Where, by or under this Act, the exercise of a power, authority or function of the Minister is dependent upon the opinion, belief, or state of mind of the Minister, in relation to any matter, that power, authority or function may be exercised upon the opinion, belief, or state of mind of the Commission, or the member thereof or other officer of the Department to whom it is delegated by an instrument of delegation under this section.

(d) The Minister may, at his will, revoke a delegation made by him under this section.

(e) No delegation shall prevent the exercise of any power, authority or function by the Minister.

Division III.—Secretary, Commissioners and other Officers

24. (1) The Governor in Council may, from time to time appoint a Secretary of the Commission, and such Land Commissioners, Assistant Land Commissioners, Deputy Land Commissioners, Land Agents, Land Rangers and other officers as may be necessary for carrying this Act into effect; and may assign a district or districts to any Commissioner or Land Agent. Appoint-
ment of
Secretary,
Com-
missioners
and other
officers
(1910, s. 14)

Officers
holding
land under
Act

(2) (a) Any Commissioner or other officer of the Department or any person holding, either alone or in conjunction with any other office, any office referred to in subsection (1) of this section, shall not be eligible to bid or apply for any land offered for sale, or open for lease or selection under this Act, nor, except by devolution of law or testamentary instrument, shall he acquire any interest, either directly or indirectly, in any holding unless he shall have first obtained the written permission of the Minister.

(b) Any land, or interest therein, acquired by any person in contravention of paragraph (a) of this subsection shall be deemed to have been acquired by evasion of this Act.

Duties of
Commis-
sioners and
other
officers

(3) The Minister, the Chief Commissioner of Lands, any other member of the Commission, or any Commissioner, Assistant Commissioner or Land Ranger may and shall do, on behalf of the Crown, in respect of any Crown land or any reserve, all necessary acts for preventing intrusion, encroachment or trespass, and may, with such assistants, vehicles and horses as he deems necessary, enter upon any holding, or any land comprised in a license issued under this Act, or being purchased under this Act and make any inspection or examination of the same, and may do all necessary acts for recovering any rent or other sum payable in respect thereof, or for taking and recovering possession of any land in case of forfeiture, determination of the license, or cancellation of the sale.

Right of
entry by
authorised
persons

(4) The Minister or any member of the Commission, or any person thereunto authorised by the Minister or the Commission shall have the right at all times to go upon any land, including any freehold land, with such assistants, vehicles and horses as may be specified in the authority, and to make any inspection or examination of the same.

Auctioneer's
license not
required

(5) A Commissioner or a Land Agent, or any other person authorised by the Minister, may hold any auction under this Act without holding an auctioneer's license.

Presumption
of authority

(6) In all matters in relation to this Act or any other Act for the time being administered by the Department and in any proceeding under this Act or any such other Act, the authority of the Chief Commissioner of Lands,

or any other officer of the Department to do any act or to institute, carry on, or prosecute any proceeding shall be presumed until the contrary is shown.

(7) Any report furnished for the purposes of this Act by any officer of the Department, and purporting to be made while such officer was acting in the discharge of his duty, shall be received in evidence in any court or tribunal acting judicially without proof of such officer's authority to make such report, and shall be *primâ facie* evidence of all the facts therein stated which are relevant to the matters then being heard and determined by such court or tribunal.

Evidence
of reports

(8) All documents whatever purporting to be issued or written by or under the direction of the Minister or the Commission, or any member or the secretary thereof, or a Commissioner, and purporting to be signed by him, shall be received in evidence in any court or tribunal acting judicially, and shall be deemed to be issued or written by or under his or its direction until the contrary is proved.

Official
documents
to be
admitted in
evidence

In this subsection the expression "documents" includes all orders, directions and notices.

(9) In any proceeding, the production of any map or plan purporting to be issued or published by any Department of the Government, or any officer thereof, shall be sufficient evidence of the matters stated or delineated thereon until the contrary is proved.

Maps, &c.

(10) No matter or thing done in good faith and without negligence—

Protection
of officers,
&c., from
personal
liability

(a) by the Minister or any person acting with the authority of the Minister or by the Commission or any member or the secretary thereof; or

(b) by any other officer of the Department, or any other person,

for the purpose of executing this Act or in the execution of his powers, authorities or functions, or the discharge of his duties under this Act, shall subject the Crown, the Minister, the person acting with the authority of the Minister, the Commission or any member or the secretary thereof, or the other officer of the Department or other person in question to any liability in respect thereof.

Notice of
action
(1910, s. 15)

25. An action shall not be brought against the Crown or, unless brought on behalf of the Crown, against any member of the Commission, Commissioner, Assistant Commissioner, Land Agent, Land Ranger or other officer acting under this Act, or person acting in his aid, for any thing done or intended or omitted to be done under this Act, until the expiration of one month after notice in writing has been served,—

(a) in the case of the Crown, on the Minister; or

(b) on the officer or person concerned,

clearly stating the cause of action, and the name and place of abode of the intended plaintiff and of his solicitor or agent.

On the trial of such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served.

Unless such notice is proved, the court before which the action is brought shall find for the defendant.

The Crown or the officer or person concerned may tender amends to the plaintiff, his solicitor, or agent, and, in case the same is not accepted, may plead such tender.

The plaintiff in such action shall not recover if tender of sufficient amends is made before the commencement of the action, or if a sufficient sum of money is paid into court after the commencement of the action by or on behalf of the defendant, together with costs incurred up to the time of such tender or payment into court.

If judgment is given for the defendant, or the plaintiff is non-suited or discontinues his action, the defendant shall recover from the plaintiff costs as between solicitor and client.

Every such action shall be commenced within six months next after the accruing of the cause of action, and not afterwards.

Division IV.—The Commissioner's Court

26. The Commissioner shall once at least in each month, on a day to be notified in the *Gazette*, hold an open court, to be called the Commissioner's Court, at which—

Commissioner to hold a monthly court (1910, s. 16)

- (a) all applications to lease land under pastoral lease, or to obtain an occupation license, or to select land as a selection pursuant to the open method of application shall be considered and rejected or accepted or refused or otherwise dealt with; and
- (b) all inquiries shall be held, and all matters which by this Act or any other Act are declared to be within the cognisance of the Commissioner shall be dealt with, if such inquiries and matters are required to be held and dealt with in open court.

27. (1) The Commissioner shall have power—

Proceedings in such court (1910, s. 17)

- (a) to inquire into and determine any question raised at any such court by himself or any other person, and to inquire into any objection made, either on public or private grounds ;
- (b) to summon any person as a witness, and to require and compel him to bring and produce for the purposes of evidence all documents and writings in his possession or power, and to examine him upon oath, and to punish him for not attending in pursuance of the summons or for refusing to give evidence, or for neglecting or refusing to bring and produce any such documents or writings, and for such purposes to exercise the same powers and authorities as are conferred upon justices by "*The Justices Acts, 1886 to 1960*";
- (c) to take evidence on oath, affirmation, affidavit, or declaration ;

(d) to take evidence of his own motion if he thinks fit;

(e) to adjourn the proceedings.

(2) Any party to any matter in such court may be represented by his counsel, solicitor, or agent.

(3) Every witness summoned to such court shall be entitled to a tender of his reasonable expenses by the party requiring his attendance.

(4) The Commissioner's decision on every matter heard in such court shall be pronounced in open court.

Inter-
rupting
proceedings
of such
court
(1910, s. 18)

28. Any person who wilfully insults a Commissioner sitting in court, or wilfully interrupts the proceedings of or otherwise misbehaves himself in such court, may be excluded from the court by order of the Commissioner, and shall, whether he is so excluded or not, be liable to a fine to be imposed by the Commissioner not exceeding twenty pounds, and in default of immediate payment shall be liable to be imprisoned by order of the Commissioner for a period not exceeding fourteen days.

No summons need be issued against the offender, nor need any evidence be taken, but he may be taken into custody then and there by a member of the Police Force by order of the Commissioner, and called upon to show cause why he should not be fined or otherwise dealt with under this section.

Appeal from
Commis-
sioner's
decision
(1910, s. 19)

29. (1) Subject to this Act, every decision of a Commissioner pronounced in open court shall be final, unless written notice of appeal to the Court from the decision is delivered at the office of the Commissioner within fourteen days after the pronouncing of his decision, or within such further time, not exceeding twenty-eight days, as the Court may allow.

(2) The appellant shall within the period of fourteen days aforesaid, or such further time as the Court may have allowed for the making of an appeal, also serve a copy of the notice upon the Registrar and all persons directly affected by the decision.

(3) Every notice of appeal from the decision of a Commissioner shall state concisely the grounds on which the appellant intends to rely.

(4) The Minister shall cause the record of proceedings in the Commissioner's Court to be lodged in the office of the Registrar within fourteen days of the lodgment of the notice of appeal.

(5) On the hearing of any such appeal the Court shall consider and may confirm, with or without variation, or may reverse the Commissioner's decision.

(6) A decision of the Commissioner accepting an application to select land shall not be subject to appeal to the Court, but every such application shall be referred to the Court.

Decisions accepting applications to select land are subject to approval by the Court

If the Court approves the application the Commissioner's decision shall be final.

If the Court refuses the application the Commissioner's decision shall be thereby set aside.

The Court shall not refuse any such application without giving the applicant notice and hearing him in open court if he desires to be heard.

The decision refusing any such application shall be pronounced in open court.

(7) When the decision of the Commissioner accepting an application for land under any tenure under this Act has been determined by lot as prescribed, the Court shall not refuse the application or reverse the Commissioner's decision on the grounds of—

Minor irregularities not to invalidate ballots

- (a) the inclusion in the ballot of any unqualified applicant who was not the successful applicant; or
- (b) the exclusion, from the ballot of a qualified applicant; or
- (c) any irregularity in the form of any unsuccessful application for the same land or in the mode of lodging such unsuccessful application with the Land Agent,

if the Court is satisfied that the Commissioner acted in good faith and in a reasonable manner in the circumstances known to him at the time.

Division V.—The Land Court

Land Court
(1910, s. 20)

30. (1) For the purposes of this Act the Land Court is hereby preserved, continued in existence, and constituted under this Act. The Court shall consist of not more than six members, appointed from time to time by the Governor in Council by commission in Her Majesty's name.

President

(2) Subject to this subsection, the Governor in Council may also from time to time designate one of such members as President of the Land Court, and in that event such designation shall be indicated on the commission of appointment of such member.

A member shall not be designated as President of the Land Court unless he is a barrister or solicitor of the Supreme Court of Queensland of not less than five years standing.

Existing
members

(3) The members of the Court in office at the commencement of this Act shall, subject to the provisions of sections thirty-two and thirty-three of this Act, continue to hold such offices pursuant to their appointments thereto respectively (and in the case of the President of the Land Court his designation as such) under the repealed Acts.

Disabilities
of members

(4) The members of the Court shall not be capable of being members of the Legislative Assembly, and shall not act as directors or auditors or in any other capacity take part in the management of any bank, corporation, trade or business, or acquire any interest in any land held under lease or license under this Act.

Salaries of
members of
the Land
Court
(1910, s. 21)

31. (1) The salary of the member of the Court designated as President of the Land Court shall be at the rate of five thousand pounds per annum.

(2) The salaries of the members of the Court (other than the member designated as President of the Land Court) shall be at the rate of four thousand five hundred pounds per annum.

(3) All such salaries shall be a charge upon and paid out of Consolidated Revenue which is hereby appropriated accordingly.

(4) The provisions of "*The Judges' Pensions Act of 1957*" shall with and subject to all necessary adaptations apply to—

Application
of "*The
Judges'
Pensions Act
of 1957*"

- (a) the President of the Land Court continued in that office by this Act ; and
- (b) every member of the Court designated as President of the Land Court at any time after the commencement of this Act who is not a contributor to the Public Service Superannuation Fund immediately prior to the date of the issue of his commission of appointment on which such designation is indicated,

and to his widow after his death in the same manner as they apply to a Judge of the Supreme Court appointed to office after the coming into force of that Act and to his widow, and for this purpose that Act shall be read and construed as though the words "President of the Land Court" were substituted for the word "Judge" wherever it occurs therein.

(5) (a) Section three of "*The Supreme Court Acts Amendment Act of 1944*" as limited by section fifteen of "*The Judges' Pensions Act of 1957*" shall apply to a President of the Land Court to whom the provisions of "*The Judges' Pensions Act of 1957*" apply in the same manner as it would apply to a Judge of the Supreme Court appointed to office after the date of the passing of "*The Judges' Pensions Act of 1957*."

Leave of
President

(b) The provisions of section three of "*The Supreme Court Acts Amendment Act of 1944*" shall apply to members of the Land Court other than a President thereof to whom the provisions of "*The Judges' Pensions Act of 1957*" apply, as and from the date of the commencement of their commissions respectively, and for this purpose that section shall be read and construed as though the words "Member of the Land Court" or "Member" were substituted for the words "Judge of the Supreme Court" or "Judge" as the case may be.

Leave of
Members

Tenure of
office of new
members
(1910, s. 22)

32. Every member of the Court shall be appointed for a term of fifteen years and, subject to this Act, shall be eligible for re-appointment, but no such re-appointment shall be for a term exceeding fifteen years :

Provided that every member shall retire from office upon attaining the age of seventy years, notwithstanding that he has not then remained in office for the term then current of his appointment.

Removal
from office ;
suspension
(1910, s. 23)

33. A member of the Court shall not be removed from office except by the Governor in Council on an address from the Legislative Assembly praying for such removal on the ground of proved misbehaviour or incapacity :

Provided that at any time when Parliament is not sitting the Governor in Council may suspend any member of the Court from his office on the ground of proved misbehaviour or incapacity, in which case a statement of the ground of suspension shall be laid before the Legislative Assembly within seven days after the commencement of the next session thereof.

If an address shall during that session be presented to the Governor by the Legislative Assembly praying for the restoration of the suspended member to his office, he shall be restored accordingly unless the term of his appointment current at the time of his suspension shall have expired ; but if no such address shall be presented the Governor in Council may confirm such suspension, and declare the office of the member to be vacant, and the same shall be vacant accordingly.

Appointment
of acting
members
(1910, s. 24)

34. (1) In the case of the illness, suspension, inability or absence of the President of the Land Court, the Governor in Council may, by Order in Council, appoint a Member of the Court to act as President thereof during such illness, suspension, inability or absence.

(2) In the case of the illness, suspension, inability or absence of any member of the Court (other than the President thereof), or of the appointment of any member of the Court to act as President, the Governor in Council may appoint some other person to act temporarily as a member of the Court in the room of such member during his illness, suspension, inability or absence, or, as the

case may be, whilst he acts as President and every such person, while he so acts shall have all the powers and authorities of and be deemed to be a member of the Court.

35. The Court shall be a court of record, and shall have a seal which shall be judicially noticed by all courts and persons acting judicially. Seal ; public sittings (1910, s. 25)

The Court shall from time to time hold public sittings in Brisbane or elsewhere, to be called Land Courts, at which all business required to be transacted by it in open court shall be transacted.

If more than one member is sitting at the same time in the exercise of the jurisdiction of the Court under this Act or any other Act, each such member shall constitute the Court.

The Court shall, as near as may be to the first day of January in each year, make and publish in the *Gazette* a calendar of the times and places for such sittings of the Court during that year. But the publication of such calendar shall not prevent the Court from holding such sittings at other times or at additional places as occasion requires during such year.

36. The Governor in Council shall appoint a registrar of the Court and deputy registrars. Registrar and deputies (1910, s. 26)

Such officers shall keep minutes of the proceedings and records of the decisions of the Court, and shall perform such other duties as the Court may direct.

Jurisdiction and Proceedings of Land Court

37. (1) The Court shall hear and determine all matters which by this Act or any other Act are required to be heard and determined by the Court. General jurisdiction (1910, s. 27)

(2) The Court or any member thereof, or any member of the Court together with any member of the Commission, shall inquire into and report upon any matter connected with the administration of this Act or any other Act administered by the Minister which is referred to the Court or to such member, or to such member of the Court together with a member of the Commission, as the case may be, by the Governor in Council or the Minister. Matters may be referred

For the purposes of any such inquiry the Court, or a member thereof, or a member of the Court, together with a member of the Commission, shall have and may exercise the powers of a commission under and within the meaning of "*The Commissions of Inquiry Acts, 1950 to 1954*," save such of those powers as are expressed by such Acts to be conferred upon a Judge of the Supreme Court.

Assessment
of rent,
compensa-
tion, &c.
(1910, s. 29)

38. Whenever it is necessary to determine the amount of any rent, or unimproved value of any land, or compensation, or value of improvements, or other money payable or to become payable under this Act or any other Act conferring jurisdiction on the Court in respect of such matters, such amount shall be determined by the Court, and the following provisions shall apply :—

- (a) if the Crown is a party, the Minister shall furnish to the Court a report and a valuation with respect to the land or improvements or other matter in question made by the Commissioner or some other person ;
- (b) the Court shall require the lessee and every other person, by or to whom, respectively, any rent or money in question is or will be payable, to furnish to it a valuation or a claim in respect of the land, or improvements or other matter in question and such valuation or claim shall be furnished accordingly;
- (c) any party to any proceeding to which this section relates, after he has furnished his valuation or claim, shall have the right to inspect and take a copy of any valuation or claim furnished to the Court for the purposes of the proceeding.

In every case of assessment of rent of a pastoral lease, or selection, or brigalow lease, every report, valuation or claim furnished pursuant to paragraphs (a) or (b) of this section shall also state the number of stock which the holding may reasonably be expected to carry in average seasons, and additionally, in the case of a settlement farm lease, brigalow lease or perpetual lease selection, the acreage of arable land in the holding.

Dispute as to
boundaries
(1910, s. 30)

39. Any dispute which arises as to the boundaries of any holding, whether between the lessees of contiguous holdings or between a lessee and the Crown, shall,

upon reference by the Minister or any lessee who is a party to the dispute, be inquired into and determined by the Court.

Upon request by the Court made at any time during the course of its inquiry, the Minister may direct that a survey of the boundaries of the respective holdings with regard to which the dispute arose be made by an authorised surveyor appointed by the Minister.

The Court may order the cost of any such survey to be paid by any party to the dispute or paid by the parties in such proportions as the Court orders according as the Court deems warranted by the circumstances of the case.

The determination of the Court shall be binding upon the Crown, whether or not it is a party to the dispute, and upon all persons who are parties to the dispute.

40. (1) One member sitting alone shall constitute the Court for the purpose of the exercise by it of its jurisdiction in respect of the following matters, namely :—

Jurisdiction
of one
member
(1910, s. 31)

- (a) any application for a selection ;
- (b) any appeal from a decision of a Commissioner pronounced in open court ;
- (c) any determination of rent, compensation, value of improvements, price or value upon sale of land in fee-simple, or other money where the amount is under this or any other Act to be determined by the Court ;
- (d) any determination of unimproved value of land for the purpose of conversion of tenure ;
- (e) any dispute as to the boundaries of any holding ;
- (f) any claim in respect of any netting fence or any repairs to any netting fence pursuant to Division XII. of Part X.;
- (g) any reference in respect of any communal ring fence pursuant to Division XIII. of Part X.;
- (h) any determination of the unimproved value of land granted in trust when sale thereof proposed by mortgagee ;

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- (i) any determination as to whether the area of any land granted in trust exceeds the trust requirements and, if so, the extent of the excess ;
 - (j) any determination of the boundaries of land when Crown resumes possession of reservation contained in deed of grant ;
 - (k) any determination referred to in subsection (5) of section seventy-three of this Act ;
 - (l) any question as to whether land has been dedicated as a road precedent to considering closure thereof ;
 - (m) any determination referred to in subsection (3) of section two hundred and seventy-nine of this Act;
 - (n) any other matter in respect whereof the Court has jurisdiction under this Act or any other Act, unless this Act or such other Act prescribes that such jurisdiction shall be exercised by the Court constituted otherwise than by one member thereof sitting alone.

(2) Subject to this Act or, in the case of any matter in respect whereof the Court has jurisdiction under some other Act, subject to that other Act, the Crown or any party aggrieved may appeal in the manner herein provided, from any decision of the Court constituted by one member sitting alone.

Subject to this subsection, every decision of the Court shall be final and conclusive.

Powers of
Court
(1910, s. 32)

41. (1) For the purposes of any inquiry or appeal held by or made to the Court, or any other matter within its jurisdiction under this or any other Act, the Court shall have power to summon any person as a witness and to require and compel him to bring and produce in evidence all documents and writings in his possession or power, and to examine him, and to punish him for not attending in pursuance of the summons, or for refusing to give evidence, or for neglecting or refusing to bring and produce any such documents or writings, and for such purposes a member of the Court shall have the like powers as a Judge of the Supreme Court.

(2) The Court may, if it thinks fit, take evidence of its own motion.

(3) Every appeal from the decision of a Commissioner to the Land Court shall be by way of rehearing.

The Court on such appeal may hear and determine any question which arises in the course of such appeal, whether such question was or was not brought before or considered or decided by the Commissioner, or was or was not contained in any prescribed notice, but in such case any party to the proceedings shall be entitled to an adjournment upon such terms and conditions as the Court thinks just.

(4) The Court may take evidence on oath, affirmation, affidavit or declaration, and shall take notes of the evidence.

(5) Notwithstanding anything in this Act or in any other Act, or in any rule, process or practice of law—

Court to be guided by equity and good conscience

(a) the Court in the exercise of any jurisdiction, duty, power or function conferred or imposed upon it shall be governed in its procedure and in its decisions by equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms or the practice of the other courts ;

(b) the Court in the exercise of any such jurisdiction, duty, power or function shall not be bound by any rule or practice as to evidence, but may inform its mind on any matter in such manner as the Court deems just ;

(c) the Court may accept, admit and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.

This subsection does not apply to proceedings in respect of offences against this Act.

(6) Every witness summoned shall be entitled to a tender of his reasonable expenses by the party requiring his attendance.

(7) Any party may be represented by his counsel, solicitor or agent.

(8) Subject to the rules of court relating to the exercise in chambers of the jurisdiction of the Court, every proceeding shall be heard and determined and the decision thereon shall be pronounced in open court.

(9) The Court may make such order as it thinks fit as to the costs of any proceeding heard and determined by it, including allowances to witnesses attending for the purpose of giving evidence at the hearing and the cost of any survey of boundaries. Any such order may be made an order of the Supreme Court and enforced accordingly :

Provided that where the Court has jurisdiction under this Act or any other Act (and whether the Crown is a party or not) to award costs to or in favour of or amongst any party or parties to any proceeding or matter before the Court, the Court may, in its discretion, order that such costs shall be ascertained and fixed by the proper costs taxing officer of the Supreme Court at Brisbane, according to the scale of costs prescribed by law for the time being in respect of proceedings in the Supreme Court, and in every such case it shall be within the discretion of the taxing officer to decide what is the proper scale to be adopted by him in the taxation of such costs.

(10) Any party affected by the decision shall be entitled to see and take copies of the notes of the evidence and any reports or other documents put in evidence.

(11) The Court may sit in chambers, and may exercise in chambers such jurisdiction as by the rules of court is so exercisable.

Penalty for
interrupting
the proceed-
ings
(1910, s. 33)

42. Any person who wilfully insults the Court while sitting, or wilfully interrupts the proceedings of the Court, or otherwise misbehaves himself in the presence of the Court, may be excluded by order of the Court, and shall, whether he is so excluded or not, be liable to a fine, to be imposed by the Court, not exceeding fifty pounds, and in default of immediate payment shall be liable to be imprisoned by order of the Court for a period not exceeding twenty-eight days.

No summons need be issued against the offender, nor need any evidence be taken, but he may be taken into custody then and there by a member of the Police Force by order of the Court, and called upon to show cause why he should not be fined or otherwise dealt with under this section.

43. Upon application lodged in the office of the Registrar within twenty-eight days after the pronouncing of any decision of the Court upon any matter wherefrom the Crown or any person aggrieved may appeal, the Court may, if it thinks fit, and upon such terms as it thinks reasonable, grant a rehearing of the matter. Court may rehear matter (1910, s. 34)

Subject to being lodged within the aforementioned period of twenty-eight days the application may be dealt with thereafter and wherever practicable shall be dealt with by the member who pronounced the decision.

If it grants a rehearing the Court shall appoint a day for rehearing the matter, and shall rehear it accordingly.

An appeal shall lie from the decision on such rehearing in the same manner as if it had been a decision on a first hearing of such matter.

Division VI.—The Land Appeal Court

44. (1) For the purpose of hearing appeals from the Land Court, there shall be a Land Appeal Court consisting of a Judge of the Supreme Court and any two of the members of the Land Court exclusive of the member who pronounced the decision appealed against. Constitution of Land Appeal Court (1910, s. 35)

The two members of the Court shall be named in that behalf by the President of the Land Court, who in his discretion may be one of such members, provided the decision appealed against was not pronounced by him.

If more Judges of the Supreme Court than one are sitting with two members of the Court respectively at the same time in the exercise of the jurisdiction of the Land Appeal Court, each such Judge and the two such members sitting with him shall constitute the Land Appeal Court.

Chief Justice
to notify
name of
Supreme
Court Judge
to be
member of
the Land
Appeal
Court

(2) In the month of January in each year, the Chief Justice shall notify to the Minister the name of one of the Judges of the Supreme Court at Brisbane (who may be himself) to be the Judge of the Supreme Court to be the member of the Land Appeal Court in order to constitute the Land Appeal Court within the Southern District for that year, and it shall be the duty of the Judge of the Supreme Court so named to be a member of the Land Appeal Court in order to constitute the Land Appeal Court accordingly.

(3) For the purpose of constituting the Land Appeal Court within the Northern District or within the Central District, the Northern Judge or the Central Judge, as the case may be, shall, without any notification from the Chief Justice to the Minister as aforesaid, be the Judge who shall be the member of the Land Appeal Court.

It shall be the duty of the Northern Judge or the Central Judge, as the case may be, to be such member.

(4) In respect of any time when the Judge of the Supreme Court thereunto named by the Chief Justice, or the Northern Judge, or the Central Judge, as the case may be, is unable to be a member as prescribed of the Land Appeal Court, the Chief Justice shall notify to the Minister the name of another Judge of the Supreme Court to act in his place, and it shall be the duty of the Judge so named to act in his place accordingly.

(5) When the Governor in Council deems it expedient, having regard to all the circumstances of the case, that any matter to be heard and determined by the Land Appeal Court, should be so heard and determined at a particular place not within the district for the purposes of this section wherein the land or other matter the subject of the appeal is situated, he may, in his absolute discretion and notwithstanding anything contained in this Act or in any other Act or in any rule, process or practice of law, by Order in Council appoint the place at which the Land Appeal Court shall hear and determine such matter, and thereupon the matter concerned shall be heard and determined by the Land Appeal Court at the place so appointed, and the Judge of the Supreme Court to constitute the Land Appeal Court for the purposes of the hearing

and determination thereof shall, according as the place so appointed as aforesaid is within the Northern District, or the Central District, or the Southern District, be the Judge of the Supreme Court empowered under and in pursuance of this Act to be a member of the Land Appeal Court for the time being in order to constitute such Court within such District.

(6) No commission of appointment as a member of the Land Appeal Court shall be required to issue to any Judge of the Supreme Court, and, moreover, where any Land Appeal Court is constituted (and whether within the Southern, the Central or the Northern Districts) by a Judge of the Supreme Court being present and sitting with two members of the Court (other than the member who pronounced the decision the subject of the appeal), such Land Appeal Court so constituted shall be legally and validly constituted.

(7) For the purposes of this section the "Northern District," "Central District" and "Southern District" shall comprise respectively such Land Agent's Districts and Local Authority Areas or parts thereof as the Governor in Council by Order in Council may from time to time prescribe.

(8) The Land Appeal Court shall be a court of record, and shall have a seal which shall be judicially noticed by all courts and persons acting judicially.

(9) The Registrar of the Land Court shall act as Registrar of the Land Appeal Court.

(10) The Registrar shall notify the time and place of any sittings of the Land Appeal Court by notice published in the *Gazette* not less than twenty-one days before such time.

The Registrar may by a further notice published in the *Gazette* cancel or vary any such notice.

(11) The appellant shall serve notice of the appeal upon all persons directly affected by the decision not later than forty-two days after the pronouncing of the decision, or not later than fourteen days after the refusal of the Court to rehear the matter, whichever is the longer period.

(12) Any party to an appeal may be represented by his counsel, solicitor or agent.

(13) The appeal shall be by way of a rehearing, and shall be brought and the proceedings shall be had in such manner as may be prescribed by rules of court.

The Land Appeal Court may hear and determine any question which arises in the course of the appeal, including any question so arising which was not brought before or considered or decided by the Commissioner or the Court, or was not contained in any prescribed notice, but in such case any party to the proceedings shall be entitled to an adjournment upon such terms and conditions as the Land Appeal Court thinks just.

(14) Evidence on an appeal to the Land Appeal Court may be taken in the same manner as is prescribed with respect to matters heard and determined by the Land Court, and for the purposes of the appeal the Land Appeal Court shall have the same powers as the Land Court has under this Act.

Land Appeal
Court to be
guided by
equity and
good
conscience

(15) Notwithstanding anything in this Act or in any other Act, or in any rule, process or practice of law—

- (a) the Land Appeal Court in the exercise of any jurisdiction, duty, power or function conferred or imposed upon it shall be governed in its procedure and in its decisions by equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms or the practice of the other courts ;
- (b) the Land Appeal Court in the exercise of any such jurisdiction, duty, power or function shall not be bound by any rule or practice as

to evidence, but may inform its mind on any matter in such manner as the Court deems just ;

- (c) the Land Appeal Court may accept, admit and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not.

This subsection does not apply to proceedings in respect of offences against this Act.

(16) The Land Appeal Court may make such order as it thinks fit as to the costs of any proceeding heard and determined by it, including allowances to witnesses attending for the purpose of giving evidence at the hearing, and the cost of any survey of boundaries. Any such order may be made an order of the Supreme Court and enforced accordingly :

Provided that where the Court has jurisdiction under this Act or any other Act (and whether the Crown is a party or not) to award costs to or in favour of or amongst any party or parties to any proceeding or matter before such Court, the Court may, in its discretion, order that such costs shall be ascertained and fixed by the proper costs taxing officer of the Supreme Court at Brisbane, according to the scale of costs prescribed by law for the time being in respect of proceedings in the Supreme Court, and in every such case it shall be within the discretion of the taxing officer to decide what is the proper scale to be adopted by him in the taxation of such costs.

(17) If on the hearing of an appeal the members do not agree, the decision of the majority shall be the decision of the Land Appeal Court.

(18) Except as prescribed the decision of the Land Appeal Court shall be final and conclusive.

Division VII.—Appeals from the Land Appeal Court

Appeal to
Full Court
on questions
of law
(1910, s. 36)

45. (1) When the Crown or any person feels aggrieved by a decision of the Land Appeal Court, on the ground of error or mistake in law on the part of the Land Appeal Court or that the Land Appeal Court had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision, the Crown or such person may, within forty-two days after the making of the decision, notify the Registrar and the parties to the proceedings in question of its or his intention to request the Land Appeal Court to state and sign a case setting forth the facts and the grounds of decision for appeal thereon to the Full Court.

(2) The appellant shall, within three months of the date of the aforementioned notice, submit to the Registrar a draft case together with an application that the Land Appeal Court consider such draft and state and sign a case setting forth the facts and the grounds of decision for appeal thereon to the Full Court.

(3) If the appellant fails to submit a draft case within the time specified the decision of the Land Appeal Court shall be final and binding upon all parties thereto, and no appeal shall lie from the decision to the Full Court or any other Court or tribunal nor shall the decision be reviewed, quashed or otherwise called in question in any proceeding whatsoever.

(4) The appellant shall, before a case is stated, enter into a recognisance before a member of the Court or the Registrar or a justice of the peace, in such sum and with such surety, or sureties, if any, as such member or the Registrar shall determine, conditioned to prosecute the appeal without delay and pay such costs as the Full Court shall award.

(5) The appellant shall, within ten days after receiving the case, transmit the same to the Registrar of the Supreme Court, first giving notice in writing of the appeal with a copy of the case to the other or respondent parties, if any.

(6) During the hearing of an appeal, a case may be stated by the Land Appeal Court of its own motion, or in its discretion at the request of any party.

46. (1) In any case in which the Land Appeal Court is of opinion that the application is frivolous, but not otherwise, it may refuse to state a case, and thereupon shall, at the request of the applicant, sign and deliver to him a certificate of such refusal.

When Land Appeal Court may refuse to state a case (1910, s. 37)

(2) When the Land Appeal Court refuses to state a case, the applicant may within twenty-eight days after such refusal apply to the Supreme Court or a Judge thereof, upon an affidavit of the facts, for an order calling upon the Land Appeal Court, and also upon any party interested in supporting the decision, to show cause why a case should not be stated.

Full Court may order a case to be stated

The order may be made returnable on any day on which the Full Court is appointed to sit ; and whether cause is then shown or not, the Full Court may make the order absolute, or discharge it with or without costs.

The Land Appeal Court, upon being served with an order absolute, shall state a case accordingly.

The provisions of this subsection do not apply to a refusal by the Land Appeal Court to state a case at the request of any party during the hearing of any appeal.

47. The Full Court, when a case is transmitted under this Act, shall hear and determine every question of law arising thereon, and may remit the matter to the Land Appeal Court with the opinion of the Full Court thereon, or make such other order in relation to the matter as seems proper, and may make such order as to costs as to the Full Court may seem fit.

Full Court to determine the questions on the case (1910, s. 38)

48. The Full Court may cause a case to be sent back to the Land Appeal Court for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered by the Full Court after it is amended.

Case may be sent back for amendment (1910, s. 39)

PART III.—PASTORAL TENURES

Division I.—Pastoral Leases

Opening of
land for
pastoral
lease and
withdrawing
same
(1910, s. 40)

49. (1) The Minister, with the approval of the Governor in Council, may, by notification published in the *Gazette*, declare any Crown land open for pastoral lease under the following classes of tenure, namely :—

- (a) pastoral holding ; or
- (b) pastoral development holding ; or
- (c) preferential pastoral holding.

Land shall be declared open for pastoral lease under pastoral development holding tenure only where the cost of developing the land will be abnormally high, and where developmental conditions are imposed calculated to improve the carrying capacity and productivity of the land and to develop the public estate.

(2) Land declared open for pastoral lease under the provisions of this Division shall, at and after the time appointed by the opening notification, be open for lease in accordance with the notification.

(3) At any time after the publication of the opening notification, but before the Commissioner accepts an application to lease, the Minister may in his discretion withdraw any land from being so open.

The Minister shall cause any such withdrawal to be notified in the *Gazette*.

Requisites of Opening Notification

Matters to
be specified
in opening
notification
(1910, s. 40)

50. (1) Without limit to the power of the Minister, with the approval of the Governor in Council, to impose conditions in any notification declaring land open for pastoral lease, every such notification shall specify—

- (a) the block to be leased, the name by which it is designated, and the area thereof;
- (b) the term of lease ;
- (c) the rent per square mile during the term, or if the term exceeds ten years, during the first rental period ;
- (d) the amount of the deposit to accompany each application ;

- (e) in the case of land open for pastoral lease under pastoral development holding tenure, the matters specified in section fifty-one of this Act;
- (f) in the case of land open for pastoral lease under preferential pastoral holding tenure, the matters specified in section fifty-two of this Act,

and shall appoint a place where and a time, not being less than twenty-eight days from the date of the notification, when the land shall be so open.

(2) The notification may—

- (a) declare the value or state a provisional value of any improvements on the land ;
- (b) declare the maximum area of land which may be applied for by any one person in the whole area to which the notification has reference, or the maximum number of blocks which may be applied for by any one person in the whole area to which the notification has reference, or both of these :

Matters
which may
be specified
in opening
notification

Provided that one person shall not be permitted to apply for more than the maximum number of blocks so declared, whether the aggregate area of such blocks so applied for does or does not attain the maximum area so declared ;

- (c) impose any one or more of the following conditions :—
 - (i) that the land shall be enclosed within a specified time with a good and substantial fence, which, if required, shall, according as required, also be a rabbit-proof, or a marsupial-proof, or both a rabbit-proof and marsupial-proof fence, and that the land shall at all times thereafter, during the term of the lease be kept so enclosed ;
 - (ii) that any existing rabbit-proof fence, or marsupial-proof fence, or both rabbit-proof and marsupial-proof fence, shall be maintained as such at all times during the term of the lease ;

- (iii) that any other improvements, or any specified developmental works or conditions whatsoever, shall be made, done or performed within a specified time ;
- (iv) that specified noxious plants on the whole or a specified part of the land shall be destroyed within a specified time.

The manner of such destruction may also be specified, in which case the destruction shall be carried out in the manner so specified ;

- (d) declare that the lease shall be subject to a reservation or reservations with respect to the land comprised therein or any part or parts of that land (and whether of a specified area or of a specified part or parts of that land or generally without specifying any part of that land or area of that land) for or for any purpose of or connected with any works under and within the meaning of "*The Irrigation Acts, 1922 to 1961.*"

Additional
requisites of
opening
notification
for pastoral
development
holding

51. In the case of land open for pastoral lease under pastoral development holding tenure, the notification shall specify—

- (a) the improvements and developmental works involving abnormal expenditure which are required to be effected within a specified time and which are calculated to improve the carrying capacity and productivity of the land and develop the public estate ;
- (b) the resumption rights, if any, to accrue to the Crown during the term of the lease.

Additional
requisites of
opening
notification
for
preferential
pastoral
holding

52. In the case of land open for pastoral lease under preferential pastoral holding tenure, the notification shall specify the maximum mileage which may be applied for by any person who holds any estate or interest in a pastoral lease, grazing selection or brigalow lease, such maximum mileage being the aggregate, expressed in square miles, of the areas respectively, of such estate or interest and of the land applied for ; and may also specify a survey fee and impose—

- (a) the condition of personal residence during the first seven years of the term of the lease ;
- (b) a stocking condition requiring that the land shall, within a specified period not exceeding three years, be stocked to its reasonable carrying capacity with the lessee's own sheep or cattle, or both sheep and cattle, and shall thereafter be used for producing wool, or cattle, or both wool and cattle.

Term of Lease

53. (1) The term of lease of a pastoral holding or preferential pastoral holding shall be determined by the Minister, and shall in no case exceed thirty years. Term of lease (1959, s. 61)

(2) The term of lease of a pastoral development holding shall be determined by the Minister, according to the expenditure likely to be incurred on the development of the land and to the developmental conditions to which the lease shall be subject, and shall in no case exceed fifty years :

Provided that a term exceeding thirty years shall be determined only if the lease is made subject to very extensive developmental conditions, involving abnormally high expenditure.

Disqualifications for Preferential Pastoral Holdings

- 54.** (1) Subject to this Act a person who is— Disqualifications for preferential pastoral holdings (1910, s. 40B)
- (a) in respect of the land applied for or held, or any part thereof or interest therein, a trustee, agent or servant of or for any other person ; or
 - (b) a lessee of a pastoral lease, grazing selection or brigalow lease the aggregate of the area of which, ascertained in square miles, and of the area sought to be acquired as a preferential pastoral holding, exceeds the maximum mileage specified in the notification opening the land for lease as preferential pastoral holding or the maximum mileage prescribed by subsection (6) of this section as the case may be ; or
 - (c) a selector or lessee of a grazing selection, the rent for the first period of the lease of which, together with the rent for the first period of the

preferential pastoral holding sought to be acquired, exceeds six hundred pounds per annum,

shall not be competent to apply for or hold a preferential pastoral holding.

(2) For the purposes of this section a joint lessee or holder of land under any tenure mentioned in paragraphs (b) or (c) of subsection (1) of this section shall be deemed to be the lessee or holder under the tenure in question of an area and at an annual rental respectively proportioned to his actual interest therein and, in the case of a joint applicant, the preferential pastoral holding applied for shall be deemed to be of an area and at an annual rental respectively proportioned to the interest therein for which he has applied.

(3) Any corporation whatsoever shall not be competent to apply for or hold a preferential pastoral holding.

(4) Proof that the stock of any person other than the lessee are ordinarily depastured on a preferential pastoral holding shall be *primâ facie* evidence that the lessee is a trustee of such holding for the owner of the stock.

(5) (a) The provisions, other than paragraph (a) of subsection (1) and subsection (4), of this section shall not affect the right or title of any person to any preferential pastoral holding lawfully held by him as lessee under the repealed Acts immediately prior to the commencement of this Act, or the power of the Minister to grant to him under Part VI. a new lease as a preferential pastoral holding of the whole or part of the land comprised therein or his right or title to take and hold such new lease.

(b) If, after the passing of this Act, a person who is the selector or lessee of a grazing selection lawfully acquires a preferential pastoral holding, or the lessee of a preferential pastoral holding lawfully acquires a grazing selection, he shall, notwithstanding the provisions of paragraph (c) of subsection (1) of this section, be competent to be granted pursuant to Part VI. (whether in substitution for or upon expiry of the subsisting lease or leases) a lease or leases of any of the land comprised in the preferential pastoral holding or grazing selection, and to hold the new lease offered of the grazing selection or preferential pastoral holding.

(6) For the purposes of this section the maximum mileage for a preferential pastoral holding issued otherwise than pursuant to this Part III, shall be ninety-four square miles or where the area of the preferential pastoral holding in question exceeds ninety-four square miles the actual area of such holding.

Joint Ownerships

55. (1) Any two or more persons, each of whom is qualified to apply for or hold a preferential pastoral holding not exceeding the area which may be applied for and held by any one person, may apply for or hold such a holding in their joint names as tenants in common or as joint tenants. Joint
ownerships
(1910, s. 40c)

Where the condition of personal residence applies, the holding may only be applied for or held jointly by more persons than two under a tenancy in common and one of the joint applicants shall apply for or hold at least a half interest.

Such persons shall jointly perform all the conditions to which the holding is subject except—

- (a) the condition of personal residence, which shall be performed by the continuous and *bona fide* residence on the holding of one of such joint holders who holds not less than one-half interest in the holding ; and
- (b) the condition of occupation, which shall be performed by the continuous and *bona fide* residence on the holding of any one of such joint holders or of a registered bailiff who is qualified to hold the holding in question.

(2) For the purpose of determining whether or not a joint holder is disqualified from applying for or holding another preferential pastoral holding, such joint holder shall be deemed to be the holder of an area proportioned to his actual interest in the jointly held holding.

(3) No transfer of a share in a preferential pastoral holding shall be registered except—

- (a) a transfer with the permission of the Minister, from one joint holder, or the representative of a deceased or mentally sick joint holder, to the other joint holder or, where there are more than two joint holders, any one or more of the other joint holders ; or

(b) a transfer with the permission of the Minister and the consent of all the other joint holders to another person qualified as prescribed.

(4) In the event of the bankruptcy of one of the joint holders, the conditions upon which the holding is held except the condition of personal residence may and shall, pending the disposal of the interest of the bankrupt by the trustee in bankruptcy, be performed by the other joint holder or holders as if he or they were the sole lessee or lessees ;

(5) In the event of the death, mental illness or bankruptcy of the joint holder required to perform the condition of personal residence the provisions of section one hundred and fourteen of this Act shall, with and subject to all necessary adaptations, apply as if that person were the sole lessee :

Provided that if the other joint holder holds a half interest in the preferential pastoral holding the condition of personal residence may be performed by that holder.

Joint
ownership
under will
or intestacy

(6) (a) Notwithstanding anything contained in this Act, two or more persons may take and hold in their joint names as tenants in common or joint tenants a preferential pastoral holding whereto they are entitled under the will of the deceased lessee or, in the case of the lessee having died intestate, from the administrator as their shares respectively as widower or widow or next-of-kin.

(b) Such persons shall jointly perform all the conditions to which the preferential pastoral holding is subject except the condition of personal residence or the condition of occupation, which shall be performed by the continuous and *bona fide* residence on the holding of any one of the lessees or of a registered bailiff who is qualified to hold the holding in question.

(c) For the purpose of determining whether or not a joint holder is disqualified from applying for or (save a preferential pastoral holding held by him alone or jointly at the date of death of the deceased lessee) holding another preferential pastoral holding, such joint holder shall be deemed to be the holder of an area and at an annual rental respectively proportioned to his actual interest in any jointly held preferential pastoral holding.

(d) No transfer of a share in a preferential pastoral holding taken and held jointly pursuant to the provisions of this subsection shall be registered except as provided by subsection (3) of this section.

(e) In the event of the bankruptcy of one of the joint holders, the conditions upon which the holding is held, except the condition of personal residence or the condition of occupation, may and shall pending the disposal of the interest of the bankrupt be performed by the other joint holders as if they were the sole lessees, and the condition of personal residence or the condition of occupation may and shall be performed by the continuous and *bona fide* residence on the holding of any one of the joint holders other than the bankrupt or of a registered bailiff, who is qualified to hold the holding in question, appointed by the joint holders (other than the bankrupt) and by the trustee in bankruptcy.

Applications

56. (1) Any person who desires to apply for land open for lease under pastoral holding or pastoral development holding tenure, shall himself, or by his agent authorised in writing under his hand, lodge with the Land Agent at the place appointed by the opening notification, an application in the prescribed form. Application for pastoral holding or pastoral development holding (1910, s. 41)

(2) A person shall not lodge (either alone or jointly) more than one application for the same block and, if any person does so, every application whereto he is the sole or a joint party shall be rejected by the Commissioner.

(3) The application shall be signed by the applicant personally or by his agent as aforesaid. It shall be for a block specified in the opening notification, and shall be accompanied by the amount of the deposit specified in the opening notification, which shall be returned to the applicant if the application is not accepted.

(4) Notwithstanding anything in this section in any case where a person desiring to apply for any block has appointed in writing under his hand the Public Curator to be his agent, it shall not be necessary for the Public Curator personally to lodge the application, but he may, by virtue of the power vested in him to appoint agents for the exercise of his functions, appoint any person (not being an officer of the Department) to act for him as the agent of the applicant. Public Curator as agent

Withdrawal
of
applications

(5) At any time before the Commissioner has dealt with an application to lease land under pastoral lease tenure, such application may, with the approval of the Commissioner, be withdrawn, upon such terms as to forfeiture of the deposit or part thereof or otherwise as the Commissioner may direct.

Priority to
occupier

(6) The Minister may at any time prior to the time appointed for considering the applications, by notice to the Commissioner, direct that the application for any specified block of any person who is in occupation of such land or any part of it shall have priority, and such application shall be considered and dealt with in priority to all other applications as if it were the only application for the block specified in such notification.

When
application
to be deemed
made for
certain other
specified
lots in same
notification

(7) Notwithstanding anything in this section, where an opening notification declares two or more blocks open for pastoral lease, any person may lodge with his application for any such block a notice, in the prescribed form or to the like effect, that he desires to be deemed an applicant for any other specified block or blocks included in the opening notification; whereupon, provided his application is accompanied by an amount equal to the amount of the greatest deposit for any of the blocks specified in his application and such notice, he shall be deemed to be an applicant for all blocks specified in such application and notice.

Nothing in this subsection authorises the holding by any person of a greater area either as pastoral holdings, or as pastoral development holdings, as the case may be, than is allowed in and by the opening notification in question.

Discretion of
Commis-
sioner
as to
applications
for pastoral
leases
(1910, reg. 11)

(8) The Commissioner may refuse any application for any pastoral lease made by any person if the Commissioner is satisfied that the applicant is a person of bad repute, or that if his application were accepted he would be an undesirable settler, or that the acceptance of his application would be prejudicial to settlement in the locality.

Any objection to an application on the grounds mentioned in this subsection may be taken by the Commissioner of his own motion, or by any officer or representative of the Crown, or by any settler in the locality.

The applicant shall, if he so desires, be heard before his application is refused on any of the grounds mentioned in this subsection.

The decision refusing any such application shall be pronounced in open court.

57. (1) The provisions of this section shall apply to applications made in respect of land open for pastoral lease under preferential pastoral holding tenure. Application for preferential pastoral holding (1910, s. 41)

(2) Except as provided in this section all the provisions of section fifty-six of this Act apply to applications in respect of land open for preferential pastoral holding.

(3) An application for a preferential pastoral holding, and any notice lodged therewith pursuant to subsection (7) of section fifty-six of this Act, shall be in the prescribed form and be signed by the applicant personally.

(4) Every application for a preferential pastoral holding shall be made in good faith. Good faith (1910, s. 40D)

(5) An application shall not be accepted unless the Commissioner is satisfied that the application is made in good faith. The burden of proof that an application is made in good faith shall always rest upon the applicant.

(6) An application shall be deemed to be made in good faith when the sole object of the applicant is to obtain the land in order that he may hold and use it for his exclusive benefit.

(7) The fact that two or more applications are made by different applicants for the benefit of one person shall be conclusive evidence that none of such applications is made in good faith.

(8) In any case in which the Commissioner is satisfied that an application is not made in good faith, he may declare any moneys lodged with the application, or any part of such money, to be forfeited.

Stocking
condition
(1910, s. 40D)

(9) Where an opening notification declares land open for pastoral lease under preferential pastoral holding tenure subject to a stocking condition, each applicant shall be required to furnish, as part of his application, a declaration undertaking to fulfil such condition and setting out—

- (a) his pastoral or land experience ; and
- (b) the means by which he proposes to finance the holding, and, if he proposes to borrow moneys for such purpose, the amount to be borrowed and the name and address of the bank, corporation or person from whom the amount is to be borrowed.

Where an applicant proposes to borrow as aforesaid, his application shall be accompanied by a statement in writing from the bank, corporation or person named as aforesaid by the applicant as the proposed lender acknowledging the correctness of information with respect to his proposal to borrow furnished by the applicant.

(10) If the Commissioner considers that the applicant's means for financing the holding, as expressed in the declaration, are inadequate or generally unsatisfactory, he may reject the application.

An applicant whose application is so rejected shall be excluded from any ballot to determine the successful applicant.

The decision of the Commissioner to so reject an application shall be final and conclusive.

(11) Subject to this Act, an unmarried female under the age of twenty-one years, or a married woman unless she has obtained an order for judicial separation, shall not be competent to apply for land open for lease under preferential pastoral holding tenure subject to the condition of personal residence.

(12) (a) Notwithstanding the area and rental limitations prescribed by this Act when land is open for pastoral lease under preferential pastoral holding tenure

subject to the condition of personal residence, any person who, anywhere in the Commonwealth holds under the Crown in right of the Commonwealth or any State land in fee-simple or for any lesser estate than freehold—

- (i) shall be disqualified from applying for and holding the land so open if, in the opinion of the Commissioner the land so held by him comprises fifty per centum or more of a living area ;
- (ii) shall, if otherwise qualified as prescribed, be qualified to apply for and hold the land so open if, in the opinion of the Commissioner, the land so held by him comprises less than fifty per centum of a living area.

For the purpose of this paragraph, where land is jointly held under any tenure, a joint holder shall be deemed to hold so much thereof as is proportionate to his interest therein.

(b) The applicant shall furnish as part of his application a declaration setting out particulars of all land (including freehold land) held by him anywhere in the Commonwealth, his interest therein, the situation and area thereof, description of country, state of development, carrying capacity or productivity (present and potential), estimated market value, and whether or not such land, in his opinion, comprises less than fifty per centum of a living area.

(c) If, at any time after the acceptance of the application the Commissioner has reason to believe that any declaration made by a successful applicant is false or misleading in any particular, or, if in the opinion of the Commissioner, the land held by the applicant at the time he made the declaration comprised fifty per centum or more of a living area, the holding the subject of the successful application shall be deemed to have been acquired by evasion of or fraud upon this act and the right or title of the applicant in or to such land, whether as lessee thereof or otherwise, shall be liable to forfeiture. The provisions of Division X. of Part X. shall, with and subject to all necessary adaptations, apply accordingly.

Determination of Successful Applicant

Determina-
tion of
successful
applicant

58. (1) Every application for land open for pastoral lease lodged by the appointed time which, on consideration as prescribed, the Commissioner decides to have been made by an applicant who is not duly qualified under the provisions of this Act or the opening notification to hold the land, shall be rejected by the Commissioner and excluded from any ballot that may be necessary to determine the successful applicant.

The decision of the Commissioner rejecting an application shall be endorsed thereon.

(2) If only one application is received for land open for pastoral lease, or if, pursuant to subsection (6) of section fifty-six of this Act, the Minister has directed that any such application shall receive priority, and, after consideration as prescribed, the Commissioner decides that the applicant is duly qualified under the provisions of this Act and the opening notification to hold the land, or, if in the case of simultaneous applications, on consideration as prescribed, the Commissioner decides that only one applicant is duly qualified under the provisions of this Act and the opening notification to hold the land, the Commissioner shall forthwith accept such application and the person making the application shall be the successful applicant and, subject to this Act, entitled to the issue of a lease of the land in his name. The decision of the Commissioner accepting the application shall be endorsed thereon.

(3) (a) In every case of simultaneous applications, where, on consideration as prescribed, more than one applicant is found by the Commissioner to be duly qualified to hold the land under the class of tenure concerned the successful applicant shall be determined by lot conducted by the Commissioner in the prescribed manner.

(b) The application of the person so determined shall be accepted by the Commissioner and such person shall be the successful applicant and, subject to this Act, entitled to the issue of a lease in his name. The decision of the Commissioner accepting the application shall be endorsed thereon. All other applications admitted to ballot shall be refused as lost by lot and shall be endorsed accordingly by the Commissioner.

(4) If no applications are received at or before the appointed time or if all applications so received are rejected or refused by the Commissioner, applications made thereafter shall be considered and dealt with by the Commissioner in accordance with the order of their being lodged with the Land Agent at the place appointed by the opening notification.

The provisions of subsections (1), (2) and (3) of this section shall, with and subject to all necessary adaptations, apply for the purposes of this subsection.

59. The successful applicant for a pastoral lease shall, within twenty-one days of the acceptance of his application by the Commissioner, pay to the Land Agent or to the office, in Brisbane, of the Department, the difference, if any, between the amount of the deposit accompanying his application and the amount of a full year's rent or a full year's rent and one-fifth of any survey fee prescribed, as the case may be. First year's rent, &c.

If such amount is not paid as aforesaid, any right had by the applicant in or to the land, by virtue of the application or the decision of the Commissioner thereon, and the deposit accompanying his application, shall be forfeited without any further process whatsoever.

60. (1) The remainder of any prescribed survey fees which was not paid as provided in section fifty-nine of this Act shall be payable by the lessee in four equal annual instalments, without interest, on the thirtieth day of September, in the next following years. Payment balance survey fee

(2) For the purpose of enforcing the payment of survey fees, all such fees shall be deemed to be rent.

Conditions of Lease

61. In addition to the other conditions prescribed by this Act, all pastoral leases shall be subject to the following conditions, namely :— Conditions generally (1910, ss. 42, 43)

(a) subject to section fifty-three of this Act, the term shall be the notified term or, in respect of a pastoral lease issued otherwise than pursuant to this Part III., as determined by the Minister ; Term

Commence-
ment of
lease

- (b) where no payment by the successful applicant for improvements on the land is required to be made the lease shall be issued to him and the term of such lease shall commence on the quarter day next following the date of acceptance of his application.

Where payment by the successful applicant for improvements on the land is required to be made, the lease shall not be issued to him until he has paid as prescribed the amount of the value of the improvements.

When payment as aforesaid has been made by the successful applicant, the lease shall be issued to him and the term of such lease shall commence on the quarter day next following the date of such payment ;

Periods

- (c) where the term of the lease exceeds ten years, the term shall be divided into rental periods no one of which shall exceed ten years. The last period shall be of such duration as will permit the other period, or each of the other periods, as the case may be, to be of the duration of ten years ;

- (d) the rent shall be computed according to the number of square miles in the lease, and during the term or, where the term exceeds ten years, during the first period, the annual rent shall be the notified rent or, in respect of a pastoral lease issued otherwise than under this Part as determined by the Minister or the Court, as the case may be ;

Reassess-
ment

- (e) where the term exceeds ten years, the rent payable for the second and each succeeding rental period, shall be determined by the Court.

Conditions
of lease of
preferential
pastoral
holding
(1910, s. 43)

62. (1) The lease of a preferential pastoral holding shall also be subject to the condition of occupation during the whole term :

Provided that the lease shall be subject to the condition of personal residence during the first seven years of the term and thereafter for the remainder of the term to the condition of occupation in any case where the opening notification has imposed the condition of personal residence during the first seven years of the term.

(2) The provisions of sections one hundred and fourteen, one hundred and fifteen, one hundred and seventeen, one hundred and eighteen, one hundred and nineteen and one hundred and twenty of this Act shall, with and subject to all necessary adaptations, apply to preferential pastoral holdings.

(3) In the case of a preferential pastoral holding opened pursuant to this Part III., the lessee shall not be bound to perform the condition of personal residence or the condition of occupation, as the case may be, within the first three months after the date of the commencement of his lease.

In the case of a preferential pastoral holding, the lease whereof issued otherwise than pursuant to this Part, the lessee shall be bound to perform the condition of occupation on and from the date of the commencement of his lease.

63. It shall be a condition of the lease of every preferential pastoral holding that, except with the written permission of the Minister, the lessee shall not allow stock to be taken on agistment on his holding for a period or periods aggregating longer than six months in any one year. Agistment (1910, s. 43)

Exemption from Fencing Condition

64. (1) It shall not be necessary to erect any fence in compliance with any condition of lease of a pastoral lease upon any boundary which is formed by a natural feature sufficient to prevent the passage of stock. Fencing (1910, s. 170)

(2) Where the condition imposed specifies a rabbit-proof or a marsupial-proof or both a rabbit-proof and marsupial-proof fence, it shall not be necessary to erect such a fence upon a boundary which is formed by a natural feature sufficient to prevent the passage of rabbits, or marsupials, or both rabbits and marsupials, as the case may be.

(3) The Minister, in his discretion, may exempt a lessee from performing any condition of fencing imposed upon the lease of a pastoral lease and may alter or cancel such exemption.

For the purposes of this subsection the provisions of section one hundred and eleven of this Act shall, with and subject to all necessary adaptations apply.

Restriction on Improvements

Restriction
on improve-
ments
(1910, s. 43A)

65. In the case of any pastoral lease (other than a preferential pastoral holding), the lessee shall not, without first obtaining the written permission of the Minister, make any improvements or developmental works upon such holding at any time within two years prior to the date from which resumption of part of the holding may be made pursuant to section three hundred and seven of this Act or within two years prior to the date of expiry of the lease.

If a lessee makes any such improvement or developmental work without such permission, he shall have no claim whatever with respect thereto, and the improvement or developmental work shall, upon the resumption, expiration or sooner determination of the lease, become the property of the Crown.

Division II.—Stud Holdings

Application
for stud
holding
(1958, s. 52)

66. (1) A lessee of a holding, or of two or more adjacent holdings worked conjointly which has or have been developed and used for the production of stud merino sheep or of any breed of stud beef cattle may apply to the Minister to have the tenure of his holding or holdings converted to a stud holding.

(2) Every such application shall be in writing, be signed by the applicant, set out the name, area, situation and description of the holding or of the holdings respectively to which it relates, and contain or be accompanied by the following information and particulars, that is to say :—

- (a) the description and situation of all existing improvements upon the holding or holdings to which the application relates and the approximate cost or estimated present value of any and every such improvement ;
- (b) the description and intended situation of any improvements proposed to be made upon the holding or holdings to which the application relates and the respective estimated cost of any and every such proposed improvement ;

-
- (c) the carrying capacity as at the date of the application of the holding or holdings to which the application relates ;
 - (d) an estimate of the extent to which the quality of, the carrying capacity of, and production from, the land comprised in the holding or holdings to which the application relates, will be increased or safeguarded, or increased and safeguarded by the carrying out of the proposed improvements ;
 - (e) the numbers respectively of sires and of females depastured on the holding or holdings to which the application relates during each of the five years next preceding the date of the application and the number of sires produced on the holding or holdings to which the application relates and sold for breeding purposes elsewhere than on the holding or holdings to which the application relates during the period of three years next preceding the date of the application ;
 - (f) the numbers respectively of sires and of females proposed to be depastured on the stud holding if granted pursuant to the application ;
 - (g) the number of sires which can reasonably be produced and sold each year from the stud holding if granted pursuant to the application ;
 - (h) whether or not the applicant is prepared to surrender any part or parts of the holding or holdings to which the application relates ;
 - (i) such other information and particulars as may be prescribed or, in so far as not prescribed, required by the Minister from time to time ;
and
 - (j) any other information or particulars deemed by the applicant to be relevant to the application.

When
Minister to
reject appli-
cation
(1958, s. 53)

67. (1) The Minister shall reject any such application unless—

(a) where the application is made in respect of the production of stud merino sheep he is satisfied—

(i) that not less than three thousand registered stud merino ewes were depastured on the holding or holdings to which the application relates at all times during the period of five years next preceding the date of the application ; and

(ii) that the number of stud merino rams produced on the holding or holdings to which the application relates and sold for breeding purposes elsewhere than on such holding or holdings during the period of three years next preceding the date of the application averaged not less than four hundred yearly ; or

(b) where the application is made in respect of the production of any breed of stud beef cattle, he is satisfied that the number of stud beef bulls of that breed produced on the holding or holdings to which the application relates and sold for breeding purposes elsewhere than on such holding or holdings during the period of three years next preceding the date of the application averaged not less than sixty yearly.

(2) The Minister may require an applicant to furnish to him, within a period of time specified by him, all such additional information and particulars as he deems necessary for the purposes of this section.

(3) Notwithstanding subsection (1) of this section, the Minister may accept any such application from an applicant who, he is satisfied,—

(a) is the proprietor of a merino sheep stud which has been established and registered in another State of the Commonwealth for not less than twenty-five years and is being carried on there ; and

- (b) has acquired the holding or holdings to which the application relates for the purpose of establishing and carrying on thereon a merino sheep stud.

68. Save applications rejected by him, upon receipt thereof the Minister—

Powers, &c.,
of Minister
as respects
applications
(1958, s. 54)

- (a) shall refer the application to the Commission for investigation and report as herein provided ; and
- (b) may refer the application to the Advisory Committee constituted under section sixty-nine of this Act for the making by that committee of any investigation, inquiry, or inspection of the holding or holdings to which the application relates as directed by the Minister.

69. (1) The Minister may, in his discretion, constitute an Advisory Committee for the purposes of this Division.

Advisory
Committee
(1958, s. 55)

(2) That committee shall consist of—

- (a) an officer of the Department nominated by the Minister who shall be the chairman of the committee ;
- (b) an officer of the Department of Agriculture and Stock nominated by the Minister for the time being administering that Department and approved by the Minister ;
- (c) a person nominated by the Queensland Merino Stud Sheepbreeders' Association and approved by the Minister ; and
- (d) a person nominated by the United Stud Beef Cattle Breeders' Association of Australia and approved by the Minister,

all of whom shall be appointed by the Minister in writing under his hand :

Provided that—

- (i) the member to whom paragraph (c) of this subsection applies shall not act as a member of the committee as respects any application made in respect of the production of any breed of stud beef cattle ; and

- (ii) the member to whom paragraph (d) of this subsection applies shall not act as a member of the committee as respects any application made in respect of the production of stud merino sheep :

Provided further that neither such member shall act as a member of the committee as respects any application in which he is interested, but, in respect of such application, the Minister may appoint in writing another person, nominated as in his case, to act temporarily in his stead.

(3) Subject to the provisions of subsection (2) of this section, the Minister may from time to time make such appointments to the committee as are necessary to fill vacancies thereon howsoever arising.

(4) The Advisory Committee shall make, in respect of applications referred to it, all such investigations, inquiries and inspections of holdings as the Minister directs, either generally or in the particular case.

The committee shall make to the Commission and, if so required by the Minister, to the Minister a report upon every investigation, inquiry or inspection made by it.

(5) The Minister and the Commission, in respect of an application as aforesaid, shall have regard to any report made to him or the Commission by the Advisory Committee but shall not be bound thereby.

Investigation
by Land
Administra-
tion
Commission
(1958, s. 56)

70. (1) The Commission shall, in respect of every application referred to it by the Minister, investigate the following matters, that is to say :—

- (a) the suitability or otherwise of the holding or holdings to which the application relates for the production of stud merino sheep or, as the case may be, the breed of stud beef cattle mentioned in the application in accordance with the representations made by the applicant in or in connection with the application ;

- (b) the public interests including the demand or lack of demand existing for land of the description comprised in the holding or holdings to which the application relates for the purposes of new settlement in the locality in question ;
- (c) the monetary value of a stud holding if granted pursuant to the application ; and
- (d) the area of other country land whether freehold or leasehold, held by the applicant.

(2) The Commission shall make to the Minister a report upon its investigations as aforesaid and shall make to the Minister such recommendations as it deems fit regarding the matters so investigated.

(3) The Minister in exercising, in respect of an application under this Division, the powers conferred upon him by this Division, shall have regard to the report and recommendations of the Commission but he shall not be bound thereby.

71. (1) The Minister may recommend to the Governor in Council that an application under this Division—

Powers of the Governor in Council and Minister (1958, s. 57)

- (a) be refused ; or
- (b) be granted either wholly or in part,

and the Governor in Council may, having regard to the recommendation of the Minister but without being bound thereby—

- (a) refuse the application ; or
- (b) grant the application wholly or in part.

(2) (a) Subsection (1) of this section applies subject to this subsection.

(b) A stud holding shall not be granted, pursuant to an application under this Division, in respect of an area which in the opinion of the Commission exceeds three living areas for grazing in the locality in question.

(c) Any other country land, whether freehold or leasehold which is or has been worked conjointly with the holding or holdings to which the application relates may be taken into account for the purposes of paragraph (b) of this subsection as if that country land were included in the area in respect whereof the stud holding is to be granted.

Steps to be taken by lessee upon approval wholly or in part of his application for a stud holding (1958, s. 58)

72. (1) As soon as may be after the Governor in Council has made a determination pursuant to the provisions of section seventy-one of this Act upon an application made under this Division for a stud holding, the Minister shall cause to be given to the applicant notice, in writing, of that determination.

(2) A lessee of a holding or holdings, whose application under this Division has been granted by the Governor in Council, wholly or in part, may notify the Minister in writing that he elects to take advantage of that grant.

(3) Notice in writing of election as aforesaid shall be given to the Minister within three months after the date of the notification to the lessee in question of the determination of the Governor in Council granting his application either wholly or in part, or within such extended time longer than the aforesaid three months (but not exceeding six months in all) as the Minister may in his discretion allow in any particular case.

(4) If a lessee fails to give to the Minister notice of election as aforesaid within the time allowed therefor, the determination in question by the Governor in Council shall be of no effect, and the subsisting lease or leases of the holding or holdings in respect of which that determination was made shall continue in force as if there had neither been an application under this Division in respect thereof nor a determination upon that application by the Governor in Council.

When new lease to issue in substitution for subsisting lease (1958, s. 59)

73. (1) Upon duly electing to take advantage of a determination by the Governor in Council approving wholly or in part of his application under this Division for a stud holding, a lessee shall surrender any and every subsisting lease in respect whereof his application is granted by the determination and thereupon a new lease as a stud holding shall be issued to that lessee in accordance with the determination.

(2) Except as varied by this Division, all of the provisions of this Act relating to pastoral leases (other than to preferential pastoral holdings) shall apply with respect to a stud holding granted pursuant to this Division.

(3) Every stud holding granted pursuant to this Division, shall be subject to the following additional conditions, namely :—

- (a) the term of the lease shall be the period, not exceeding forty years, specified therein, and shall commence on the quarter day next ensuing after the lessee shall have surrendered the lease or leases in respect whereof his application under this Division has been granted ;
- (b) in respect of a stud holding granted for the production of stud merino sheep the lessee shall at all times during the term of the lease depasture on the land comprised therein not less than the number of stud female merino sheep specified in the lease ;
- (c) the lessee shall in each year during the term of the lease sell for breeding purposes elsewhere than on the holding not less than the number specified in the lease of stud merino sires or registered sires of the breed of cattle, as the case may be, specified in the lease ;
- (d) the lessee shall at all times use the land comprised in the lease primarily for stud purposes ;
- (e) the lessee shall when and so often as he is thereunto required by the Minister furnish to the Minister all such information and particulars respecting the stud on the leased land, and matters and things appertaining thereto and to the carrying on thereof, as the Minister may require ;
- (f) the Governor in Council may resume from the holding and without compensation all land which, in the opinion of the Commission, is in excess of one living area for grazing in the district in which the holding is situated upon the recommendation of the Minister made by him for that he is satisfied that investigations made by the Commission establish that any conditions of the lease have not been complied with.

This paragraph (f) applies subject to subsection (5) of this section.

(4) The provisions of subsection (2) of section three hundred and seven of this Act shall be deemed to apply with respect to any resumption to be made from a stud holding so as to give effect to the condition specified in paragraph (f) of subsection (3) of this section.

(5) The Minister shall give to the lessee of the stud holding concerned notice in writing of his intention to make in respect of such holding the recommendation specified in paragraph (f) of subsection (3) of this section, and shall state in such notice the conditions of the lease which the Minister is satisfied have not been complied with by the lessee.

The lessee may, within twenty-eight days after the date of such notice, apply in writing to the Minister to have the matter of whether or not he has complied with the conditions of the lease stated in the notice given to him by the Minister determined by the Court, and thereupon the Minister shall refer such matter to the Court for hearing and determination.

The determination shall be final and conclusive, and shall not be called in question in the Land Appeal Court or in any other court or tribunal whatsoever.

Where a reference to the Court is duly applied for as prescribed by this subsection, the Minister—

- (a) shall postpone the making of the recommendation under paragraph (f) of subsection (3) of this section pending the determination of the Court ; and
- (b) shall not make such recommendation if the Court determines that the lessee has complied with the conditions of the lease stated by the Minister in the notice of intention referred to in this subsection.

(6) Upon any resumption being effected pursuant to the provisions of paragraph (f) of subsection (3) of this section, the lease of the stud holding in question shall be converted to a lease of a pastoral holding subject in all respects to the terms and conditions prescribed by this Act as applicable to such class of pastoral lease tenure and the additional conditions to which the lease was subject as a stud holding shall no longer apply.

The Registrar of Dealings shall make an appropriate noting upon the relevant instrument of lease.

74. The lessee of a stud holding granted pursuant to this Division may at any time during the last five years of the term of his lease apply to the Minister for renewal thereof, and if the Minister is first satisfied by investigations made by the Commission (and, if the Minister has referred the matter to a committee named by him for investigation, which it is hereby declared he may do in his discretion, that committee) that the lessee has performed the conditions of the subsisting lease and is *bona fide* desirous of continuing the stud in question at a satisfactory rate of production, a new lease of the land comprised in the stud holding may, subject to the provisions of this Division and upon the surrender of the subsisting lease, be granted.

Renewal of
lease of
stud
holding
(1958, s. 60)

Division III.—Occupation Licenses

75. (1) The Minister may, in his discretion, by notification published in the *Gazette*, declare any Crown land open for occupation under occupation license, subject to any conditions as he deems fit.

Opening of
land for
occupation
license and
withdrawing
same
(1910, s. 45)

(2) Land declared open for occupation license under the provisions of this section shall at and after the time appointed by the opening notification be open for occupation under occupation license in accordance with the notification.

(3) At any time after publication of the opening notification, but before the acceptance of an application by the Commissioner, the Minister may, in his discretion, withdraw any land from being so open.

The Minister shall cause any such withdrawal to be notified in the *Gazette*.

76. Without limit to the power of the Minister to impose conditions in any notification, every notification declaring land open for occupation under occupation license shall specify the area to be occupied and the rent per square mile per annum or the total annual rent, and appoint a place where and a time, not being less than twenty-eight days from the date of the notification, when the land shall be so open.

Opening
notification
(1910, s. 45)

Applications
(1910, s. 45)

77. (1) (a) An application for an occupation license shall be in the prescribed form, shall be signed by the applicant personally or by his agent authorised in writing under his hand, and shall be lodged by the applicant or such agent with the Land Agent at the place appointed by the opening notification.

(b) In the case of the Public Curator being appointed an agent the provisions of subsection (4) of section fifty-six of this Act with and subject to all necessary adaptations shall apply.

(c) Every application shall be accompanied by the amount of the notified annual rent or, in any case where the auction is held on or after the thirtieth day of September, the amount prescribed by the second paragraph of subsection (2) of section seventy-nine of this Act, as the case may be, which shall be returned to the applicant if his application is not accepted.

(2) A person shall not lodge (either alone or jointly) more than one application for the same area of land and, if any person does so, every application whereto he is the sole or a joint party shall be rejected by the Commissioner.

(3) (a) Applications shall be considered and dealt with by the Commissioner in accordance with the order of their being lodged with the Land Agent at the place appointed by the opening notification.

(b) If there are simultaneous applications by qualified applicants, the Commissioner shall, at the time appointed for considering them, cause the land to be offered at auction to such applicants and to no other person.

The applicant who bids the highest rental for the land and immediately pays to the Land Agent the difference between such sum bid by him and the amount lodged with his application together with, in any case where the auction is held on or after the thirtieth day of September, any adjustment necessary to the annual rent bid according to the provisions of the second paragraph of subsection (2) of section seventy-nine of this Act shall be declared the successful applicant.

The annual rent payable by him in respect of the land shall be the amount bid by him instead of the notified rent.

(c) The applicant whose application is accepted by the Commissioner whether at auction or otherwise shall be declared the successful applicant and subject to this Act shall be entitled to the issue of a license entitling him to occupy the land from the date of acceptance of his application.

(d) All applications considered by the Commissioner shall be endorsed by him according as respectively rejected, refused or accepted by him.

78. (1) The Minister may, in his discretion, without notification published in the *Gazette*, grant to any person an occupation license, subject to any conditions as he deems fit, in respect of any Crown land at such annual rent per square mile or such total annual rent as may be fixed by the Minister.

Licenses may be granted without previous notification (1910, s. 46)

(2) If, before the resumption of the whole or part of a pastoral lease takes effect, or if before the expiration of the lease of a pastoral lease, grazing selection, or settlement farm lease, or, if before the surrender of a holding pursuant to the provisions of Division I. of Part VI., the lessee thereof shall have made an application to the Minister for an occupation license in respect of the resumed land or land comprised in the lease, the Minister shall grant to such lessee an occupation license of so much of the land the subject of the application as the Minister deems fit, and at such annual rent per square mile or such total annual rent as the Minister fixes.

The Minister may subject such an occupation license to any conditions as he deems fit.

Unless the application is made within the time prescribed by this subsection, the lessee shall not have any right or claim to the grant of an occupation license under this subsection.

(3) If in the opinion of the Minister any licensee who has been granted a license pursuant to the provisions of subsection two of this section is injuriously using the land comprised in such license by overstocking it, the Minister may require the licensee to reduce the number of the stock thereon to such an extent as the Minister may think fit ; and if the licensee fails to

Provision in case of overstocking occupation license

comply with such requisition within thirty days thereof (or within such extended time as the Minister may in his absolute discretion allow) the license shall be determined forthwith.

Provisions
applicable to
occupation
licenses
(1910, s. 47)

79. (1) Every occupation license shall, unless renewed, expire on the thirty-first day of December of the year in which it is granted or, in the case of any occupation license, applied for or granted on or after the thirtieth day of September in any year, on the thirty-first day of December of the next succeeding year.

(2) The annual rent shall be the amount notified or bid by the applicant or fixed by the Minister, as the case may be.

For the first year the rent shall be computed and paid in respect only of the period between the first day of the month next following the date of the application or grant and the thirty-first day of December next following ; but if the date of application or grant is on or after the thirtieth day of September the whole of the next year's rent shall also be paid at the time of application or prior to the grant.

(3) The license may be renewed from year to year, upon payment of the prescribed rent on or before the thirtieth day of September preceding the year for which it is renewed.

(4) The Minister may, at any time before the first day of September in any year, give notice to the licensee that the next year's rent will be increased or decreased by a stated amount, and the rent shall be increased or decreased accordingly.

(5) The license shall be determinable at any time with respect to the whole or any specified part of the land by three months' notice given by the Minister to the licensee.

Nothing in this subsection shall affect any other powers of determination conferred by this section.

(6) The land or any part of the land comprised in any license may at any time be declared open for selection, or leased, or sold, or reserved, under this Act.

(7) If the land or any part of the land is selected, leased, sold or reserved under this Act, the license shall be thereby determined with respect to the land or, as the case may be, such part and, in the case of part only of the land a reduction shall be made in the rent proportionate to the area selected, leased, sold or reserved. Rent, if any, paid in advance shall be adjusted and any necessary refund made.

For the purpose of this subsection land is—

- (a) selected, as and from the date of the approval by the Court of the successful applicant's application ;
- (b) leased—
 - (i) in the case of a pastoral lease (other than a stud holding) opened pursuant to Division I. of this Part as from the date of acceptance of the successful applicant's application by the Commissioner ;
 - (ii) in the case of a lease of an additional area, as and from the date of the acceptance of the Minister's offer ;
 - (iii) in the case of a stud holding granted pursuant to Division II. of this Part, or in the case of a pastoral lease or selection granted otherwise than pursuant to this Part or Part IV. or, in the case of any other lease, the date of the commencement of the lease;
- (c) sold, as and from date of sale ;
- (d) reserved, as and from the date of the Order in Council setting apart the land as a reserve.

Restriction on Improvements

80. If the licensee of an occupation license makes any improvements or developmental works on the land without first obtaining the written permission of the Minister, he shall have no claim whatever in respect thereof and such improvements or developmental works shall upon and by virtue of the determination of the license, become the property of the Crown.

For the purposes of this section improvements made upon any occupation license with the approval of the Court under the repealed Acts shall be deemed to have been made with the prior written permission of the Minister.

PART IV.—SELECTIONS

Division I.—General Provisions

Notification of Land for Selection

Opening land
for selection
and
withdrawing
the same
(1910, s. 48)

81. (1) The Minister, with the approval of the Governor in Council, may by notification published in the *Gazette*, declare country land open for selection either as surveyed land or as designed land pursuant to a method of application as in this Division provided.

(2) Land declared open for selection under the provisions of this Division shall at and after the time appointed by the opening notification be open for selection in accordance with the notification.

(3) At any time after the publication of the opening notification but before the Commissioner or the Committee of Review, as the case may be, accepts an application to select the Minister may, in his discretion, withdraw any land from being so open.

The Minister shall cause any such withdrawal to be notified in the *Gazette*.

Surveyed
land
(1910, s. 49)

82. (1) Before land is declared open for selection as surveyed land, it shall be surveyed and divided into portions of convenient area, with roads and reserves for public purposes wherever necessary.

The portions shall be marked on the ground in the manner prescribed.

Designed
land

(2) Before land is declared open for selection as designed land, the land shall be divided into portions, and the position of such portions shall be indicated on maps or plans.

After the notification, the delineation of the portions on the maps or plans shall be deemed to be a survey of the land, and the portions shall be deemed to be surveyed portions :

Provided that—

- (a) the application for a portion of designed land shall not be approved by the Court until the land has been actually surveyed ; and
- (b) the land which the selector shall be entitled to occupy shall be the land comprised in the application according to the boundaries as defined by the actual survey.

Classes of Selections

83. (1) Subject to this Act land may be opened for selection, applied for and selected, and leases may be issued and held, under any class, or any mode of a class, of selection set out in this subsection, namely :—

Classes and
modes of
selections
(1910, s. 50)

(a) Agricultural selection, which may be—

(i) agricultural farm ; or

(ii) perpetual lease selection ;

(b) Settlement farm lease ;

(c) Grazing selection, which may be—

(i) grazing homestead ; or

(ii) grazing farm.

(2) Land may be opened for selection alternatively as either an agricultural farm or a perpetual lease selection.

(3) Land may be declared open for selection as a grazing farm only in a case where the Commission certifies to the Minister that the area thereof does not, in its opinion, constitute a living area, and the notification opening such land as a grazing farm may declare that the selection shall be exempt from the condition of occupation.

(4) A lease under Part VI. (whether in substitution for or upon the expiration of the subsisting lease) of the whole or part of the land comprised in a selection, or a lease under Division VI. of Part X. of an additional area, may be issued in any class or mode, other than agricultural farm, of a class of selection specified in subsection (1) of this section :

Provided that—

(a) a lease under Part VI. as a grazing farm shall issue only in respect of an area certified to the Minister by the Commission to be, in its opinion, less than a living area and in such case, or in the case of a grazing farm the lease whereof issued pursuant to Division VI. of Part X., the Minister may, in his discretion, exempt the lease from the condition of occupation ; and

(b) a lease as a grazing homestead shall not be issued under Division VI. of Part X.

Maximum Areas

Maximum
area declared
by opening
notification
(1910, s. 56)

84. (1) The maximum area declared by any opening notification shall not exceed the area specified in this subsection in relation to the particular class or mode of a class of selection, that is to say :—

- (a) Agricultural farm, subject to subsection (2) of this section two thousand five hundred and sixty acres ;
- (b) Perpetual lease selection, subject to subsection (2) of this section two thousand five hundred and sixty acres ;
- (c) Settlement farm lease, six thousand acres ;
- (d) Grazing selection, subject to subsection (3) of this section, forty-five thousand acres.

(2) Land exceeding two thousand five hundred and sixty acres but not exceeding five thousand acres in area may be opened for agricultural farm or perpetual lease selection or for selection alternatively as either an agricultural farm or a perpetual lease selection or may be granted under perpetual lease tenure under Part VI. (whether in substitution for or upon the expiration of the subsisting lease), if conditions are imposed requiring an expenditure of at least five pounds per acre within a specified time on the improvement and development of the land, including structural improvements, or in the case of a lease granted under Part VI. such expenditure has already been incurred on the land or partly incurred on the land and conditions are imposed requiring the expenditure of the balance of such sum per acre within a specified time.

(3) Land of an area in excess of forty-five thousand acres, but not exceeding sixty thousand acres, may be opened for grazing selection if the Commission first certifies to the Minister that, in its opinion, such land, having regard to its quality and situation, is not greatly in excess of a living area.

Maximum
area which
may be held
in a
district
(1910, s. 51)

85. The Governor in Council may, from time to time, by Order in Council declare the maximum areas of land which may be held in the aggregate as two or more selections in any district named in the Order by any one person under the class, or mode of a class of selection specified in the Order. Thereafter, subject to

this Act, a person shall not at the same time apply for or hold in such district under the class or mode of a class of selection tenure in question, two or more selections the aggregate of the areas whereof is greater than the maximum area declared by such Order.

But any alteration of the boundaries of a district or any declaration of a maximum area within a district shall not prejudice any rights accrued with respect to then subsisting selections.

86. (1) Subject to this Act, a person shall not at the same time apply for or hold in the State—

Maximum area which may be held in the State (1910, s. 53)

- (a) two or more agricultural selections, the aggregate of the areas whereof exceeds two thousand five hundred and sixty acres ;
- (b) two or more settlement farm leases, the aggregate of the areas whereof exceeds six thousand acres ;
- (c) two or more grazing selections, the aggregate of the areas whereof exceeds forty-five thousand acres.

(2) The provisions of this section shall not affect the right or title—

- (a) of any person who at the commencement of this Act is the lessee of two or more agricultural selections (including any agricultural selection converted to such tenure pursuant to section one hundred and twenty-nine of this Act), the aggregate of the areas whereof exceeds two thousand five hundred and sixty acres ;
- (b) of any person who at the commencement of this Act is the lessee of two settlement farm leases the aggregate of the areas whereof exceeds six thousand acres ; or
- (c) of any person who at the commencement of this Act is the lessee of two or more grazing selections, the aggregate of the areas whereof exceeds forty-five thousand acres,

to continue to hold such selections or to be granted and to hold any new lease of the whole or part of such selections issued in pursuance of the provisions of Part VI.

(3) For the purposes of section eighty-five of this Act and this section land within any Irrigation Area under and within the meaning of "*The Irrigation Acts, 1922 to 1961*," held by any person under "*The Irrigation Areas (Land Settlement) Act of 1962*," and this Act shall be deemed to be held under this Act only and be taken into account accordingly.

Requisites of Opening Notification

What opening notification shall specify (1910, s. 54)

87. (1) Without limit to the power of the Minister, with the approval of the Governor in Council, to impose conditions in any notification declaring land open for selection, every such notification shall—

Place and time of opening

(a) appoint a place (or, where the method of application is selective, a place or places) where and a time, not being less than twenty-eight days from the date of the notification, when the land will be open for selection ;

Tenure

(b) specify, by reference to class or mode of a class of selection the tenure under which the land is open for selection ;

Maximum areas

(c) declare, in respect of all the portions or such of the portions as are specified, the maximum area of land which may be applied for under any class or mode of a class of selection so specified, by any one person in the whole area to which the notification has reference, or the maximum number of portions which may be applied for under any class or mode of a class of selection so specified, by any one person in the whole area to which the notification has reference, or both such maximum area and such maximum number :

Provided that one person shall not be permitted to apply for more than the maximum number of portions so declared, whether the aggregate of the areas of such portions so applied for does or does not attain the maximum area so declared ;

Rent, &c.

(d) specify the numbers of the portions, and their respective areas, and the annual rent per acre to be paid for each portion ;

- (e) specify the amount of the deposit which shall accompany each application ; Deposit
- (f) specify the method of application ; Method of application
- (g) in the case of land open for selection as agricultural farm, specify (at an amount per acre) the purchasing price at which the lessee may purchase the land in fee-simple ; Purchasing price
- (h) in the case of land open for selection as perpetual lease selection, state the unimproved capital value per acre of the land ; Perpetual lease selections
- (i) in the case of land open for selection alternatively as either agricultural farm or perpetual lease selection, state the amount per acre which shall be either the purchasing price of the land as an agricultural farm or the unimproved capital value of the land as a perpetual lease selection ; Alternative tenures
- (j) in the case of land open for selection as settlement farm lease— Settlement farm leases
- (i) state the term of lease, which shall be thirty years ; and
- (ii) impose a cultivation condition requiring that a specified area of land comprised in the selection shall be cultivated within a specified time ;
- (k) in the case of land open for selection as grazing selection, state the term of lease which may be any number of years not less than ten years and not exceeding thirty years. Grazing selections
- (2) The notification may also— Improvements
- (a) declare the value or state a provisional value of any improvements upon a portion ;
- (b) impose any one or more of the following conditions :—
- (i) a cultivation condition requiring that a specified area of land comprised in the selection shall be cultivated within a specified time ; Cultivation condition
- (ii) that any improvements or any specified developmental works or conditions whatsoever, shall be made or done or performed within a specified time ; Other improvements

Noxious
plants

- (iii) that specified noxious plants on the whole or a specified part of the land shall be destroyed within a specified time.

The manner of such destruction may also be specified, in which case the destruction shall be carried out in the manner so specified ;

Restriction
of right of
application

- (c) restrict for a period not longer than six months as specified in the notification the right of applying for any particular portion or portions comprised in the opening notification to persons who, anywhere in the Commonwealth, do not hold under the Crown in right of the Commonwealth or of any State, any land in fee-simple or for any lesser estate than freehold, other than land situated in a city, town, or township ;

Non-
contiguous
portions

- (d) declare that any lot comprising two or more non-contiguous portions shall be applied for and held as one selection, or that lots which are not contiguous may be applied for and held as one selection.

(3) In subparagraph (ii) of paragraph (j) of subsection (1) and in subparagraph (i) of paragraph (b) of subsection (2) of this section "cultivation condition" means that the area of land specified shall be cultivated for the production of fodder or other crops calculated to increase, or to render more secure, or to both increase and render more secure, the normal stock carrying capacity or productivity of the selection.

(4) The notification opening land for selection as agricultural farm or perpetual lease selection may also impose the condition of personal residence during the first seven years of the term.

(5) The notification opening land for selection as settlement farm lease may also impose the condition that the selection shall be enclosed within a specified time, and at all times thereafter during the term of the lease kept enclosed with a rabbit-proof fence, or with a marsupial-proof fence, or with both a rabbit-proof and marsupial-proof fence.

(6) The notification opening land for selection as grazing selection may also impose one or more of the following conditions :—

- (a) that the selection shall be enclosed within a specified time, and at all times thereafter during the term of the lease kept enclosed with a rabbit-proof fence, or with a marsupial-proof fence, or with both a rabbit-proof and marsupial-proof fence ;
- (b) a stocking condition requiring that the selection shall, within a specified period not exceeding three years, be stocked to its reasonable carrying capacity with the applicant's own sheep or cattle, or both sheep and cattle, and shall thereafter be used for producing wool or cattle, or both wool and cattle ;
- (c) that the selection shall be subject to a reservation or reservations with respect to the land comprised therein or any part or parts of that land (and whether of a specified area or of a specified part or parts of that land or generally without specifying any part of that land or area of that land) for or for any purpose of or connected with any works under and within the meaning of "*The Irrigation Acts, 1922 to 1961.*"

(7) The right of application for any specified portion or portions comprised in any notification opening land for selection under any class, or any mode of a class, of selection tenure may be limited to eligible persons as defined in paragraph (a) of the definition "eligible persons" in section three of "*The War Service Land Settlement Acts, 1946 to 1960.*"

Methods of Application to Select Land

88. Applications to select land open for selection may be made, considered and dealt with pursuant to the following methods :—

- (a) open ; or
- (b) selective.

Methods of
application
to select land

Open Method

Open method
of
application

89. Applications made pursuant to the open method shall be considered and dealt with by the Commissioner for the District in which the land is situated in accordance with the provisions of this Act.

Selective Method

Selective
method of
application

90. (1) Applications made pursuant to the selective method shall be considered and dealt with by a Committee of Review as hereinafter in this section provided.

(2) Applications made pursuant to the selective method shall be lodged with the Land Agent at the place or places and by the time appointed in the opening notification.

(3) When land is open for selection pursuant to the selective method, the Minister, in his discretion, may determine any special qualifications or conditions which applicants must possess or comply with in order to be eligible to apply for and hold the land.

(4) Any such special qualifications or conditions shall be specified in the opening notification.

(5) For the purpose of reviewing, considering and dealing with any application or applications, the Minister shall from time to time constitute a Committee of Review consisting of the following persons nominated by him :—

(a) a member of the Commission or other officer of the Department who shall be the Chairman of the Committee ;

(b) two persons not being officers of the Public Service, who, in the opinion of the Minister, are experienced in the primary industry for which the land is best suited.

(6) To the extent he deems practicable the Minister shall nominate under paragraph (b) of subsection (5) of this section, persons who have had experience as mentioned in that paragraph in the locality in which the land open for selection is situated.

(7) A member of a Committee of Review shall not be eligible to make an application for any land in respect of which the Committee, of which he is a member, is to determine the successful applicant.

(8) The Committee of Review shall consider every application lodged by the appointed time with a view to determining whether, in its opinion, the applicant is—

(a) having regard to any special qualifications or special conditions imposed by the Minister, eligible ; and

(b) having regard to the provisions of this Act, otherwise qualified,

to apply for and hold the land.

(9) All applicants who are rejected by the Committee, as not being eligible or otherwise qualified, shall be notified in writing of the Committee's decision and the reasons therefor.

(10) Any applicant may, within fourteen days of the date of the notification of the Committee's decision, apply in writing to the Committee to appear before it or he may, within such time lodge with the Committee written evidence in support of his application.

(11) As soon as possible after the expiry of the fourteen days as aforesaid, the Committee shall hear any rejected applicant who duly applied to appear before it, or consider any written evidence duly lodged with it by any rejected applicant.

Subject to so doing the Committee of Review may make, with respect to the application concerned, a fresh determination, and either in confirmation of or substitution for its original decision.

(12) Subject to subsections (10) and (11) of this section, the decision of the Committee to reject an application shall be final and conclusive.

(13) If with respect to any determination to be made by it, the members of the Committee of Review do not agree, the decision of the majority shall be the decision of the Committee.

Disqualifications

91. (1) Subject to this Act—

(a) any number of persons exceeding two ; or

(b) any corporation whatsoever ; or

Disqualifi-
cations
(1910, s. 59)

- (c) any person who in respect of the land applied for or held or any part thereof or interest therein, is a trustee, agent or servant of or for any other person,

shall not be competent to apply for or hold any selection.

(2) Proof that the stock of any person other than the lessee are ordinarily depastured on a selection shall be *primâ facie* evidence that the lessee is a trustee of the selection for the owner of the stock.

Maximum holding as grazing selection (1910, s. 52)

92. (1) Subject to this Act—

- (a) a person shall not be competent to hold two or more grazing selections the aggregate of the areas whereof exceeds thirty thousand acres and the aggregate of the rents whereof for the respective first periods of the leases thereof exceeds six hundred pounds per annum ;

- (b) a person who is the lessee of one or more grazing selections shall not be competent to apply for another grazing selection where the aggregate of the areas of the grazing selection or grazing selections already held by him and of that other grazing selection exceeds thirty thousand acres and the aggregate of the rents of all such grazing selections for the respective first periods of the leases thereof exceeds six hundred pounds per annum.

(2) Notwithstanding the provisions of subsection (1) of this section, a person holding two or more grazing selections the aggregate of the areas whereof exceeds thirty thousand acres shall be competent to be granted pursuant to Part VI. (whether in substitution for or upon the expiry of the subsisting lease or leases) a lease or leases of any of the land comprised in that aggregate as a grazing selection or grazing selections, and to hold that grazing selection or grazing selections.

Restriction on selection by pastoral lessees (1910, ss. 53 and 53A)

93. (1) Any person having an interest in a pastoral lease shall, to the extent of that interest as ascertained in acreage, be disqualified from applying for or holding a grazing selection.

(2) Any person who has an interest exceeding thirty thousand acres in one or more pastoral leases shall not be competent to apply for or hold a grazing

selection if the aggregate of the rents for the respective first periods of such pastoral lease or leases and grazing selection exceeds six hundred pounds per annum.

(3) Where at the commencement of this Act a person is both the duly qualified lessee of a grazing selection and the holder of a pastoral lease or pastoral leases this section shall not affect the right or title of such person to such grazing selection or any such pastoral lease or the power of the Minister to grant to him a new lease under Part VI. of the whole or part of the land comprised in such grazing selection or any such pastoral lease or his right or title to take and hold such a new lease.

(4) Where at any time a person is both the duly qualified lessee of a grazing selection and the holder of an interest exceeding thirty thousand acres in a pastoral lease or pastoral leases this section shall not affect the power of the Minister to grant to such person a new lease under Part VI. of the whole or part of the land comprised in such grazing selection or any such pastoral lease or his right or title to take and hold such a new lease.

(5) For the purposes of this section, a joint lessee of a pastoral lease shall be deemed to hold under such lease an area and at an annual rental respectively proportioned to his actual interest therein and, in the case of a joint applicant or joint holder, the grazing selection applied for or held shall be deemed to be of an area and at an annual rental respectively proportioned to the interest therein applied for or held.

Joint Ownership

94. (1) Any two persons, each of whom is qualified to apply for or hold a selection not exceeding the area which may be applied for and held by any one person, may apply for or hold a selection in their joint names as tenants in common or as joint tenants. Such persons shall jointly perform all the conditions to which the selection is subject, except the condition of personal residence or the condition of occupation, which—

Joint
ownership
(1910, s. 60)

- (a) if they hold equal interests, may be performed by either of them ; or
- (b) if they do not hold equal interests, shall be performed by the one of them who holds the greater interest.

For the purpose of determining whether or not a joint holder is disqualified from applying for or holding another selection of the same class or mode of a class, such joint holder shall be deemed to be the holder of an area and at an annual rental respectively proportioned to his actual interest in the jointly held selection.

(2) No transfer of a share in a selection held jointly by two persons shall be registered except—

(a) a transfer with the permission of the Minister from one joint holder, or the representative of a deceased or mentally sick joint holder to the other joint holder ; or

(b) a transfer with the permission of the Minister and the consent of the other joint holder to another person qualified as prescribed.

(3) In the event of the bankruptcy of one of the joint holders, the conditions upon which the selection is held except the condition of personal residence or the condition of occupation may and shall, pending the disposal of the interest of the bankrupt by the trustee in bankruptcy, be performed by the other joint holder as if he were the sole lessee.

(4) In the event of the death, mental sickness or bankruptcy of the joint holder required pursuant to paragraph (b) of subsection (1) of this section to perform the condition of personal residence, the provisions of section one hundred and fourteen of this Act shall apply as if that person were the sole lessee.

Joint
ownership
under will
or
intestacy
(1910, s. 60A)

95. (1) Notwithstanding anything contained in this Act, two or more persons may take and hold in their joint names as tenants in common or joint tenants a selection whereto they are entitled under the will of the deceased lessee or, in the case of the lessee having died intestate, from the administrator as their shares respectively as widower or widow or next-of-kin.

Such persons shall jointly perform all the conditions to which the selection is subject except the condition of personal residence or the condition of occupation, which shall be performed by the continuous and *bona fide* residence on the selection of any one of the lessees or of a registered bailiff who is qualified to select a similar selection.

For the purpose of determining whether or not a joint holder is disqualified from applying for or (save a selection held by him alone or jointly at the date of death of the deceased lessee) holding another selection of the same class or mode of a class, such joint holder shall be deemed to be the holder of an area and at an annual rental respectively proportioned to his actual interest in any jointly held selection.

(2) No transfer of a share in a selection taken and held jointly pursuant to the provisions of this section shall be registered except, with the permission of the Minister, a transfer from a joint holder, or the representative of a deceased or mentally sick joint holder, to the other joint holders or any one or more of the other joint holders.

In the event of the bankruptcy of one of the joint holders, the conditions upon which the selection is held, except the condition of personal residence or the condition of occupation, may and shall pending the disposal of the interest of the bankrupt be performed by the other joint holders as if they were the sole lessees, and the condition of personal residence or the condition of occupation may and shall be performed by the continuous and *bona fide* residence on the selection of any one of the joint holders other than the bankrupt or of a registered bailiff, who is qualified to select a similar selection, appointed by the joint holders (other than the bankrupt) and by the trustee in bankruptcy.

Applications

96. (1) Any person desiring to select land shall himself or by his agent appointed in writing under his hand, lodge with the Land Agent, at the place, or one of the places, appointed by the opening notification, an application in the form prescribed for the particular method of application specified in the notification.

Applications
to be lodged
in prescribed
form
(1910, s. 66)

For the purposes of this subsection an application made pursuant to the selective method received by a Land Agent by prepaid post shall be deemed lodged with him when he so receives it.

(2) The application shall be signed by the applicant personally, and shall be accompanied by the amount of the deposit specified in the notification.

(3) In the case of a joint applicant, the land applied for as a selection shall be deemed to be of an area and at an annual rental respectively proportioned to the interest therein for which he has applied.

(4) A person shall not lodge (either alone or jointly) more than one application for the same portion of land, and if any person does so every application whereto he is the sole or a joint party shall be rejected by the Commissioner or the Committee of Review.

Restriction
on applica-
tion by
females
(1910, s. 61)

(5) Subject to this Act, an unmarried female under the age of twenty-one years, or a married woman unless she has obtained an order for judicial separation, shall not be competent to apply for land open for selection subject to the condition of personal residence.

(6) (a) Notwithstanding the area and rental limitations prescribed by this Act when land is open for selection subject to the condition of personal residence, any person who, anywhere in the Commonwealth holds under the Crown in right of the Commonwealth or any State land in fee-simple or for any lesser estate than freehold—

(i) shall be disqualified from applying for and holding the land so open if, in the opinion of the Commissioner, or the Committee of Review, the land so held by him comprises fifty per centum or more of a living area ;

(ii) shall, if otherwise qualified as prescribed, be qualified to apply for and hold the land so open if, in the opinion of the Commissioner, or the Committee of Review, the land so held by him comprises less than fifty per centum of a living area.

For the purpose of this subsection, where land is jointly held under any tenure, a joint holder shall be deemed to hold so much thereof as is proportionate to his interest therein.

(7) When land is open for selection subject to the condition of personal residence, each applicant shall furnish as part of his application a declaration setting

out particulars of all land held by him anywhere in the Commonwealth, his interest therein, the situation and area thereof, description of country, state of development, carrying capacity or productivity (present and potential), estimated market value, and whether or not such land, in his opinion, comprises less than fifty per centum of a living area.

(8) (a) Where subsections (6) or (7) of this section apply, if the Commission is of opinion—

- (i) that the opinion of the Commissioner or of the Committee of Review that the area of land held by a successful applicant is less than fifty per centum of a living area is unreasonable ; or
- (ii) that the successful applicant has made a false or misleading declaration,

the Commission shall inform the Court accordingly when forwarding the application for consideration.

(b) Thereupon the Court shall inquire into the matter and if the Court is satisfied—

- (i) that the opinion of the Commissioner or of the Committee of Review is unreasonable ; or
- (ii) that the applicant made a false or misleading declaration,

and the Court is further of the opinion that the applicant holds fifty per centum or more of a living area, the Court shall refuse the application.

(c) In any such case any right in or to the land had by the successful applicant by virtue of his application or the decision of the Commissioner or of the Committee of Review thereon shall be forfeited without any further process whatsoever and the deposit lodged with the application together with any other moneys paid by the applicant may be forfeited in whole or in part as the Minister, in his discretion, determines.

(d) The declaration of the applicant shall be deemed to be misleading with respect to the land held by him—

- (i) for the purposes of paragraph (a) of this subsection, if, in the opinion of the Commission ; or

(ii) for the purposes of paragraph (b) of this subsection if, in the opinion of the Court, such land comprises fifty per centum or more of a living area.

(9) The application shall (except where otherwise in this Act is specially provided) be for a portion or contiguous portions as specified in the opening notification, and when the land is open for selection in alternative modes of a class shall state which mode is desired.

(10) Subject to the provisions of this Act relating to the forfeiture thereof, money deposited under this section shall be returned to the applicant if his application is not accepted.

Withdrawal
of
applications

(11) At any time before the Commissioner or the Committee of Review has dealt with an application to select land as a selection, such application may, with the approval of the Commissioner or the Committee of Review, be withdrawn, upon such terms as to forfeiture of the deposit or part thereof or otherwise as the Commissioner or the Committee of Review may direct.

(12) Where the notification opening land for grazing selection pursuant to the open method of application imposes a stocking condition each applicant shall be required to furnish, as part of his application, a declaration undertaking to fulfil such condition and setting out—

- (a) his pastoral or land experience ; and
- (b) the means by which he proposes to finance the selection, and, if he proposes to borrow moneys for such purpose, the amount to be borrowed and the name and address of the bank, corporation or person from whom the amount is to be borrowed.

Where an applicant proposes to borrow as aforesaid, his application shall be accompanied by a statement in writing from the bank, corporation or person named as aforesaid by the applicant as the lender acknowledging the correctness of information with respect to his proposal to borrow furnished by the applicant.

If the Commissioner considers that the applicant's means for financing the selection, as expressed in the declaration, are inadequate or generally unsatisfactory, he may reject the application.

An applicant whose application is so rejected shall be excluded from any ballot to determine the successful applicant.

The decision of the Commissioner to so reject an application shall be final and conclusive.

(13) Notwithstanding anything in the preceding subsections of this section, where a notification declares two or more portions open for selection, any person may lodge with his application a notice signed by him personally, in the prescribed form or to the like effect, that he desires to be deemed an applicant for any other specified portion or portions included in the opening notification ; whereupon, provided his application is accompanied by an amount equal to the amount of the greatest deposit for any of the portions specified in his application to select and such notice, he shall be deemed to be an applicant for all portions specified in such application to select and notice.

When application to be deemed made for certain other specified portions in same notification

Nothing in this subsection authorises the holding by any person of a selection or selections the area, or the aggregate of the areas, whereof exceeds the maximum area declared in the opening notification or, in the case of a number of selections, exceeding in number the maximum number so declared.

(14) Notwithstanding anything in this section, in any case where a person desiring to select any land has appointed in writing under his hand the Public Curator to be his agent, it shall not be necessary for the Public Curator personally to lodge the application, but he may, by virtue of the power vested in him to appoint agents for the exercise of his functions, appoint any person (not being an officer of the Department) to act for him as the agent of the applicant.

Public Curator as agent

(15) Notwithstanding anything contained in this Act, an application by any person who is a member of the Naval, Military or Air Forces of the Commonwealth absent from the State on service during any war or war-like operations may be made in the prescribed

manner and signed by a parent, brother, sister, spouse, or child of or over the age of eighteen years, or duly appointed agent of such applicant.

Applicants
to attend
Commissioner's
Court
(1910, s. 68)

97. Every applicant for a selection, pursuant to the open method of application, shall himself, or by his agent appointed in writing under his hand, appear at the Commissioner's Court when his application is dealt with by the Commissioner. If an applicant fails so to appear, his application shall be refused:

Provided that the Commissioner may, in his discretion, dispense with the attendance of an applicant or his agent if a request to that effect is made, in writing, prior to the sitting of the Court :

Public
Curator
as agent

Provided further that, in any case where the applicant has appointed the Public Curator to be his agent, it shall not be necessary for the Public Curator personally to appear at the Commissioner's Court when the application is dealt with, but he may, by virtue of the power vested in him to appoint agents for the exercise of his functions, appoint any person (not being an officer of the Department) to appear for the applicant at such Court; and the power of the Commissioner to dispense with the attendance of the applicant or his agent shall in like manner be applicable in the case of the person appointed by the Public Curator as aforesaid.

Applications
to be made
in good
faith

98. (1) Every application for a selection shall be made in good faith.

(2) An application shall not be accepted or approved unless the Commissioner or the Committee of Review or the Court, as the case may be, is satisfied that the application is made in good faith. The burden of proof that an application is made in good faith shall rest upon the applicant.

(3) An application shall be deemed to be made in good faith when the sole object of the applicant is to obtain the land in order that he may hold and use it for his exclusive benefit.

(4) The fact that two or more applications are made by different applicants for the benefit of one person shall be conclusive evidence that none of such applications is made in good faith.

(5) In any case in which the Commissioner or the Committee of Review or the Court, as the case may be, is satisfied that an application is not made in good faith, the Commissioner or the Committee of Review or the Court may declare any moneys deposited with the application or paid subsequently in respect thereof, or any part of such moneys, to be forfeited.

(6) The Commissioner, or the Committee of Review, or the Court, as the case may be, may refuse an application for any selection if satisfied that the applicant is a person of bad repute, or that if his application were accepted or approved he would be an undesirable settler, or that the acceptance or approval of his application would be prejudicial to settlement in the locality.

Discretion of Commissioner, Committee of Review and Court as to applications for selections (1925, reg. 11)

Any objection to an application on the grounds mentioned in this subsection may be taken by the Commissioner, or the Committee of Review, or the Court of his or its own motion, or by any officer or representative of the Crown, or by any settler in the locality.

The applicant shall, if he so desires, be heard before his application is refused on any of such grounds.

The decision refusing the application shall in the case of the Commissioner or the Court be pronounced in open court, and in the case of the Committee of Review, shall be notified to the applicant in writing.

Determination of Successful Applicant

99. (1) Every application to select land lodged at an appointed place by the appointed time which, on consideration as prescribed, the Commissioner or the Committee of Review decides to have been made by an applicant who is not duly qualified under the provisions of this Act or the opening notification to hold the land, shall be rejected by the Commissioner or the Committee of Review and excluded from any ballot that may be necessary to determine the successful applicant. The decision of the Commissioner or of the Committee of Review rejecting an application shall be endorsed thereon by the Commissioner or the Committee of Review, as the case may be.

Determination of successful applicant

(2) If only one application is received for land open for selection and, after consideration as prescribed, the Commissioner or the Committee of Review decides that the applicant is duly qualified under the provisions of this Act and the opening notification to hold the land or, if in the case of simultaneous applications, on consideration, as prescribed, the Commissioner or the Committee of Review decides that only one applicant is duly qualified under the provisions of this Act and the opening notification to hold the land, the Commissioner or the Committee of Review shall forthwith accept such application and the person making the application shall be the successful applicant and, subject to this Act, entitled to the issue of a lease in his name. The decision of the Commissioner or the Committee of Review accepting the application shall be endorsed thereon.

(3) (a) In every case of simultaneous applications, where on consideration as prescribed, more than one applicant is found by the Commissioner or the Committee of Review to be duly qualified to hold the land, the successful applicant shall be determined by lot pursuant to a ballot conducted by the Commissioner or the Committee of Review in the prescribed manner.

(b) The application of the person so determined shall be accepted by the Commissioner or the Committee of Review and such person shall be the successful applicant and, subject to this Act, entitled to the issue of a lease in his name. The decision of the Commissioner or the Committee of Review accepting the application shall be endorsed thereon. All other applications admitted to ballot shall be refused as lost by lot and the Commissioner or the Committee of Review shall cause them to be endorsed accordingly.

(4) If no application is received at an appointed place at or before the appointed time, or if all applications so received are rejected or refused by the Commissioner or the Committee of Review, any applications made thereafter shall be considered and dealt with by the Commissioner or the Committee of Review in accordance with the order in which they were lodged respectively at an appointed place.

The provisions of subsections (1), (2) and (3) of this section shall, with and subject to all necessary adaptations, apply for the purposes of this subsection.

(5) In the case of any applicant whose application is prescribed to be considered and dealt with by a Committee of Review, for the purposes of this section "qualified" means eligible and otherwise qualified as set out in subsection (8) of section ninety of this Act.

100. (1) The successful applicant shall, within twenty-one days of the acceptance of his application, pay to the Land Agent for the District in which the land is situated, or to the office in Brisbane of the Department, the difference, if any, between the amount of the deposit accompanying his application and the amount of a full year's rent and one-fifth of the prescribed survey fee. Payment of balance of first year's rent, &c.

The application shall not be approved by the Court until the amount of such difference, if any, has been paid.

If such payment is not made as aforesaid, any right, had by the applicant in or to the land by virtue of the application or the decision of the Commissioner or Committee of Review thereon, and the deposit accompanying his application, shall be forfeited without any further process whatsoever.

(2) If the successful applicant desires to withdraw his application at any time before approval thereof by the Court he shall execute and lodge in the office of the Department in Brisbane a surrender of his interest in such application and of any right had by him in or to the land in question by virtue of his application or the decision of the Commissioner or the Committee of Review thereon.

The deposit lodged with his application together with any other moneys paid by him may be forfeited in whole or in part as the Minister in his discretion may determine.

Approval

101. (1) The decision of the Commissioner or the Committee of Review accepting an application to select land as a selection shall not be final unless and until the application is approved by the Court. Approval by Court and notice to applicant (1910, s. 74)

If the Court is satisfied—

(a) that the application has not been made in good faith ; or

- (b) that the applicant is not in every respect eligible and otherwise qualified under the provisions of this Act or the opening notification to hold the land ; or
- (c) that the approval of the application would be otherwise contrary to any provision of this Act,

the Court shall refuse the application and the decision of the Commissioner or the Committee of Review, as the case may be, shall be set aside.

The provisions of subsections (6) and (7) of section twenty-nine of this Act shall, with and subject to all necessary adaptations, apply to any decision of the Committee of Review accepting an application to select land as a selection and to such application.

(2) When the Court has approved of an application, notice of such approval shall be given to the applicant. The notice shall specify the conditions to be performed by the selector, and the consequences of non-performance.

(3) Subject to this Act, if the Court refuses the application, the Minister in his discretion may forfeit all or part of the deposit lodged with the application and of any other moneys paid in respect thereof.

Commencement of Lease

Commence-
ment of
lease
(1910, s. 77)

102. Subject to the Court approving the application to select—

- (a) where no payment by the selector for improvements on the land is required to be made, the lease shall be issued to him and the term of such lease shall commence on the quarter day next following the date of such approval ;
- (b) where payment by the selector for improvements on the land is required to be made, the lease shall not be issued to him until he has paid as prescribed the amount of the value of the improvements.

When such payment has been made by the selector, the lease shall be issued to him and the term of such lease shall commence on the quarter day next following the date of such payment.

103. The selector of any selection which is held ^{Saving} under license to occupy at the commencement of this Act shall be entitled to the immediate issue of his lease. He shall, nevertheless, be bound to complete the performance of the condition of improvement prescribed by sections seventy-eight or seventy-nine of "*The Land Acts, 1910 to 1962*," within the time thereby prescribed or any extension of that time current at the commencement of this Act.

Compliance with the requirements of this section shall be deemed to be a condition of the lease imposed by this Act for breach whereof the lease shall be liable to forfeiture as prescribed by this Act.

Survey Fee

104. (1) The remainder of the prescribed survey ^{Balance of} fee which was not paid as prescribed by subsection (1) ^{survey fee} of section one hundred of this Act shall be paid by the ^(1910, s. 85) lessee in four equal annual instalments, without interest, payable respectively on the thirty-first day of March in each year of the period of four years next following the date of the commencement of the lease.

(2) For the purpose of enforcing the payment of any survey fee, such fee shall be deemed to be rent.

Conditions of Fencing or Other Improvement in Lieu

105. In the case of an agricultural selection ^{Condition} selected pursuant to the provisions of this Part IV., it shall ^{of fencing} be a condition of lease that the lessee shall within three ^{or other} years from the date of commencement of his lease ^{improvement} either enclose the land with a good and substantial ^{on} fence or make substantial improvements on the land of ^{agricultural} a value equal to the cost of such a fence. ^{selections} ^(1910, s. 78)

In computing the value of such improvements, the cost of destroying trees for the purpose of maintaining or increasing the productivity of the land may be taken into account : Provided that the lessee shall have, where necessary, first obtained a permit pursuant to this Act for the destruction of such trees.

Fencing of
Part IV.
selections
(1910, s. 79)

106. (1) In the case of a grazing selection or a settlement farm lease selected pursuant to the provisions of this Part IV., it shall be a condition of lease that the lessee shall within three years from the date of commencement of his lease enclose the land with a good and substantial fence and, subject to this Act, shall at all times thereafter during the term of his lease keep the land so enclosed.

Standard of
fence

(2) According to the conditions imposed by the opening notification such fence shall also be either rabbit-proof, or marsupial-proof, or both rabbit-proof and marsupial-proof and, subject to this Act, the lessee shall at all times during the term of his lease, after the land has been so enclosed, keep the fence rabbit-proof, or marsupial-proof, or both rabbit-proof and marsupial-proof, according as required by such conditions.

Fencing of
other
selections

107. (1) In the case of every lease issued otherwise than pursuant to the provisions of this Part IV., the tenure whereof is that of a grazing selection or settlement farm lease, the lease shall be subject to a condition that, at all times during the term of the lease, the lessee, subject to this Act, shall—

- (a) keep the land comprised in the lease fenced with a good and substantial fence ; and
- (b) if thereunto required by the conditions imposed by the Minister, also keep such fence either rabbit-proof or marsupial-proof, or both rabbit-proof and marsupial-proof, according as required by such conditions.

(2) If at the commencement of the lease the land is not completely enclosed with a fence, or is wholly or partly enclosed with a fence of a standard which does not comply with the condition of fencing attaching to the lease, the lessee shall, within one year from the commencement of his lease, or such extended time as the Minister may allow, completely enclose the land or repair existing fencing, as the case may be, so as to comply with the condition of fencing attaching to his lease.

(3) In the case of every lease issued otherwise than pursuant to the provisions of this Part IV., the tenure whereof is that of perpetual lease selection, if the land comprised therein is not at the date of the commencement

of the lease enclosed with a good and substantial fence, the lessee shall within one year from the date of the commencement of the lease or such extended time as the Minister may allow, enclose or complete the enclosure of the land with a good and substantial fence or make substantial improvements on the land of a value equal to the cost of such a fence.

In computing the value of such improvements, the cost of destroying trees for the purpose of maintaining or increasing the productivity of the land may be taken into account : Provided that the lessee shall have, where necessary, first obtained a permit pursuant to this Act for the destruction of such trees.

108. It shall be a condition of the lease of every selection, any part of which at the commencement of the lease is wholly or partly bounded by rabbit-netting fencing, or marsupial-netting fencing, or both rabbit-netting and marsupial-netting fencing, that, subject to this Act, the lessee shall at all times during the term of the lease keep such fencing rabbit-proof or marsupial-proof, or both rabbit-proof and marsupial-proof, as the case may be. Maintenance of fencing (1910, s. 80)

109. If the same person is the lessee of two or more contiguous selections, it shall be sufficient to enclose the whole area comprised in the selections with the prescribed fencing, or, if both selections are agricultural selections, to make the prescribed improvements upon any part of the whole area. Enclosure of contiguous selections, &c. (1910, s. 81)

For the purposes of the provisions, relating to fencing, of this section any freehold land contiguous to a selection which is owned by the lessee shall be deemed to be a selection.

110. (1) It shall not be necessary to erect any fence in compliance with any condition imposed by sections one hundred and five, one hundred and six or one hundred and seven of this Act, or by any condition of lease, upon any boundary which is formed by a natural feature sufficient to prevent the passage of stock. Where fence unnecessary (1910, s. 170)

(2) Where the condition imposed specifies a rabbit-proof or a marsupial-proof, or both a rabbit-proof and marsupial-proof fence, it shall not be necessary to erect such a fence upon a boundary which is formed by a natural feature sufficient to prevent the passage of rabbits, or marsupials, or rabbits and marsupials, as the case may be.

Minister
may exempt
from or vary
fencing
conditions
(1910, s. 79)

111. In respect of any lease the Minister, in his discretion, may exempt the lessee from performing any condition of fencing imposed by this Division.

Such an exemption may be limited as to time or other circumstances as the Minister deems fit.

The Minister may cancel or, from time to time, alter any such exemption but, save with the consent of the lessee, he shall not do so without giving to the lessee at least six months' notice in writing of his intention to make the cancellation or alteration.

Upon cancellation of such an exemption or upon the expiration of any such exemption which is limited as respects time, the condition concerned shall again have force and effect as if the exemption had never been made, save that in calculating any period of time within which it is to be performed, the time during which the exemption was in force shall not be taken into account.

Fencing of
contiguous
grazing
selections
(1910, s. 82)

112. In the case of two or more contiguous grazing selections the aggregate of the areas whereof does not exceed twenty thousand acres, the Commissioner may, upon the application of the lessees, issue a special license modifying the condition of fencing, and unless and until such special license is revoked by the Commissioner it shall be sufficient to enclose the whole area comprised in the selections.

Such a special license may authorise the lessee of any grazing selection, with the consent of the owner of any freehold land or lessee of any selection contiguous to the grazing selection to enclose such grazing selection with such freehold land or selection : Provided that the aggregate of the areas authorised by such special license to be enclosed together shall not exceed twenty thousand acres.

Fencing road
boundaries
(1910, s. 83)

113. (1) Where the boundary of a selection is a road or where selections are separated only by a road, the Court may, on the application of the lessee or lessees, as the case may be, issue a license authorising him or

them, subject, nevertheless, to the provisions of "*The Local Government Acts, 1936 to 1961*," to enclose the road and to use a fence erected wholly on one side of the road, or partly on one side and partly on the other, as a boundary fence of the selection or selections, as the case may be.

If an existing fence is proposed to be so used, the owner of the fence shall be entitled to be heard by the Court before the license is granted.

Every such license shall be subject to such conditions, as to payment to the owner of an existing fence or otherwise, as the Court may impose, and may be revoked by the Court either wholly or in part upon such notice not longer than six months as the Court deems reasonable.

During the subsistence of any such license, the condition of fencing shall be deemed to be satisfied so far as regards the boundary on which the actual erection of the fence is excused.

(2) A license under this section shall not be issued in relation to a State highway, main road, developmental road, secondary road, or any other road declared under "*The Main Roads Acts, 1920 to 1962*," without the consent of the Commissioner of Main Roads.

Conditions of Personal Residence and Occupation

114. Whenever under this Act any selection is subject to the condition of personal residence during the first seven years of the term, such condition shall be performed by the continuous and *bona fide* personal residence of the lessee on the selection during the said period, except that —

Method of performing condition of personal residence (1910, ss. 86-87)

- (a) if the lessee dies before the expiration of the said period, such condition may be performed by the continuous and *bona fide* residence on the selection for the remainder of the period of some person beneficially interested in the selection under the will or as one of the next-of-kin, or as the widow or widower of the lessee, or of a registered bailiff who is qualified to select a similar selection and who is appointed by the executor or administrator of the estate of the deceased lessee ;

-
- (b) if the lessee becomes mentally sick before the expiration of the said period, such condition may be performed by the continuous and *bona fide* residence on the selection of the wife or husband or some other member of the family of such lessee, or a registered bailiff who is qualified to select a similar selection and who is appointed by the committee of the estate of the mentally sick lessee ;
 - (c) if the lessee becomes bankrupt before the expiration of the said period such condition may be performed by the continuous and *bona fide* residence on the selection of a registered bailiff who is qualified to select a similar selection and who is appointed by the trustee in bankruptcy ;
 - (d) if, pursuant to Part IIIA. or Part IV. of “ *The Public Curator Acts, 1915 to 1957,*” the selection is under the control and management of or is vested in the Public Curator, such condition may be performed by the continuous and *bona fide* residence on the selection of a registered bailiff who is qualified to select a similar selection and who is appointed by the Public Curator.

Method of performing condition of occupation (1910, s. 89)

115. Whenever under this Act any selection is subject to the condition of occupation during the whole term or during a specified period thereof as distinguished from the condition of personal residence, the condition of occupation shall be performed by the continuous and *bona fide* residence on the selection of the lessee or of a registered bailiff who is qualified to select a similar selection :

Provided that in the case of the lease of an additional area selection issued pursuant to Division VI. of Part X., the condition of occupation, if any, attaching thereto and to the selection in respect of which the additional area is granted shall be performed by the continuous and *bona fide* residence of the lessee or his registered bailiff (being a person who is qualified to

select the total area comprised in the additional area and the selection in respect whereof it has been granted) upon either the additional area or the selection in respect whereof it has been granted.

116. Where the condition of personal residence or the condition of occupation is imposed, the lessee, in the case of a selection selected pursuant to this Part IV., shall not be bound to perform such condition within the first three months after the date of the commencement of his lease.

Commencement of residential conditions (1910, s. 76)

In the case of a selection, the lease whereof has issued otherwise than pursuant to this Part, the lessee shall be bound to perform the condition of occupation on and from the date of the commencement of his lease.

117. (1) If the same person is the lessee of two or more holdings, each of which is subject to the condition of occupation and each of which is distant not more than thirty miles from each of the others, the continuous and *bona fide* residence of the lessee or his registered bailiff on one of the holdings shall be equivalent to the residence of the lessee or such bailiff on each of the holdings.

Neighbouring holdings held by the same lessee (1910, s. 91)

(2) If the same person is the lessee of two or more holdings whereof—

- (a) each is distant not more than thirty miles from each of the others ; and
- (b) one is subject to the condition of personal residence and each of the others is subject to the condition of occupation,

the continuous and *bona fide* personal residence of the lessee on that holding which is subject to the condition of personal residence shall be equivalent to the residence of the lessee on each of the holdings.

(3) When the lessee of a holding which is subject to the condition of occupation, or such lessee's registered bailiff, resides continuously and *bona fide* on land in which the lessee is beneficially interested and which

is situated at a distance not exceeding thirty miles from the nearest part of the holding, such residence shall be equivalent to the residence of the lessee or such bailiff on the holding :

Provided that the land on which the lessee or his registered bailiff so resides is not situated in any city, town or township.

Commis-
sioner may
suspend such
condition
in certain
cases
(1910, s. 93)

118. The Commissioner may temporarily suspend the condition of personal residence or condition of occupation in respect of any selection for a period not exceeding six months in any one year in any of the following cases :—

- (a) devastation of the selection by flood, fire, or tempest ;
- (b) accident to or illness of the lessee ;
- (c) absence of the lessee from the selection while *bona fide* earning income from personal exertion elsewhere.

During the period of any such suspension such condition shall be deemed to have been performed in the manner prescribed by law.

Modification
of
residential
conditions
(1910, s. 90)

119. (1) If the Commission is satisfied that the performance of the condition of personal residence or the condition of occupation in respect of any selection would be a hardship for the lessee, or that the selection is less than a living area and does not comprise part of an aggregation of land worked conjointly which is a living area or more, or that other special reasons exist for relieving the lessee from the performance of such condition, and that public interests would not be adversely affected by so doing, the Commission may certify accordingly, and thereupon the Minister may for such period as he thinks fit waive performance of such condition or permit such condition to be performed by the residence of the lessee on other country land within a distance not exceeding thirty miles from the selection.

(2) In the case of two or more selections, each of which is at a distance not exceeding thirty miles from each of the others, held by members of a family *bona fide* in their own separate interests, if the Commission is

satisfied that good reasons exist for permitting the members of the family to live together, it may certify accordingly and thereupon the Minister for such period as he thinks fit may permit the condition of personal residence or the condition of occupation attaching to the selections to be performed by their residence on one of the selections.

(3) Any waiver or permit granted pursuant to subsections (1) or (2) of this section may be revoked by the Minister at any time upon three months' notice to the lessee or lessees concerned and, in any event, shall cease to be of any force or effect if any of the selections in question is transferred.

120. In any case where the condition of personal residence or condition of occupation is to be performed by a registered bailiff in pursuance of any provision of this Act, the appointment of such bailiff shall be made in the prescribed form and signed by the lessee and the person being so appointed. The appointment shall be made in duplicate and both copies thereof shall be lodged for registration in the District Land Office within one month from date of signature. Upon registration of the appointment by the Land Agent, one copy shall be retained in the District Land Office and the other shall be noted and returned to the lessee.

Appointment, &c.,
of bailiff
(1925, reg.
14)

If there are joint holders, subject to this Act, the appointment shall be signed by all the joint holders.

The appointment of a bailiff may be signed by the executor or administrator of the estate of a deceased lessee, the committee of the estate of a mentally sick lessee, or the trustee in bankruptcy of a lessee who is bankrupt.

121. (1) Where a selection subsisting at the commencement of this Act is subject to the condition of personal residence during the first five years of the term of the lease, the selection shall continue to be subject to such condition until the expiration of such period of five years. Thereafter for the remainder of the term the selection shall be subject to the condition of occupation.

Savings

(2) In the case of a grazing homestead or settlement farm lease subsisting at the commencement of this Act in respect whereof the condition of personal residence was, in pursuance of the provisions of the repealed Acts, reimposed for a period of five years from the date of registration of a transfer, such selection shall continue to be subject to the condition of personal residence until the expiration of the said period of five years or until the lessee to whom the selection was so transferred shall sooner cease to hold it, whichever event shall first happen. Thereafter for the remainder of the term, the selection shall be subject to the condition of occupation.

(3) The provisions of section one hundred and fourteen of this Act shall apply to selections whereto this section applies.

Exemption
from
condition
of personal
residence

122. Nothing in this Act shall be construed so as to impose the condition of personal residence upon the lessee of any selection which at the commencement of this Act is subject to the condition of occupation.

Division II.—Agricultural Selections

Agricultural Farms

Tenure
(1910, s. 99)

123. (1) The term of lease of an agricultural farm shall be thirty years.

(2) The notified purchasing price shall be payable by way of annual rent, and the annual rent reserved shall, during the term, be an amount equal to one-thirtieth of such notified purchasing price.

(3) The lease shall be subject to the condition of occupation during the whole term :

Provided that the lease shall be subject to the condition of personal residence during the first seven years of the term and thereafter for the remainder of the term to the condition of occupation in any case where the opening notification has imposed the condition of personal residence during the first seven years of the term.

124. (1) Every lease of an agricultural farm under ^{Savings} “*The Land Acts, 1910 to 1962,*” the term whereof was extended pursuant to the provisions of section 98A of such Acts, which is subsisting at the commencement of this Act, shall continue in force under, subject to and in accordance with such Acts as though such Acts had not been repealed and, notwithstanding the repeal thereof by this Act, such Acts shall be deemed to continue in force accordingly.

(2) Every lease of an agricultural farm subject to the provisions of “*The Closer Settlement Acts, 1906 to 1959,*” the term whereof commenced prior to the first day of January, one thousand nine hundred and fifty-eight, which is subsisting at the commencement of this Act, shall continue to be subject to those provisions of “*The Closer Settlement Acts, 1906 to 1959,*” which relate to the term of lease, payment of purchasing price and interest thereon, and, notwithstanding the repeal thereof by this Act, those provisions shall be deemed to continue in force accordingly.

(3) Every subsisting lease of an agricultural farm under “*The Land Acts, 1910 to 1962,*” for a term of twenty years shall, subject to the provisions of subsection (4) of this section and section one hundred and twenty-five of this Act, continue in force for the balance of such term remaining at the commencement of this Act and the purchasing price thereof shall continue to be payable by way of rent in annual instalments equal to one-twentieth of such purchasing price.

All such agricultural farms, except as provided to the contrary in this subsection, shall be held under and subject to the provisions of this Act relating to agricultural farms.

(4) (a) A lessee of an agricultural farm under ^{Extension of term to thirty years} “*The Land Acts, 1910 to 1962,*” subsisting at the commencement of this Act, with a term of lease of twenty years, may by notice in writing lodged with the Minister, not later than three months (or such extended time not exceeding six months in all as the Minister in his discretion may allow) after the commencement of this Act, elect to have the term of his lease extended to thirty years.

(b) In every such case the annual instalment of the purchasing price shall be recalculated by dividing so much of the amount of the purchasing price as has not become due for payment before the thirty-first day of December one thousand nine hundred and sixty-two by thirty less the period (expressed in years and quarters) that the lease has been current as at and including that date.

(c) The sum thus calculated, subject to the provisions of subsection (3) of section two hundred and forty-seven of this Act, shall be the annual instalment of the purchasing price payable by way of annual rent for the balance still to run after the thirty-first day of December, one thousand nine hundred and sixty-two, of the term as extended pursuant to this subsection of the agricultural farm in question.

(d) Any moneys paid in respect of rent accruing due after the thirty-first day of December, one thousand nine hundred and sixty-two, shall be credited against the appropriate recalculated annual instalments of purchasing price.

(e) The Registrar of Dealings shall make an appropriate noting upon the instrument of lease of every agricultural farm the term of which is extended pursuant to this subsection.

Conversion
of certain
perpetual
lease
selections to
agricultural
farms

(5) (a) A lessee of a perpetual lease selection subsisting at the commencement of this Act which was issued following a conversion of the lease of a settlement farm lease or grazing selection pursuant to the provisions of Part II. of "*The Land Acts and Other Acts Amendment Act of 1957*" or of Part V. of "*The Land Acts and Other Acts Amendment Act of 1959*" may, by notice in writing lodged with the Minister not later than three months (or such extended time not exceeding six months in all as the Minister in his discretion may allow) after the commencement of this Act elect to have the tenure of his perpetual lease selection converted to that of agricultural farm with a term of lease of thirty years commencing on and from the first day of January, one thousand nine hundred and sixty-three.

(b) Such election shall have force and effect as a surrender of the perpetual lease as and from the thirty-first day of December, one thousand nine hundred and

sixty-two, for the purpose of the issue to the lessee thereof of a lease as agricultural farm of the land comprised therein.

(c) The purchasing price of such agricultural farm shall be the unimproved capital value of the perpetual lease selection the subject of the election.

(d) The provisions of sections one hundred and forty-three and one hundred and forty-five of this Act, save as varied by this subsection, shall extend and apply to an agricultural farm to which a perpetual lease selection is converted pursuant to this subsection.

125. Subject to satisfying the Minister that he has performed all the developmental or improvement conditions (including the condition of fencing or other improvement) of the lease of his selection, a lessee of an agricultural farm may at any time complete the purchase by paying the amount then unpaid of the purchasing price and interest thereon, if any, to the date of such payment.

When fee-simple of agricultural farm may be acquired (1910, s. 100)

Upon so satisfying the Minister and completing the purchase and upon paying any moneys payable to the Crown in respect of the selection on account of survey fees or on any other account whatsoever which are unpaid, the lessee shall be entitled to a grant in fee-simple of the land comprised in the lease.

126. The provisions of section one hundred and twenty-five of this Act shall apply to prickly-pear selections and prickly-pear development selections held under the repealed Acts and subsisting at the commencement of this Act.

Extension of application of s. 125

Perpetual Lease Selections

127. (1) The lease of a perpetual lease selection shall be a lease in perpetuity.

Perpetual lease selections (1910, s. 104)

(2) The rental periods shall be ten years.

(3) During the first ten-year rental period the annual rent reserved shall be a sum equal to two pounds ten shillings per centum of—

(a) in the case of a perpetual lease selection selected pursuant to this Part, the notified unimproved capital value ; or

(b) in the case of a perpetual lease selection the lease whereof was issued otherwise than pursuant to this Part, the unimproved capital value as determined by the Minister or the Court, as the case may be.

(4) The annual rent for the second and each succeeding rental period thereafter shall be determined by the Court at a sum equal to two pounds ten shillings per centum of the unimproved capital value of the land as if it were held in fee-simple at the date of the commencement of the rental period in question.

(5) Subsections (2), (3) and (4) of this section apply subject to sections one hundred and twenty-eight and one hundred and twenty-nine of this Act.

(6) The lease shall not include a covenant entitling the lessee to a deed of grant in fee-simple.

(7) The lease shall be subject to the condition of occupation during the whole term :

Provided that the lease shall be subject to the condition of personal residence during the first seven years of the term and thereafter for the remainder of the term to the condition of occupation in any case where the opening notification has imposed the condition of personal residence during the first seven years of the term.

Savings

128. (1) In the case of any perpetual lease selection subsisting at the commencement of this Act where the rental period (whether the first or any subsequent such period) current immediately prior to the commencement of this Act, is other than of ten years' duration, the ten-year rental periods provided for in section one hundred and twenty-seven of this Act shall commence as from the expiration of such current rental period.

(2) In the case of any perpetual lease selection subsisting at the commencement of this Act the annual rent whereof is a sum equal to one pound ten shillings per centum of the unimproved capital value as notified or as determined by the Court, the annual rent shall continue to be such sum until the expiration of the rental period current immediately prior to the commencement of this Act, and rental for any and every rental period of ten years thereafter shall be determined by the Court

at a sum equal to one pound ten shillings per centum of the unimproved capital value of the land as if it were held in fee-simple at the date of the commencement of the rental period in question.

(3) In the case of any perpetual lease selection subsisting at the commencement of this Act the annual rent whereof is a sum equal to two pounds ten shillings per centum of the unimproved capital value as notified or as determined by the Court, the annual rent shall continue to be such sum until the expiration of the rental period current immediately prior to the commencement of this Act, and rental for any and every rental period of ten years thereafter shall be determined by the Court at a sum equal to two pounds ten shillings per centum of the unimproved capital value of the land as if it were held in fee-simple at the date of the commencement of the rental period in question.

129. (1) Notwithstanding any limitations as to maximum areas imposed by this Act, every perpetual lease prickly-pear selection and every perpetual lease prickly-pear development selection held pursuant to the repealed Acts and subsisting at the commencement of this Act is hereby converted to and declared to be a perpetual lease selection under and subject to the provisions of this Act and the instrument of lease of every such selection shall be construed accordingly.

Conversion
of existing
tenures

(2) The conversion pursuant to this section of a perpetual lease prickly-pear selection or perpetual lease prickly-pear development selection shall not affect or prejudice howsoever any mortgage, charge, sublease, easement, agreement, order or other encumbrance, estate or interest subsisting over, upon or in the selection.

(3) In the case of any perpetual lease selection to which a perpetual lease prickly-pear selection or perpetual lease prickly-pear development selection has been converted pursuant to this section—

(a) where the rental period current immediately prior to the commencement of this Act is other than of ten years' duration, the ten-year rental periods provided for in section one hundred and twenty-seven of this Act shall commence as from the expiration of such current rental period ;

(b) the annual rent shall continue to be a sum equal to one pound ten shillings per centum of the unimproved capital value as notified or as determined by the Court until the expiration of the rental period current immediately prior to the commencement of this Act, and for any and every rental period of ten years thereafter shall be determined by the Court at a sum equal to one pound ten shillings per centum of the unimproved capital value of the land as if it were held in fee-simple at the date of the commencement of the rental period in question.

(4) To the extent necessary to give operation and effect to the provisions of this section every provision of this Act or of any Order in Council under section eighty-five of this Act limiting the maximum area or maximum aggregated area which may be held by any one person as an agricultural selection or agricultural selections shall apply so as not to prejudice or affect howsoever the entitlement of the lessee as at the date of the commencement of this Act to continue to hold the converted lease of his perpetual lease prickly-pear selection or perpetual lease prickly-pear development selection, as the case may be, as a perpetual lease selection as well as any other perpetual lease selection which he may hold at the commencement of this Act.

For the purpose of determining whether or not a person other than such lessee is qualified to acquire or hold as a perpetual lease selection the converted lease where the area thereof exceeds two thousand five hundred and sixty acres, the area thereof shall be deemed to be two thousand five hundred and sixty acres.

(5) The Registrar of Dealings may make an appropriate noting upon the instrument of lease of every selection to which this section applies.

Division III.—Settlement Farm Leases

130. (1) The term of lease of a settlement farm lease shall be thirty years.

(2) The rental periods shall be ten years.

(3) During the first ten-year rental period the annual rent reserved shall be—

- (a) in the case of a settlement farm lease selected pursuant to this Part, the notified rent ; or
- (b) in the case of a settlement farm lease the lease whereof was issued otherwise than pursuant to this Part, as determined by the Minister or the Court, as the case may be.

The annual rent for the second and each succeeding rental period shall be determined by the Court.

(4) The lease of a settlement farm lease shall be subject to the condition of personal residence during the first seven years of the term and thereafter for the remainder of the term to the condition of occupation :

Provided that the lease of a settlement farm lease issued otherwise than pursuant to this Part shall be subject to the condition of occupation during the whole of the term.

(5) With respect to any settlement farm lease subsisting at the commencement of this Act, the term of which commenced before the first day of January, one thousand nine hundred and sixty, the lease shall continue in full force and effect for the remainder of the term subsisting at the commencement of this Act, and the duration of the rental periods shall continue as prescribed by “ *The Land Acts and Other Acts Amendment Act of 1959* ” as though that Act had not been repealed.

Division IV.—Grazing Selections

131. (1) The term of lease of a grazing selection shall be— Tenure
(1910, s. 109)

- (a) in the case of a grazing selection selected pursuant to this Part, the notified term ; or
- (b) in the case of a grazing selection the lease whereof was issued otherwise than pursuant to this Part, such term, not exceeding thirty years, as is determined by the Minister.

(2) When the term exceeds ten years it shall be divided into rental periods, no one of which shall exceed ten years. The last period shall be of such duration as will permit the other period or each of the other periods as the case may be, to be of the duration of ten years.

(3) During the term or when the term exceeds ten years, during the first rental period, the annual rent reserved shall be—

- (a) in the case of a grazing selection selected pursuant to this Part, the notified rent ; or
- (b) in the case of a grazing selection the lease whereof was issued otherwise than pursuant to this Part, as determined by the Minister or the Court, as the case may be.

Where the term exceeds ten years, the annual rent for the second and each succeeding rental period shall be determined by the Court.

Grazing
homesteads

(4) The lease of a grazing homestead shall be subject to the condition of personal residence during the first seven years of the term and thereafter for the remainder of the term to the condition of occupation :

Provided that the lease of a grazing homestead, issued otherwise than pursuant to this Part, shall be subject to the condition of occupation during the whole of the term.

Residence
conditions
of grazing
farms

(5) The lease of a grazing farm shall be subject to the condition of occupation during the whole term except where, pursuant to the provisions of subsections (3) or (4) of section eighty-three of this Act, the lease is exempt from such condition.

Agistment
(1910, s. 94A)

(6) It shall be a condition of the lease of every grazing selection that, except with the written permission of the Minister, the lessee shall not allow stock to be taken on agistment on his selection for a period or periods aggregating longer than six months in any one year.

Conversion
of certain
tenures

132. (1) Every development grazing homestead and every prickly-pear development grazing homestead held pursuant to the repealed Acts and subsisting at the commencement of this Act is hereby converted to and declared to be a grazing homestead under and subject to the provisions of this Act and the instrument of lease of every such selection shall be construed accordingly.

(2) Every development grazing farm and every prickly-pear development grazing farm held pursuant to the repealed Acts and subsisting at the commencement of this Act is hereby converted to and declared to be a

grazing farm under and subject to the provisions of this Act and the instrument of lease of every such selection shall be construed accordingly.

(3) The term of lease, annual rent for the rental period subsisting at the commencement of this Act, duration of rental period or periods, and, subject to this Act, all other provisions and conditions of any lease the tenure whereof is converted by this section, as subsisting immediately prior to the conversion shall continue in force under and with respect to the converted tenure:

Provided that in the case of any prickly-pear development grazing selection subsisting at the commencement of this Act the original term of twenty-eight years whereof has been extended, the rent for the extended period of the term thereof unless the repealed Acts otherwise provided, shall be determined by the Court.

(4) The conversion pursuant to this section of the tenure of any development grazing homestead, development grazing farm, prickly-pear development grazing homestead or prickly-pear development grazing farm shall not affect or prejudice howsoever any mortgage, charge, sublease, easement, agreement, order or other encumbrance, estate or interest subsisting over, upon or in the selection.

(5) The Registrar of Dealings may make an appropriate noting upon the instrument of lease of every selection to which this section applies.

133. With respect to any grazing selection ^{Saving} subsisting at the commencement of this Act, the term whereof commenced before the first day of January, one thousand nine hundred and sixty, the lease shall continue in full force and effect for the remainder of the term subsisting at the commencement of this Act, and the duration of the rental periods shall continue as prescribed by "*The Land Acts and Other Acts Amendment Act of 1959*," as though that Act had not been repealed.

Extension
of lease in
exceptional
cases
(1959, s. 59)

134. When the lessee of a grazing selection satisfies the Minister that the development of his selection will cost an abnormally high sum in comparison with the cost of developing other lands used for grazing in the locality, the Minister, with the approval of the Governor in Council, may grant an extension of lease not exceeding ten years on the lessee undertaking to incur abnormally high expenditure on such improvements or developmental works as may be specified by the Minister, and within such time as may be specified by the Minister, and thereupon the making of such improvements within such specified time shall become and be a condition of the lease.

Division V.—Conversion of certain Selections to Freeholding or Perpetual Lease Tenure
Perpetual Lease Selections

Perpetual
lease
selections
(1957, s. 4)

135. The lessee of any perpetual lease selection held under the provisions of this Act or under the provisions of "*The Irrigation Areas (Land Settlement) Act of 1962,*" may at any time apply to the Minister in writing to have the tenure of his selection converted to agricultural farm.

Determina-
tion of
unimproved
value
(1957, s. 5)

136. (1) Subject to subsection (2) of this section, and subsection (3) of section one hundred and forty-two of this Act, in every such case the Minister shall refer to the Court for hearing and determination the matter of the unimproved value, as at the date when the Minister receives the lessee's application, of the land comprised in the selection.

(2) Where the application for conversion of tenure is made during the first two years of the term of a perpetual lease selection selected pursuant to this Part IV. or the lease whereof was issued otherwise than pursuant to this Part IV., and there is upon the land timber of commercial value, the Minister may, in his discretion, reject the application or refer to the Court for hearing and determination the matter specified in subsection (1) of this section.

(3) In respect of land comprised in a perpetual lease selection to which the provisions of "*The Irrigation Areas (Land Settlement) Act of 1962,*" apply the unimproved value thereof shall include the enhanced

value of such land or any part thereof attributable to the fact that it is regarded as irrigable because its situation and quality make it capable of being irrigated from the works or proposed works of an undertaking as defined in “*The Irrigation Acts, 1922 to 1961.*”

Settlement Farm Leases

137. The lessee of any settlement farm lease may at any time apply to the Minister in writing to have the tenure of his selection converted either to an agricultural farm or to a perpetual lease selection. Settlement farm leases (1959, s. 22)

138. Subject to subsection (3) of section one hundred and forty-two of this Act, the Minister shall refer to the Court for hearing and determination, the following matters, namely :— Determination of unimproved value (1959, s. 23)

- (a) the unimproved value, as at the date when the Minister receives the lessee’s application, of the land comprised in the settlement farm lease, which unimproved value shall be exclusive of the market value of any commercial timber on the land ;
- (b) the market value as at the date of hearing by the Court of the commercial timber the property of the Crown on the land comprised in the settlement farm lease, which value shall include the value as at such date of trees with commercial potentiality.

Grazing Selections

139. The lessee of any grazing selection, the area of which does not exceed ten thousand acres, may at any time apply to the Minister in writing to have the tenure of his selection converted to agricultural farm or to perpetual lease selection. Grazing selections (1959, s. 25)

140. (1) In every such case the Commission shall certify to the Minister whether or not the grazing selection is, in the opinion of the Commission substantially in excess of a living area. Matter to be certified by the Commission (1959, s. 26)

If the Commission certifies that the grazing selection is, in its opinion, substantially in excess of a living area the Minister shall either reject the application or, subject to subsection (3) of section one hundred and forty-two of this Act, refer it to the Court.

If the Commission certifies that the grazing selection is, in its opinion, not substantially in excess of a living area the Minister shall, subject to subsection (3) of section one hundred and forty-two of this Act, refer the application to the Court.

Matters to be determined by Court

(2) In respect of every application referred by the Minister to the Court, the Court shall hear and determine the following matters, namely :—

- (a) the unimproved value, as at the date when the Minister received the lessee's application, of the land comprised in the grazing selection, which unimproved value shall be exclusive of the market value of any commercial timber on the land ;
- (b) the market value as at the date of hearing by the Court of the commercial timber the property of the Crown on the land comprised in the grazing selection, which value shall include the value as at such date of trees with commercial potentiality ;
- (c) whether public interests would be adversely affected by granting the lessee's application for conversion of tenure, and if so in what respect.

General Provisions

General provisions (1957, s. 5, 1959, ss. 23 and 26)

141. (1) For the purposes of this Division the unimproved value of any land shall be the amount which, in the opinion of the Court, experienced persons would be willing to pay for the fee-simple of the land, exclusive of the market value of commercial timber, including trees with commercial potentiality thereon, assuming the land were unimproved, and were offered for sale on such reasonable terms and conditions as a *bona fide* seller would require.

This subsection applies subject to subsection (3) of section one hundred and thirty-six of this Act.

(2) In the event of the Court or, upon appeal thereto, the Land Appeal Court determining that public interests would be adversely affected by granting the lessee's application for conversion of the tenure of a grazing selection, the application shall lapse.

(3) (a) The provisions of sections one hundred and thirty-five, one hundred and thirty-six, one hundred and thirty-seven, one hundred and thirty-eight, one hundred and thirty-nine and one hundred and forty of this Act apply subject to this subsection.

(b) Where the land in respect whereof the conversion of tenure is applied for, was granted under Division VI. of Part X. or the analogous provisions of the repealed Acts as an additional area the Commission shall certify to the Minister whether or not the conversion of tenure would, in its opinion, be contrary to the public interests.

If the Commission certifies that the conversion would, in its opinion, be contrary to the public interests, the Minister shall reject the application.

If the Commission certifies that the conversion would, in its opinion, not be contrary to the public interests the Minister may deal with it pursuant to his powers in that behalf under the applicable provisions of this Division.

142. (1) The lessee shall within three months, or such longer period (not exceeding six months in all) as the Minister in his discretion may allow, from the date of the determination by the Court or, upon appeal thereto, the Land Appeal Court, of the amount of the unimproved value of his selection and, where necessary, the amount of the value of the commercial timber, if any, thereon, notify the Minister in writing—

Lessee to elect whether to proceed with conversion of tenure (1957, s. 6, 1959, s. 24)

- (a) in the case of a perpetual lease selection, whether he elects to proceed with his application to have the tenure thereof converted to an agricultural farm ; or
- (b) in the case of a settlement farm lease or grazing selection, whether he elects to proceed with his application to have the tenure of his selection converted to an agricultural farm or to a perpetual lease selection and shall specify which of these two tenures he elects to take.

(2) Every application shall lapse at the expiration of three months or, where the Minister has allowed a longer period, such longer period after the date of the aforementioned determination by the Court or, upon appeal thereto, the Land Appeal Court, unless the lessee has sooner notified the Minister in writing that he elects to proceed therewith.

(3) Where an application lapses, any further application under this Division made by the same lessee with respect to the selection may be rejected by the Minister.

(4) Upon an application lapsing, the determination by the Court or, upon appeal thereto, the Land Appeal Court, of the unimproved value of the land comprised in the selection concerned, and where required, of the value of the commercial timber thereon, shall cease to have force or effect for any purpose whatsoever.

(5) A lessee shall forthwith, upon electing pursuant to this section to proceed with his application to have the tenure of his selection converted, surrender the subsisting lease therefor and pay the first year's rent under the converted tenure less any prescribed adjustment.

Thereupon he shall be entitled to a new lease of his selection as an agricultural farm or, according as he has specified in his notice of election, in the case of a settlement farm lease or grazing selection, a perpetual lease selection.

The converted tenure shall in every case be subject to the terms and conditions hereinafter provided in this Division.

Provisions applicable to Agricultural Farm and to Perpetual Lease Selection tenures under this Division

Terms and conditions of new agricultural farms (1957, s. 7, 1959, s. 27)

143. Every agricultural farm tenure (in this section referred to as "the new tenure") to which a perpetual lease selection or a settlement farm lease or a grazing selection is converted pursuant to this Division shall be subject to the following provisions, terms and conditions :—

- (a) the purchasing price under the new tenure shall be the unimproved value determined as prescribed by this Division and shall be payable by way of annual rent ;

-
- (b) the term of the new tenure shall be thirty years and shall commence on the quarter day next following the date when the Minister received from the lessee the application in writing to have the tenure converted unless, by notice in writing contained in or accompanying the notice of election to proceed with the application and, in the case of the conversion of a grazing selection or settlement farm lease, specifying that the election is to take the freeholding (agricultural farm) tenure, the lessee informs the Minister that he desires the term of the new tenure to commence on the quarter day next following the date when the Court or, upon appeal thereto, the Land Appeal Court, determined the unimproved value of the land comprised in the selection, in which case the term of the new tenure shall commence on such later quarter day ;
- (c) the annual rent reserved shall, during the term, be an amount equal to one-thirtieth of the purchasing price ;
- (d) moneys paid as rent under the surrendered tenure shall not be credited to the new tenure except any moneys so paid in respect of a time after the commencement of the term of the new tenure ;
- (e) the developmental and improvement conditions, if any, to which the surrendered perpetual lease selection, settlement farm lease or grazing selection was subject ;
- (f) in the case of a surrendered lease which was subject to a condition of personal residence, notwithstanding anything in this Act that condition shall continue to apply with respect to the new tenure for the unexpired period thereof remaining as at the quarter day when the term of the new tenure commences ; and
- (g) subject to paragraphs (a) to (f), both inclusive, of this section, all such provisions, terms and conditions as apply with respect to agricultural farms selected under this Act.

Terms and
conditions
of new
perpetual
lease
selections
(1959, s. 28)

144. Every perpetual lease selection (in this section referred to as "the new tenure") to which a settlement farm lease or a grazing selection is converted pursuant to this Division shall be subject to the following provisions, terms and conditions :—

- (a) the unimproved capital value under the new tenure shall be the unimproved value determined as prescribed by this Division ;
- (b) the term of the new tenure shall commence on the quarter day next following the day when the Minister received from the lessee the application in writing to have the tenure converted unless, by notice in writing contained in or accompanying the notice of election to proceed with the application and specifying that the election is to take the perpetual lease selection tenure, the lessee informs the Minister that he desires the term of the new tenure to commence on the quarter day next following the date when the Court or, upon appeal thereto, the Land Appeal Court determined the unimproved value of the land comprised in the selection, in which case the term of the new tenure shall commence on such later quarter day ;
- (c) during the first ten years of the term the annual rent reserved shall be a sum equal to two pounds ten shillings per centum of the unimproved capital value ;
- (d) the annual rent for each rental period of ten years thereafter shall be determined by the Court at a sum equal to two pounds ten shillings per centum of the unimproved capital value of the land as if it were held in fee-simple at the date of the commencement of the rental period in question ;
- (e) moneys paid as rent under the surrendered tenure shall not be credited to the new tenure except any moneys so paid in respect of a time after the commencement of the term of the new tenure ;

- (f) the developmental and improvement conditions, if any, to which the surrendered settlement farm lease or grazing selection was subject ;
- (g) in the case of a surrendered lease which was subject to a condition of personal residence, notwithstanding anything in this Act that condition shall continue to apply with respect to the new tenure for the unexpired period thereof remaining as at the quarter day when the term of the new tenure commences ; and
- (h) subject to paragraphs (a) to (g), both inclusive, of this section, all such provisions, terms and conditions as apply with respect to perpetual lease selections selected under this Act.

145. To the extent necessary to give operation and effect to the provisions of this Division every provision of this Act or of any Order in Council under section eighty-five of this Act limiting the maximum area or maximum aggregated area which may be held by any one person as an agricultural selection or agricultural selections shall apply so as not to prejudice or affect howsoever the entitlement of any lessee to a new lease of his selection as an agricultural farm or perpetual lease selection as prescribed by this Division :

Area limitation under this Act not to prejudice application for conversion of tenure (1957, s. 6, 1959, s. 29)

Provided that, save as respects the holding by the person thereunto entitled pursuant to this Division of any agricultural farm or perpetual lease selection, the area of any agricultural farm or perpetual lease selection to which this Division applies shall be taken into account in calculating the area declared or prescribed by this Act or by any Order in Council under section eighty-five of this Act to be the maximum area or maximum aggregated area which may be applied for or held by that person under this Act :

Provided further that for the purpose of determining whether or not a person other than the person thereunto entitled pursuant to this Division is qualified to acquire or hold any agricultural farm or

perpetual lease selection to which this Division applies, the area whereof exceeds two thousand five hundred and sixty acres, the area of that agricultural farm or perpetual lease selection shall be deemed to be two thousand five hundred and sixty acres.

Liability
to pay rent
(1957, s. 8
1959, s. 30)

146. An application for conversion of tenure under this Division shall not affect the liability of the lessee to pay rent in respect of his subsisting tenure, and that liability shall not cease until the conversion is recorded in the appropriate register kept in the Department.

Payment
for timber
(1959, s. 31)

147. (1) Upon and by virtue of the conversion pursuant to this Division of a grazing selection or settlement farm lease to an agricultural farm or a perpetual lease selection, all trees thereon the property of the Crown shall become and be the property of the lessee who shall pay the value of the commercial timber (including trees with commercial potentiality) comprised in such trees as determined by the Court, or, upon appeal thereto, the Land Appeal Court, in equal annual instalments during the first five years of the term of the converted tenure.

Such instalments shall be payable with the annual rent and the provisions of section two hundred and forty-nine of this Act shall apply with respect thereto as if the same were rent.

(2) The lessee may at any time pay in full the amount then unpaid of the total payment to be made by him under subsection (1) of this section, and such payment shall be deemed to be made in satisfaction of every annual instalment of the total payment prescribed by subsection (1) of this section to be payable as rent which becomes due thereafter.

(3) (a) Subject to paragraph (b) of this subsection, upon transfer or surrender of the converted lease at any time prior to the expiration of the first five years of the term of the lease any amount then unpaid of the determined value of the commercial timber shall become payable as at the date of transfer or surrender and may be recovered as a debt due to the Crown.

In the case of a transfer the Minister may direct that the transfer shall not be registered until the unpaid amount has been paid, and thereupon the transfer shall not be registered until such payment is made.

In the case of a surrender, other than a surrender to which paragraph (b) of this subsection applies, the Minister shall set off against such unpaid amount such sum as, in his opinion, is the value of the commercial timber growing upon the land at the date of surrender, but in no case shall this provision operate so as to require any payment to be made by the Minister to the person who surrendered the lease.

(b) Any annual instalment or instalments in respect of the determined value of commercial timber on a perpetual lease selection unpaid at the date of surrender thereof for conversion to an agricultural farm shall be payable with, and be added to and deemed part of, the annual rent for the agricultural farm for the year or years respectively for which such instalment or instalments is or are payable.

Division VI.—Conversion of Selection Tenures

148. This Division shall not apply to any selection Application of Division the lessee of which may apply for conversion of tenure pursuant to the provisions of Division V.

149. (1) Any lessee of a selection may at any time after the commencement of his lease apply to the Conversion of selection tenures (1910, s. 96) Minister in writing to have the tenure of his selection converted to another tenure under this Part other than agricultural farm.

(2) The Minister may refer the application to the Commission for a recommendation.

(3) Upon receipt of the Commission's recommendation the Minister may—

(a) allow the conversion of the tenure of the selection, the subject of the application, and determine the term of lease, the rental and such conditions as he deems the case to require ; or

(b) refuse the application.

(4) The conversion of tenure shall not be allowed if the area of the selection exceeds the maximum area prescribed by section eighty-four of this Act for the particular class or mode of a class of selection to which conversion is sought by the lessee.

(5) If, in the event of the Minister determining to allow the conversion, the lessee accepts the Minister's determination, he shall notify the Minister in writing accordingly and within three months after the date of the Minister's determination shall execute a surrender of his subsisting lease. Thereupon a new lease, commencing on the quarter day next following the surrender of the old lease, shall be issued to the lessee in accordance with the determination of the Minister.

(6) If the lessee fails to accept the Minister's determination as aforesaid within three months, such determination shall be of no effect, and the subsisting lease of the selection shall continue in force as if there had been neither an application under this Division nor a determination upon that application by the Minister.

(7) Notwithstanding anything in this Act in the case of a surrendered lease which was subject to the condition of personal residence, it shall be a condition of the new lease that, until the expiration of the period during which the condition of personal residence was obligatory, such obligation shall continue in force, and after the expiration of the period thereof the selection shall be subject to the condition of occupation during the remainder of the term of the new lease.

In any other case the selection shall be subject to the condition of occupation during the whole term of the new lease.

In all other respects the conditions of the new lease shall be such as are determined by the Minister and as are provided by this Act with respect to the class or mode of a class of selection for which the new lease has been granted.

(8) Moneys paid as rent under the surrendered tenure shall not be credited to the converted tenure except any moneys so paid in respect of a time after the commencement of the term of the converted tenure.

PART V.—BRIGALOW LEASES

150. (1) The Minister, with the approval of the Governor in Council, may by notification published in the *Gazette*, declare country land, not exceeding ten thousand acres in area, which is substantially covered with brigalow scrub, open for brigalow lease pursuant to either the open or the selective method of application.

Tenure
of brigalow
lease
(1959, s. 32)

(2) Land declared open for brigalow lease under the provisions of this Part shall at and after the time appointed by the opening notification be open for lease in accordance with the notification.

(3) At any time after the publication of the opening notification but before the Commissioner or the Committee of Review, as the case may be, accepts an application to lease the land as a brigalow lease, the Minister may in his discretion withdraw the land from being so open.

The Minister shall cause any such withdrawal to be notified in the *Gazette*.

(4) Every brigalow lease opened for lease pursuant to this Part shall be subject to the following provisions, terms and conditions :—

Terms and
conditions
of brigalow
leases

- (a) the term of the lease shall be the notified term, but in no case shall the term exceed forty years ;
- (b) the term shall commence on the quarter day next following the date of approval by the Court of the applications for the land, or, if there are improvements on the land to be paid for by the incoming lessee, on the quarter day next following the date of payment as prescribed of the value of the improvements ;
- (c) the rent for the first rental period of ten years shall be the amount specified in the notification opening the land. The rent for the second and each succeeding ten-year rental period shall be determined by the Court ;

- (d) a condition for the clearing of the whole or a specified portion of the brigalow scrub, which condition shall be fulfilled by the lessee in equal proportions each twelve months during the time specified for clearing ;
- (e) the conditions of personal residence and of occupation to the same extent as a grazing homestead :

Provided that if the Commission certifies to the Minister that it would be in the public interests and conducive to the more speedy development of the land and the maintenance of more persons thereon to waive the condition of personal residence, the Minister may, in his discretion, relieve the lessee from the performance of such condition :

Provided further that, if the Commission certifies to the Minister that any area is not a living area, the opening notification may declare that the lease shall be exempt from conditions of personal residence and occupation.

- (5) The lease may contain conditions for the cultivation of a portion of the land, the introduction of improved pastures, or other works calculated to develop the land and increase its productive capacity.

Company
eligible to
acquire in
certain
circum-
stances
(1959, s. 33)

151. A company under and within the meaning of “*The Companies Act of 1961*,” shall not be debarred from applying for, acquiring and holding a brigalow lease if the company first satisfies the Minister and the Governor in Council that the acquirement of such brigalow lease by such company is in the public interests and would be conducive to the more speedy development of the land, and the maintenance of more persons thereon,

and thereupon the conditions of personal residence and occupation may be performed by the personal residence on the land of an accredited representative of the company.

152. Except as in this section provided a person or company shall not be competent to apply for or hold two or more brigalow leases the aggregate area whereof exceeds ten thousand acres :

Maximum
area for
brigalow
leases
(1959, s. 34)

Provided that a person or company which undertakes—

- (a) abnormally high expenditure in developing the land ; and
- (b) the permanent employment of a number of persons thereon,

may be permitted by the Minister, with the approval of the Governor in Council, to acquire brigalow leases of an aggregate area not exceeding twenty thousand acres.

153. Save as modified by the provisions of this Part, all the provisions of this Act which are applicable to grazing selections, shall be applicable to brigalow leases, and without limiting the general application of the provisions of this Act, the provisions of this Act with respect to grazing selections relating to opening notifications, applications, deposits, determination of successful applicants, issue of leases, improvements, developmental conditions, survey fees, personal residence, occupation, sub-letting, rent and payment thereof, forfeiture, resumption, compensation, noxious plants, prickly-pear, surrender, transfer, transmission, mortgage, agistment, timber and destruction of trees, shall, with and subject to all necessary adaptations apply to brigalow leases.

General
application
of provisions
of Principal
Act relating
to grazing
homesteads
(1959, s. 35)

PART VI.—SECURITY OF LEASEHOLD TENURE

Division I.—Renewal of Leases before Expiry

Application
of this
Division
(1959, s. 40)

154. This Division shall apply with respect to settlement farm leases, grazing selections, brigalow leases, pastoral holdings, preferential pastoral holdings and pastoral development holdings and in this Division the term “ holding ” is limited in its meaning accordingly.

Application
by lessee
for new
lease
(1959, s. 42)

155. (1) A lessee of any holding, the lease whereof has not more than ten years to run, may apply to the Minister for consideration under, subject to and in accordance with the provisions of this Division of the matter of the grant to him of a new lease of the whole or part of the holding in question in substitution for the then subsisting lease thereof.

(2) Every such application shall be in writing in the prescribed form, contain or be accompanied by the prescribed information, be signed by the applicant or his agent, and may also be accompanied by other information or particulars deemed by the lessee to be relevant to the application.

(3) The Minister shall refer every such application to the Commission for investigation and report as hereinafter provided in this Division.

Investiga-
tions by
Commission
(1959, s. 43)

156. (1) The Commission shall, in respect of every application so referred to it by the Minister, investigate the following matters, that is to say :—

- (a) the area of land of the quality comprised in the holding in question which, in the opinion of the Commission, is a living area ;
- (b) the public interests, the interest of the lessee concerned, and how best the land may be brought to its maximum production, increased population may be sustained, and the public estate may be developed ;

- (c) the rental value of the land ; and
- (d) such other factors and circumstances as the Commission deems fit and proper.

(2) The Commission shall make to the Minister a Report by Commission report upon its investigations as aforesaid and such recommendations as it deems fit.

157. (1) The Minister may, in his absolute Powers of the Minister (1959 s. 44) discretion—

- (a) approve, in respect of either the whole or part only of the land comprised in the holding and, whether his approval is in respect of the whole or part only of the land, either unconditionally or subject to such conditions as, in his opinion, are calculated to develop the public estate ; or
- (b) refuse,
any application.

(2) If the Minister approves the application wholly or in part he shall determine the area of land in respect of which a new lease shall be offered, the tenure (which shall not be agricultural farm) term and rental thereof and where appropriate, the developmental and improvement conditions to which the new lease shall be subject.

(3) The Minister in his discretion, may include in the area of land offered as a new lease pursuant to this Division, any Crown land in addition to the whole or part of the land contained in the subsisting lease.

(4) In determining the area of land in respect of which a new lease may be offered under selection tenure, the Minister shall not exceed the maximum area prescribed by section eighty-four of this Act according to the class or mode of a class of selection named in the offer and in respect of a new lease offered under brigalow lease tenure he shall not exceed the maximum area prescribed by Part V.

(5) The Minister shall give to the applicant notice in writing of his decision with respect to the application.

Lessee to be qualified to hold new lease

158. (1) Subject to subsection (2) of this section, the Minister shall not make, pursuant to this Division, an offer to an applicant lessee who is disqualified in terms of this Act from holding, under the tenure determined by the Minister, the area of land in respect of which the new lease is offered.

Joint holders

(2) Where more than two individual persons are the lessees of a holding the subject of the application, such individual persons, notwithstanding anything contained in this Act, shall not on that account alone be disqualified from holding jointly according to their respective interests in such holding any selection tenure offered by the Minister in pursuance of this Division.

Steps to be taken by lessee upon approval wholly or in part of his application for a new lease (1959, s. 45)

159. (1) A lessee of a holding whose application under this Division has been approved by the Minister, whether in respect of the whole or part only of the land comprised in the holding, may notify the Minister in writing that he elects to take advantage of such approval.

(2) Notice in writing of election as aforesaid shall be given to the Minister within three months after the date of the notification to the lessee in question of the approval of the Minister or within such extended time longer than the aforesaid three months (but not exceeding six months in all) as the Minister may in his discretion allow in any particular case.

(3) Any and every notice of election as aforesaid received by the Minister within the time allowed for the giving thereof to him, shall not be revocable by the lessee and, unless and until the Minister revokes as prescribed his decision, shall bind the lessee in question and his successors in interest.

(4) If a lessee fails to give to the Minister notice of election as aforesaid within the time allowed therefor, the decision in question by the Minister shall be of no effect, and the subsisting lease of the holding in respect of which that decision was made shall continue in force as if there had been neither an application under this Division in respect thereof nor a decision upon that application by the Minister.

160. (1) Upon duly electing to take advantage of a decision by the Minister approving, whether in respect of the whole or part only of the land comprised in the holding, his application for a new lease in substitution for the subsisting lease, a lessee shall surrender the subsisting lease and thereupon the Governor in Council shall issue a new lease to him in accordance with the decision of the Minister. Issue of new lease and conditions thereof (1959, s. 46)

(2) Every such new lease shall commence on the quarter day next following after the lessee shall have surrendered the lease the subject of the application under this Division.

(3) Every such new lease shall be issued (and shall be valid and effectual to convey to and vest in the lessee therein named, the land therein described for the estate or interest therein stated) subject to such reservations and conditions as are authorised or prescribed by this Act with respect to the tenure of the new lease and subject also to such conditions as the Minister shall have deemed fit to impose in his decision approving the new lease.

161. (1) If, in any case where Crown land has been included in the offer of a new lease, there are any improvements thereon, the declared or provisional value of such improvements shall be notified to the applicant when the Minister gives him notice of his decision in respect of his application. Inclusion in offer of improved Crown land

The applicant to whom the decision is given shall pay the declared or provisional value of the improvements within one month or such extended time not exceeding two months in all, as the Minister may allow after the date when he elects to take advantage of the Minister's decision.

(2) The new lease shall not issue until the applicant has duly paid the declared or provisional value of such improvements and, if the applicant fails to make such payment, the Minister may, in his discretion, revoke his decision and thereupon the subsisting lease of the holding in question shall continue in force as if there had been neither an application under this Division in respect thereof nor a decision upon that application by the Minister.

The provisions of Division II. of Part X. shall, with and subject to all necessary adaptations, apply.

Interpreta-
tion
(1959, s. 47)

162. The provisions of this Division shall be construed so as not to confer upon any lessee a claim to be granted as of right any new lease of a holding.

The powers and authorities of the Minister under this Division shall be discretionary and every decision made or purporting to be made in the exercise of any such power or authority by the Minister shall be final and conclusive of the subject matter thereof.

No lessee shall have any right or remedy whatsoever in law in respect of anything done or omitted to be done by the Minister in respect of the exercise of any power or authority under this Division or in respect of any failure or refusal by the Minister to exercise such power or authority.

Neither the Supreme Court, nor the Court, nor any other court or judicial tribunal whatsoever shall have jurisdiction to entertain any suit, action or other proceeding whatsoever for enforcing a right, remedy or claim alleged to be had by any person by virtue of any provision of this Division.

Division II.—Late Lessee's right to receive offer of new Lease on expiration of Lease

Duties of
Commission
with
respect to
expired
lease

163. (1) Upon the expiry of the lease of any settlement farm lease, grazing selection, brigalow lease or pastoral lease, the Commission shall investigate the following matters, that is to say :—

- (a) the area of land of the quality comprised in the expired lease that, in the opinion of the Commission, is a living area ;
- (b) the public interests, the interest of the late lessee, and how best the land may be brought to its maximum production, increased population may be sustained, and the public estate may be developed ;
- (c) such other factors and circumstances as the Commission deems fit and proper.

(2) The Commission shall make to the Minister a report upon its investigations as aforesaid and such recommendations as it deems fit as to the best use to be made of the land comprised in the expired lease.

164. (1) If upon consideration of the recommendation of the Commission the Minister decides that the land or part thereof comprised in an expired lease shall be made available for leasing under preferential pastoral holding, brigalow lease, or selection tenure the late lessee shall, subject to the provisions of subsection (2) of this section, be entitled as of right to receive from the Minister an offer of a new lease as prescribed by this Division.

When late lessee to receive offer of new lease (1910, s. 72)

The Minister may, in his discretion, make the land comprised in the expired lease available for leasing in more than one lot.

The Minister may, in his discretion, make the land or any part thereof comprised in the expired lease available for leasing as mentioned in this subsection together with other Crown land and, in that event, the other Crown land shall for the purposes of this Division be deemed to have been comprised in the expired lease.

(2) (a) When land comprised in an expired lease is made available for leasing in more than one lot, the right to receive an offer of a new lease shall extend to one lot only, but the late lessee may elect the lot in respect whereof he shall be entitled to receive the offer.

(b) Subject to paragraph (c) of this subsection, the Minister shall not make, pursuant to this Division, an offer to a late lessee who is disqualified in terms of this Act from holding, under the tenure determined by the Minister, the area of land in respect of which the new lease is offered.

(c) Where more than two individual persons are the late lessee, the right to receive an offer shall extend to them jointly according to their respective interests in the expired lease and not otherwise, and such individual persons, notwithstanding anything contained in this Act, shall not on that account alone be disqualified from holding jointly according to their respective interests in the expired lease any selection tenure offered by the Minister, pursuant to this Division.

(3) An offer to a late lessee pursuant to this Division shall be in writing and shall set forth, according as determined by the Minister in his discretion, the area of land in respect of which the new lease is offered, the tenure (other than agricultural farm) term and rental thereof, and where appropriate, the developmental and improvement conditions to which the new lease shall be subject :

Provided that in determining the area of land in respect of which a new lease may be offered under selection tenure, the Minister shall not exceed the maximum area prescribed by section eighty-four of this Act according to the class or mode of a class of selection named in the offer and in respect of a new lease offered under brigalow lease tenure he shall not exceed the maximum area prescribed by Part V.

(4) (a) A late lessee who, pursuant to this Division, has received an offer may notify the Minister within three months from the date of the offer or within such extended time longer than three months (but not exceeding six months in all) as the Minister in his discretion may allow in any particular case, that he elects to take advantage of the offer.

(b) Any and every notice of election as aforesaid received by the Minister within the time allowed for the giving thereof to him, shall not be revocable by the late lessee and, unless and until the Minister revokes as prescribed his decision, shall bind the late lessee in question.

(c) If a late lessee fails to give to the Minister notice of election as aforesaid within the time allowed therefor, the offer in question and the late lessee's right to receive an offer shall lapse and the land the subject of the offer may be dealt with as Crown land under this Act.

Issue of
new lease,
&c.

165. (1) Upon a late lessee duly electing to take advantage of an offer by the Minister pursuant to this Division, the Governor in Council shall issue a new lease to the late lessee in accordance with the offer made by the Minister.

(2) Every such new lease shall commence on the quarter day next following the date of the receipt by the Minister of the late lessee's notice of election to take advantage of the offer.

(3) Every such new lease shall be issued (and shall be valid and effectual to convey to and vest in the lessee therein named, the land therein described for the estate or interest therein stated) subject to such reservations and conditions as are authorised or prescribed by this Act with respect to the tenure of the new lease and subject also to such conditions as the Minister shall have deemed fit to impose in the offer made pursuant to this Division.

166. The lease of every settlement farm lease, grazing selection, brigalow lease or pastoral lease, whether subsisting at the commencement of this Act or issued under this Act, shall be deemed to contain a covenant entitling the late lessee at the expiration of such lease to the right to receive an offer of a new lease as conferred by this Division. Covenant entitling lessee to new lease

167. For the purposes of this Division the expression "late lessee", means the lessee as at the date of the expiration of the lease, and extends to and includes any person or persons or body corporate, being— Meaning of term "late lessee"

- (a) the executor or executors or administrator or trustee of the estate of the late lessee deceased ; or
- (b) the trustee of the estate of a late lessee who is bankrupt ; or
- (c) the committee of the estate of a late lessee who is mentally sick ; or
- (d) the Public Curator when authorised to act under the provisions of Part IIIA. or Part IV. of "*The Public Curator Acts, 1915 to 1957,*"

who or which has or have had the lease of the holding or selection duly entered in his name or in their names or in its name in the records of the Department, or who or which would have been entitled if the lease had not expired to have had the same so entered.

Inclusion
in offer of
improved
Crown land

168. (1) If, in any case where other Crown land has been included in the offer of a new lease, there are any improvements thereon, the declared or provisional value thereof shall be notified to the late lessee when the offer of a new lease is made.

The late lessee to whom the offer is made shall pay the declared or provisional value of the improvements within one month or such extended time not exceeding two months in all, as the Minister may allow, after the date when he accepts the offer.

(2) The new lease shall not issue until the late lessee has duly paid the declared or provisional value of such improvements and, if the late lessee fails to make such payment, the Minister may, in his discretion, direct that the vacant Crown land in question be excluded from the area to be included in the new lease, and such vacant Crown land shall be excluded accordingly.

The provisions of Division II. of Part X. shall, with and subject to all necessary adaptations, apply.

Division III.—Surrender of Leases by arrangement

Leases
surrendered
by arrange-
ment shall
be deemed
to be expired
leases
(1910, s. 72A)

169. When any holding is surrendered to the Crown in pursuance of an arrangement made between the lessee and the Minister on the recommendation of the Commission in order that the land comprised therein or any part thereof may be again made available for leasing to the same lessee, such holding (notwithstanding that it was held under perpetual lease tenure) shall be deemed to be an expired lease for the purposes of Division II. of this Part.

PART VII.—SALES BY AUCTION

Division I.—Auction Sales in Fee-simple

170. (1) The Minister, with the approval of the Governor in Council, may by notification published in the *Gazette*, cause any Crown land to be offered for sale for an estate in fee-simple by public auction.

Land may be sold by auction or withdrawn (1910, s. 115)

Such a notification is in this Act referred to as a “sale notification.”

(2) All such land shall be distinguished as town or suburban or country lots.

(3) The area of any lot of such land shall not exceed ten thousand acres or, where in the opinion of the Commission, a lesser area is a living area, shall not substantially exceed such lesser area.

(4) The Minister may in his discretion at any time before acceptance of a bid or an application withdraw any such land from sale.

The Minister shall cause any such withdrawal to be notified in the *Gazette*.

171. (1) The sale notification shall specify—

- (a) the place and time of sale, such time being not less than twenty-eight days from the date of the notification ;
- (b) the numbers of the lots and the area and upset price of each lot ;
- (c) the amount of the deposit to be paid at the time of the sale, and the period for payment by equal annual instalments compounded of principal and interest of the balance of the purchase money and interest thereon : Provided that the period for payment of that balance shall not exceed ten years and that interest shall be at the rate of five pounds per centum per annum calculated upon yearly rests ;
- (d) the survey fee payable.

Notification of land for sale (1910, s. 116)

- (2) The sale notification may also—
- (a) impose any conditions, either with respect to the sale generally or with respect to any specified lot or lots ;
 - (b) declare that any land therein mentioned which is not bid for or is not withdrawn from sale either before or after offer at auction shall be open for purchase by the first applicant at the upset price, and on the specified conditions ;
 - (c) impose a condition that the purchaser shall make substantial structural or other specified improvements on the land to the satisfaction of the Minister of a value and within a time to be specified ;
 - (d) impose a condition that the purchaser shall destroy noxious plants upon the land within a specified time ;
 - (e) declare the value or state a provisional value of any improvements upon the land ;
 - (f) specify the maximum number of the lots which may be purchased or applied for by any bidder or applicant ;
 - (g) in the case of town lots declare that any person who, at the date on which the Crown land in question is so offered for sale, holds or is purchasing for residential purposes in the city, town or township in which that Crown land is situated, land under any tenure, shall not be competent to bid for any of the lots.

Conditions
to be read
(1910, s. 118)

172. (1) The person conducting the sale shall, before the commencement of the sale, read the conditions of sale, and all persons bidding at the sale, either personally or by an agent, shall be bound thereby.

(2) An agent may bid for and on behalf of any person and any bid made by an agent shall for the purposes of this Act be deemed to be made by the person authorising the agent to bid on his behalf.

173. (1) The person who makes the highest bid for a lot, being not less than the upset price, and immediately pays the prescribed deposit together with the full amount of the survey fee shall, subject to his furnishing a declaration in the prescribed form showing that he is competent in terms of this Act and the sale notification to hold the land, be declared the purchaser of the lot. ^{Who deemed purchaser (1910, s. 118)}

(2) Such declaration of competency shall be furnished by the purchaser immediately following the acceptance of his bid as prescribed by subsection (1) of this section or, if bidding was made on his behalf by his authorised agent, within fourteen days of the date of sale or such further time as the Minister in his discretion may allow.

(3) Any purchaser who fails to furnish a declaration of competency as aforesaid, or who is shown to be or to have been disqualified to bid for or purchase the land, shall have no right or title to the land purchased and the purchase shall lapse. Moneys paid by the purchaser in respect of the purchase may be wholly or partly forfeited to the Crown as the Minister, in his discretion, determines.

174. (1) Land which having been offered at auction and not sold is, in terms of the sale notification, open for purchase by the first applicant at the upset price and on the specified conditions, may be purchased by the first person whose application in the prescribed form accompanied by the prescribed deposit and the full amount of the survey fee is lodged with the Land Agent : ^{Land sold after auction}

Provided that any application made by a person who by declaration contained therein fails to satisfy the Land Agent that he is competent in terms of this Act and the sale notification to hold the land shall be refused.

(2) Applications shall be signed by the applicant personally, may be lodged by the applicant in person or by his agent, and shall be dealt with by the Land Agent in accordance with the order of their lodgment at the District Land Office.

Simultaneous
applications
(1910, s. 119)

(3) If two or more persons each of whom is competent to hold the land applied for make application at the same time, the land shall be again offered at auction to such applicants and to no other person by the Land Agent, and the applicant who, by himself or his agent, makes the highest bid being not less than the upset price, and immediately pays the prescribed deposit together with the full amount of the survey fee, shall be declared the purchaser of the land.

Purchase by
trustee

175. (1) If land is purchased by a person as a trustee of or for any other person, society, association, union, or religious or charitable body, or of the estate of any deceased person, the purchaser shall furnish to the Land Agent within fourteen days of the date of sale, or such further time as the Minister, in his discretion, may allow, an instrument, in duplicate, declaring the trusts pursuant to which the land is to be held by him.

(2) Every such instrument shall be signed by such person, shall be attested by a witness, and shall refer to the description to be given in the grant of the land, or shall give such other description as may be necessary to identify the land.

(3) If such instrument is not produced within fourteen days from the date of sale or within such further time as allowed by the Minister, the purchaser and the *cestui qui trust* shall have no right or title to the land purchased and the purchase shall lapse. Moneys paid by the purchaser in respect of the purchase may be wholly or partly forfeited to the Crown, as the Minister, in his discretion, determines.

Demise of
land sold
with free-
holding
covenant
(1958, s. 16)

176. (1) Subject to this section the Governor in Council may, in the name of Her Majesty, demise to the purchaser for a term any land being purchased under this Division.

(2) Land shall not be demised pursuant to this section in any case where the purchasing price, including any interest thereon, has been paid in full unless the sale notification has imposed developmental or improvement conditions.

(3) Every lease issued pursuant to a demise under this section shall be subject to the following provisions, terms and conditions :—

- (a) the term thereof shall be the period for payment of the balance of the purchase money and interest thereon specified in the sale notification or, where such payment has been made in full, the period within which all developmental and improvement conditions are to be performed ;
- (b) the term thereof shall commence to run on and from the day next following the date of the sale ;
- (c) where the purchasing price has not been paid in full, the equal annual instalments compounded of principal and interest of the balance thereof and interest thereon shall be payable as rent ;
- (d) the cancellation of the sale by the Minister pursuant to subsection (3) of section one hundred and seventy-seven of this Act shall determine the lease and thereupon the liabilities imposed by the said subsection (3) consequent on the cancellation shall apply as if the lease had never issued ;
- (e) a covenant that upon the lessee satisfying the Minister that he has performed all the developmental or improvement conditions of the lease and upon payment of all moneys payable in respect of the purchasing price, including interest thereon, the Governor in Council shall, in the name of Her Majesty, grant in fee-simple to the lessee the land comprised in the lease.

(4) The provisions of Division VIII. of Part X. shall, with and subject to all necessary adaptations, apply with respect to every lease issued pursuant to a demise under this section.

Assignment
of rights
before grant
issues
(1910, s. 120)

177. (1) Subject to subsection (2) of this section, a purchaser, other than a purchaser to whom a lease has been issued pursuant to section one hundred and seventy-six of this Act, may, with the approval of the Minister, assign his interest in the land being purchased before the issue of the deed of grant therefor. Such assignment shall be recorded in the Department. Thereupon the assignee shall succeed to all the rights of the purchaser and may in like manner assign his interest.

(2) It shall not be lawful for a purchaser who has not performed any developmental or improvement condition imposed by the sale notification, to assign his interest in the land and any such assignment or agreement to so assign shall be absolutely void and of no legal effect whatsoever.

Cancellation
of sale

(3) If the purchaser fails in any respect to comply with any condition with respect to the developmental works or improvements to be made on the land imposed by, or with any other requirement of, the sale notification, or if the purchaser or any successor in interest to the purchaser fails to make due payment of any amount payable in respect of the purchasing price, including interest thereon, the Minister, in his discretion, may, thereupon or at any time thereafter during the continuance of the failure, cancel the sale, and upon such cancellation all moneys previously paid in respect of the purchase shall be forfeited to the Crown, and neither the purchaser nor any successor in interest to him shall have any estate or interest in or further claim to the land concerned :

Provided that the Minister shall not cancel the sale for default by the purchaser in making any payment if, within ninety days after the due date the purchaser pays the amount in default together with interest thereon at the rate of ten pounds per centum per annum for the period of the default.

(4) Every cancellation of a sale for any cause shall be notified by the Minister in the *Gazette* and shall take effect from the date of the notification.

Payment of
purchasing
price

178. (1) (a) The period specified in the sale notification for payment of the balance of the purchasing price and interest thereon shall commence on the day next following the date of the sale.

(b) The purchaser shall pay the balance of the purchasing price, together with interest at the rate of five pounds per centum per annum, calculated upon annual rests, on the amount of the balance remaining unpaid for the time being, in equal annual instalments compounded of principal and interest, and he shall pay those instalments respectively on or before the day which is the anniversary of the sale in each year of the period specified in the sale notification for the payment thereof.

Interest shall be payable on and from the first day of such period.

(2) This section applies whether or not the land being purchased is demised to the purchaser for a term.

179. Upon payment of the purchasing price, including interest thereon, and all other moneys payable in respect of the purchase and performance to the satisfaction of the Minister of any and every developmental or improvement condition imposed by the sale notification, the purchaser, or successor in interest at the time in question, shall be entitled to a deed of grant of the land in fee-simple.

When deed
of grant to
issue
(1910, s. 120
(3))

Division II.—Auction Perpetual Leases

180. (1) The Minister, with the approval of the Governor in Council, may, by notification published in the *Gazette*, cause any Crown land to be offered for sale by public auction as auction perpetual lease under any of the following classes of tenure, namely :—

Perpetual
town,
suburban or
country
leases
(1910, s. 121
(1))

- (a) perpetual town lease ;
- (b) perpetual suburban lease ; or
- (c) perpetual country lease.

Such a notification is in this Act referred as a “ sale notification.”

(2) The land shall be offered in lots, the maximum areas whereof respectively shall not exceed—

- town land, half an acre ;
- suburban land, twenty acres ;
- country land, two thousand five hundred and sixty acres.

(3) The Minister may, in his discretion, at any time before acceptance of a bid or an application withdraw any such land from sale.

The Minister shall cause any such withdrawal to be notified in the *Gazette*.

(4) An auction perpetual lease under any class of tenure mentioned in this section may be issued as prescribed by any provision, other than this section, of this Act, but so that the maximum area of any such lease shall not, unless otherwise prescribed, exceed the maximum area prescribed by this section according to the class of tenure thereof.

Matters to be
stated in sale
notification
(1910, s. 121
(1))

181. (1) The sale notification shall specify—

- (a) the place and time of sale, such time being not less than twenty-eight days from the date of the notification ;
- (b) the numbers of the lots and the area and upset price of each lot ;
- (c) the deposit to be paid at the time of sale, being one year's rent ;
- (d) the survey fee payable.

(2) The sale notification may also—

- (a) impose any conditions, either with respect to the sale generally or with respect to any specified lot or lots ;
- (b) declare that any land therein mentioned which is not bid for or is not withdrawn from sale, either before or after offer at auction, shall be open for purchase by the first applicant at the upset price and on the specified conditions ;
- (c) specify the maximum number of the lots which may be purchased or applied for by any bidder or applicant ;
- (d) in the case of perpetual town leases, declare that any person who, at the date on which that Crown land is so offered for sale, holds

or is purchasing for residential purposes in the city, town or township in which that Crown land is situated, land under any tenure, shall not be competent to bid for any of the lots ;

- (e) impose a condition that the lessee shall destroy noxious plants upon the land within a specified time ;
- (f) declare the value or state a provisional value of any improvements upon the land.

182. (1) The person conducting the sale shall, before the commencement of the sale, read the conditions of sale, and all persons bidding at the sale, either personally or by an agent, shall be bound thereby.

Conditions
of sale to be
read
(1910, s. 118)

(2) An agent may bid for and on behalf of any person and any bid made by an agent shall for the purposes of this Act be deemed to be made by the person authorising the agent to bid on his behalf.

183. (1) Bidding shall be by capital sum.

(2) The person who bids the highest capital sum for a lot, being not less than the upset price, and immediately pays the prescribed deposit together with the full amount of the survey fee shall, subject to his furnishing a declaration in the prescribed form showing that he is competent in terms of this Act and the sale notification to hold the land, be declared the purchaser of the lot.

Who
deemed
purchaser
(1910, ss. 118,
121 (1), reg.
5-3-36)

(3) Such declaration of competency shall be furnished by the purchaser immediately following the acceptance of his bid as prescribed by subsection (2) of this section or, if bidding was made on his behalf by his authorised agent, within fourteen days of the date of sale or such further time as the Minister, in his discretion, may allow.

(4) Any purchaser who fails to furnish a declaration of competency as aforesaid or who is shown to be or to have been disqualified to bid for or purchase the land shall have no right or title to the land purchased and the purchase shall lapse. Moneys paid by the purchaser in respect of the land may be wholly or partly forfeited to the Crown as the Minister, in his discretion, determines.

Land sold
after auction

184. (1) Land which having been offered at auction and not sold is, in terms of the sale notification, open for purchase by the first applicant at the upset price and on the specified conditions, may be purchased by the first person whose application in the prescribed form accompanied by the prescribed deposit and the full amount of the survey fee is lodged with the Land Agent :

Provided that any application made by a person who by declaration contained therein fails to satisfy the Land Agent that he is competent in terms of this Act to hold the land shall be refused.

(2) Applications shall be signed by the applicant personally, and may be lodged by the applicant in person or by his agent and shall be considered by the Land Agent in accordance with the order of their lodgment at the District Land Office.

Simultaneous
applications
(1910, s. 119)

(3) If two or more persons each of whom is competent to hold the land applied for make application at the same time, the land shall be again offered at auction to such applicants and to no other person by the Land Agent, and the applicant who, by himself or his agent, makes the highest bid being not less than the upset price, and immediately pays the prescribed deposit together with the full amount of the survey fee, shall be declared the purchaser of the land.

Issue of
lease

185. The purchaser shall, subject to the provisions of this Act, be entitled to the issue of a perpetual town lease, or a perpetual suburban lease or a perpetual country lease, as the case may be, according to the provisions of the sale notification, of the land comprised in the lot purchased by him.

Limitation
as to
holding
(1910, s. 121
(1))

186. A person shall not acquire or hold in any one city, town or township as a perpetual town lease or as perpetual town leases more than six allotments, or as a perpetual suburban lease or perpetual suburban leases more than six suburban allotments or portions :

Provided that a person may hold as perpetual town leases or perpetual suburban leases a number of allotments or portions in excess of six where the excess allotments or portions have been acquired by him under the will or intestacy of a deceased lessee:

Provided further that if the Commission certifies, that in order to establish, conduct or maintain any industry or business it is necessary for any person or corporation to hold more than six allotments in any one city, town or township as perpetual town leases or more than six suburban allotments or portions as perpetual suburban leases, the Governor in Council, upon the recommendation of the Minister, may permit the person or corporation in question to bid or apply for and hold the number fixed by the Governor in Council of allotments, suburban allotments or portions, as the case may be.

187. (1) Save as provided in subsection (2) of this section a person shall not acquire or hold an auction perpetual lease or any part thereof or any interest therein as a trustee, agent or servant of or for any other person. ^{Trusts (1910, s. 121 (1))}

(2) The Governor in Council may grant permission to a trustee of or for any other person, society, association, or union, or religious or charitable body, or of the estate of any deceased person, to acquire and hold a perpetual town lease, perpetual suburban lease, or perpetual country lease.

(3) An instrument, in duplicate, declaring the trust upon which the land is to be held, shall be lodged with the Department before the lease of a perpetual town lease, perpetual suburban lease or perpetual country lease is issued to or acquired by a trustee.

Every such instrument shall be signed by the trustee or trustees, shall be attested by a witness, and shall describe the subject land so as to identify it.

(4) A company registered under "*The Companies Act of 1961*," or a body corporate constituted by, under or pursuant to any Act or Commonwealth Act with power to take, acquire, purchase and hold land or any estate or interest in land shall be competent to apply for, ^{Power of Company, &c., to hold auction perpetual lease}

bid for, acquire and hold a perpetual town lease, perpetual suburban lease, or perpetual country lease under this Division.

Power of
Local
Authority
to hold
auction
perpetual
lease
(1910,
s. 121 (3))

(5) A Local Authority shall be competent to apply for, bid for, acquire, and hold a perpetual town lease, perpetual suburban lease, or perpetual country lease.

Terms and Conditions of Auction Perpetual Leases

Term of
lease
(1910,
s. 121 (1))

188. (1) The lease of an auction perpetual lease shall be a lease in perpetuity, and shall commence on the quarter day next following the date of the sale.

The deposit of rent paid at the time of sale shall be the annual rent for the first year of the lease.

(2) The rental periods shall be ten years.

(3) During the first rental period the annual rent reserved shall be a sum equal to three pounds per centum of the notified upset price of the land for sale by auction, or of such greater capital sum as has been bid by the purchaser at auction.

(4) For the second and each subsequent rental period the annual rent shall be determined by the Court at a sum equal to three pounds per centum of the fair unimproved capital value of the land as if it were held in fee-simple at the date of commencement of the rental period in question.

(5) In no case shall the annual rent be less than one pound per annum.

This subsection applies as and from the anniversary of the quarter day on which the lease commenced, occurring on or first occurring after the date of the commencement of this Act.

(6) The lease shall not include a covenant entitling the lessee to a deed of grant in fee-simple.

Conditions
of lease
(1910, s. 121
(1))

189. Subject to this Act, the following conditions of lease shall apply to every perpetual town lease or perpetual suburban lease :—

(a) that within two years of the commencement of the lease, the lessee shall make substantial structural or other specified improvements on

the land to the satisfaction of the Minister of a value of not less than one hundred pounds, or such sum greater than one hundred pounds, as the Minister may specify in the sale notification ;

- (b) that the lessee shall not, without the written permission of the Minister first had and obtained, remove from the land comprised in the lease, any improvements effected on the land in compliance with the requirements of paragraph (a) of this section.

190. (1) In the case of any perpetual town lease, ^{Saving} perpetual suburban lease or perpetual country lease held pursuant to the repealed Acts and subsisting at the commencement of this Act, the first of the rental periods of ten years shall commence as from the expiration of the rental period of fifteen years current immediately prior to the commencement of this Act.

In every case the rent for the first of the rental periods of ten years and for every subsequent such period shall be determined by the Court as prescribed by subsection (4) of section one hundred and eighty-eight of this Act.

(2) (a) A lessee of a perpetual town lease or a ^{Remission of rent} perpetual suburban lease used exclusively for his own residential use may apply to the Commission for relief, on the ground of hardship, from the liability to pay in full the annual rent determined by the Court for the second or any subsequent rental period.

The application shall be in writing, shall state the grounds of hardship relied upon, and shall contain or be accompanied by full information and particulars of the property and income of the lessee and his or her spouse respectively, and of the circumstances of any hardship relied upon.

All such information and particulars shall be verified by statutory declaration.

(b) The Commission shall investigate the application and may require the lessee concerned to furnish to it all such further information and particulars as it deems fit.

For the purpose of investigating the application the Commission may require the lessee to appear in person before it or an officer of the Department named by it.

(c) If upon investigation and consideration of the application the Commission is satisfied that the liability to pay in full the annual rent in question imposes upon the lessee a hardship which should be alleviated, then, notwithstanding anything in this Act, the Commission may remit, to the extent it deems necessary to effect such alleviation, the annual rent in question.

(d) In the case of a lease in respect of the annual rent whereof a remission is granted by the Commission pursuant to this subsection—

- (i) the annual rent as determined by the Court shall be reduced by the amount of the remission ; and
- (ii) in respect of the rental period in question, such reduced annual rent shall be payable, and shall be the annual rent, on and from the quarter day preceding the date of the receipt by the Commission of the application for the remission which is the anniversary next preceding that date of the quarter day on which the lease in question commenced :

Provided that if the date of the receipt of the application by the Commission is not later than six months after the date of the Court's determination, such reduced annual rent shall be payable, and shall be the annual rent, for the rental period in question.

This paragraph (d) applies subject to paragraph (f) of this subsection.

(e) The Commission may at any time and from time to time require any lessee to whom it has granted a remission in annual rent pursuant to this subsection to inform it in writing, verified by statutory declaration, within a time specified by it, whether or not there has been since the application was made or, during any period subsequent to the making of the application specified by the Commission any and, if so, what alteration in the financial circumstances of the lessee or his or her spouse or in the circumstances of any hardship on the ground whereof the remission was granted.

(f) (i) If a lease is transferred, whether by operation of law or otherwise, any remission in the annual rent thereof granted by the Commission pursuant to this subsection shall be determined thereby.

(ii) The Commission may determine or reduce or increase any remission in the annual rent of any lease granted by it pursuant to this subsection if in its opinion the determination, reduction or increase is warranted by change in the circumstances of any hardship on the ground whereof the remission was granted (or, in the case of an increase in the remission, by further hardship) or, if at any time when the lessee is required by the Commission to inform it or any of the matters mentioned in paragraph (e) of this subsection, the lessee fails so to do within the time specified by the Commission.

(iii) Any determination, reduction or increase referred to in subparagraph (i) or (ii) of this paragraph of a remission in the annual rent of a lease shall take effect on and from the quarter day following the date of the transfer of the lease in question or, as the case may be, the making by the Commission of such determination, reduction or increase, which is the anniversary next following that date of the quarter day on which the lease commenced.

Division III.—Provision for the Freeholding of certain Perpetual Town Leases, Perpetual Suburban Leases, and Perpetual Country Leases

191. A lessee of a perpetual town lease, a perpetual suburban lease or a perpetual country lease held under the provisions of this Act or "*The Irrigation Areas (Land Settlement) Act of 1962*," other than a lease acquired pursuant to section two hundred and ten of this Act or section 175C of "*The Land Acts, 1910 to 1962*," subject to conditions for accommodating and providing recreational and other facilities for tourists, may at any time apply to the Minister in writing to have his lease deemed a lease for a term of ten years, and subject to a covenant entitling him to a deed of grant in fee-simple.

Application
(1957, s. 10)

This section does not apply to a lease granted pursuant to section 22B of "*The State Housing Acts, 1945 to 1962*."

192. (1) Subject to subsection (3) of section one hundred and ninety-three of this Act, the Minister shall refer to the Court for hearing and determination the matter of the amount of the unimproved value of the land comprised in the lease as at the date of receipt by the Minister of the application, and thereupon the Court shall hear and determine that matter.

Court to
determine
unimproved
value
(1957, s. 11)

(2) For the purposes of this section, the unimproved value of any land shall be the amount which, in the opinion of the Court, experienced persons would be willing to pay for the fee-simple of the land, assuming it were unimproved, and were offered for sale on such reasonable terms and conditions as a *bona fide* seller would require.

The unimproved value shall not include the value of any commercial timber on the land or the value of trees with commercial potentiality.

Lessee to elect whether to proceed with application (1957, s. 12)

193. (1) The lessee shall, within three months, or such longer period not exceeding six months in all as the Minister in his discretion may allow, from the date of the determination by the Court or upon appeal thereto, the Land Appeal Court, of the amount of the unimproved value of the land comprised in his lease, notify the Minister in writing whether he elects to proceed with his application to have the lease deemed a lease for a term of ten years.

(2) Every application shall lapse at the expiration of three months or where the Minister has allowed a longer period, such longer period after the date of the aforementioned determination by the Court or upon appeal thereto, the Land Appeal Court, unless the lessee has sooner notified the Minister in writing that he elects to proceed therewith.

(3) Where an application lapses, any further application under this Division made by the same lessee with respect to the lease may be rejected by the Minister.

(4) Upon an application lapsing the determination by the Court or upon appeal thereto, the Land Appeal Court, pursuant to section one hundred and ninety-two of this Act, of the unimproved value of the land concerned shall cease to have force or effect for any purpose whatsoever.

(5) Upon the receipt by the Minister, pursuant to this section, of notice from a lessee that he elects to proceed with his application to have his lease deemed a lease for a term of ten years, the lease shall, subject in every respect to the provisions of this Division, be deemed a lease for such term, and the Registrar of Dealings shall endorse the lease accordingly.

(6) A notice under this section in respect of any lease shall not affect or prejudice howsoever any mortgage or other encumbrance, estate or interest then subsisting over, upon, or in the land comprised in the lease.

The provisions of Division VIII. of Part X. shall, with and subject to all necessary adaptations, apply to every lease deemed pursuant to this Division a lease for a term of ten years.

194. Subject to this Act, the following provisions, terms and conditions shall apply to every lease deemed, pursuant to this Division, a lease for a term of ten years :—

Terms and conditions of lease for term of ten years (1957, s. 13)

- (a) the purchasing price of the land comprised in the lease shall be the amount of the unimproved value thereof determined as prescribed by this Division, save that in the case of land held by a religious body pursuant to section two hundred and nine of this Act, the purchasing price shall be one half of that amount ;
- (b) the term of ten years shall commence on the quarter day next following the date when the Minister received the application referred to in section one hundred and ninety-one of this Act unless, by notice in writing contained in or accompanying the notice of election to proceed with the application, the lessee has informed the Minister that he desires the lease to commence on the quarter day next following the date when the Court or, upon appeal thereto, the Land Appeal Court, determined the unimproved value of the land comprised in the lease, in which case the term of ten years of the lease shall commence on such later quarter day ;
- (c) the lessee shall pay, as prescribed by subsection (1) of section one hundred and ninety-five of this Act, a deposit of one-tenth of the purchasing-price;
- (d) the lessee shall pay in ten equal annual instalments compounded of principal and interest, as prescribed by subsection (2) of section one hundred and ninety-five of this Act, the balance of the purchasing price, together with interest at the rate of five pounds per centum per annum, calculated upon yearly rests, on the amount of that balance remaining unpaid for the time being ;

- (e) moneys paid as rent under the perpetual lease in respect of any time before the commencement of the term of ten years shall not be credited to the purchasing price, but moneys so paid in respect of any time after the commencement of such term shall be credited to the purchasing price ;
- (f) subject to paragraphs (a) to (e), both inclusive, of this section, all such provisions, terms and conditions (including developmental and improvement conditions) as applied with respect to the lease in question as a lease under a class of an auction perpetual lease tenure.

Payment of
purchasing
price and
of interest
on deferred
instalments
thereof
(1957, s. 14)

195. (1) If the lessee elects to proceed with his application, he shall pay by forwarding with his notice of election the prescribed deposit.

The lessee may set off against the amount of the prescribed deposit all sums paid by way of rent which, pursuant to paragraph (e) of section one hundred and ninety-four of this Act, are to be credited to the purchasing price.

(2) The lessee shall pay the balance of the purchasing price, together with interest at the rate of five pounds per centum per annum, calculated upon annual rests, on the amount of that balance remaining unpaid for the time being, in ten equal annual instalments compounded of principal and interest, and he shall pay those instalments respectively on or before the last day of each year of the ten year term of the lease, commencing with the first year thereof.

Interest shall be payable on and from the commencement of the term of the lease.

This subsection applies subject to subsections (3) and (4) of this section.

(3) A lessee, at any time after he has performed to the satisfaction of the Minister any and every developmental and improvement condition of the lease, may complete payment in full of the purchasing price by paying the balance thereof then outstanding together with interest thereon at the rate of five pounds per centum per annum from the due date for payment of the annual instalment last payable before that time up to the date of payment of the outstanding balance of the purchasing price.

(4) In any case where the lessee has not been notified of the amount of the purchasing price (as determined by the Court or, upon appeal thereto, the Land Appeal Court) before any annual instalment becomes payable pursuant to subsection (2) of this section, payment of that instalment shall be deemed to be deferred until the lessee has been so notified, whereupon the lessee shall, within three months after such notification, pay the same.

196. Every lease deemed, pursuant to this Division a lease for a term of ten years, shall be deemed to contain a covenant that the Governor in Council shall, in the name of Her Majesty, grant in fee-simple to the lessee the land comprised in the lease—

Freeholding
covenant
(1957, s. 15)

- (a) upon payment of all moneys payable in respect of the purchasing price, including interest thereon, and also including any moneys unpaid on any account whatsoever in respect of the lease ; and
- (b) upon the lessee satisfying the Minister that he has performed any and every developmental and improvement condition of the lease.

197. For the purposes of the application with respect to a lease deemed, pursuant to this Division, a lease for a term of ten years of the provisions of section two hundred and forty-nine of this Act, all moneys payable in respect of the purchasing price, including interest thereon, shall be deemed to be payable as rent.

Forfeiture
of lease for
failure to
pay
purchasing
price
(1957, s. 16)

PART VIII.—SPECIAL LEASES AND GRANTS

Division 1.—Special Leases

198. (1) The Minister, with the approval of the Governor in Council, may, by notification published in the *Gazette*, cause to be offered for sale by public auction as a special lease—

Offer of land
as special
lease and
withdrawal
of same
(1910, s. 179)

- (a) any Crown land, for any manufacturing, industrial, residential or business purposes ;
or
- (b) any land reserved and set apart for public purposes, for any purpose, not inconsistent with the reservation, specified in the notification.

Such a notification is in this Act referred to as a “sale notification.”

(2) The Minister may, in his discretion, at any time before acceptance of a bid or an application withdraw any such land from sale.

The Minister shall cause any such withdrawal to be notified in the *Gazette*.

Matters to
be stated in
notification

199. (1) The sale notification shall specify—

- (a) the place and time of sale, such time being not less than twenty-eight days from the date of the notification ;
- (b) the number of the lots and the area and upset annual rent of each lot ;
- (c) the term of lease which shall not exceed thirty years ;
- (d) in respect of each lot, the deposit to be paid at the time of sale being one year's rent, together with the full amount of the survey fee, if any.

(2) The notification may also—

- (a) impose a condition that the lessee shall destroy noxious plants upon the land within a time to be specified ;
- (b) impose such other terms and conditions as the Governor in Council thinks fit ;
- (c) declare the value or state a provisional value of any improvements upon the land ;
- (d) declare that any land therein mentioned which is not bid for or is not withdrawn from sale, either before or after offer at auction, shall be open for purchase by the first applicant at the upset price and on the specified conditions.

Who
deemed
purchaser

200. The person who bids the highest amount of rent per annum for a lot, not being less than the upset annual rent, and immediately pays the prescribed deposit together with the full amount of the survey fee, if any, shall, subject to his furnishing a declaration in the prescribed form that he is competent in terms of this Act to hold the land, be declared the purchaser of the lot.

Application
of ss. 175,
182, 183 (3)
(4), and 184

201. The provisions of sections one hundred and seventy-five and one hundred and eighty-two, of subsections (3) and (4) of section one hundred and

eighty-three, and of section one hundred and eighty-four of this Act shall, with and subject to all necessary adaptations apply to land offered for sale as a special lease.

202. The purchaser of any lot shall, subject to this Act, be entitled to the issue of a special lease of the land comprised in the lot. Purchaser entitled to lease

203. The Minister, with the approval of the Governor in Council, may, without notification published in the *Gazette*, issue to any person a special lease of— Issue of special leases without notification (1910, s. 179)

- (a) any Crown land, for any manufacturing, industrial, residential or business, or for any racecourse or recreational purposes ; or
- (b) any land reserved and set apart for public purposes, for any purpose not inconsistent with the reservation,

for such term not exceeding thirty years and subject to such conditions as to rent or otherwise as the Minister thinks fit.

Terms and Conditions of Special Lease

204. (1) The term of lease of a special lease shall be the notified term or, in the case of a lease issued other than pursuant to the provisions of section one hundred and ninety-eight of this Act, as determined by the Minister, but in no case shall the term exceed thirty years. Terms and conditions of special lease

(2) The lease shall commence on the day the land is sold or, in the case of a special lease issued other than pursuant to the provisions of section one hundred and ninety-eight of this Act, on the day determined by the Minister.

(3) The term may be divided into rental periods of such duration as may be specified in the sale notification or as determined by the Minister.

(4) During the first rental period, or if no rental periods have been specified or determined, during the term, the annual rent reserved shall be the amount notified as the upset annual rent, or bid, or fixed by the Minister, as the case may be.

(5) If there are rental periods the annual rent for the second and each subsequent rental period shall be determined by the Court at a sum equal to three pounds per centum of the unimproved capital value of the

land as if it were held in fee-simple at the date of commencement of the rental period in question, reduced by such amount as in the opinion of the Court is fair having regard to any diminution in value of the lease on account of the public use of the land for the purpose for which it was reserved, or to conditions of the lease limiting the use of the land by the lessee, or to the fact that the land is held, improved, and used for sporting or recreational purposes.

This subsection applies only to rental periods commencing on or after the date of the commencement of this Act.

(6) The lease shall be subject to all the conditions specified in the sale notification or, in the case of a special lease issued other than pursuant to the provisions of section one hundred and ninety-eight of this Act, to such conditions as the Minister deems fit to impose.

(7) It shall be a condition of lease of every special lease comprising the whole or part of any reserve for public purposes that the lessee shall hold the land so that the same may be used for the public purpose for which it was reserved without undue interruption or obstruction.

Special lease
of land
costly to
develop
(1958, s. 33)

205. (1) With respect to land which in the opinion of the Minister is abnormally costly to develop, the Governor in Council (without limiting the conditions that he in his discretion may impose) may, after or without by public advertisement inviting applications therefor, issue a special lease in pursuance of this Division subject to conditions providing for—

- (a) the specific development of the land in order to render it fit for manufacturing, industrial, residential or business purposes ;
- (b) the time within which the developmental work shall commence and the rate of progress which shall be observed by the lessee during each year of a specified period of the lease ;
- (c) the tenure under which the land or part thereof may be subsequently granted to the lessee after its development and compliance with any other conditions of lease, and the purchasing price to be paid for the freehold thereof or the capital value in respect of the perpetual lease, whichever may be granted.

(2) Notwithstanding anything in this Act, upon development satisfactory to the Minister of the land or any part thereof and upon surrender of the subsisting special lease either wholly or in respect of the part in question of the land, as the case requires, the Governor in Council may—

- (a) sell for an estate in fee-simple the land or the part thereof so developed to the lessee at the purchasing price set out in the conditions of the special lease and, if no purchasing price has been specifically set out in the conditions of such lease in respect of the part developed and proposed to be sold, then at a sum fixed by the Minister as a fair proportionate amount of the total purchasing price so set out ; or
- (b) issue to the lessee of the special lease a perpetual lease under Division II. of Part VII. at the capital value set out in the conditions of such special lease and, if no capital value has been specifically set out in the conditions in respect of the part developed and in respect of which a perpetual lease is to be issued, then at a sum fixed by the Minister as a fair proportionate amount of the total capital value so set out.

Where part only of the developed land is to be sold or leased as hereinbefore specified in this subsection, the Governor in Council may reserve the remaining part or any portion thereof for a public purpose within the meaning of this Act or otherwise deal therewith under the provisions of this Act.

(3) The provisions with respect to maximum area of section one hundred and eighty of this Act shall not apply to a lease of any class of tenure issued pursuant to this section.

206. A company registered under "*The Companies Act of 1961*," or body corporate constituted by, under or pursuant to any Act or Commonwealth Act, with power to take, acquire, purchase and hold land or any estate or interest in land, or a Local Authority shall be competent to apply for, bid for, acquire and hold a special lease.

When
corporation
may take

Division II.—Conversion of Special Leases to Perpetual Lease Tenures or to Grants in Fee-simple

Sale or issue
of perpetual
leases
in certain
cases
(1910,
s. 175B)

207. (1) The lessee of a special lease comprising land not reserved and set apart for any public purpose who considers he has reasonably improved such land, may apply to the Minister to be allowed to purchase the land or to be granted a perpetual lease thereof.

(2) The Minister, in his discretion, may refuse the application or refer it to the Commission.

If, upon investigation of an application so referred to it, the Commission is satisfied that the land—

(a) has been reasonably improved, having regard to its unimproved value ; and

(b) is not required for any public purpose,
it may certify accordingly.

(3) Subject to that certification by the Commission, the Governor in Council upon surrender of the special lease may—

(a) sell the land to the lessee at the price fixed by the Minister upon the recommendation of the Commission and, upon payment of such price, issue to him a deed of grant therefor in fee-simple ; or

(b) issue to the lessee a perpetual town lease, or a perpetual suburban lease, or a perpetual country lease of the land at an annual rent for the first period of ten years of a sum equal to three pounds per centum of the unimproved value of the land as fixed by the Minister upon the recommendation of the Commission.

(4) In determining, for the purposes of this section, whether any land has been reasonably improved, having regard to its unimproved value, any improvements as defined in this Act and any developmental work by which, having regard to its unimproved state, that land has been improved may be taken into account.

(5) Subject to this section, the provisions of sections one hundred and eighty-seven and one hundred and eighty-eight of this Act shall, with and subject to all necessary adaptations, apply to any perpetual town lease, perpetual suburban lease or perpetual country lease issued pursuant to this section.

(6) Every such lease shall be distinguished in the records of the Department and be endorsed as a perpetual town lease (non-competitive lease), perpetual suburban lease (non-competitive lease), or perpetual country lease (non-competitive lease), as the case may be.

Division III.—Special Grants

208. In any case in which—

- (a) there is no convenient way of access to any portion of Crown land ;
- (b) any portion of Crown land is insufficient in area for sale by auction ;
- (c) a portion of Crown land lies between land already granted and a street or road which forms or should form the way of access to such granted land ;
- (d) buildings erected on land already granted extend over Crown land ; or
- (e) in respect of any portion of Crown land, the Commission certifies that special reasons exist,

Sales without competition in special cases (1910, s. 175)

the Governor in Council may sell and grant in fee-simple such Crown land or part thereof to the holder of any adjoining land, at a price fixed by the Minister upon the recommendation of the Commission, or may issue a perpetual town lease, or a perpetual suburban lease, or a perpetual country lease of such Crown land to the holder of any adjoining land at an annual rent for the first period of ten years of a sum equal to three pounds per centum of the unimproved capital value of the land as fixed by the Minister upon the recommendation of the Commission.

209. (1) Notwithstanding anything in this Act, the Governor in Council may sell and grant in fee-simple any Crown land, or may issue a perpetual town lease, perpetual suburban lease, or perpetual country lease of any Crown land, to a religious body which is authorised and competent in law to acquire and hold land in fee-simple, for the purpose of erecting church buildings thereon.

Sale or lease of Crown land to a religious body for erection of church buildings (1910, s. 175A)

It shall be a condition of the sale or lease, as the case may be, that church buildings of a value specified by the Minister shall be erected on the land within a time specified by him.

(2) (a) When it is proposed to sell and grant in fee-simple land pursuant to this section, the value of the land shall be fixed by the Minister upon the recommendation of the Commission, and the price charged to the religious body shall be one-half of the value so fixed.

(b) When it is proposed to issue a perpetual town lease, perpetual suburban lease, or perpetual country lease pursuant to this section, the annual rent payable during the first rental period of ten years of the term shall be a sum equal to one pound ten shillings per centum of the unimproved capital value of the land as fixed by the Minister upon the recommendation of the Commission.

(c) For each rental period of ten years thereafter so long as the land continues to be used for the purpose for which the lease was issued, the rent shall be determined by the Court at a sum equal to one pound ten shillings per centum of the fair unimproved capital value of the land as if it were held in fee-simple at the date of commencement of the rental period in question.

Should the lease be transferred to a person other than a religious body or should the land cease to be used for the purpose for which the lease was issued the rent for the remainder of the then current rental period as and from the anniversary of the quarter day when the lease commenced occurring on or first occurring after the date of transfer shall be payable at a sum equal to three pounds per centum of the then unimproved capital value and the rent for every succeeding rental period shall be determined in accordance with the provisions of subsection (4) of section one hundred and eighty-eight of this Act.

Leases for
manufacturing or
industrial,
&c.,
purposes
without
competition
(1910,
s. 175c)

210. (1) Notwithstanding anything contained in this Act, the Governor in Council may issue a perpetual town lease or a perpetual suburban lease or a perpetual country lease of any Crown land to any person or body corporate who or which proposes to effect upon the land substantial improvements for any manufacturing or industrial enterprise or for accommodating and providing recreational and other facilities for tourists.

(2) Every such lease shall be subject to the following conditions, that is to say :—

(a) a condition that specified buildings or developmental works shall be erected or constructed on the land within a specified time ; and

(b) all such other conditions as the Governor in Council shall impose including (but without limit to the generality of the power of the Governor in Council to impose conditions of a lease under this section), as respects a lease under this section for tourist purposes, the obligations, duties and responsibilities to be undertaken, observed and performed by the lessee in relation to tourists, or in relation to any specified State Forest, Scenic Area, National Park or any Crown land, or in relation both to tourists and to any specified State Forest, Scenic Area, National Park or any Crown land.

(3) The annual rent payable during the first rental period of ten years of the term of a perpetual town lease, a perpetual suburban lease, or a perpetual country lease issued pursuant to this section, shall be a sum equal to three pounds per centum of the unimproved capital value of the land as fixed by the Minister upon the recommendation of the Commission.

211. (1) Upon payment of the sale price of any land sold pursuant to any of the provisions of this Division and the performance of any conditions imposed, the purchaser shall be entitled to a deed of grant of the land for an estate in fee-simple. When purchaser entitled to deed of grant

(2) Where the purchaser of any land sold pursuant to this Division is the owner of adjoining land held in fee-simple and, in the opinion of the Governor in Council, the area of land sold is too small to warrant the issue of a deed of grant therefor, or in any case in which it appears to the Governor in Council appropriate so to do, the purchaser may surrender his subsisting deed of grant and be issued with a fresh deed of grant pursuant to section nine of this Act in respect of the land comprised in the surrendered deed of grant and the area of land sold to him pursuant to the provisions of this Division.

212. Subject to this Division the provisions of sections one hundred and eighty-seven and one hundred and eighty-eight of this Act shall, with and subject to all necessary adaptations, apply to any perpetual town lease, perpetual suburban lease or perpetual country lease, issued pursuant to this Division. Sections 187 and 188 applied

Every such lease shall be distinguished in the records of the Department and be endorsed as a perpetual town lease (non-competitive lease), perpetual suburban lease (non-competitive lease), or perpetual country lease (non-competitive lease), as the case may be.

Powers to
grant in case
of escheat
(1910, s. 177)

213. In any case in which Her Majesty becomes entitled to any land pursuant to a certificate given under “*The Escheat Acts, 1891 to 1962*,” the Governor in Council may, at any time after the time for traversing such certificate has expired, grant or demise such land or any part thereof in fee-simple or for any lesser estate, or pay over the whole or part of the proceeds arising from the sale of such land to any person for the purpose of restoring the same, or the value thereof, to any of the family of the person in whom or for whose benefit the same had been vested, or of carrying into effect, so far as may be, any intended grant, conveyance, or devise of such lastmentioned person in relation to such land, or of rewarding any person making discovery of Her Majesty’s right and title thereto.

PART IX.—PROVISIONS RELATING TO THE DEVELOPMENT OF CROWN LAND AND LAND RECLAIMABLE FROM THE SEA

Division I.—Development Leases

Development
leases
(8 Eliz. II.
No. 25, s. 2)

214. (1) Notwithstanding anything contained in “*The Harbours Acts, 1955 to 1962*,” the Governor in Council may issue to any person a development lease of any land above, or below, or partly above and partly below high water mark as defined in “*The Harbours Acts, 1955 to 1962*,” which Acts shall operate and have effect subject to this Part.

(2) Every development lease shall be for such term not exceeding thirty years as the Governor in Council thinks fit.

(3) Every development lease shall be subject to such terms and conditions as to rent and otherwise as are prescribed by this Division or, in so far as not prescribed by this Division, the Governor in Council thinks fit.

(4) Any development lease may be issued pursuant to this Division either after or without by public advertisement inviting applications therefor.

(5) A development lease comprising in whole or part land below high water mark as defined in "*The Harbours Acts, 1955 to 1962*," shall not be issued without the prior consent of the Minister for the time being administering "*The Harbours Acts, 1955 to 1962*."

(6) The Minister may require an applicant for a development lease to furnish to the satisfaction of the Minister proof of his capacity, financial and otherwise, to perform the conditions on and subject to which the Minister is prepared to recommend that the lease be granted.

215. Without limit to the power of the Governor in Council to subject any development lease to such terms and conditions he thinks fit, the Governor in Council may, subject any development lease to conditions specifying—

Conditions
of develop-
ment leases
(8 Eliz. II.
No. 25, s. 3)

- (a) the purposes for which the land comprised in the lease is to be developed, which purposes may include any or all of the following, that is to say manufacturing, business, industrial, residential, tourist and recreational purposes ;
- (b) the purposes for which particular parts or portions respectively of the land comprised in the lease shall be developed ;
- (c) the roads, bridges, viaducts and other works to be constructed, whether within or without, or both within and without, the boundaries of the land comprised in the lease for the purpose of providing or improving access to, through, over, under or in the vicinity of such land or any part or portion thereof ;
- (d) the levelling, top dressing, draining, subdivisional roads, and other works and things to be done or constructed for developing the land for any purpose or purposes specified in the lease ;
- (e) the standards of materials and workmanship to be observed in respect of the construction of any road, bridge, viaduct or the levelling, top dressing or draining of any land, or the carrying out of any works in performance of any of the conditions of the lease ;

-
- (f) that any land comprised in the lease which is below high water mark as defined in "*The Harbours Acts, 1955 to 1962*," shall be reclaimed, and the height above such high water mark to which it shall be raised by reclamation, the works to be constructed for the purpose of reclaiming the land, and the standards of materials and workmanship to be observed in respect of such works ;
 - (g) the time within which the lessee shall begin to perform any condition specified in the lease, the rate of progress to be made by the lessee during any specified period of time towards completing the performance of any such condition, and the time within which the lessee shall perform any such condition ;
 - (h) the nature and amount of the security to be provided by the lessee for the due performance of the conditions of the lease ;
 - (i) the purchasing price or the method of determining or calculating the purchasing price to be paid by the lessee to the Crown for an estate in fee-simple in any subdivision permitted by the Minister pursuant to section two hundred and sixteen of this Act of land comprised in the lease.

Subdivisions
of develop-
ment leases
(8 Eliz. II.
No. 25, s. 4)

216. (1) The land, or any part or portion of the land, comprised in a development lease shall not be subdivided without the prior permission in writing of the Minister.

The requirement imposed by this subsection shall be deemed a condition of the lease.

(2) The Minister may, in respect of an application to subdivide the land, or any part or portion of the land, comprised in a development lease require, according as he deems fit, having regard to the circumstances of the case, any of the conditions of the lease to be performed in full or to the extent determined by him.

(3) The lessee shall apply in writing to the Minister for permission to subdivide the land, or any part or portion thereof, and shall lodge with the application a design plan, prepared and signed by an authorised surveyor, of the land or of the part or portion thereof to which the application relates, which shall exhibit

distinctly delineated all roads, streets, passages, thoroughfares, lanes, pathways, parks, squares or reserves to be appropriated or set apart for public use and all subdivisions into which the said land or part or portion thereof, as the case may be, is proposed to be divided, marked with distinct numbers or symbols.

(4) The lessee shall endorse on such plan that he agrees to the plan of subdivision.

(5) (a) If the Minister is of the opinion that the proposed method of subdivision is satisfactory and that every requisition made by him pursuant to subsection (2) of this section has been carried out he shall forward two copies of the plan to the Local Authority for its consideration of the subdivisional design as set out in the plan.

The Local Authority shall, after consideration of the subdivisional design notify the Minister—

- (i) that it has no objection to the subdivisional design as set out in the plan ; or
- (ii) as to any objection it has thereto, or any amendment it desires to have made thereto.

(b) Upon notification from the Local Authority that such Local Authority has no objection to the subdivisional design as set out in the plan or, where the Local Authority has notified the Minister as to any objection it has thereto, or any amendment it desires to have made thereto, after consideration by the Minister of such objection or desired amendment, and determination by the Minister thereof, the Minister shall grant permission for subdivision in accordance with the original plan or, as the case may be, the plan determined by him after such consideration.

(c) Upon granting such permission the Minister shall cause—

- (i) the plan in accordance with which permission for subdivision has been granted by him (hereinafter in this section referred to as the “approved plan”) to be registered and deposited in the office of the Surveyor-General and, subject to the provisions of subsection (9) of this section, thereupon and thereafter, whilst comprised in the development lease, the land shall not be dealt with under this Act otherwise than in accordance with the design of the approved plan ;

-
- (ii) a copy of the approved plan to be forwarded to the Local Authority who shall notify the lessee of its decision as to the type, standard and specifications of the works required to be performed by the lessee to give effect to the approved plan other than the type, standard and specifications of any works required to be performed by the lessee in accordance with the conditions attaching to the development lease.

(d) The lessee may appeal to the Minister for Public Works and Local Government (or other Minister of the Crown for the time being charged with the administration of "*The Local Government Acts, 1936 to 1961,*")—

- (i) against any decision of the Local Authority as to the type, standard and specifications of any works to be performed by the lessee ; or
- (ii) in any case where the Local Authority fails to notify the lessee within forty days, or such further time as the said Minister for Public Works and Local Government (or other Minister of the Crown for the time being charged with the administration of "*The Local Government Acts, 1936 to 1961,*") may allow, after the receipt by the Local Authority from the Minister of the approved plan, of the decision of the Local Authority as to the type, standard and specifications of works to be performed by the lessee.

For the purposes of any such appeal the provisions of subsection (15) of section thirty-four of "*The Local Government Acts, 1936 to 1961,*" (or, as the case requires, section thirteen of "*The City of Brisbane (Town Plan) Act of 1959*") shall, with and subject to all necessary adaptations, extend and apply.

(6) As soon as practicable after registering and depositing the approved plan in the office of the Surveyor-General the lessee shall cause the land to which the plan relates to be surveyed by an authorised surveyor.

(7) A plan of such survey, certified by an authorised surveyor as accurate and conforming with or as nearly as practicable to the approved plan, together with all field notes necessary to permit the plan to be examined, shall be lodged with the Surveyor-General who, when he has satisfied himself that the plan of survey conforms

with or as nearly as practicable to the approved plan shall cause the survey plan to be registered and deposited in his office.

(8) Such plan of survey shall thereupon for all purposes of this Division become the approved plan and all land thereunto exhibited and delineated on such plan shall become and be dedicated and set apart for public use as roads, streets, passages, thoroughfares, lanes, pathways and squares respectively and shall vest in the Crown, and all land exhibited and delineated on the plan as parks and reserves shall be set aside as such under the applicable provisions of this Act.

(9) If it subsequently appears to the Minister (either of his own motion or upon application by the lessee) desirable to deal with any part of the land comprised in a development lease other than in accordance with the approved plan he shall cause two copies of an amended design plan of such part to be forwarded to the Local Authority for its consideration of the amended design as set out on such plan.

The provisions of subsections (5), (6), (7) and (8) of this section shall, with and subject to all necessary adaptations, apply to such amended design plan so that for the part of the development lease concerned such design plan and subsequent survey plan thereof shall become the approved plan.

Before, of his own motion, causing any amended design to be forwarded to the Local Authority the Minister shall cause to be given to the lessee two copies of a design plan showing the amendments proposed by him and shall have regard to (but shall not be bound by) any objections made to him by the lessee within two months thereafter.

217. (1) The Minister may, either pursuant to a condition with respect thereto imposed by the lease or, where such a condition is not imposed by the lease, as and when he deems fit, require any lessee of a development lease to give to the Crown security of such nature and to such amount as he determines for the performance by the lessee of the conditions of the lease or such of those conditions as are specified by the Minister.

Security for performance of conditions of lease (8 Eliz. II. No. 25, s. 5)

(2) No deed of grant for an estate in fee-simple shall issue pursuant to a subdivision of a part or portion only of the land comprised in a development lease unless and until the lessee shall have given to the Crown

security of the nature and amount determined by the Minister for the performance by the lessee of the conditions of the lease, or such of those conditions as are specified by the Minister, to the extent to which they remain to be performed at the time in question.

The amount of such security shall be such sum as in the opinion of the Minister will require to be expended to perform the conditions of the lease or, as the case may be, such of those conditions as are specified by the Minister to the extent to which they remain to be performed at the time in question.

Neither this subsection nor any security given under this subsection shall entitle the lessee to a deed of grant of any land comprised in a development lease prior to the performance of any and every condition of the lease which, it is a condition thereof, shall be performed prior to the issue of the deed of grant.

(3) If the lessee of a development lease who has given any security to the Crown pursuant to this section, fails in any respect to perform the conditions of the lease in respect whereof he has given that security, the amount of that security shall become and be due and payable to the Crown, and if not paid upon demand made on behalf of the Crown, may be recovered as a debt due to the Crown.

In and for the purposes of any proceeding to recover that amount, it shall be a genuine pre-estimate of the damage suffered and recoverable by the Crown in respect of the failure by the lessee, and it shall not be competent for the defence to plead that such damage was less than such amount or that the same or any part thereof is a penalty or penal damages.

The Governor in Council may upon the recommendation of the Minister reduce the amount so recoverable to such sum as he is satisfied is sufficient to defray the expenditure required to perform the conditions of the lease to the extent to which they remain to be performed at the time in question.

Lessee may purchase estate in fee-simple in subdivisions (8 Eliz. II. No. 25, s. 6)

218. (1) Subject to this section the lessee may purchase from the Crown for an estate in fee-simple any subdivision permitted by the Minister pursuant to section two hundred and sixteen of this Act of land comprised in a development lease.

(2) Save as prescribed by subsection (3) of this section a lessee shall not be entitled to so purchase any such subdivision until he has satisfied the Minister that he has *bona fide* contracted to sell the subdivision in question to a buyer at a price not less than the value thereof, and he has paid to the Crown the purchasing price specified in the lease, or as calculated according to the method specified in the lease.

For the purposes of this subsection the value of any subdivision shall be the amount which, in the opinion of the Minister, an experienced person would be willing to pay for the fee-simple of the subdivision, assuming it were offered for sale on such reasonable terms and conditions as a *bona fide* seller would require.

(3) The Minister may approve of the lessee purchasing from the Crown for an estate in fee-simple any such subdivision for any purpose approved by the Minister.

The Minister shall not so approve unless and until he is satisfied that the lessee will *bona fide* use the subdivision in question for the purpose approved by the Minister.

The lessee shall pay to the Crown for any subdivision the purchase whereof is approved by the Minister under this subsection, such purchasing price as is agreed upon between him and the Minister.

219. (1) Any person authorised by the Minister or by the Local Authority in the Area whereof a development lease or any road, bridge, viaduct or other works to be constructed pursuant to the conditions of the lease is, or is to be situated, may at any reasonable time and with such vehicles and assistants as he deems necessary for the purposes of such entry, enter or go in or on to any land comprised in such lease or any land whereon such road, bridge, viaduct, or other works (or any part thereof, is to be, is being, or has been constructed) and thereon or therein make such inspection or examination as he deems fit.

Entry
(8 Eliz. II.
No. 25, s. 7)

(2) Any person who obstructs any person in the making of any entry, inspection or examination specified in subsection (1) of this section shall be guilty of an offence against this Act and liable to a penalty of not more than fifty pounds.

Maintenance
of roads, &c.
(8 Eliz. II.
No. 25, s. 8)

220. (1) The lessee of a development lease shall maintain and keep fit and ready for public use for the period specified in the lease any road, bridge, viaduct or other works constructed pursuant to the conditions of the lease and shall, to the satisfaction of the Minister and the Local Authority concerned, remedy every defect or failure that may appear or occur in any such thing during the period so specified.

Every requirement imposed by this subsection shall be deemed a condition of the lease.

(2) During the period the lessee of a development lease is required pursuant to subsection (1) of this section to maintain any thing specified in that section he shall be legally liable for any defect or failure that may occur therein both to any person damaged by such defect or failure and by way of indemnity to the Crown and any Local Authority concerned.

Transfer,
&c., of
lease
(8 Eliz. II.
No. 25, s. 9)

221. (1) Save in the case of death, mental sickness, or bankruptcy of the lessee, or of the mortgagee exercising power of sale or as prescribed by section two hundred and ninety-two of this Act, a development lease shall not be transferable.

(2) A development lease or any part or portion of the land comprised therein shall not be sublet.

Body
corporate

222. A company registered under "*The Companies Act of 1961*," or other body corporate constituted by, under or pursuant to any Act or Commonwealth Act, with power to take, acquire, purchase and hold land or any estate or interest in land shall be competent to apply for, acquire and hold a development lease.

Division II.—Agreements for Development Leases

Agreements
(8 Eliz. II.
No. 25, s. 11)

223. (1) If the Governor in Council is of the opinion that investigations, tests or experiments, or any thereof, are necessary or expedient to determine the potentialities of any Crown land or land lying below high water mark as defined in "*The Harbours Acts, 1955 to 1962*," for development for manufacturing, business, industrial, residential, tourist and recreational purposes, or any of those purposes, the Governor in

Council may enter into an agreement with any person, either after or without by public advertisement inviting applications therefor, to grant to such person a development lease of the land in question subject to that person making in compliance with the terms and conditions of the agreement the investigations, tests or experiments specified in the agreement.

(2) Such an agreement shall not be entered into in respect of any land below high water mark as defined in "*The Harbours Acts, 1955 to 1962*," without the prior consent of the Minister administering those Acts.

(3) Such agreement need not specify all or any of the conditions to which the development lease will be subject if granted pursuant thereto.

PART X.—ANCILLARY PROVISIONS

Division I.—Miscellaneous Provisions

224. When land is declared open for lease or selection, or is to be offered for sale by auction, maps shall be prepared and exhibited to the public at the office in Brisbane of the Department and at the District Land Office, showing the land and such other information as the Minister directs.

Maps of
land open
(1910, s. 161)

225. (1) The Land Agent shall keep registers in which he shall enter particulars of all applications to lease land under pastoral lease or to acquire an occupation license, and of all applications pursuant to the open method to select land as a selection, in the order of their receipt by him and the day and hour of their receipt.

Land Agent
to keep
registers of
applications
(1910, s. 162)

Each applicant shall himself, or by his agent appointed in writing under his hand, sign his name to such entry.

When an application is rejected, or accepted or refused, or otherwise dealt with by him, the Commissioner shall make a memorandum of his decision opposite the entry of the application in the register.

(2) (a) In the case of applications pursuant to the selective method to select land as a selection, the Land Agent at every place appointed by the opening notification shall keep a register in which he shall enter particulars of all such applications lodged at such place in order of their receipt by him and the day and hour of their receipt.

He shall note such day and hour on the application and initial the noting.

He shall also in such register record the date of transmission by him of each application to the Secretary of the Commission at the office in Brisbane of the Department for consideration by the Committee of Review.

(b) The Secretary of the Commission shall cause particulars of all such applications to be entered in a register kept for the purpose.

When an application is rejected, or accepted or refused, or otherwise dealt with by the Committee of Review, such Committee shall cause a memorandum of the decision to be made opposite the entry of the application in such register.

Instruments
of lease

226. (1) Every instrument of lease or license issued pursuant to this Act shall be in duplicate, the original thereof being issued to the lessee or licensee and the duplicate being kept in the office in Brisbane of the Department.

(2) Particulars of all transfers, mortgages and subleases under this Act and such other particulars as are prescribed to be entered or registered in the registers kept in the Department, shall also be entered on both the original and duplicate of the instrument of lease or license, or other instrument of title, concerned (save where such entry is dispensed with under the provisions of this Division).

(3) Where appropriate, such entries shall be made so as to record the priority of registration of the dealing concerned.

227. (1) There shall be kept in the office in Brisbane of the Department registers wherein shall be entered particulars of all leases, and licenses, under this Act, and of all transfers, mortgages and subleases thereof and other dealings therewith under this Act, and such other particulars as are prescribed.

Registers of leases, &c., to be kept (1910, s. 163)

Where appropriate, such entries shall be made so as to record the priority of registration of the dealing concerned.

(2) Registers containing the like particulars and any other particulars that may be prescribed shall be kept in each District Land Office in respect of leases, and licenses which comprise or relate to land situated in the district concerned.

(3) Registers kept in pursuance of this section shall be open to public inspection at any reasonable time during office hours.

Public inspection of registers (1910, s. 164)

228. The Minister may dispense with the production of any instrument of lease, or license, or other instrument for the purpose of making any endorsement thereon which by this Act is authorised or required to be made.

Dispensing with production of documents (1925, reg. 29)

The Minister may in any such case require proof to his satisfaction to be made by statutory declaration or otherwise that the applicant for the endorsement is lawfully entitled to have the same made.

Upon such endorsement of the registration of a transfer or other dealing the Minister shall cause to be included in the noting thereof that no endorsement of such transfer or other dealing has been made on the instrument of lease or license, or other instrument, and such transfer or other dealing shall thereupon be as valid and effectual as if the endorsement had been made on the lease or license, or other instrument :

Provided that before any such endorsement is made the Minister shall cause to be given at least fourteen days' notice of intention so to do in at least one newspaper circulating in the locality where the land referred to in the instrument of lease, or license, or other instrument is situated.

Provisional
instruments
of title
(1925,
reg. 30)

229. (1) Whenever any instrument of lease or license has been lost, mislaid or destroyed, or whenever the person entitled to the possession of any such instrument is for any cause beyond his control unable to obtain possession thereof, the lessee or licensee, or any other person having knowledge of the circumstances may make a statutory declaration stating the facts of the case, the name and description of the registered lessee or licensee, and the particulars of all mortgages, encumbrances or other matters affecting the land and the title thereto, to the best of the declarant's knowledge and belief.

The Minister may, if satisfied as to the truth of such declaration and the *bona fides* of the dealing, cause to be issued to the person entitled to possession thereof a provisional instrument of lease or license which shall be an exact copy of the original instrument, and of every memorandum and endorsement appearing thereon or made under section two hundred and twenty-eight of this Act in respect thereof, and shall also, unless the Minister otherwise directs, contain a statement of the circumstances under which such provisional instrument is issued.

The Minister shall at the same time cause to be entered in the appropriate register a note of the issuing of such provisional instrument, and the date thereof, and the circumstances under which it was issued.

Such provisional instrument shall be available for all purposes and uses for which the original instrument would have been available, and shall be as valid to all intents and purposes as such original instrument :

Provided that before causing such provisional instrument to issue the Minister shall give at least fourteen days' notice of intention to issue it in at least one newspaper circulating in the locality where the land is situated.

New
instruments
of title
(reg.
22-12-32)

(2) Whenever any instrument of lease or license has become so mutilated or contains so many endorsements as to render the instrument incapable of bearing with convenience any necessary endorsement or further endorsement, the Minister may, upon lodgment of such instrument with the Department, cause to be issued in substitution therefor a new instrument of title, which shall be a copy of the original instrument,

containing a short form of endorsement showing the devolution of title from the original lessee or licensee to the present lessee or licensee, and particulars of all or any subsisting mortgages, encumbrances, or other matters affecting the land and endorsed on the original instrument.

Such new instrument shall be available for all purposes and uses for which the original instrument would have been available and shall be as valid to all intents and purposes as the original instrument.

230. An instrument of a dealing under Division VIII., or of an agreement for a communal ring fence under Division XIII. of this Part, shall be registered when a noting, signed by the Registrar of Dealings, of the particulars thereof has been endorsed on both copies of the relevant instrument of lease or license, and entered in the appropriate register kept in the office in Brisbane of the Department : Registration
of dealings,
&c.

Provided that if the Minister has, pursuant to the provisions of section two hundred and twenty-eight of this Act, dispensed with the production of any instrument of lease or license, any dealing in respect of such instrument shall be registered when a noting thereof as prescribed by this section has been endorsed on one copy of the relevant instrument of lease or license and entered in the appropriate register.

231. (1) Where there are improvements the property of the Crown or of a predecessor in title on land selected, leased or sold under this Act, the selector, lessee, or purchaser of the land shall not be entitled to occupy, nor shall he enter into possession of such land, save with the written permission of the Minister first had and obtained, until he has paid as prescribed the declared value or the provisional value of such improvements. When right
to occupy
accrues

In any such case the selector, lessee or purchaser shall be entitled to occupy, and may enter into possession of, the land when he has paid as prescribed the declared

value or the provisional value of the improvements or, with the written permission of the Minister, at any sooner time.

(2) Where there are no improvements the property of the Crown or of a predecessor in title on land selected, leased or sold under this Act the selector, lessee or purchaser shall be entitled to occupy and may enter into possession of the land—

- (a) in the case of a selection selected pursuant to Part IV., on and from the date of approval of his application by the Court;
- (b) in the case of a pastoral lease, on and from the date of acceptance of his application by the Commissioner ;
- (c) in the case of a sale of land pursuant to Part VII., on and from the date of sale ;
- (d) in the case of a special lease or development lease, on and from the date of the commencement of his lease;
- (e) in the case of a lease of an additional area, on and from the date of acceptance of the Minister's offer.

(3) A lessee who is granted a new lease pursuant to Division II. of Part VI. shall be entitled to occupy and may enter into possession of the land comprised therein on and from the date of the determination of the occupation license in respect of the land comprised in the new lease or, if there is no such occupation license, on and from the date of his election to take advantage of the offer by the Minister pursuant to the provisions of the said Division.

(4) In all other cases, the lessee or purchaser from the Crown shall be entitled to occupation and possession of the land comprised in the lease or purchase on and from the date of commencement of the lease or the date of sale, or, in the case of a lessee, such date earlier than the date of commencement of the lease as the Minister may permit in writing.

232. The lessee of a holding shall not be entitled to impound the stock of the lessee of a contiguous holding until after the expiration of a period of three years from the date of the commencement of that lease which is the more recent in title, unless—

Restriction on the right of impounding (1910, s. 172)

- (a) the common boundary is already fenced, or during such period of three years is fenced, with a fence sufficient to prevent the passage of stock ; or
- (b) in the case of deliberate trespass.

For the purposes of this section, “ lessee ” includes the holder of an occupation license, “ holding ” includes the land comprised in an occupation license, and “ lease ” includes an occupation license.

233. If the Minister is of opinion that the lessee of any holding is depasturing on the land included in his holding such a number of stock that the land is likely to be permanently injured thereby, the Minister may, by notice in writing, require the lessee, within the time specified in the notice, to reduce the number of stock so depastured to the number specified in the notice and to comply with any other restriction specified in the notice as to the stocking of such land, and if the lessee fails to comply with the terms of the notice the holding shall be liable to be forfeited.

Overstocking (1910, s. 173A)

234. (1) Every lease of a holding shall be subject to a condition that the lessee shall, when and so often as he is thereunto required by the Minister, furnish to the Minister such returns or statements as the Minister requires concerning any stock, cost of improvements or developmental works, working expenses, or any other matter relative to the holding or to any lands worked in conjunction with the holding.

Condition as to making returns (1910, s. 174)

(2) All such returns and statements shall be treated as strictly confidential, and shall not be divulged or made use of except for the purposes of this Act.

235. (1) Notwithstanding anything in this Act the disqualifications and restrictions imposed by this Act against any person holding a holding or any interest therein, or against any one person holding more than the prescribed area of land as a holding or holdings or any interest therein, shall not apply to the holding by any person of any holding or interest in any holding as a

Cases of trusteeship (1910, s. 135A)

trustee as defined in this section, and the holding by him as such a trustee of any holding or interest therein shall not be taken into account in determining whether or not he is subject to any disqualification or restriction imposed by this Act in respect of any other holding or interest in any other holding which he applies for or holds otherwise than as such a trustee.

(2) For the purposes of subsection (1) of this section the term "person" includes a body corporate, and the term "trustee" means and includes—

- (a) the trustee, executor or administrator of the estate of a deceased lessee, including the Public Curator ;
- (b) the trustee of a bankrupt lessee ;
- (c) the committee of the estate of a mentally sick lessee ;
- (d) the Public Curator when authorised to act under the provisions of Part IIIA. or Part IV. of "*The Public Curator Acts, 1915 to 1957.*"

(3) Where the aggregate of the areas of—

- (a) any holding or holdings or any interest in any holding or holdings acquired by any person under the will of a deceased lessee or, in the case of a lessee who died intestate, acquired by any person from the administrator in respect of his share as next-of-kin or widow or widower of the deceased lessee ; and
- (b) any other holding or holdings or any interest in any other holding or holdings held by such person as at the date of the acquisition mentioned in paragraph (a) of this subsection,

amounts to or exceeds the maximum area which this Act prescribes may (taking into account the aggregate of the rents of all such holdings for the first rental periods thereof) lawfully be held under this Act by such person as such holding or holdings, such person—

- (i) may nevertheless continue to hold under this Act all such holdings and interests in holdings and may take and hold for a like interest any new lease of any such holding or part thereof pursuant to Part VI. ;
- (ii) shall, while the aggregate of the holdings and interests in holdings held by him continues to amount to or exceed such maximum area,

Legatees
and
next-of-kin
(1910,
s. 135A)

not be qualified to apply for or hold under this Act any further area except by later acquisition as mentioned in paragraph (a) of this subsection,

but where such aggregate is less than such maximum area, such person shall be qualified to apply for and hold under this Act a further area not exceeding in area the difference between such maximum area and aggregate.

For the purposes of this subsection the area and annual rental of an interest in a holding shall be proportioned respectively to the total area and total annual rental.

Division II.—Improvements made by Predecessor

236. (1) When there are improvements the property of the Crown or late lessee upon land which has been leased, selected or purchased under this Act, and the value of such improvements has been declared in the opening or sale notification or the provisional value has been stated therein, the amount of such declared value or provisional value, as the case may be, shall be paid by the incoming lessee or purchaser to the Land Agent or at the office in Brisbane of the Department within one month, or such extended time not exceeding two months in all, as the Minister may allow, after—

- (a) in the case of a pastoral lease, the date of acceptance of the application by the Commissioner ;
- (b) in the case of a selection, the date of the notice of approval of the application to select ;
- (c) in the case of a sale of land under Part VII., the date of the sale ; or
- (d) in the case of a special lease or development lease, the date of the commencement of the lease.

(2) In any case where the opening or sale notification states a provisional value of improvements and the late lessee or, where the improvements are the property of the Crown, the Minister, and the incoming lessee or purchaser agree as to the value of the improvements, before the expiration of one month or such extended

time not exceeding two months in all, as the Minister may allow, from the applicable date mentioned in subsection (1) of this section, the amount of such agreed value may (subject, where the improvements are the property of the late lessee, to proof of the agreement to the satisfaction of the Minister) be paid to the Land Agent or at the office in Brisbane of the Department in satisfaction of the provisional value.

(3) If the declared, provisional or agreed value of improvements, as the case may be, is not paid by the incoming lessee or purchaser within the applicable time prescribed in subsection (1) of this section, the incoming lessee or purchaser shall have no right or title to the land in question or to the occupation thereof, and all moneys paid by him in respect thereof shall be wholly or partly forfeited to the Crown as the Minister in his discretion determines.

(4) (a) Where the Crown is not the owner of the improvements, if the parties are unable to agree, the Minister, at the expiration of six months from the date of payment of the provisional value, or sooner if thereunto requested by any party, shall cause the matter of the value of the improvements to be referred to the Court.

Where the Crown is the owner of the improvements the Minister, at any time after the date of payment of the provisional value, may cause the matter of the value of the improvements to be referred to the Court.

Upon such a reference, unless the value is subsequently agreed upon, the Court shall hear and determine the matter thereof.

(b) When making any such reference the Minister shall furnish to the Court a valuation of the improvements made by the Commissioner or some other person and such valuation shall be admissible in evidence.

(c) The Court shall determine the value of the improvements at such sum as, in the opinion of the Court, fairly represents their value to a prudent incoming lessee or purchaser of the land on which the improvements are situated, but in no case shall such sum exceed the cost of making the improvements as at the date the Court is required to determine the value thereof, less depreciation in value from use or otherwise.

- (d) The date as at which the Court shall determine the value of improvements shall be—
- (i) in the case of a pastoral lease, the date of acceptance of the application ;
 - (ii) in the case of a selection, the date of the approval by the Court of the application ;
 - (iii) in the case of a sale under Part VII., the date of the sale ;
 - (iv) in the case of a special lease or development lease, the date of commencement of the lease ;
 - (v) in the case of Crown land (not being, in the case of an expired lease, land which was formerly comprised therein) included in a new lease issued pursuant to Part VI. or leased as an additional area pursuant to Division VI. of Part X., the date of acceptance of the Minister's offer or determination.

Date as at which Court to value improvements

237. (1) If the value of the improvements as agreed upon between the late lessee or, where the improvements are the property of the Crown, the Minister, and the incoming lessee or purchaser, or as determined by the Court, exceeds the provisional value, the amount of such excess shall be paid by the incoming lessee or purchaser to the Land Agent or at the office in Brisbane of the Department within one month after notice thereof has been given to him by the Commission.

Payment of excess over provisional value

If such amount is not duly paid, the lease may be forfeited or the sale cancelled by the Minister without any further process and all moneys paid by the incoming lessee or purchaser in respect of the land and improvements thereon shall be wholly or partly forfeited to the Crown, as the Minister in his discretion, determines.

(2) If the value of the improvements as agreed upon between the late lessee or, where the improvements are the property of the Crown, the Minister, and the incoming lessee or purchaser, or as determined by the Court, is less than the provisional value the amount of the difference between such values shall be refunded to the incoming lessee or purchaser.

Refund where value less than provisional value

Crown
deemed
owner of
improve-
ments and
payment to
late lessee
(1910, s. 124)

238. (1) When—

- (a) any holding is forfeited ;
- (b) any holding is wholly or in part surrendered under this Act ;
- (c) any resumption of part of a pastoral lease is made under the provisions of section three hundred and seven of this Act ;
- (d) any resumption of part of a stud holding is made under the provisions of paragraph (f) of subsection (3) of section seventy-three of this Act ;
- (e) the lease of any holding expires ; or
- (f) the sale of any land for an estate in fee-simple under Part VII. is cancelled,

any improvements on the land in question the property of the late lessee shall, as from the date when such forfeiture, surrender, resumption, expiry or cancellation takes effect, be deemed to be vested in the Crown.

Subject to this Act, the late lessee shall be entitled to receive from the Crown the amount of—

- (a) the declared value ; or
- (b) the value, as agreed upon between himself and the incoming lessee or purchaser ; or
- (c) the value as determined by the Court,

of the improvements when such amount has been paid to the Crown, less the amount of all money due by the late lessee to the Crown on any account whatsoever.

(2) If at the time of forfeiture or surrender the holding is subject to a mortgage, a memorandum whereof is registered in the Department, and any debt secured by such mortgage remains unpaid, then, subject to section three hundred and three of this Act, the Minister shall, as he deems just, pay to the mortgagee in or towards satisfaction of such unpaid debt the whole or portion of any amount received by the Crown in respect of the value of the improvements.

Any payment so made to a mortgagee shall for the purposes of this section be deemed to have been made with the authority and on behalf of the late lessee concerned.

For the purposes of this subsection, the cancellation of a sale of land in respect of which a lease was issued pursuant to the provisions of section one hundred and seventy-six of this Act, shall be deemed to be the forfeiture of a holding.

(3) Any money received by the Crown from an incoming lessee or purchaser as the value of improvements, including any such money received under the repealed Acts, which remains in the hands of the Crown for six years, shall become vested in the Crown, and no claim by any person in respect thereto shall be entertained.

239. (1) Notwithstanding anything in this Act, where the improvements upon land are the property of the Crown, the Minister may enter into an agreement with the incoming lessee or purchaser for the payment of the value of such improvements by instalments upon such terms as may be agreed upon ; whereupon the value of the improvements owned by the Crown shall be paid by the incoming lessee or purchaser in terms of such agreement.

Minister
may accept
payment by
instalments
for Crown
Improvements
(1910,
s. 123A)

(2) Notwithstanding anything in this Act, when an incoming lessee or purchaser has entered into an agreement with the Minister for the payment of the value of the improvements the property of the Crown, and has paid the value of other improvements, if any, on the land, he shall be entitled to a lease of the land.

(3) If in any respect the terms of the agreement are not observed by the incoming lessee or purchaser, or any instalment mentioned in the agreement is not paid on or before the due date for payment thereof, the interest of the incoming lessee or purchaser in the land may at the option of the Crown be forfeited.

240. (1) For the purposes of this Division the destruction of trees or the clearing of undergrowth and useless vegetation or any other developmental work effected not earlier than ten years prior to the expiration, surrender, forfeiture or resumption of a lease or during the purchasing period of a sale under Part VII. which has been cancelled, which had the effect of improving or

Destruction
of trees, &c.,
deemed an
improvement

maintaining the carrying capacity or productivity of the land comprised in such lease or sale or making it suitable for habitation, shall be deemed to be an improvement :

Provided that—

- (a) any such destruction of trees or clearing shall be deemed to be an improvement only if it was effected in accordance with a permit issued pursuant to this Act or the repealed Acts in any case where such a permit was required ;
- (b) the value of the improvement shall in no case exceed the actual cost of the destruction of trees or clearing or developmental work in question, less a proper deduction for deterioration as at the date on which the value of any such improvement is required to be determined pursuant to the provisions of this Division ;
- (c) the destruction of undergrowth and useless vegetation shall be deemed to have lost its utility for the purposes of this section, to the extent to which after it has been effected, undergrowth or useless vegetation of any species is allowed to establish itself on the land so cleared.

(2) The provisions of this section do not apply to the destruction of trees effected as part of the treatment of scrub in the course of cultivation.

Meaning of term "late lessee"

241. (1) For the purposes of this Division the term "late lessee" means the lessee or purchaser as at the date when the forfeiture, surrender, resumption, expiry or cancellation takes effect.

Extension of Division

(2) This Division shall extend to—

- (a) improvements on an occupation license made with the approval of the Minister, or of the Court under the repealed Acts, by the holder of such license as at the date of termination thereof and for the purpose of such extension, the term "late lessee" includes such a holder ;
- (b) improvements on any land set aside as a reserve for public purposes under the repealed Acts or this Act, made by the trustees

or other person with their authority and for the purpose of such extension the term "late lessee" shall include the trustees of a reserve or, as the case may be, person who effected the improvements in question with their authority.

Division III.—Rent

Principles of Rent Assessment and Valuation

242. (1) (a) The rent of any leasehold tenure under this Act shall be based on the unimproved value of the land comprised in the holding as at the date of the commencement of the rental period in question.

Principles
of rent
assessment
and
valuation
(1959, s. 36)

(b) The physical state and condition of the land comprised in the holding as at the date of the commencement of the term of the subsisting lease shall be taken into consideration in ascertaining the unimproved value, save to the extent such physical state and condition resulted from improvements as defined by section five of this Act.

(c) In ascertaining the unimproved value of land for rental purposes, no regard shall be had to the value of commercial timber or trees with commercial potentiality naturally growing on the land unless, in the case of a perpetual lease selection or perpetual country lease, the Court is satisfied that the best use of the land at the commencement of the rental period in question is the production of commercial timber from trees then naturally growing thereon.

(d) Subject to paragraph (c) of this subsection, the potentialities of the land shall be regarded as forming part of its unimproved value.

(e) No regard shall be had to any increase in value attributable to improvements.

(2) In determining the rent the Court shall consider the potentialities of the land but, in so doing, shall have due regard to expenditure on—

(a) improvements ; or

(b) works of development effected during the currency of the subsisting lease,

which, in the opinion of the Court, are calculated to realise its capability for increase in, or maintaining, carrying capacity and production.

Variability
of seasons
and prices
to be
considered
(1959, s. 37)

(3) The variability of seasons and prices obtainable for products from the land during the rental period, to the extent that might reasonably be expected or anticipated by a prudent person, shall be matters to be considered in the assessment of rents.

Principles
for
determina-
tion of rent
(1910, s. 125)

243. (1) The Court, in determining the rent of a pastoral lease, or brigalow lease, or settlement farm lease, or grazing selection, shall have regard to—

- (a) the quality and fitness of the land for grazing purposes ;
- (b) the number of stock which the land may reasonably be expected to carry in average seasons ;
- (c) transport facilities available to the holding ;
- (d) the natural supply of water, and the facilities for the raising or storage of water ;
- (e) the amount which experienced persons would be willing to pay for land of similar quality in the same neighbourhood ; and
- (f) any other matters which in the opinion of the Court affect the rental value of the land.

(2) The Court, in determining the rent of a settlement farm lease or brigalow lease, shall also have regard to the quality and fitness of any part of the land comprised therein for agricultural or horticultural purposes.

(3) The Court, in determining the rent of a perpetual lease selection, or a perpetual town lease, or a perpetual suburban lease, or a perpetual country lease, or a special lease shall have regard to—

- (a) the amount which experienced persons would be willing to pay for land of similar quality in the same neighbourhood whether held in fee-simple or under a freeholding or perpetual lease tenure ; and
- (b) any other matters which in the opinion of the Court affect the rental value of the land

244. In ascertaining the unimproved value of land for the purposes of this Act from a consideration of the sale prices of comparable land in the neighbourhood which has been developed and improved, allowances shall be made in arriving at the unimproved value to the extent that such allowances would likely be made by an experienced and prudent person, for the following :—

How comparable sales are to be applied (1959, s. 38)

- (a) the replacement cost of all improvements and works of development less depreciation from use or otherwise ;
- (b) the time it would take for the improvements and works of development to be completed and to become effective ; and
- (c) the added price which an experienced and prudent person would be likely to give for a developed holding purchased as a going concern.

245. (1) Section twenty-five of "*The Valuation of Land Acts, 1944 to 1959*," does not apply to the expression "unimproved value" where appearing in any provision of this Act.

S. 25 of 8 Geo. VI. No. 3 not to apply for the purposes of this Act (1962, s. 3)

(2) Where the question whether or not the expression "unimproved value", where appearing in any Act other than this Act, is a reference to which section twenty-five of "*The Valuation of Land Acts, 1944 to 1959*," applies is in issue in any proceedings before any court or judicial tribunal, the court or tribunal shall determine that question as if this section had not been enacted.

(3) This section applies so as not to affect the application of section twenty-five of "*The Valuation of Land Acts, 1944 to 1959*," to the Acts specified in paragraphs (a), (b), (c) and (d) thereof.

Miscellaneous

246. (1) Notwithstanding any provision, other than this section, of this Act, a lessee of—

- (a) a selection, brigalow lease or pastoral lease, a new lease whereof is granted pursuant to the provisions of Part VI.;

Lessee may elect to have rent for first period determined by Land Court (1958, s. 18)

- (b) a pastoral lease, a new lease whereof is granted to an applicant given priority pursuant to subsection (6) of section fifty-six of this Act ; or
- (c) a stud holding, a lease whereof is granted pursuant to the provisions of Division II. of Part III.,

may, not later than three months after the date of commencement of the term of the lease, apply to the Minister in writing to have the annual rent payable for the first rental period determined by the Court.

(2) Upon application made as prescribed by subsection (1) of this section, the Minister shall refer to the Court for hearing and determination the matter of the annual rent payable for the first rental period of the lease the subject of that application, and thereupon the Court shall hear and determine that matter.

(3) If the annual rent fixed by the Minister is altered by the determination of the Court, a due adjustment shall be made, for which purpose amounts paid in excess shall be credited to the lessee in payment of future rent or, at his request, refunded to him, and amounts short paid shall be recoverable as unpaid rent.

Rent, where
and when
payable
(1910, s. 127)

247. (1) Rent and other payments due to the Crown under this Act shall be payable at the office in Brisbane of the Department, or at any District Land Office, or at any other place appointed in that behalf by the Governor in Council.

- (2) Rent shall be payable annually as follows :—
 - (a) for pastoral leases, on or before the thirtieth day of September, in respect of the period of one year ending the thirtieth day of June next following ;
 - (b) for selections, on or before the thirty-first day of March in respect of the calendar year ending the thirty-first day of December next following ;
 - (c) for perpetual town leases, perpetual suburban leases, perpetual country leases, or any lease deemed pursuant to Division III. of Part VII.

to be in force for a term of ten years, on or before the quarter day which is the anniversary of the quarter day on which the lease commenced, in respect of the period of one year commenced on such anniversary ;

(d) for special leases and development leases on or before the first day of January in respect of the calendar year ending the thirty-first day of December next following ;

(e) in all other cases, as prescribed by this Act.

(3) In any case to which the provisions of paragraphs (a) or (b) of subsection (2) of this section apply, where the term of the lease commences on the second, third or fourth quarter day of the period of one year or calendar year, the rent payable in respect of that period of one year or calendar year shall, according to such commencing day, be three quarters, two quarters, or one quarter of the annual rent ; and the rent payable in respect of the period of one year or calendar year in which the term expires shall, according to such commencing day, be one quarter, two quarters, or three quarters of the annual rent. Credit shall be given to the lessee on this basis in respect of the first year's rent paid by him prior to the commencement of his lease.

Apportionment of rent where term does not commence on first quarter day

(4) Where the term of a special lease or development lease commences on a day other than the first day of January, in respect of the annual rent payable for the second calendar year of the term, credit shall be given for the amount thereof in excess of the proportion applicable to the period from the anniversary date of the commencement of the lease to the thirty-first day of December in such second calendar year ; and the rent payable in respect of the calendar year in which the term expires shall be only the proportion of the annual rent applicable in respect of the period from the first day of January to the date of expiry of the lease.

(5) Any amount due and payable and unpaid of the rent in respect of any lease or license under this Act, with any accrued penalties in respect of arrears of rent, shall be a debt due to Her Majesty, and if the lessee or licensee dies before such debt has been paid in full to Her Majesty his estate shall be liable for any unpaid amount thereof.

Rent a debt to the Crown

Rent to be
paid pending
re-assess-
ment
(1910, s. 128)

248. (1) The fact that the Court has not determined the rent of any holding for any rental period for which the rent is determinable by the Court, shall not in the meantime affect the liability of the lessee to pay rent.

In such case the lessee shall, until the determination is made, continue to pay rent at the annual rate thereof payable by him for the last preceding rental period.

(2) If the rent is altered by the determination a due adjustment shall be made, for which purpose amounts paid in excess shall be credited to the lessee in payment of future rent or, at his request, refunded to him, and amounts short paid shall be recoverable as unpaid rent.

(3) No amount shall be recoverable under subsection (2) of this section as rent unpaid pursuant to a determination in respect of any time earlier than twelve months before the date on which the Minister referred to the Court the matter of such determination.

Penalties
for default
in payment
of rent
(1910, s. 129)

249. (1) If default is made by the lessee of a holding in the payment of rent, the lease may, at the option of the Crown, and without any inquiry or other process be forfeited unless—

(a) not later than ninety days after the due date for payment of the rent in default, the lessee makes payment thereof together with an additional payment by way of penalty at the rate of ten pounds per centum per annum thereon for the period of the default ; or

(b) the lessee having made payment of the rent in default together with an additional payment by way of penalty at the rate of ten pounds per centum thereon for the period of the default, later than ninety days after the due date for payment of the rent, the Minister (who is hereby thereunto authorised) waives the forfeiture.

(2) If default is made by the holder of an occupation license in the payment as prescribed of the annual rent for any year of an occupation license, the license shall not be renewed for such year unless—

- (a) not later than ninety days after the due date for payment of the annual rent for the year in question the licensee makes payment thereof together with an additional payment by way of penalty at the rate of ten per centum per annum thereon for the period of the default ; or
- (b) the licensee having made payment of the annual rent in default together with an additional payment by way of penalty at the rate of ten per centum per annum thereon for the period of the default later than ninety days after the due date for payment of the annual rent for the year in question, the Minister (who is hereby thereunto authorised) approves the renewal of the license for the year in question.

Division IV.—Destruction of Trees on Holdings, &c.

250. (1) Without the prior permit in writing of the Commissioner, or contrary to any of the terms and conditions of a permit granted under this section—

Permit to
destroy
trees
(1910, s. 198)

- (a) the lessee of an agricultural selection or a perpetual country lease shall not during the first two years of the term of his lease ; or
- (b) the lessee of a pastoral lease, brigalow lease, grazing selection, settlement farm lease or special lease, or the holder of an occupation license or road license shall not at any time,

destroy any tree thereon.

This subsection does not apply to an agricultural selection acquired by virtue of the conversion of tenure of a grazing selection or settlement farm lease pursuant to Division V. of Part IV. or pursuant to the analagous provisions of the repealed Acts.

(2) An application for a permit to destroy trees shall be made by the lessee or licensee, as the case may be, to the Commissioner in or to the effect of the prescribed

Application
for permit

form and the application shall identify by species or names the trees for the destruction of which the permit is applied for and shall by means of a diagram or description sufficiently identify the land whereon such trees are standing.

Permits

(3) The Commissioner may, after inquiry, refuse any permit applied for under this section or, without being bound by the application, may grant a permit in respect of such land or such trees, or both such land and such trees, as he thinks fit subject nevertheless to the conditions as hereinafter provided in this section :

Provided that in the case of a lease or license over the whole or part of a State Forest or Timber Reserve, the application for the permit shall be referred to the Conservator of Forests and no permit shall be granted by the Commissioner except upon the recommendation of the Conservator of Forests and in accordance in all respects with that recommendation.

(4) A permit to destroy trees shall state the period for which the permit shall have effect, the purpose for which the trees, the subject thereof, are authorised to be destroyed, and may specify the manner in which such trees shall be destroyed.

A permit (save a permit in respect of a lease or license comprising the whole or part of a State Forest or Timber Reserve) granted to a lessee or holder of an occupation license to destroy any trees for the purpose of the use by him of the timber derivable therefrom in the improvement of the holding or land comprised in the occupation license to which the permit applies shall not be subject to a condition obligating the permittee to pay any sum by way of royalty or otherwise.

Conditions applicable to permits

(5) Every permit granted shall be in or to the effect of the prescribed form and shall be subject to the following conditions :—

(a) that the permittee will not destroy, damage or otherwise interfere with or cause or allow to be destroyed, damaged or otherwise interfered with, any tree excepting such trees as are specified in the permit ;

(b) if the permit specifies the manner of the destruction of trees authorised to be destroyed, that the permittee will not

destroy, or cause or allow to be destroyed, any tree except in the manner specified in the permit ;

- (c) that, in the event of the permittee effecting a transfer to some other person of the lease or the license to which the permit relates, no further destruction of trees shall be effected in terms of the permit ;
- (d) such further conditions as the Commissioner deems fit, including provision for the retention of adequate shade and shelter, or as may be prescribed.

(6) The Commissioner, in his absolute discretion, ^{Cancellation of permits} may cancel a permit under this section—

- (a) if, after the issue thereof, he forms the opinion that any of the information or particulars contained in or accompanying the application therefor is or are in any respect false or misleading ;
- (b) if, after the issue thereof, he forms the opinion that with respect to destruction of trees thereby authorised any condition of the permit has not been, or is not being, complied with ;
- (c) if he is satisfied after investigation that the destruction of trees authorised by the permit is being carried out in a manner not likely to be effective or complete, or likely to be harmful or injurious to the land the subject of the permit, or to land adjacent thereto ; or
- (d) if he is satisfied that there has been a substantial change in circumstances since the issue thereof.

(7) A permit may be cancelled under the provisions of paragraph (b) of subsection (6) of this section whether or not legal proceedings for a breach of any provision of this section have been instituted.

In any proceedings to which the cancellation of a permit by the Commissioner is relevant the power of the Commissioner to cancel that permit shall be presumed and evidence proving or tending to prove that the Commissioner had no grounds or insufficient ground for cancelling that permit shall not be led or admitted.

Section to apply notwithstanding conditions of lease or license

(8) The provisions of this section shall apply notwithstanding that any holding is held subject to a condition that any destruction of trees shall be done or performed within a specified time, and accordingly the lessee of any holding shall not do or take any thing or step in fulfilment of any such condition except under the authority of a permit under this section in respect of the trees proposed to be so destroyed.

Offences

(9) Any lessee or licensee mentioned in subsection (1) of this section who, without a permit granted under this section, or who, contrary to any of the terms and conditions of a permit granted under this section, destroys or causes or allows to be destroyed any tree on the land comprised in his lease or license shall be guilty of an offence against this Act and liable to a penalty of not less than twenty-five pounds or more than two hundred pounds.

In proceedings for such an offence evidence may be led and admitted of the market value of the trees the subject of such proceedings as at the time of the destruction thereof, and upon convicting the person proceeded against, the justices shall, in addition to the penalty imposed, order him to pay such sum as they are satisfied is such value.

Division V.—Destruction of Prickly-pear and other Noxious Plants

Destruction of noxious plants (1910, s. 137A)

251. Every holding shall, by virtue of this section, be subject to a condition for the destruction of noxious plants, and the lessee shall at all times perform that condition.

252. Without limit to the generality of its powers, but subject to any directions which the Minister may give from time to time, the Commission may for the purposes of this Division—

Powers of the Commission (14 Geo. V. No. 34, s. 11 (6) (7))

- (a) obtain by purchase or otherwise poisons, specifics, destroyers, apparatuses, appliances and other things for the destruction of, or prevention of infestation of land by, noxious plants and sell, supply, distribute and dispose of the same to persons upon such terms as the Commission deems fit ;
- (b) adopt and carry out all such means and methods, whether mechanical, biological or otherwise as the Commission deems fit, either generally or in any particular case, of destroying or preventing the infestation of land by noxious plants, or for experimenting in or investigating any such means or methods ;
- (c) acquire and disseminate information and advice with respect to any means or method whereby in the opinion of the Commission, any noxious plants may be destroyed, or the infestation of land thereby may be prevented.

Noxious Plants

253. For the purpose of the provisions of this Division, save sections two hundred and fifty-one and two hundred and fifty-two hereof, the term “noxious plants” does not include prickly-pear.

Meaning of term “noxious plants”

254. In any case where the lease of a holding is expressly subject to a condition that the lessee shall destroy the noxious plants thereon the destruction shall be effected in accordance with the requirements of such condition, and the following provisions of this Division do not apply to any such case.

Effect of express condition to destroy noxious plants (1910, s. 136)

255. (1) If after inspection of any holding by the Commissioner or a person thereunto authorised by him, the Commissioner is satisfied that such holding is infested with any noxious plant or plants he shall give to the lessee a notice in writing—

Notice to destroy noxious plants (1910, s. 137A)

- (a) stating that the holding is infested with the noxious plant or plants specified in the notice and requiring the lessee to destroy such noxious plant or plants ;
- (b) specifying the period within which the lessee is required to destroy such noxious plant or plants in equal proportions during each half year of such period, and, if the Commissioner thinks fit, also specifying the manner of such destruction ;
- (c) requiring that after the expiration of such period and during the remainder of the term the lessee shall keep the holding absolutely free from all noxious plants.

(2) A lessee to whom such notice has been given shall comply in every respect with the requirements thereof.

Failure in any respect by a lessee to comply with any requirement of such a notice shall be deemed a breach by him of a condition of his lease.

Prickly-pear

Prickly-pear
District
(14 Geo. V.
No. 34, s. 9)

256. The Governor in Council, on the recommendation of the Minister, may from time to time by Order in Council, constitute any part of the State wherein there are lands which are infested with prickly-pear to be a prickly-pear district.

Appointment
of warden
(14 Geo. V.
No. 34, s. 5)

257. (1) The Governor in Council may appoint a prickly-pear warden for any prickly-pear district.

(2) In respect of all lands in the district for which he is appointed a prickly-pear warden shall, in addition to the powers, authorities and functions vested in him pursuant to the provisions of this Division, also exercise such of the powers, authorities and functions of a Commissioner as may from time to time be directed by the Minister.

Effect of
express
condition to
destroy
prickly-pear
(1910, s. 136)

258. In any case where the lease of a holding is expressly subject to a condition that the lessee shall destroy prickly-pear thereon, the destruction shall be effected in accordance with the requirements of such condition, and the remaining provisions of this Division shall not apply to any such case.

259. Subject to section two hundred and fifty-eight of this Act, the remaining provisions of this Division shall be applicable to all land held for the time being under a lease or license from the Crown pursuant to any Act (herein referred to as "holdings"), and to all lessees or licensees of such land (in the following provisions of this Division referred to as "Crown tenants").

Application of these provisions (1910, s. 138)

260. (1) If after inspection of any holding by the Commissioner or prickly-pear warden, or any officer authorised by him, the Commissioner or prickly-pear warden, as the case may be, is satisfied that such holding is infested with prickly-pear, he shall give to the Crown tenant a notice in writing—

Notice as to infested holdings and duties of tenants (1910, s. 141)

- (a) stating that the holding is infested with prickly-pear and requiring the Crown tenant to destroy all prickly-pear thereon ;
- (b) specifying the period within which the Crown tenant is required to destroy all prickly-pear in equal proportions during each half-year of such period, and, if the Commissioner or prickly-pear warden thinks fit, also specifying the manner of such destruction ;
- (c) requiring that after the expiration of such period and during the remainder of the term the Crown tenant shall keep the holding absolutely free from all prickly-pear.

(2) A Crown tenant to whom such notice has been given shall comply in every respect with the requirements thereof.

Harrisia Cactus

261. (1) The lease or license of any holding not expressly subject to a condition for the destruction of *Harrisia cactus* shall be subject to a condition requiring the Crown tenant thereof to maintain the holding free

Harrisia cactus (1958, s. 24)

from *Harrisia* cactus, or if the holding is infested with *Harrisia* cactus, to proceed forthwith to destroy the *Harrisia* cactus on the holding, and thereafter to maintain the holding free from *Harrisia* cactus.

(2) In the case of any holding infested with *Harrisia* cactus, if at any time the Commissioner or prickly-pear warden is of opinion that no steps have been taken for the destruction of the *Harrisia* cactus, or that the rate of destruction of the *Harrisia* cactus is not satisfactory, he shall give the Crown tenant a notice requiring him to commence and complete, or to complete, as the case may require, such destruction within the time and in the manner specified in such notice.

(3) (a) Where the Minister is satisfied that it is necessary to cut down or otherwise destroy any trees upon any holding, road, stock route or reserve for the purpose of freeing the same from, or preventing the likelihood of infestation thereof by, *Harrisia* cactus, the Minister may, in writing, authorise the Crown tenant or Local Authority named in the authority to cut down or otherwise destroy those trees.

A person or Local Authority so authorised by the Minister may cut down or otherwise destroy any tree to which this subsection applies provided he or it does so in compliance in every respect with that authority.

(b) This subsection does not apply with respect to trees comprised in a State Forest, Timber Reserve, Scenic Area or National Park under and within the meaning of "*The Forestry Act of 1959*."

(c) Except trees exempted by paragraph (b) of this subsection, this subsection applies with respect to trees wheresoever situated, and accordingly to the extent necessary to give operation and effect to this subsection every provision, other than this subsection, of this Act and the provisions of every other Act or law shall apply subject to this subsection.

Forfeiture
for failure
to comply
with notice
(1958, s. 26)

262. Upon failure by any Crown tenant to comply in any respect with any requirement of any notice issued to him pursuant to the provisions of sections two hundred and sixty or two hundred and sixty-one of this Act, the lease or license of his holding shall be rendered

liable to forfeiture as for a breach of condition of lease or license and the provisions of Division X. of Part X. shall, with and subject to all necessary adaptations, apply.

263. If a holding is situated in a prickly-pear district the prickly-pear warden appointed thereto is hereby vested with the powers of a Commissioner for the purposes of issuing a notice pursuant to section two hundred and ninety-seven of this Act and of hearing and determining the matter of the liability to forfeiture arising out of the alleged non-compliance with any express condition of lease, or with any requirement of any notice given pursuant to sections two hundred and sixty or two hundred and sixty-one of this Act.

When
prickly-pear
warden may
issue
forfeiture
notice

264. (1) Every Local Authority shall, at all times maintain free from prickly-pear of any species whatsoever—

Roads, stock
routes and
reserves
(1958, s. 27)

(a) every road or stock route within its Area, save a road or stock route which is fenced in with some holding ; and

(b) any reserve under this Act or any other Act for any purpose and which is vested in or under the control of the Local Authority, save a reserve or any part of a reserve which is fenced in with some holding or in respect of which a lease has been granted by the Crown.

(2) The liability imposed upon a Local Authority by this section is absolute and no provision of any other Act or law or rule of law (save to the extent to which an enactment passed after the commencement of this Act expressly excuses it from that liability) shall apply so as to excuse it from that liability.

(3) Where the Minister is of the opinion that a Local Authority is not taking, or has not taken, satisfactory steps for the destruction of prickly-pear infesting any road, stock route or land referred to in this section within its Area, he may give to that Local Authority a notice requiring it to commence or complete the destruction of such prickly-pear within the time and in the manner specified in such notice.

(4) Upon the failure of any Local Authority to comply with any requirement of any notice given pursuant to subsection (3) of this section, the Minister may, in writing, authorise any person named in the authority, to destroy any prickly-pear infesting any road, stock route or land specified in the authority.

(5) Authority under this section shall empower the person to whom it is given to enter, re-enter and remain, with, such assistants, transport, plant, equipment and materials, as he deems necessary, upon any road, stock route or land specified in the authority at all times during such period of time as is necessary to enable him to search for and destroy prickly-pear infesting the road, stock route or land to which the authority relates, and thereon to take and do all steps and things necessary for the effective destruction of all prickly-pear thereon.

(6) A person shall not obstruct, hinder, interfere with, threaten or assault any person in the exercise of any power conferred by an authority under this section.

Any person who contravenes this subsection is guilty of an offence against this Act.

(7) All costs and expenses incurred by a person authorised under this section with respect to the exercise of that authority shall be paid to the Crown by the Local Authority concerned.

Any amount of such costs and expenses not paid upon demand made by the Minister may be recovered as a debt due to the Crown.

(8) Compliance by a Local Authority with the requirements of this section shall be deemed a function of Local Government and accordingly a Local Authority may defray from its general fund any amount of any costs and expenses incurred by it in complying with the requirements of this section, or it may, and shall have power to make, levy and recover pursuant to "*The Local Government Acts, 1936 to 1961*"—

(a) a separate rate ; or

(b) a special rate,

for defraying any amount of those costs and expenses.

(9) The provisions of subsections (1) to (7), both inclusive, of this section shall, with and subject to all necessary adaptations, apply to land set apart under this Act or any other Act for any public purpose whereof a Local Authority is not the trustee, and to the duly appointed trustees thereof, and all other persons concerned.

265. (1) Every owner of freehold land shall at any times maintain such land free from prickly-pear of any species. Freehold lands (14 Geo. V., s. 11)

(2) The liability imposed upon an owner of freehold land by this section is absolute and no provision of any other Act or law or rule of law (save to the extent to which an enactment passed after the commencement of this Act expressly excuses him from that liability) shall apply so as to excuse him from that liability.

(3) Where the Minister is of the opinion that the owner of any freehold land is not taking, or has not taken, satisfactory steps, for the destruction of prickly-pear infesting such land, he may give to that owner a notice requiring him to commence or complete the destruction of such prickly-pear within the time and in the manner specified in such notice.

(4) Upon the failure of any owner to comply with any requirement of any notice given pursuant to subsection (3) of this section the provisions of subsections (4), (5), (6) and (7) of section two hundred and sixty-four of this Act shall, with and subject to all necessary adaptations, apply.

266. (1) Subject to this section the Minister may in writing exempt, to the extent specified in the exemption— Exemption from obligations under this Act (1958, s. 28)

(a) a Crown tenant from performing the conditions imposed in respect of the holding by sections two hundred and fifty-one and two hundred and sixty-one of this Act ;

(b) the owner from discharging, in respect of the freehold land specified in the exemption, the liability imposed by section two hundred and sixty-five of this Act ;

- (c) a Local Authority from discharging, in respect of any road, stock route or reserve specified in the exemption, the liability imposed by section two hundred and sixty-four of this Act ; or
- (d) the trustees, other than a Local Authority, from discharging, in respect of the reserve specified in the exemption, the liability imposed by section two hundred and sixty-four of this Act,

in any case where the Minister is satisfied in the case of a holding or freehold land that, having regard to the value thereof, the performance of the condition or discharge of the liability would be uneconomic or, in the case of a Local Authority or trustees other than a Local Authority, that the discharge of the liability would be an undue burden on its or their finances.

(2) Such an exemption may be subject to such terms and conditions as the Minister specifies therein, or separately in writing including, but without limit to the power of the Minister to subject such an exemption to terms and conditions, terms and conditions—

- (a) limiting the exemption to a specified period ;
- (b) limiting the exemption to a specified portion of the subject holding, freehold land, road, stock route or reserve ;
- (c) requiring the Crown tenant, or owner, or Local Authority, or trustees other than a Local Authority concerned to expend a specified sum in performing the condition or discharging the liability the subject of the exemption, and fixing the date before which or the period during which the sum or any amount thereof shall be so expended ;
- (d) making the exemption subject to the Crown tenant, or owner, or Local Authority, or trustees other than a Local Authority concerned performing or discharging in all respects the condition or liability the subject of the exemption save to the extent of the exemption.

(3) The Minister may in writing from time to time extend for the further period, or to the later date specified in the writing, any period of time to which he has limited any exemption under this section, or any period of time or date referred to in paragraph (c) of subsection (2) of this section.

(4) The Minister may in writing revoke any exemption under this section if he is satisfied—

- (a) that the terms and conditions thereof have not been or are not being complied with in every respect ; or
- (b) that the circumstances taken into account by him in respect of the grant of the exemption have since changed substantially.

(5) The revocation by the Minister of an exemption shall not prejudice his power under this section to grant any other such exemption to the holder of the revoked exemption.

267. (1) Notwithstanding anything in this Act or any other Act or law or rule of law, where notice of the use of any poisonous or noxious substance has been given in compliance with the requirements of subsection (2) of this section, no person shall have any right or remedy in damages or otherwise howsoever against the Crown, or the Minister, or any Local Authority, or the trustees, other than a Local Authority, of any reserve, or any Crown tenant, or the owner of any freehold land, or any agent or employee of any of the aforesaid, in respect of death of or injury to any livestock resulting from the use—

Indemnity in respect of stock lost through the use of poison, &c., for destroying prickly-pear (1958, s. 29)

- (a) in the case of the Crown, on any land whether or not Crown land ;
- (b) in the case of a Local Authority, on any road, stock route or reserve ;
- (c) in the case of the trustees, other than the Local Authority, of any reserve, on the reserve ;
- (d) in the case of any Crown tenant of any holding with which any road or stock route is fenced in, on such road or stock route or on any land comprised in such holding

whereon travelling stock using such road or stock route may lawfully be depastured ;
or

- (e) in the case of any owner of freehold land, on any road or stock route fenced in with the land whereof he is the owner,

of that poisonous or noxious substance for any purpose of or connected with the eradication or attempted eradication of prickly-pear or any other noxious plant.

(2) For the purposes of subsection (1) of this section, notice of the use of any poisonous or noxious substance shall, in respect of any land (including any land comprised in a road, stock route or reserve), be given—

- (a) by advertisement published at least twice in a newspaper circulating in the locality in which the land is situated within the period commenced not earlier than twenty-one days and ended not later than seven days before the use of the poison or noxious substance is commenced ;
- (b) by affixing, before the use of the poison or noxious substance is commenced, and thereafter keeping affixed in a conspicuous manner on or in the immediate vicinity of the land such and so many notices as are reasonably sufficient to give public notice of the use thereon of the poison or noxious substance ; and
- (c) by, before the use of the poison or noxious substance is commenced, serving on every resident occupier of land abutting or having a frontage to the land whereon the poison or noxious substance is used notice of the intended use thereof.

Land
deemed to be
included in
holding
(1958, s. 30)

268. For the purposes of this Division V.—

- (a) any road, stock route or reserve adjoining or within the boundaries of and fenced in with a holding or freehold land ;

- (b) the bed and banks of, and the water in, any watercourse within the boundaries of a holding or freehold land or within the boundaries of a road, stock route or reserve which is fenced in with a holding or freehold land ; and
- (c) the bed and banks of, and the water in, up to the centre line of, any watercourse abutting upon or bounding any, or any part of any, holding or freehold land or abutting upon or bounding any, or any part of any, road, stock route or reserve which is fenced in with a holding or freehold land,
- shall be deemed to be comprised in and to form part of the holding or freehold land in question.

Division VI.—Additional Areas

269. (1) Upon the recommendation of the Commission, approved by the Minister, the Governor in Council may, under, subject to and in accordance with the provisions of this Division, issue a lease of Crown land under any class of tenure or any mode of a class of tenure (other than agricultural farm or grazing homestead) prescribed by this Act, as an additional area to the lessee of a subsisting selection or pastoral lease. Additional areas
(1927, s. 10)

(2) In this Division the term “additional area” means a holding the lease whereof has issued pursuant to an offer made by the Minister under this Division.

(3) The needs of new settlement shall take precedence over the offering of additional areas.

(4) A person shall not be eligible to receive an offer of an additional area unless—

(a) he was the successful applicant for the land comprised in the subsisting selection or pastoral lease in relation whereof the offer is made when such land was first open for selection or pastoral lease by the Crown and has since continuously personally resided on and held that land ; or

(b) all of the following apply, namely :—

(i) in the opinion of the Commission and the Minister the selection or pastoral lease held by him, or the aggregate thereof and

- of any other land held by him or in which he has an interest, whilst not being a living area, is not less than fifty per centum of a living area, and such selection or pastoral lease is within a reasonable working distance of the Crown land ;
- (ii) for not less than ten years immediately prior to the offer as hereinafter provided, he has personally resided on his pastoral lease or selection continuously and in a *bona fide* manner ;
 - (iii) he is substantially dependent for his livelihood on the income derived from the area of land held by him ;
 - (iv) he has not disposed of any country land whether held under this Act or in fee-simple during the period of twenty years immediately preceding the date of the offer whereby, in the opinion of the Commission and the Minister, he reduced the aggregate area of land held by him below a living area ;
 - (v) as at the date of the offer, he has fully developed his holding or any land worked in conjunction therewith ;
 - (vi) he is financially capable of developing the offered additional area ; and
 - (vii) he is otherwise qualified under this Act to hold the land concerned under the tenure contained in the offer.

(5) For the purpose of forming, for a purpose of this Division, an opinion whether a selection or pastoral lease, either separately or together with any other land held by the lessee, or in which the lessee has an interest, is less than a living area but not less than fifty per centum of a living area, country land or an interest in country land held under this Act or in fee-simple by the lessee's wife or husband shall be deemed to be held by the lessee.

(6) When Crown land is available, the Commission shall recommend to the Minister whether or not the land should be offered as an additional area and, if it recommends the making of an offer, the lessee to whom

the offer should be made, and the area, tenure, term, rental and other conditions, if any, of the lease which should be offered.

Prior to making any such recommendation the Commission may cause an officer of the Department to inquire and report whether there is or are any lessee or lessees in the locality where the Crown land is situated who is or are eligible, as hereinbefore provided, for an additional area.

(7) If the Crown land available is insufficient to enable offers to be made to all eligible lessees, the Commission shall cause to be determined by lot, as prescribed, the lessee or lessees to whom an offer or offers shall be made.

(8) The Minister may make to any lessee to whom the Commission has recommended the offering of an additional area or who has been so determined by lot, an offer in writing setting out the area, tenure, term, rental and conditions, if any, of the lease the subject of the offer.

(9) No additional area shall be of such area as, when added to any and every area held by the lessee or in which he has an interest, to aggregate in the opinion of the Commission substantially in excess of a living area.

(10) A lessee to whom any offer of an additional area is made, may notify the Minister in writing that he accepts such offer.

Notice in writing of such acceptance shall be given to the Minister within three months, or such extended time not exceeding six months in all as the Minister may in his discretion allow, after the date of the offer.

If the lessee fails to give notice within the prescribed time or within the extended time allowed therefor, the offer of the additional area shall lapse.

Subject to due acceptance of the offer, the Governor in Council shall issue a lease of the additional area which lease shall be issued (and shall be valid and effectual to convey to and vest in the lessee therein named, the land therein described for the estate or interest therein stated) subject to such reservations and

conditions as are authorised or prescribed by this Act with respect to the tenure of the lease and otherwise in accordance with the offer.

Every such lease shall commence on the quarter day next following the acceptance of the Minister's offer and shall be for such term as shall have been fixed by the Minister in his offer.

(11) If there are improvements on an additional area the declared or provisional value thereof shall be notified to the lessee when the offer is made to him.

The lessee shall pay the declared or provisional value of the improvements within one month, or such extended time not exceeding two months in all, as the Minister may allow, after the date when he accepts the offer.

The provisions of Division II. of Part X. shall, with and subject to all necessary adaptations, apply.

(12) No holding in respect of which an additional area has been granted shall be transferred except together with and inclusive of such additional area. No additional area shall be transferred except together with and inclusive of the holding in respect of which such additional area has been granted.

(13) (a) Save as provided by this subsection a holding and the additional area granted in respect thereof shall not be transferred together during the first five years of the term of the lease of the additional area.

(b) A holding and the additional area granted in respect thereof may be transferred together during the first five years of the term of the lease of the additional area in the event of the death, mental sickness or bankruptcy of the lessee or of the mortgagee exercising power of sale, or as prescribed by section two hundred and ninety-two of this Act.

(c) In the case of any lessee who becomes incapacitated by reason of serious illness, accident, infirmity or misfortune the provisions of paragraph (b) of subsection (4) of section two hundred and eighty-six of this Act shall, with and subject to all necessary adaptations, apply.

(d) Where any additional area granted by way of renewal of lease pursuant to the provisions of Part VI. has been held by the lessee under the prior lease and the

subsisting lease therefor for a total period of not less than five years, this subsection applies so as not to prohibit the transfer together during the first five years of the term of the lease of such additional area and the holding concerned.

(14) In subsections (12) and (13) of this section the term "additional area" includes any holding granted to the lessee thereof as an additional area pursuant to the repealed Acts.

(15) Nothing in this Division shall confer upon any lessee a right or claim to be granted any Crown land as an additional area.

(16) (a) Notwithstanding anything contained in this Act, the Governor in Council may, if he deems fit, include any Crown land offered under, pursuant to and in accordance with this Division in the lease of the holding in respect whereof the offer is made, and in such case a separate lease of the Crown land in question as an additional area shall not issue.

(b) Where the Crown land offered is to be included in the lease of the holding in respect whereof the offer is made, the offer shall specify accordingly and shall state the annual rental and conditions, if any, which shall apply to the Crown land in question when it is included in such lease.

In such case, the Crown land offered shall be included in the lease on and from the date of acceptance of the offer.

(c) Where the lease is divided into rental periods, the annual rental stated in the offer shall be the annual rental for the balance of the rental period subsisting when the lessee accepts the offer.

(d) The conditions, if any, stated in the offer shall become and be conditions of the lease in question on and from the date of the acceptance of the offer.

(e) The provisions of subsection (13) of this section apply as if a separate lease of an additional area had been granted in respect of the Crown land included in a lease pursuant to this subsection.

(f) Subject to paragraph (g) of this subsection, the provisions of subsection (11) of this section apply where there are improvements on Crown land included in a lease pursuant to this subsection.

(g) If the lessee fails to make as prescribed payment for the value of improvements, the Minister may direct that the Crown land included in his lease pursuant to this subsection be excluded from such lease and such land shall be excluded accordingly and again become and be Crown land.

Division VII.—Amalgamations, Subdivisions, &c.

Amalgamation of contiguous holdings

Amalgama-
tion of
contiguous
holdings
(1910, s. 167)

270. (1) In the case of two or more contiguous holdings which are held by the same lessee under the same class or mode of a class of tenure, the whole of the land comprised therein may, if the Minister and the lessee agree, be included in one and the same lease, and in that case shall thereafter for all the purposes of this Act be, and be dealt with as one holding.

In such case the subsisting leases of the holdings shall be surrendered and a fresh lease issued comprising the whole of the land. The term of the fresh lease and the rent reserved and the conditions thereof shall be such as are agreed upon between the Minister and the lessee, taking into consideration any adjustments that are necessary to be made upon the amalgamation of the respective surrendered leases.

The term of the fresh lease shall commence on the quarter day next following the date of the surrender and shall not exceed the residue of the term of lease of the holding included in the amalgamation, which, except therefor, would have last expired.

No rental period of the amalgamated lease shall exceed ten years.

(2) No amalgamation of selections shall be permitted in any case where the aggregated area would exceed the maximum area prescribed by section eighty-four of this Act, in respect of the class or mode of a class of tenure concerned.

Subdivision of Holdings, &c.

Subdivision
of holdings,
&c.
(1910, s. 168)

271. (1) The land comprised in any holding or license may be subdivided, with the permission of the Minister, upon such terms and conditions as to rent or otherwise as the Minister thinks fit.

The application shall be accompanied by a plan (which may be a design or sketch plan) clearly illustrating the proposed subdivision.

It shall be in the absolute discretion of the Minister whether he will grant or refuse to grant such permission.

(2) Upon subdivision as permitted by the Minister being effected, the theretofore subsisting lease or license shall be surrendered by the lessee or licensee, and fresh leases or licenses of the subdivisions respectively shall thereupon be issued to him.

(3) The fresh leases shall be for the residue of the theretofore subsisting term, and the rental periods, if any, of the fresh leases shall be fixed by the Minister, taking into consideration any adjustments of rental periods of the surrendered lease that appear to him to be necessary and so that no rental period shall exceed ten years.

(4) The term of every fresh lease shall commence on the quarter day next following the date of the surrender.

(5) The annual rental for each fresh lease or license for the whole term or, if in the case of a fresh lease the Minister has fixed rental periods, for the first rental period shall be fixed by the Minister.

Where the Minister has fixed rental periods, the rent for the second and any subsequent rental period shall be determined by the Court.

(6) Any subdivision of or agreement to subdivide the land comprised in any holding or license without the previous permission in writing of the Minister thereto shall be deemed a breach of a condition of the lease or license.

Subdivision of Perpetual Lease Selections and conversion of tenure of subdivisions thereof

272. (1) In the case of a perpetual lease selection comprising land situated within or adjacent to a city, town or township, an application may be made to the Minister, by or on behalf of the lessee, for permission to subdivide that land and to have the tenure of all or

Subdivision
of perpetual
lease
selections
(1910,
s. 168A)

any of the proposed subdivisions of that land as specified in the application converted to perpetual town lease or perpetual suburban lease.

The application shall be accompanied by a plan (which may be a design or sketch plan) clearly illustrating the proposed subdivisions.

The Minister may, in his absolute discretion, approve of the application in respect of the whole or part only of the land comprised in the perpetual lease selection concerned or he may refuse the application.

(2) If the Minister approves the application, in whole or in part, he shall determine the annual rent of each and every subdivision for the first rental period of ten years of the converted tenure, and may for the purposes of that converted tenure impose in respect of each and every subdivision such other conditions as he could impose if that subdivision were land offered for sale by public auction under Part VII.

(3) The tenure of a subdivision shall not under this section be converted to perpetual town lease if its area exceeds one half of an acre or to perpetual suburban lease if its area exceeds twenty acres.

(4) Where the Minister has approved both of the subdivision of the whole or part of the land comprised in a perpetual lease selection and of the conversion of the tenure of any subdivision of such land to perpetual town lease or perpetual suburban lease, the lessee of that selection may at any time after the date when the Minister so approves, and notwithstanding any provision of this Act, but subject nevertheless to the consent of the Minister, transfer or assign the converted tenure of that subdivision to a person qualified under this Act to acquire and hold under that converted tenure the land comprised in that subdivision.

Upon the lodgment and registration in the Department of a properly executed instrument of such transfer or assignment a lease of the land comprised in the subdivision so transferred or assigned shall be issued to the transferee or assignee.

That lease shall commence on the quarter day next following the date of lodgment in the Department of the instrument of transfer or assignment as aforesaid :

Provided that the lease under the converted tenure for a subdivision may be issued to the lessee holding the selection in question under perpetual lease tenure if, but only if, that lessee would be qualified under this Act to acquire and hold under the converted tenure the land comprised in that subdivision if that subdivision were land offered for sale by public auction under Part VII. In that case the lease shall commence on the quarter day next following the date on which the Minister approved both of the subdivision and of the converted tenure therefor.

(5) As and when the lease under the converted tenure as aforesaid of a subdivision of a perpetual lease selection commences, the rent payable by the lessee of that selection shall be adjusted by deducting therefrom a sum which bears the same proportion to the amount of that rent as the area of that subdivision bears to the area of the selection.

(6) When and so often as the new lease under perpetual lease tenure or a lease under a converted tenure provided for in this section is issued pursuant to this section for a part or subdivision of a selection held under perpetual lease tenure, the Registrar of Dealings shall enter in the appropriate register kept in the Department and shall likewise endorse upon the lease of that selection a noting recording the issue of the aforesaid new lease or of the lease under the aforesaid converted tenure, and particulars of the part or subdivision in respect of which it has issued.

Upon such entry and endorsement being made the lease of that selection shall be deemed to be thereby cancelled, on and from the quarter day on which the aforesaid new lease or the lease under the aforesaid converted tenure commences, in respect of so much of the selection as comprises the part or subdivision of the selection specified therein.

(7) For each rental period of ten years after the first such period of the lease under the converted tenure the rent shall be determined by the Court at a sum equal to three pounds per centum of the fair unimproved capital value of the land as if it were held in fee-simple at the date of the commencement of the rental period in question.

(8) The provisions of Part VII. shall, so far as they can be applied, apply to and with respect to a lease under perpetual town lease or perpetual suburban lease tenure issued under this section.

Division VIII.—Subleases, Mortgages, Transfers and other Dealings
Definition

Meaning of
“prescribed
period”

273. In this Division “prescribed period” means—

- (a) the first five years of the term, in the case of a selection subsisting at the commencement of this Act which was selected subject to the condition of personal residence ;
- (b) the first seven years of the term, in the case of a selection selected under this Act subject to the condition of personal residence ;
- (c) the first seven years of the term, in the case of a preferential pastoral holding applied for and held subject to the condition of personal residence under this Act or the repealed Acts.

Subleases

Subletting
(1910,
ss. 43D,
94, 121)

274. (1) It shall not be lawful—

- (a) for a lessee of a preferential pastoral holding or selection which is subject to the condition of personal residence to sublet the whole or any part of his holding at any time during the prescribed period ; or
- (b) for a lessee of a selection which is subject to the condition of fencing or other improvement in lieu prescribed by sections one hundred and five or one hundred and six of this Act to sublet the whole or any part of his holding, unless and until such condition has been performed ; or
- (c) for a lessee of a perpetual town lease, perpetual suburban lease or perpetual country lease, or any demise pursuant to section one hundred and seventy-six of this Act or any lease deemed to be for a term of ten years pursuant to section one hundred and ninety-four of this Act, to sublet the whole or any part of his holding until any developmental or improvement conditions of the lease have been performed ; or

(d) for a lessee of a development lease to sublet the whole or any part of his lease at any time during the term thereof.

(2) (a) Save as prescribed by subsection (1) of this section, a lessee of a holding may, subject to paragraphs (b) and (c) of this subsection, with the prior approval in writing of the Minister, sublet the whole or any part of his holding.

(b) The sublessee shall be a person who is qualified, according to the class or mode of a class of tenure of the holding concerned, to become the lessee of the holding or of the part thereof comprised in the sublease.

(c) Application for the Minister's approval to sublease shall be made by or on behalf of the lessee not later than three months after the date of the agreement to enter into a sublease and shall be accompanied by a draft of the proposed sublease.

(d) The Minister in his discretion may approve the proposed sublease unconditionally or subject to such conditions and modifications as he deems fit or he may refuse to approve thereof.

(e) As soon as practicable after the receipt of the Minister's approval a sublease agreement in accordance with such approval shall be lodged in triplicate in the Department for registration.

(3) Upon registration, the original of the instrument of the sublease shall be retained in the Department.

(4) The lessee of any holding who sublets the whole or any part of his holding contrary in any respect to subsections (1) or (2), of this section, shall be deemed to commit thereby a breach of the conditions of his lease.

(5) The lessee of a holding who has sublet the whole or any part thereof shall nevertheless continue to be liable for the performance, in respect of the whole holding of all the conditions to which the lease of the holding is subject.

Sub-subleases

(6) (a) The sublessee of the whole or part of any perpetual town lease, perpetual suburban lease, perpetual country lease or special lease, with the prior approval in writing of the Minister and the approval of the lessee Sub-subleases

of such holding, may, subject to this subsection, sub-sublet the whole or part of the land comprised in his sublease.

(b) The sub-sublessee shall be a person who is himself qualified to become the lessee of the holding or of the part thereof included in the sub-sublease.

(c) Application for the Minister's approval to sub-sublease shall be made by or on behalf of the sublessee not later than three months after the date of the agreement to enter into a sub-sublease and shall be accompanied by a draft of the proposed sub-sublease and the written approval thereto of the lessee.

(d) The Minister in his discretion may approve the proposed sub-sublease unconditionally or subject to such conditions and modifications as he deems fit or he may refuse to approve thereof.

(e) As soon as practicable after receipt of the Minister's approval a sub-sublease agreement in accordance with such approval shall be lodged in quadruplicate in the Department for registration.

(f) Upon registration the original of the instrument of the sub-sublease shall be retained in the Department.

Mortgages

Mortgages
(1910, s. 156)

275. When any holding is intended to be charged or made security for the payment of any money, the lessee may at any time after he becomes entitled to the issue of the lease, execute a memorandum of mortgage in the form prescribed or to the like effect.

Every memorandum of mortgage shall be in duplicate and shall be registered in the Department, the original of the memorandum of such mortgage being retained in the Department.

A mortgage may be transferred or discharged. Every transfer or discharge shall be registered in the Department.

In the case of several mortgages of the same holding, or several transfers of the same mortgage, the mortgages or transfers shall take effect respectively according to priority of registration and not according to the date of execution of the instrument.

276. A memorandum of mortgage shall be construed and have effect only as a security for the sum of money intended to be secured by it, and shall not operate or take effect as a transfer or assignment of the lease.

Effect of mortgage (1910, s. 158)

277. For the purposes of this Division, any holding acquired as an additional area under the repealed Acts or this Act shall be deemed to be a part of the holding in respect of which it was granted as an additional area, and no memorandum of mortgage in respect of it shall have any effect except as collateral security against such holding.

Mortgage of land granted as additional area (1910, s. 158A)

278. (1) In the case of a preferential pastoral holding or selection which is subject to the condition of personal residence if, before the expiration of the prescribed period, the lessee desires to mortgage the holding otherwise than to the Agricultural Bank or some other bank, he shall first make application to the Minister for permission to mortgage the holding.

Mortgages of holdings whilst condition of personal residence applies (1910, ss. 157, 157A)

(2) Every such application shall contain full and correct particulars, verified by declaration of the lessee, of—

- (a) the name and address of the person by whom the advance is to be made ;
- (b) the amount to be advanced ;
- (c) the rate of interest to be charged ;
- (d) the purpose to which the lessee proposes to put the moneys advanced ;
- (e) other terms and conditions of the proposed memorandum of mortgage.

(3) The Minister may, in his absolute discretion, upon being satisfied that the application is made *bona fide* for the purpose of stocking or improving the holding, or for other purposes approved by the Minister, permit in writing the lessee to mortgage the holding in terms of the application.

(4) (a) The Governor in Council, by Order in Council, may in his discretion, declare any corporation to be a corporation to which a preferential pastoral holding or selection may be mortgaged during the prescribed period without first obtaining the Minister's permission as prescribed by this section.

(b) Any such Order in Council with respect to any such corporation may be revoked by the Governor in Council at any time, as he deems fit, but without prejudice to the validity of any memorandum of mortgage which was registered prior to such revocation.

(5) In the case of a preferential pastoral holding or selection which is subject to the condition of personal residence, no memorandum of mortgage executed by a lessee during the prescribed period in favour of a mortgagee, other than the Agricultural Bank or some other bank, or a corporation declared by an Order in Council under subsection (4) of this section, shall have any effect as a security against the holding unless and until the consent of the Minister thereto is evidenced by endorsement thereon under his hand.

Rights of
mortgagee
(1910, s. 159)

279. (1) If default is made in the payment of the money secured by memorandum of mortgage, or upon the happening of any event which, according to the terms of the memorandum, entitles the mortgagee so to do, the mortgagee may—

- (a) enter upon and take and retain possession of the holding, giving notice of such entry to the Minister within thirty days thereafter ;
- (b) sell the holding by public auction or private contract after not less than thirty days' notice of the intended sale published in the *Gazette* and a newspaper circulating in the locality : Provided that in every case, unless expressly agreed in the memorandum of mortgage, the holding shall in the first instance be submitted for sale by public auction ; but no person shall become the purchaser of a holding under this section unless he is qualified under this Act to be the lessee of the holding.

The mortgagee, while in possession of the holding, shall be bound to perform all the conditions which by this Act the lessee would have been bound to perform if he had continued in possession of the holding save that, where the holding is subject to the condition of personal residence, such condition may be performed by the continuous and *bona fide* residence on the land during the prescribed period of a registered bailiff who is qualified under this Act to be the lessee of the holding.

(2) If a mortgagee enters upon and takes possession of a holding under this section he may retain possession—

(a) for a period not exceeding one year where, in the case of a preferential pastoral holding or selection which is subject to the condition of personal residence, the mortgagee has entered upon and taken possession before the expiration of the prescribed period ;

(b) for a period not exceeding two years in any other case.

(3) Before the expiration of the period for which a mortgagee is authorised by this section to retain possession of a holding, he shall cause the holding to be sold unless, upon application by him, the Court is satisfied that good reasons exist for extending such period, and extends the same accordingly.

If before the expiration of such period or extended period, as the case may be, the mortgagee has failed to cause the holding to be sold, the Court may order the Commissioner forthwith to cause it to be sold, and to hold the proceeds of such sale, after deducting expenses, for the benefit of the persons entitled to the same.

(4) Upon the sale of a holding under the power of sale hereby conferred upon a mortgagee, he or, upon a sale by the Commissioner pursuant to an order of the Court under this section, the Commissioner may (subject to the purchaser being qualified under this Act to be the lessee) transfer the lease to the purchaser. ^{Transfer on sale}

280. The lessee of any holding who mortgages his holding contrary in any respect to the provisions of this Division shall be deemed to have thereby committed a breach of the conditions of his lease. ^{When mortgage deemed breach of condition}

281. (1) When any sublease or sub-sublease of a holding registered under this Act is intended to be charged or made security for the payment of any sum of money, the sublessee or sub-sublessee, as the case may be, shall execute a memorandum of mortgage in or to the effect of the form prescribed for mortgages of holdings, with necessary adaptations having regard to the nature of the interest being charged or made security. ^{Mortgage of sublease and sub-sublease (1910, s. 160a)}

(2) The provisions of section two hundred and seventy-five (other than the first paragraph), section two hundred and seventy-six, and section two hundred and seventy-nine of this Act shall, with and subject to all necessary adaptations, apply with respect to any mortgage of a sublease or of a sub-sublease.

Easements

Easements
(1910,
s. 197A)

282. (1) Where in the opinion of the Minister it is desirable to permit the registration of an easement or right of way affecting any land comprised in a holding, whether as between the Crown and the lessee or as between the lessee and any other person, or as amongst the Crown and the lessee and any other person, the Minister may approve that such easement or right of way be registered in the appropriate register kept in the Department.

Upon such registration, the holding affected by the easement or right of way shall be subject to the easement or right of way as an encumbrance running with the land.

Except in the case of an easement which has been acquired by the Crown by resumption from a holding, no easement or right of way shall be registered unless previously agreed upon between or amongst the parties.

Every easement or right of way so registered shall be noted on the instrument of the lease, if any, of the land for the purpose of being annexed to or used and enjoyed together with which it has been created.

Upon registration the original of the instrument of any easement or right of way shall be retained in the Department.

(2) An easement or right of way—

- (a) affecting any land comprised in a reserve for the purpose of being annexed to or used and enjoyed together with any holding ; or
- (b) affecting any land comprised in a holding for the purpose of being annexed to or used and enjoyed together with any reserve,

may be created by agreement between the Minister and the lessee of the holding concerned.

Every such easement or right of way so created shall be registered on the instrument of lease of the holding concerned as well as being noted in the records of the Department relative to the reserve in question.

Upon such registration, the holding or the reserve as the case may be, affected by the easement or right of way shall be subject to the easement or right of way as an encumbrance running with the land.

(3) Whenever any easement affecting land comprised in a holding is created for the purpose of being used and enjoyed by the Crown in right of this State, any Crown corporation or instrumentality of this State, or corporation or instrumentality representing the Crown in right of this State, or any Local Authority, such easement may be registered in the Department notwithstanding that it is not being annexed to or used and enjoyed together with any other land whether under the provisions of this Act or not.

(4) When the Crown is the grantee of an easement the Governor in Council may authorise the Minister to execute on behalf of the Crown any instrument or deed by which such easement is created and execution as aforesaid shall be good and sufficient execution on behalf of the Crown.

Execution
on behalf of
Crown of
easements
(reg. 7-5-53)]

When the Crown is the grantor of an easement the Governor in Council may authorise the Minister to create such easement by an instrument or deed approved by the Governor in Council and to execute such instrument or deed on behalf of the Crown.

283. (1) Whenever any easement—

- (a) affecting any land under the provisions of “*The Real Property Acts, 1861 to 1960*,” is created for the purpose of being annexed to or used and enjoyed together with any land comprised in a reserve or holding under the provisions of this Act ;
- (b) affecting any land comprised in a reserve or holding under the provisions of this Act is created for the purpose of being annexed to or used and enjoyed together with any land under the provisions of “*The Real Property Acts, 1861 to 1960*,”

Easements
affecting
both
freehold and
leasehold
lands or
reserves
(1910,
s. 197B)

the Registrar of Titles shall, when he shall have notice thereof, note such easement on the deed of grant of the land under the provisions of "*The Real Property Acts, 1861 to 1960*," affected thereby in such manner as to preserve its priority or enter a memorial of the instrument creating such easement upon the deed of grant of the land under such lastmentioned Acts for the purpose of being annexed to or used and enjoyed together with which such easement has been created.

(2) An easement mentioned in subsection (1) of this section shall not be registered in the Department until the Registrar of Titles has noted such easement or, as the case requires, entered a memorial of the instrument creating same as prescribed by the said subsection (1).

(3) Every instrument creating any easement mentioned in subsection (1) of this section shall be lodged in duplicate in the Real Property Office and the Registrar of Titles shall forward one copy of such instrument to the Department as soon as may be after he has noted the easement or, as the case requires, entered a memorial of such instrument upon the deed of grant of the land concerned.

The registration fee prescribed by the regulations under this Act shall be paid to the Registrar of Titles when the instrument of easement is lodged in duplicate in his office in addition to the registration fee payable to him and the firstmentioned fee shall be remitted to the Department with the copy of the instrument.

Continuance of encumbrances upon change of tenure

When mortgage, &c., not affected by surrender of lease (1910, s. 160A)

284. (1) The surrender to the Crown of a lease of a holding for the purpose of enabling—

- (a) the tenure thereof to be converted to some other tenure ;
- (b) a new lease of the whole or part of the land comprised therein to be granted pursuant to the provisions of Part VI.; or
- (c) a fresh lease of the land comprised therein and in any holding or holdings contiguous thereto to be granted pursuant to the provisions of Division VII. of this Part X.,

shall not affect or prejudice in any way any mortgage, charge, sublease, easement, right of way, agreement or order to which the holding is subject when surrendered,

save that any right or power, whether absolute or contingent, to sell or purchase the holding conferred by any such mortgage or charge shall not authorise a sale or purchase of the holding for the tenure or, where appropriate, area thereof subsisting immediately prior to the surrender.

(2) Every new lease or fresh lease issued or granted to the lessee of the surrendered holding to effect the purpose of the surrender shall be subject to every such mortgage, charge, sublease, easement, right of way, agreement or order at all times during the term thereof during which the mortgage, charge, sublease, easement, right of way, agreement or order continues to subsist.

(3) The Registrar of Dealings shall, before the issue of the instrument of the new lease or fresh lease, endorse on the instrument and in the appropriate register therefor (in such manner as to preserve the priority of the respective mortgages or charges in case there shall be more than one) a noting of every mortgage, charge, sublease, easement, right of way, agreement or order to which the lease is subject pursuant to this section, and thereafter the first mortgagee or encumbrancee shall be entitled to possession from the Department of such instrument.

(4) Where a holding surrendered for a purpose specified in this section is subject to a sublease which is in turn subject to a mortgage, charge or sub-sublease the surrender shall not affect or prejudice in any way such mortgage, charge or sub-sublease (or any mortgage of such sub-sublease) and the Registrar of Dealings shall make with respect thereto the like endorsements as prescribed by subsection (3) of this section to be made by him in respect of the lease.

285. (1) Where, at the time of the grant in fee-simple of the land comprised in a holding, the holding is subject to any mortgage or other charge registered in the Department, the Registrar of Dealings shall transmit to the Registrar of Titles a copy of every subsisting entry in the register kept in the Department relating to such mortgage or charge, together with the original memorandum of mortgage or charge. Before the issue of the deed of grant, the Registrar of Titles shall endorse thereon a note of the entries transmitted

Perfecting security over holdings when freehold acquired subsequent to mortgage (1910, s. 160)

to him in such manner as to preserve the priority of the respective mortgages or charges, in case there shall be more than one ; and thereupon every such mortgage or charge shall have operation and effect as a mortgage or charge under "*The Real Property Acts, 1861 to 1960,*" save to the extent to which the provisions of such Acts relating to mortgages and charges are modified by the express provisions of such mortgages or charges.

(2) The holder of the first mortgage shall be entitled to possession from the Registrar of Titles of the deed of grant.

Sublease

(3) Where, at the time of the grant in fee-simple of the land comprised in a holding, a sublease in respect thereof is registered in the Department, the Registrar of Dealings shall transmit to the Registrar of Titles a copy of every subsisting entry in the register kept in the said Department relating to such sublease, together with the original of the instrument of the sublease and the original of any memorandum of mortgage or charge registered in the Department in respect thereof. Before the issue of the deed of grant the Registrar of Titles shall endorse thereon a note of every such entry transmitted to him ; and thereupon the sublease shall, subject to the express provisions thereof, have operation and effect as a lease registered under "*The Real Property Acts, 1861 to 1960.*"

The provisions of this subsection shall, with and subject to all necessary adaptations, apply to a sub-sublease (and any mortgage or charge thereon) registered in respect of a perpetual town lease, a perpetual suburban lease, a perpetual country lease, or a special lease and upon the Registrar of Titles noting particulars thereof on the deed of grant, the sub-sublease shall, subject to the express provisions thereof, have operation and effect as a sublease under "*The Real Property Acts, 1861 to 1960.*"

Easement

(4) Where, at the time of the grant in fee-simple of the land comprised in a holding, the holding is affected by an easement, or an easement is annexed to or used and enjoyed together with the holding, the Registrar of Dealings shall transmit to the Registrar of Titles a copy of every subsisting entry in the register kept in the Department relating to such easement, together with the original of the instrument of easement or a certified

copy thereof. Before the issue of the deed of grant the Registrar of Titles shall, according as the case requires, note thereon such easement in such manner as to preserve its priority or enter thereon a memorial of the instrument creating such easement.

(5) The provisions of subsection (4) of this section shall, with and subject to all necessary adaptations apply to an agreement registered in respect of a holding in pursuance of the provisions of section seventeen of "*The Stock Routes and Rural Lands Protection Acts, 1944 to 1962,*" and to an order registered in respect of a holding in pursuance of the provisions of section nine of "*The Barrier Fences Acts, 1954 to 1962.*"

Transfers

286. (1) Subject to this Act, leases and licenses Transfer of leases and licenses (1910, s. 166) under this Act may, upon application by or on behalf of the lessee or licensee, be transferred to qualified persons with the permission in writing of the Minister. It shall be in the absolute discretion of the Minister whether he will grant or refuse to grant such permission, save that the Minister shall not permit any transfer which is prohibited by this Act.

Failure to produce any transfer of or agreement to transfer any lease or license, or any interest therein, to the Minister for his consideration within three months from the date of the execution thereof shall be deemed a breach by the lessee or licensee of a condition of his lease or license.

Every transfer of a lease or license shall be registered in the appropriate register kept in the Department :

Provided that the Registrar of Dealings shall not register any such transfer until it has been permitted by the Minister.

(2) Subject to subsections (3) and (4) of this section, the following holdings or any interest in any such holding shall not be capable of transfer or assignment, whether by operation of law or otherwise, that is to say :—

- (a) any preferential pastoral holding or selection subject to the condition of personal residence at any time during the prescribed period ;

-
- (b) any selection in respect of which the condition of fencing or other improvement in lieu as prescribed by sections one hundred and five or one hundred and six of this Act has not been performed ;
- (c) any perpetual town lease, perpetual suburban lease, or perpetual country lease, or any demise pursuant to section one hundred and seventy-six of this Act, or any lease deemed to be a lease for a term of ten years pursuant to section one hundred and ninety-four of this Act unless and until any developmental or improvement conditions of the lease have been performed.
- (3) The provisions of subsection (2) of this section do not apply in the case of—
- (a) the death, mental sickness or bankruptcy of the lessee ;
- (b) the Public Curator when authorised to act under the provisions of Part IIIA. or Part IV. of “*The Public Curator Acts, 1915 to 1957*” ;
- (c) a sale by a mortgagee exercising power of sale under this Act ; or
- (d) a sale pursuant to section two hundred and ninety-two of this Act.
- (4) (a) Subsection (2) of this section applies subject to this subsection in the case of any lessee who becomes incapacitated by reason of serious illness, accident, infirmity or misfortune from performing any of the conditions mentioned in that subsection.
- (b) Such lessee may apply to the Minister for permission to transfer his interest in his holding and the Minister may, if he thinks fit, refer the matter to the Court. The Court shall inquire into such application and may certify to the Minister that good grounds exist for permitting the transfer whereupon the Minister may in writing permit the transfer to a qualified person.
- (c) Where during the prescribed period a transfer is permitted pursuant to paragraph (b) of this subsection with respect to a preferential pastoral holding or selection subject to the condition of personal residence the transferee shall be bound to perform such condition during the residue of the prescribed period.

287. Notwithstanding the limitations prescribed by this Act with respect to the maximum of the area or the aggregated areas or rent or aggregated rents, or both, of lands that may be held by any one and the same person under the tenure of agricultural selection, settlement farm lease, grazing selection, brigalow lease or preferential pastoral holding the Minister may—

Permission to transfer notwithstanding area limitations, &c.

- (a) upon application by the lessee of such a holding or holdings comprising an area which is not a living area, permit such lessee to acquire by transfer an additional holding or holdings for the purpose of constituting a living area for the lessee concerned ;
- (b) permit any person who does not hold any such holding to acquire by transfer two or more holdings under the same class or mode of a class of tenure to be worked in conjunction provided the total area of the holdings sought to be acquired is not substantially in excess of a living area :

Provided that the prescribed limitations with respect to the maximum of the area or aggregated areas or rent or aggregated rents, or both, shall not be exceeded unless the Commission first certifies to the Minister that the areas of the holding or holdings to be acquired pursuant to the application and of all other lands held by the applicant, whether in fee-simple or for any lesser estate, proposed to be held and worked in conjunction do not, in the opinion of the Commission, substantially exceed a living area.

288. (1) A sublease shall not be transferred without the prior permission in writing of the Minister and the consent of the lessee.

Transfer of sublease

A transferee of a sublease shall be a person who is qualified under this Act to hold the sublease of the holding in question.

(2) The Minister may refuse to permit any transfer of or agreement to transfer any sublease of a holding or any interest in any such sublease which is not produced to him within three months from the date of execution thereof.

(3) Every transfer of a sublease shall be registered in the appropriate register kept in the Department :

Provided that the Registrar of Dealings shall not register any such transfer until it has been permitted in writing by the Minister.

Transfer of
sub-sublease

(4) The provisions of this section shall with and subject to all necessary adaptations apply to the transfer of a sub-sublease.

Marriages, records of death and transmissions

Registration
of marriages
and deaths
and trans-
missions by
death (1910,
s. 165)

289. The marriage of a female lessee, licensee or purchaser under Part VII., the death of a lessee, licensee or purchaser under Part VII. holding as a joint tenant, and the transmission of the interest in any land held or being purchased under this Act of any deceased lessee, licensee or purchaser under Part VII. shall be recorded in the appropriate register kept in the Department.

Transmis-
sion of land
in certain
cases with-
out probate
or adminis-
tration
(1910, s. 169)

290. In the case of the death of a lessee, licensee or purchaser under Part VII., the Minister may, if satisfied—

(a)(i) that a will has been left by him, and that probate of such will or administration with such will annexed has not been granted within six months after his death ;
or

(ii) that a will has not been left by him, and that administration of his estate has not been granted within such time ; and

(b) that the gross value of his estate does not exceed six thousand pounds,

cause transmission by death to be entered in the appropriate register kept in the Department as if probate or letters of administration with the will annexed or, if the deceased died without leaving a will, letters of administration had been duly granted.

Thereupon the person or persons to whom the estate or interest held under this Act in the land in question has been transmitted shall have all such rights, powers and liabilities in respect of such land as if probate,

or administration with the will annexed, or administration of the estate of the deceased person had been granted to him or them.

Bankruptcy of Lessee

291. (1) Notwithstanding any other provision of this Act, the property under and within the meaning of the *Bankruptcy Act* 1924–1960 of the Commonwealth (or any Act amending or substituted for that Act) in any holding of a lessee or in any land of a purchaser under Part VII. shall, upon sequestration thereunder or upon any composition, scheme of arrangement or assignment under Part XI. thereof or any deed of arrangement under Part XII. thereof vest in the official receiver or trustee as the owner upon his registration as such in the Department.

Regis-
tration of
trans-
mission upon
bankruptcy
(1910,
s. 169A)

Upon application by the person who is the official receiver or trustee under such Act of the property of any lessee in a holding or of any purchaser under Part VII. in land, the Registrar of Dealings shall register him as such.

(2) The official receiver or trustee under the *Bankruptcy Act* 1924–1960 of the Commonwealth (or any Act amending or substituted for that Act) may, with the written permission of the Minister, transfer the property under and within the meaning of that Act in any holding or land vested in him as owner pursuant to this section to any person who is qualified under this Act to hold such holding or land or to purchase such land but to no other person.

In such case the transferee shall, with respect to the performance of all the conditions of the lease or purchase, including any conditions for the development or improvement of the land comprised in the holding or purchase, be bound and liable as if he were the original lessee or purchaser.

(3) For the purposes of this section “holding” includes an occupation license or a road license and “lessee” includes a holder of such a license.

Execution against holdings, &c.

Execution
against
holdings,
&c.

292. (1) Subject to this section the interest of any lessee, licensee or purchaser under Part VII. in any holding or land shall be liable to seizure and sale under any execution issued from the Supreme Court, or any District Court, magistrate's court, or other court of competent jurisdiction.

The officer appointed to make the seizure and sale may, with the written permission of the Minister, transfer the lease, license or interest of the purchaser to any person who is qualified under this Act to hold the same, but to no other person.

The transferee shall, with respect to the performance of all the conditions of the lease, license or purchase, including any conditions for the development or improvement of the land comprised in the lease, license or purchase, be bound and liable as if he were the original lessee, licensee or purchaser.

Contractors'
and
Workmen's
Lien Acts

(2) "*The Contractors' and Workmen's Lien Acts, 1906 to 1921,*" apply to land held from the Crown under this Act and, in relation to any such land, the holder thereof from the Crown shall be deemed the owner for the purpose of the application of such Acts as prescribed by this subsection.

Registration of Powers of Attorney

Power of
attorney
(1925,
reg. 15)

293. (1) Any lessee of a holding, holder of an occupation license or road license, person registered as having any interest in a holding, occupation license or road license or purchaser under Part VII., may by a power of attorney authorise and appoint any person to act for him or on his behalf in respect of the transfer of, or otherwise lawfully dealing with, his interest in the land concerned in accordance with the provisions of this Act.

(2) Upon an original or an attested copy of such power of attorney being lodged in the office in Brisbane of the Department, the Registrar of Dealings shall cause a noting of the same to be entered in the register book kept for that purpose, and from and after the date of such entry all acts lawfully done by the person so appointed under authority of and within the limits

prescribed in such power shall have the same force and effect and be equally binding on the lessee, licensee, purchaser or other person who granted the power as if such acts had been done by him.

(3) Every such original or attested copy bearing endorsement that the noting of the same has been so entered, signed by the Registrar of Dealings, shall be received in evidence as sufficient proof that the person to whom power of attorney has been thereby granted is duly authorised to make all contracts, to sign all instruments, and to do all other lawful acts in accordance with the powers therein limited and appointed.

(4) A register of powers of attorney shall be kept in the office in Brisbane of the Department, and whenever a power of attorney or attested copy thereof is lodged, the Registrar of Dealings shall cause to be entered a noting thereof in such register.

Such entry shall be sufficient registration for the purposes of this Act.

(5) It shall, unless the contrary is proved, be presumed that, at the time of the execution of any instrument executed under any power of attorney registered in the Department as prescribed by this section, and tendered for registration under this Act, such power was unrevoked :

Provided that the Registrar of Dealings may require a declaration of non-revocation of the power of attorney to be tendered with any instrument executed thereunder.

Division IX.—Partnership Agreements

294. (1) Lessees of selections, preferential pastoral holdings, perpetual country leases, and brigalow leases (in this Division referred to as "holdings") may, with the prior approval in writing of the Minister, enter into partnership agreements with one another for the working of their holdings in conjunction. Partnerships (1910, s. 130A (6))

Any proposed partnership agreement shall be forwarded to the Department for investigation or inquiry as the Minister may deem fit.

(2) If the Minister is satisfied—

(a) that the proposed agreement will be for the economical and beneficial working in conjunction of the holdings the subject thereof ;

- (b) that provision for allocation of profits among the partners is reasonably proportionate to the productive capacities in average seasons of their holdings (or their interests therein) respectively to be worked in conjunction ; and
- (c) that the proposed agreement is not contrary to the public interests,

he may, in his absolute discretion, approve the proposed agreement for such period and subject to such terms, conditions, provisions and stipulations as he thinks fit.

(3) A partnership agreement between lessees of holdings shall be invalid and of no effect in law unless it is registered in the Department. A partnership agreement shall not be registered—

- (a) unless it complies in all respects with the requirements imposed by the Minister in respect of his approval ;
- (b) unless each of the parties thereto is registered as the lessee of or has a registered interest in at least one of the holdings the subject of the agreement ;
- (c) if the commencing date of the partnership established by the agreement is antecedent to the date of the Minister's approval :

Provided that the Minister, in his discretion, may permit the registration of a partnership agreement with a commencing date not more than three months antecedent to his approval if he is satisfied that the partnership established by the agreement was effective as and from such earlier date.

(4) (a) The partnership agreement shall not confer upon or create in favour of any party thereto, whether as a partner or otherwise, any interest in any holding the subject of the agreement and, to the extent to which the agreement or any provision thereof may be construed to do so, it shall be invalid and of no effect in law.

(b) In respect of any holding, or any part of or interest in any holding the subject of a partnership agreement, it shall not be lawful for any party to such agreement to in any way constitute himself an agent, trustee or servant of or for the other parties thereto or any of them, or of or for any other person whomsoever.

(5) If any holdings are worked and conducted under or pursuant to any partnership agreement not registered under this Act, or if the provisions of subsection (4) of this section are contravened in respect of any of the holdings the subject of a partnership agreement registered under this Act, every such holding shall be liable to be forfeited for that it is held in fraud upon this Act and the provisions of Division X. of Part X. shall apply accordingly.

(6) Subject to the Minister's permission in writing, land held in fee-simple or under any tenure or class of tenure under this Act not specified in subsection (1) of this section may be included with any holding in a partnership agreement under this Division upon such terms and conditions as the Minister deems fit.

(7) For the purposes of this section a partnership agreement shall be registered under this Act when particulars thereof have been entered in a register of partnership agreements which shall be kept in the office in Brisbane of the Department.

Division X.—Forfeiture, &c.

295. Any lease under this Act shall be liable to be forfeited upon—

- (a) breach of any condition to which it is or is deemed to be subject ; or
- (b) any mortgage, transfer or assignment, sublease, or agreement (other than a partnership agreement) of or in respect of it which is contrary in any respect to this Act or which is deemed a breach of a condition of the lease in question.

296. (1) The right or title of any person to any holding or interest in any holding acquired or held by him in evasion of or by fraud upon this Act shall be liable to be forfeited.

(2) Any person who, save as prescribed, acquires or holds as a trustee, agent or servant of or for any other person—

- (a) any preferential pastoral holding or selection ;
or

(b) any perpetual town lease, perpetual suburban lease, or perpetual country lease, or any interest in any such holding shall be deemed to have acquired or to hold the holding or his interest therein by fraud upon this Act, and shall be liable in respect of such holding or interest to the forfeitures prescribed.

(3) Every person who has—

(a) acquired ; or

(b) agreed to acquire (whether the agreement is in writing or oral, and whether it is express or implied),

any holding or any interest in any holding, shall, unless within three months from the date of such acquisition or agreement,—

(i) a transfer or agreement to transfer to him the holding or interest in question has been produced to the Minister for his consideration ; or

(ii) he has given to the Minister notice in writing that he has acquired or agreed to acquire the holding or interest in question,

be deemed to have acquired the holding or the interest in a holding the subject of the acquisition or agreement by fraud upon this Act.

The provisions of this subsection, or the giving of any notice prescribed by this subsection, shall not affect any liability to forfeiture incurred or imposed, or liable to be incurred or imposed under, or by any other provision of this Act, in respect of any transaction referred to in this subsection.

(4) If any person, whether by application or by transfer or other means whatsoever (other than by devolution of law or under a testamentary instrument), acquires or attempts to acquire or seeks to establish (whether in the Department or by any proceedings in any court whatsoever and whether against the Crown or any other party) title as lessee of a holding or holdings or any other interest in any holding or holdings, and the aggregate of the area or areas of such holding or holdings or interest therein ascertained in acreage and of any other holding or holdings of which

such person is the lessee and of any interest held by such person in any other holding or holdings ascertained in acreage exceeds the maximum area of land which by this Act is permitted to be applied for or held by one and the same person under the tenure in question, such person shall be deemed to have acquired the holding or interest in a holding in question by fraud upon this Act :

Provided that the Minister in his discretion may, in writing under his hand, waive the whole or any part of any forfeiture to which any person has become liable under the provisions of this subsection if the Minister is satisfied that, before the acquisition or attempted acquisition, or the doing of the act or thing which made him liable to such forfeiture, such person made full disclosure to the Minister of all the interests then held by such person in any holding or holdings.

For the purposes of ascertaining under this subsection the acreage of any interest in any holding, such acreage shall bear to the total acreage of the holding the same proportion as the interest of the person concerned bears to the total interests in that holding.

297. (1) If at any time the Commissioner has reason to believe that the lease of any holding is liable to be forfeited for any cause other than non-payment of rent, he shall cause to be served upon the lessee either personally, or by post, or by delivering or leaving at the holding, a notice in writing specifying the alleged cause of the forfeiture, and calling upon the lessee to appear upon the hearing of the matter at the sitting of the Commissioner's Court held next after the expiration of thirty days from the service of the notice.

Forfeiture
proceedings
(1910, s. 133)

The Commissioner shall proceed to hear and determine the matter at the said sitting of his Court or at some adjournment thereof, and shall pronounce his decision in open court.

(2) If upon the final decision of the matter any such liability to forfeiture is established the Minister may in his discretion—

(a) recommend to the Governor in Council that the lease be forfeited ; or

- (b) waive the liability to forfeiture subject to such terms and conditions as he thinks fit to impose upon the lessee.

The Governor in Council may upon the recommendation of the Minister as aforesaid declare the lease forfeited, and thereupon and thereby the lease shall be determined and the lessee shall be irrevocably divested of his right, title and interest thereunder in and to the land comprised therein.

Forfeitures to be notified in the *Gazette* (1910, s. 134)

298. (1) Every forfeiture of any lease under this Act for any cause shall be notified by the Minister in the *Gazette*, and shall take effect from the date of the notification.

Registered mortgagee to be notified of intended forfeiture

(2) When any holding liable to forfeiture under this Act is subject to a registered memorandum of mortgage the holder of such mortgage shall be notified of the intended forfeiture before the publication of the notification in the *Gazette*.

Consequence of forfeiture or other premature determination of lease, &c. (1910, s. 135)

299. (1) If any lease is determined by forfeiture or other cause before the expiration of the period or term for which it was granted, then, unless in any particular case other provision is made in that behalf by this Act, the land shall revert to Her Majesty and become Crown land, and may be dealt with under this Act accordingly.

(2) Forthwith upon the determination of the lease the person in occupation of the land concerned shall give peaceful possession thereof and of all improvements thereon to the Commissioner or a person thereunto named by the Commissioner, otherwise such person shall be a trespasser upon Crown land and the provisions of this Act relating to such trespassers shall apply accordingly.

Improvements included in forfeiture (1910, s. 130 (3))

300. Upon the forfeiture of any lease by reason of the lessee having acquired or holding the same or being, pursuant to any of the provisions of this Act, deemed to have acquired or to be holding the same in evasion of or by fraud upon this Act the improvements

thereon shall, notwithstanding anything contained in this Act, be forfeited to the Crown, and the lessee shall have no right or claim to compensation in respect of them.

The lessee and any person acting in collusion with him shall also be liable to pay to the Crown an amount by way of penalty equal to three times the amount of rent of the holding for the period during which it has been held in evasion of or by fraud upon this Act, but in no case shall the amount of the penalty be less than fifty pounds.

301. Any amount by way of penalty which a lessee or a lessee and any other person or persons is or are liable to pay to the Crown under section three hundred of this Act shall be a debt due to Her Majesty and if any lessee or other person so liable dies before such debt has been paid in full to Her Majesty his estate shall be liable for any unpaid amount thereof.

Recovery of penalties in respect of forfeitures (1910, s. 130 (4))

Where the lessee and another person or other persons are so liable such liability shall be joint and several.

302. Notwithstanding anything contained in this Act, where liability to forfeiture of any lease or interest in a lease has been finally established and the forfeiture has been declared by the Governor in Council against any person for that he has acquired or holds or is deemed to have acquired or to hold the holding in question or the interest in question in a holding in evasion of or by fraud upon this Act, then, additionally to the lease in respect whereof the liability to forfeiture has been declared, all other holdings and interests in holdings whatsoever, and all improvements on other holdings and interests in improvements on other holdings held, owned, occupied possessed or had by such person shall be liable to be forfeited to Her Majesty, and the Governor in Council may impose any and every such forfeiture either wholly or in part.

When Governor in Council may forfeit other holdings held by lessee (1910, s. 130A (4))

Compensation shall not be claimable or payable in respect of any holding or any interest in a holding or any improvements or any interest in improvements forfeited pursuant to this section.

Mortgages
of forfeited
holdings
(1910,
s. 130 (3))

303. Where any holding subject to a mortgage has been forfeited for any cause whatsoever (whether such liability has been established after notice and process or has arisen by virtue solely of the provisions of this Act without any notice and process), upon proof to the satisfaction of the Minister—

- (a) that the mortgage was made for valuable consideration ; and
- (b) that the mortgagee did not connive at or consent to the act or omission by the lessee which constituted the cause of forfeiture and had no knowledge thereof prior to its commission by the lessee,

the Minister shall, as he deems just, pay to the mortgagee, out of any moneys received by him in respect of the improvements on the forfeited holding, any amount not exceeding the amount due by the lessee to the mortgagee at the date of forfeiture.

Sale by
mortgagee
in lieu of
forfeiture
(1910,
s. 130 (3))

304. Notwithstanding anything in this Act, in any case where a holding subject to a mortgage has become liable to forfeiture for any cause whatsoever (whether such liability has been established after notice and process or has arisen by virtue solely of the provisions of this Act without any notice or process), the Minister in his discretion may, on the application of the mortgagee and on proof to his satisfaction—

- (a) that the mortgage was made for valuable consideration ; and
- (b) that the mortgagee did not connive at or consent to the act or omission by the lessee which constituted the cause of forfeiture and had no knowledge thereof prior to its commission by the lessee,

in lieu of recommending to the Governor in Council that the lease be forfeited, grant permission to the mortgagee to sell the holding by public auction or private contract, after not less than thirty days' notice of the intended sale, published in the *Gazette* and in a newspaper circulating in the locality in which the land is situated, to a qualified person approved by the Minister.

The grant of such permission to so sell the holding shall have the effect of divesting from the lessee all his right, title, and interest in and to the holding.

In every such case, unless the Minister otherwise permits, the holding shall in the first instance be submitted for sale by public auction.

All moneys received in respect of the sale over and above the expenses thereof and the moneys due to the mortgagee at the date on which the permission to sell was granted shall be paid over by the mortgagee to the Crown to the credit of Consolidated Revenue.

305. (1) A holding shall be forfeited as prescribed by section two hundred and forty-nine of this Act for non-payment of rent without inquiry or other process of law. Non-payment of rent (1910, s. 131)

(2) The acceptance by or on behalf of the Crown of any rent or other payment under any lease shall not operate as a waiver by the Crown of any forfeiture accruing by reason of the breach of any condition to which the lease is subject. Acceptance of payment no waiver

Division XI.—Resumption and Compensation

306. (1) The whole or any part of any holding may be resumed by the Governor in Council. Resumption with compensation (1910, s. 145)

When it is not necessary that the whole interest of the lessee should be resumed but it is sufficient to acquire an easement upon (including any right of way over) the holding, such easement may be resumed by the Governor in Council, and such resumption shall for the purposes of this Act be deemed to be a resumption of the part of the holding affected thereby.

(2) Upon resumption of the whole or part of a holding under this section, the lessee shall be entitled to compensation for the loss thereof.

307. (1) Subject to sections sixty-five, two hundred and thirty-eight and three hundred and fourteen of this Act, the Governor in Council—

(a) after the expiration of the first fifteen years of the term of the lease of a pastoral holding, may at any time and from time to time Resumption from pastoral holdings without compensation (1910, s. 146)

resume without paying compensation therefor any of the land comprised therein of an area or aggregate not exceeding one third of the total area thereof ;

- (b) at any time and from time to time, may resume without paying compensation therefor land comprised in a pastoral development holding of an area or aggregate not exceeding such area as was specified by the Governor in Council when the land was opened for application or the lease was granted.

(2) When it is intended to make any resumption under this section, subject to section three hundred and eighteen of this Act the Minister shall refer the matter to the Court, and the Court in determining the resumption shall observe in respect thereof the following provisions :—

- (a) The land to be taken shall be in one block, separated, when practicable, from the remainder of the holding by one straight line, and at least one-fourth of the external boundaries shall coincide with the original boundaries of the holding ;
- (b) The average qualities and capabilities of the land to be taken shall be as far as practicable the same as the average qualities and capabilities of the whole holding ;
- (c) In any case where the qualities and capabilities of different parts of a holding are unequal, an allowance may be made in the proportion of the total area of the holding which may be resumed under this section so as to ensure that the value of the part to be resumed (or, in the case of a second or subsequent resumption, aggregate of the values of the part to be resumed and of the part or parts already resumed) bears to the total value of all land comprised in the holding before the making of any resumption therefrom under this section, the same proportion as the total area authorised by this section to be resumed from the holding bears to the area thereof before the making of any such

resumption ; and the area to be resumed may be increased or decreased as necessary to effect such allowance as nearly as may be ;

- (d) The part or parts which may be resumed shall not comprise the head station or the principal woolshed or principal water improvement upon the holding ;
- (e) So far as practicable, any land which, under the subsisting lease or under a prior lease, has been improved by the destruction of noxious plants shall be excluded from the resumption.

The provisions of paragraphs (a), (d) and (e) of this subsection may be departed from, in whole or in part, if the Crown and the lessee so agree, or if the Court determines that the resumption cannot otherwise be made effectively, or if it appears to the Court to be necessary in the public interests so to do.

308. The Governor in Council may, at any time and from time to time, resume for any public purpose any of the land comprised in a pastoral lease, or settlement farm lease, grazing selection, brigalow lease, development lease or special lease without making compensation for the land resumed but subject to making compensation, to the amount of the value thereof, for any improvements situated upon such land and compensation in respect of any depreciation in the value to the lessee of the residue of the holding caused by the loss of the part resumed or by the use to be made thereof.

Resumptions
for public
purposes
(1910, s. 148)

309. (1) In every case of a lease, which contains a reservation of part of the land comprised therein for public purposes, and specifies the area of the land reserved, whether or not the land reserved is described so as to identify it, the Governor in Council may, for any of the public purposes mentioned in the reservation, at any time and from time to time resume possession from the lessee—

Reservations
for public
purposes
not defined
(1910, s. 149)

- (a) where the land comprised in the reservation is identified by description, of any part of the land comprised in the reservation ; or

- (b) where the land comprised in the reservation is not identified by description, of any part of the land comprised in the lease provided that the area or aggregate of the areas, possession whereof is so resumed, shall not exceed the area specified in the reservation.

In respect of the land, possession of which has been resumed, no compensation whatsoever therefor, or for any item or factor associated with the resumption thereof, shall be payable except for improvements thereon.

(2) The provisions of subsection (1) of this section shall, with and subject to all necessary adaptations, apply to any pastoral lease or grazing selection the lease whereof is subject to a reservation with respect to the land contained therein or any part or parts of that land for, or for any purpose of or connected with, any works under and within the meaning of "*The Irrigation Acts, 1922 to 1961.*"

Notice of
resumption
(1910, s. 150)

310. A notice of resumption shall in every case be published in the *Gazette* and the Minister shall cause a copy thereof to be served on the lessee, either personally or by post or by delivering or leaving it at the holding.

Subject, in the case of a resumption to which section three hundred and seventeen of this Act applies, to that section, the resumption shall take effect—

- (a) in case of resumption pursuant to section three hundred and six of this Act, on the date proclaimed in the notice by the Governor in Council being not less than thirty clear days after publication of the notice of resumption ;
- (b) in case of resumption pursuant to section three hundred and seven of this Act, six months or, if a longer time is fixed by the notice, such longer time after publication of the notice ;
- (c) in case of resumption pursuant to sections three hundred and eight or three hundred and nine of this Act, one month or, if a longer time is fixed by the notice, such longer time after publication of the notice.

311. (1) In every case where compensation is payable in respect of a resumption under sections three hundred and six, three hundred and eight, or three hundred and nine of this Act, the lessee shall forward to the Minister so as to reach him within three months after the publication of the notice of resumption, his claim for compensation and in default thereof his claim to compensation shall, subject to subsection (2) of this section, be absolutely barred.

Limitation
of time for
claiming
compensation
(1910, s. 151)

(2) The lessee shall set out in his claim the nature and full particulars of each item in respect of which compensation is claimed and, to the extent to which he fails to do so, the Minister may in writing require such particulars.

If any lessee fails to furnish any particulars required by the Minister within the time (being not less than thirty days) specified in the requisition, or within such extended time thereafter as the Minister may allow, his claim for compensation shall be absolutely barred.

312. (1) This section applies subject to section three hundred and eleven of this Act.

Reference to
Court of
claim for
compensation

(2) In any case where compensation is payable in respect of any resumption under the provisions of sections three hundred and six, three hundred and eight, or three hundred and nine of this Act, the Minister or the lessee may, at any time after the expiration of four months from the publication of the notice of resumption, refer to the Court for hearing and determination the matter of the amount of the compensation.

If, upon any such resumption, the Minister and the lessee are unable to agree within twelve months from the date of publication of the notice of resumption as to the amount of compensation payable and the matter has not been referred to the Court by either party, the Minister shall forthwith refer to the Court for hearing and determination the matter of such amount.

313. (1) When compensation is payable for any resumption under the provisions of section three hundred and six of this Act or from an agricultural selection, a perpetual town lease, a perpetual suburban lease, a perpetual country lease, land being purchased pursuant to Part VII. or a lease deemed a lease for a term of ten years pursuant to Division III. of Part VII. such

Assessment
of
compensation
(1910, s. 154
(1) and (1A))

compensation shall, in respect of the interest of the lessee in the holding in question, be assessed at such sum as would fairly represent the market value of such interest—

- (a) in the resumed land as unimproved ; and
- (b) in the improvements and developmental works, if any, thereon.

(2) When compensation is payable for any resumption under the provisions of section three hundred and six of this Act of or from a pastoral lease, settlement farm lease, brigalow lease, grazing selection, development lease, or special lease, such compensation shall be assessed at such sum as would fairly represent the market value of the resumed land as unimproved and of the improvements and developmental works, if any thereon to a purchaser thereof for the remainder of the term :

Provided that—

- (a) the Court in assessing such compensation shall have due regard to the right of a claimant lessee to receive an offer of a new lease pursuant to the provisions of Division II. of Part VI.;
- (b) compensation shall not be payable and shall not be assessed in respect of the unlawful destruction of any trees.

(3) With respect to any resumption referred to in subsections (1) or (2) of this section—

- (a) the lessee shall also be entitled to compensation in respect of any depreciation in the value to him of the residue of the holding caused by the loss of the part resumed or by the use to be made thereof for the purpose for which it was resumed ;
- (b) when the whole or part of any holding is taken for the carrying out of works thereon, there shall in assessing the compensation to be paid, be taken into consideration by way of set-off or abatement any enhancement in the value of the interest of the lessee in any land adjoining the land taken or severed therefrom. But in no case shall this paragraph (b) operate so as to require any payment to be made by the lessee in consideration of such enhancement in value.

(4) (a) This subsection applies subject to section three hundred and fifteen of this Act.

(b) When compensation is payable for any resumption under the provisions of sections three hundred and eight or three hundred and nine of this Act, such compensation shall be assessed at such sum as would fairly represent the market value of the improvements, if any, on the land taken to a purchaser of the holding on which the improvements were situated if the purchase were under and for the term of the tenure whereunder the holding is held from the Crown.

(5) When compensation is payable in respect of any resumption under the provisions of sections three hundred and six, three hundred and eight or three hundred and nine of this Act, it shall be assessed as at the date when the resumption took effect.

314. (1) Compensation shall be paid to the lessee by the Crown :—

- Compensation for improvements (1910, s. 155 (1))
- (a) upon any resumption of part of a pastoral lease under the provisions of section three hundred and seven of this Act, or of part of a stud holding pursuant to paragraph (f) of subsection (3) of section seventy-three of this Act, for any improvements on any part of the resumed land which is reserved and set apart for any public purpose or dedicated as a road ;
- (b) upon the expiration of the term of a pastoral lease, or settlement farm lease, or grazing selection, or brigalow lease, for any improvements upon any part of the land comprised therein which is reserved and set apart for any public purpose or dedicated as a road ;
- (c) upon a resumption pursuant to a condition of the lease, of the whole or part of the land contained in a special lease, for any improvements upon the resumed land.

(2) This section does not apply to improvements made by the lessee on a pastoral lease in contravention of the provisions of section sixty-five of this Act.

(3) (a) This subsection applies subject to section three hundred and fifteen of this Act.

(b) Compensation payable under this section shall be assessed at such sum as would fairly represent the market value of the improvements to a purchaser of the holding on which the improvements were situated if the purchase were under and for the term of the tenure whereunder the holding is or was held from the Crown.

(4) The value of the improvements shall be assessed as at the date when the resumption took effect or the lease expired or, where an occupation license was issued to the claimant for compensation, as at the date of the determination or expiration thereof.

(5) Upon reference by either the Minister or the lessee, the Court shall hear and determine the matter of the compensation to be paid.

(6) The provisions of this section shall extend to improvements made, with the approval of the Minister, or of the Court under the repealed Acts upon any part of the land comprised in an occupation license, where such part is, on expiration or determination of the license, set apart and reserved for any public purpose or dedicated as a road.

(7) The provisions of this section shall apply for the purposes of the hearing and determination by the Court of the matter of the compensation to be made in respect of a resumption made prior to the commencement of this Act pursuant to a condition of a special lease.

When
destruction
of trees, &c.,
deemed
improvement
(1910, s. 155
(1))

315. (1) For the purposes of the assessment of compensation payable under sections three hundred and eight, three hundred and nine or three hundred and fourteen of this Act, the lawful destruction of trees or the clearing of undergrowth and useless vegetation or any other developmental work which had the effect of increasing or maintaining the carrying capacity or productivity of land comprised in the holding or making it suitable for habitation, shall be deemed to be an improvement for which the lessee shall be entitled to compensation in the event of the resumption of the land

or the expiration of the lease within ten years after the date when such destruction, clearing or developmental work was effected:

Provided that—

- (a) any such destruction of trees or clearing shall be deemed to be an improvement only if it was effected in accordance with a permit issued pursuant to this Act or the repealed Acts in any case where such a permit was required ;
- (b) in no case shall the amount of such compensation exceed the actual cost of such destruction, clearing or developmental work less proper deduction for deterioration as at the date of resumption or expiration of lease, as the case may be ;
- (c) the destruction of undergrowth and useless vegetation shall be deemed to have lost its utility for the purposes of this section, to the extent to which after it has been effected, undergrowth or useless vegetation of any species is allowed to establish itself on the land so cleared.

(2) The provisions of subsection (1) of this section do not apply to the destruction of trees effected as part of the treatment of scrub in the course of cultivation.

316. (1) When determining compensation payable under this Division, the Court may, in addition, award interest on the amount of compensation in respect of the period commencing on and including the date when the resumption took effect or the lease expired and ending on and including the day immediately preceding the date on which payment of that compensation is made (but so that such interest shall not extend for more than two years) at such rate per centum per annum as to it seems reasonable, and thereupon the Crown shall pay such interest in accordance with that award.

(2) Every judgment of the Court or (in case of appeal thereto) of the Land Appeal Court under this Division shall be transmitted by the Registrar to the Registrar or Deputy Registrar of the Supreme Court

Interest on
compensa-
tion

Decision to
be filed in
Supreme
Court

for the Supreme Court District within which the matter was heard to be filed in such Supreme Court. Thereupon, subject to subsection (3) of this section, such judgment shall have the effect of a judgment of the Supreme Court and may be enforced accordingly.

Effect of
notice of
withdrawal
on decision

(3) If the Minister gives to the Registrar or Deputy Registrar concerned of the Supreme Court notice of intention to discontinue the resumption, the enforcement of the judgment shall be stayed for a period of three months after the date of final determination. If within this period notification of election to discontinue the resumption is published by the Minister in the *Gazette*, the judgment by virtue of such notification shall cease to have force and effect.

Right of
Crown to
withdraw
(1910,
s. 154 (3))

317. When any resumption is made under the provisions of sections three hundred and six or three hundred and eight of this Act of or from any holding, the Minister shall, for a period of three months after the amount of the compensation payable has been finally determined by the Court or Land Appeal Court, as the case may be, have the right to elect whether the Crown will pay such amount or will discontinue such resumption; and if the Minister, before the expiration of such period, by notification in the *Gazette*, elects to discontinue such resumption, the same shall be discontinued accordingly, and the notice of resumption and all proceedings thereon shall be treated as a nullity.

The lessee shall be entitled to compensation for the actual damage (if any) done to the land by the Crown from and after the date resumption took effect to the date of discontinuance, and in addition the Crown shall pay to the lessee the costs and expenses incurred by him up to the date of such discontinuance. The amount thereof shall, on reference by either the Minister or the lessee, be determined by the Court.

Power of
Minister to
agree
(1910, s. 153)

318. (1) Nothing in this Division shall be construed to prevent the Minister on behalf of the Crown and the lessee entering into an agreement as to—

(a) the part of the holding to be resumed under section three hundred and seven of this Act;

- (b) the compensation payable under the provisions of sections three hundred and six, three hundred and eight, three hundred and nine, or three hundred and seventeen of this Act ;
- (c) the compensation to be paid by the Crown with respect to improvements in any case where the Crown is liable pursuant to the provisions of section three hundred and fourteen of this Act.

(2) In the event of such agreement the matter, the subject of the agreement, shall not be heard and determined by the Court.

(3) Any such agreement shall be binding upon the Crown and the lessee concerned and enforceable in any court of competent jurisdiction.

319. (1) At the request of a Local Authority or any person or authority (in this section called the "constructing authority") empowered or authorised by any Act to take compulsorily land, or any estate or interest in land, the Governor in Council may on its behalf make under sections three hundred and six or three hundred and eight of this Act any resumption thereby authorised to be made by him.

Resumption on behalf of Local Authority

(2) To the extent to which the provisions of this Division apply to a resumption under sections three hundred and six or three hundred and eight of this Act, those provisions shall apply to such a resumption made on behalf of a Local Authority or constructing authority.

(3) Compensation and costs incurred by the Crown in respect of such a resumption made on behalf of a Local Authority or constructing authority shall be paid by the Local Authority or constructing authority concerned.

Such Local Authority or constructing authority shall, before the publication of the notice of resumption, give to the Minister such security as he may require in respect of such payment.

320. (1) Upon resumption of part of a holding under any provision of this Division, the lessee shall be entitled to a reduction of rent proportionate to the part resumed.

Effect of part resumption upon rent (1910, s. 154 (2))

Set-off
by Crown

(2) The Crown shall be entitled to deduct from any money payable to a lessee consequent upon any resumption under this Division, any money due to the Crown on any account whatsoever by that lessee.

If at the date of resumption or expiration of the lease the holding was subject to any mortgage, a memorandum whereof was registered in the Department, the Minister may pay to the mortgagee so much of the amount of the compensation as does not exceed the sum due to the mortgagee.

Meaning of
terms
"lessee"
and
"holding"
(1910,
s. 155 (3))

321. For the purposes of this Division—

(a) "lessee" includes—

- (i) in relation to an expired lease, the lessee at the date of expiration thereof ;
- (ii) a purchaser of land sold pursuant to Part VII.;

(b) "holding" includes land being purchased pursuant to Part VII.

Division XII.—Fencing Claims

Application
of Fencing
Acts
(1910,
s. 170A)

322. Subject to the provisions of section three hundred and twenty-three of this Act, "*The Dividing Fences Act of 1953*" shall apply to all holdings. For the purposes of such Act and of this Division, the lessee of the holding shall be deemed the owner, and the granting of the lease shall be deemed an alienation of the land.

Rabbit-proof
and
marsupial-
proof
fences
(1910, s. 171)

323. (1) Notwithstanding anything contained in "*The Dividing Fences Act of 1953*," and whether or not the provisions of such Act with respect to notice have been complied with, the following provisions of this section shall apply to every dividing fence between country lands which is rabbit-proof or marsupial-proof, or both rabbit-proof and marsupial-proof, and the provisions of "*The Dividing Fences Act of 1953*" shall be read and construed accordingly.

Country
lands—
meaning of
term

For the purposes of this Division the term "country land" includes all land, other than town land or suburban land, which is held as a holding under this Act, or which is freehold, or which is being purchased under this Act for an estate in fee-simple.

(2) The Court and not a court of petty sessions shall have and exercise the jurisdiction conferred upon courts of petty sessions by "*The Dividing Fences Act of 1953*," and for the purposes of such jurisdiction such Act shall be read subject to this Division.

(3) (a) Where the owner or occupier of any country land (in this Division called the "plaintiff") has fenced the boundary of such land, either wholly or in part, with a fence which is rabbit-proof or marsupial-proof, or both rabbit-proof and marsupial-proof, or has by transfer or devolution of law acquired such a fence erected by a prior owner or occupier who has not made a claim as prescribed by this subsection and the plaintiff claims that such fence is of material benefit to the owner or occupier (in this Division called the "defendant") of adjoining country land along the said boundary, the plaintiff may, by summons served upon the defendant, apply to the Court in the manner prescribed to decide whether any such benefit has been so conferred.

(b) A dividing fence which at the time of the claim is not on the then existing boundaries of the lands of the parties or of either of them (whether or not roads or other lands intervene on either side or both sides of such fence) shall be deemed to be on the boundary between such lands for the purposes of this Division if such fence is the effective rabbit-proof, or marsupial-proof or rabbit-proof and marsupial-proof fence, between such lands, or is otherwise of material benefit to the defendant.

(c) On the hearing of a claim under this Division, the Court shall declare the value of the fence and the proportion of benefit (if any) which the defendant derives from the fence and shall give judgment for such sum (not exceeding one-half of such declared value) as is equivalent to such benefit.

(4) (a) In any case where the sum adjudged to be equivalent to the proportion of benefit as declared by the Court is less than one-half of the declared value, and the plaintiff or any successor in title claims that an increase has subsequently occurred in the material benefit conferred upon the defendant or his successor in title, such plaintiff or his successor in title may bring before the Court a claim with respect to such increase.

Court to
declare
value of
fence and
proportion
of benefit

(b) Upon any claim being made with respect to an increase in material benefit, the Court shall declare the value of the fence and the proportion of benefit (if any) which the defendant derives from the fence at the time the claim is made, and shall give judgment for such sum (which sum shall not, together with the amount or aggregate amounts of any previous judgment or judgments, exceed one-half of such declared value) as is equivalent, in the opinion of the Court, to the increase in benefit.

Court may
impose
rental for
fence across
road

(5) Where the lands of the parties are separated by a road, the Court, in lieu of giving judgment for a sum equivalent to the benefit or increase in benefit as aforesaid, may give judgment for a sum to be paid as and by way of an annual rental in respect of such benefit or increased benefit, which rental shall be payable only so long as the fence is used as a dividing fence.

Repairs

(6) At any time after a judgment under subsections (3) or (4) of this section the plaintiff or defendant or their successors in title respectively may recover a proportion not exceeding one-half of the cost of any subsequent repairs to the fence which was the subject of such judgment, provided that—

(a) neither shall recover anything on account of repairs effected by him more than one year before he commenced proceedings for the recovery of the cost of such repairs ; and

(b) the proportion of the cost of any repairs to such fence which may be recovered by either shall not be greater than the proportion of benefit which, according to the declaration of the Court made pursuant to subsections (3) or (4) of this section, the other derives from the fence.

(7) A copy of every summons under this Division in respect of country land mortgaged to the Agricultural Bank to secure any advance under "*The Wire and Wire-Netting Advances Acts, 1933 to 1944*," shall be served by the plaintiff on the said Bank at least thirty days before the day fixed for hearing.

Such Bank may intervene for the protection of its interest, but in such case shall not be deemed to be a party.

(8) The Court may, in its discretion, require a Commissioner to furnish or to cause to be furnished a report on any claim made under this Division and a valuation of the fence in question. Any such report and valuation shall be admissible in evidence.

Report by
Commis-
sioner

(9) If the land of the plaintiff in any proceeding under this Division is subject to any mortgage or charge in favour of the Agricultural Bank to secure any advance under "*The Wire and Wire-Netting Advances Acts, 1933 to 1944*," the Court shall, upon application by or on behalf of such Bank, as part of its judgment, order and direct that the sum adjudged to be paid, or so much thereof as is required for the purpose, shall be paid to such Bank in full or part discharge of the mortgage or charge ; and the sum so ordered to be paid shall be paid by the defendant accordingly to such Bank ; and upon such payment being made the judgment shall be deemed to be satisfied to the extent thereof.

Procedure
when
plaintiff's
land
subject to
mortgage in
favour of
Crown

(10) The Court may in its discretion order that the amount of any judgment shall be paid or satisfied in such instalments as it may determine, but on the sale or transfer of the lands of the defendant in relation to which the amount was recovered all unpaid instalments shall immediately become due and payable and be recoverable.

Payment by
instalments

(11) Every judgment of the Court or (in case of appeal thereto) of the Land Appeal Court under this Division shall be transmitted by the Registrar to the Registrar or Deputy Registrar of the Supreme Court for the Supreme Court District within which the matter was heard to be filed in such Supreme Court. Thereupon such judgment shall have the effect of a judgment of the Supreme Court and may be enforced accordingly.

Decision to
be filed in
Supreme
Court

(12) The jurisdiction of the Court shall apply to every rabbit-proof or marsupial-proof, or rabbit-proof and marsupial-proof fence, whether such fence was erected before or after the commencement of this Act.

(13) (a) In any case where adjoining owners have agreed in writing as to—

- (i) the value of the netting fence separating their respective country lands and as to the proportion of benefit each derives from the fence as at the date of agreement ; or

- (ii) the value of the netting fence to be constructed in terms of the agreement on the boundaries of their respective country lands and as to the proportion of benefit each will derive from the fence upon its construction,

either owner, not later than six months from the execution of the agreement, may lodge with the Registrar an executed copy of the agreement and apply for it to be made a formal judgment of the Court.

(b) Whereupon, unless the written consent of the other party to the agreement being made a formal judgment of the Court is lodged with the application, the Registrar shall notify the other party to the agreement of the application and inform him that the agreement will be made a formal judgment of the Court unless within one month from the date of the notification, he makes to the Court an application to show cause why the agreement should not be made a formal judgment.

(c) In any case where—

- (i) the other party consents to the application to make the agreement a formal judgment ;
- (ii) the other party does not, within the period notified to him by the Registrar, apply to the Court to show cause why the agreement should not be made a formal judgment ; or
- (iii) the Court (which is hereby thereunto authorised) upon hearing the matter thereof finds that cause has not been shown why the agreement should not be made a formal judgment,

the Registrar shall record the agreement as a formal judgment of the Court and the provisions of this section shall apply as if the agreement were a judgment of the Court.

Division XIII.—Communal Ring Fences

324. (1) In this Division—

“ Crown tenant ” means a lessee of a holding ;

“ Holding ” means a holding or part of a holding ;
and

“ Ring fence ” means an external boundary fence entirely enclosing two or more holdings which are adjacent and which fence is a rabbit-proof fence, or a marsupial-proof fence, or both a rabbit-proof and a marsupial-proof fence.

(2) Where a holding is held by two or more persons, such persons shall for the purposes of section three hundred and twenty-six of this Act be deemed to be one and the same Crown tenant.

325. (1) The Crown tenants of a number of holdings which are adjacent and capable of being entirely enclosed by a ring fence (being either a rabbit-proof fence or a marsupial-proof fence, or both a rabbit-proof and marsupial-proof fence) may enter into an agreement for the construction and maintenance of such ring fence. Communal ring fence against vermin (1910, s. 171A)

(2) Such agreement shall state all of the holdings which will be enclosed by the proposed ring fence.

(3) If the Crown tenants of all such holdings are parties to and duly execute the agreement it shall be registered in the Department.

(4) By virtue of such registration the agreement shall on and from the date of such registration and thereafter while it continues in force be binding upon the parties thereto and their heirs, successors and assigns.

326. (1) Where not less than two-thirds of the Crown tenants of a number of holdings which are adjacent and capable of being entirely enclosed by a ring fence (being either a rabbit-proof fence or a marsupial-proof fence, or both a rabbit-proof and marsupial-proof fence) are of the opinion that all such holdings would benefit by such enclosure, such Crown tenants may in writing signed by them request the remaining Crown tenants of such holdings to enter with them into an agreement for the construction and maintenance of such ring fence (stating in such request whether the ring fence is to be rabbit-proof or marsupial-proof, or both rabbit-proof and marsupial-proof). Majority may request ring fence against vermin (1910, s. 171A (2))

(2) If within ninety days after the making of such request, an agreement as thereby requested has not been made and registered in the Department, the Crown tenants who made the request, or any of them, or any of the Crown tenants to whom the request was made who are willing to enter into an agreement as requested, may by a memorial in writing signed by them request the Minister to declare the area comprised by the holdings in question to be a benefited area.

- (3) Such memorial shall set forth—
- (a) a description of the holdings proposed to be enclosed ;
 - (b) the names and places of address of the Crown tenants of such holdings ;
 - (c) a description of the proposed ring fence, stating whether it is to be rabbit-proof or marsupial-proof, or both rabbit-proof and marsupial-proof ;
 - (d) the grounds of the opinion of the memorialists that the proposed ring fence would be of benefit to all of the holdings proposed to be enclosed ; and
 - (e) such further particulars as the memorialists may desire to state or as the Minister may require.

Powers of
Minister
with respect
to
memorial
(1910,
s. 171A (3),
(4), (5))

327. (1) The Minister shall consider such memorial, and may cause such inquiry and reports to be made with respect to the matter as he thinks fit.

(2) The Minister in his absolute discretion may or may not approve of the request contained in the memorial.

(3) If the Minister approves of the request he shall, by notification published in the *Gazette*, declare the holdings described in the memorial to be a benefited area under and for the purposes of this Division, and the area so declared shall accordingly become and be a benefited area.

(4) The notification shall declare—

- (a) the boundaries of the benefited area declared thereby ;
- (b) the nature of the fence by which such area is to be enclosed—namely, either rabbit-proof or marsupial-proof, or both rabbit-proof and marsupial-proof ; and
- (c) the time within which the benefited area is to be enclosed by the ring fence, which time the Minister may in his discretion extend by a further notification.

(5) The notification may—

- (a) set forth the terms and conditions of the proposed agreement ; and

- (b) exclude from the liability to contribute towards the cost of the erection and maintenance of the ring fence the Crown tenant of any holding included within the benefited area.

Notwithstanding that any such Crown tenant is so excluded, the other Crown tenants within the benefited area who are liable to contribute towards such cost shall at all times have the right of access to the land comprised in the holding of the Crown tenant so excluded for the purposes of the destruction thereon of rabbits or marsupials or both of these, according to the nature of the ring fence.

328. (1) Forthwith upon the declaration of a benefited area, the Crown tenants whose holdings are comprised therein shall enter into an agreement for the erection and maintenance of the ring fence, and if within ninety days after the date of the notification published in the *Gazette* declaring the benefited area no such agreement has been made and registered in the Department, the Minister may refer the matter to the Court and the Court shall hear and determine the matter as provided by this section.

Effect of
declaration
of benefited
area
(1910,
s. 171A (6))

Every Crown tenant of a holding comprised within the benefited area shall (unless he is excluded from liability to contribute) receive notice of and may appear as a party to the proceedings.

- (2) The Court shall decide—
- (a) the description of the ring fence to be erected (being the ring fence which in the opinion of the Court will confer the greatest benefit upon the holdings) ; and
- (b) the proportion of the cost of the erection and maintenance of the ring fence to be contributed by each Crown tenant (except a Crown tenant excluded from liability to contribute) taking into consideration the benefit which each of them will respectively derive from the existence of the ring fence.
- (3) In apportioning such contribution the Court—
- (a) shall have regard to any holding the Crown tenant whereof has been excluded from liability to contribute, and may also, upon being satisfied that any holding comprised within the benefited area will not receive

any appreciable benefit, exclude the Crown tenant of such holding from liability for contribution ; and

(b) may include any holding comprised within the benefited area, notwithstanding that no part of the external boundaries thereof are conterminous with any part of the external boundary of the benefited area whereon the ring fence is to be erected, and in such a case may take into consideration the fact that no part of the ring fence is or will be an improvement actually existing upon such holding.

(4) The determination of the Court shall be final.

(5) The Court may also make to the Minister such further recommendations upon the matter as the Court thinks proper, including with respect to variations of the conditions as to fencing imposed in respect of any of the holdings comprised in the benefited area.

Implement-
ation of
decision of
the Court
(1910,
s. 171A, (7),
(8))

329. (1) The Court shall forward its decision and recommendations to the Minister, and thereupon the Minister shall cause to be prepared an agreement embodying the decision and such of the recommendations of the Court as he thinks fit, and shall publish such agreement in the *Gazette* and forward a copy thereof to each of the Crown tenants concerned.

(2) Forthwith upon such publication, such agreement shall become and be an agreement between the Crown tenants (except any Crown tenant excluded from liability to contribute) whose holdings are comprised within the benefited area and, upon registration in the Department, shall be effective in the same manner and to the same extent as if each of such Crown tenants had executed the same, and each of such Crown tenants shall for all purposes of this Division be and be deemed to be a party to such agreement.

Provisions
applicable
to agree-
ments
generally
(1910,
s. 171A (9))

330. The following provisions shall apply to every agreement under this Division :—

(a) it may be made for a limited time or without limit of time ;

(b) it may provide for the recovery of moneys payable under the agreement by any party thereto, whether for capital cost or maintenance of the ring fence, by complaint as for a breach of duty under “ *The Justices*

Acts, 1886 to 1960," on the complaint of any other party to the agreement, or of the Commissioner, or by the group of persons as a body corporate as herein provided ;

- (c) moneys recovered upon such complaint shall after payment of the costs of the proceedings, be applied in carrying out the terms of the agreement ;
- (d) during the currency of the agreement it shall be deemed to run with the lands enclosed by the ring fence of all the parties to the agreement, and shall not be affected by the renewals or conversions of leases of any such lands, save that the agreement shall not, in the event of the determination for any cause whatsoever of the tenancy of any such party, be binding upon the Crown, while the lands comprised in the determined tenancy are vacant in the possession of the Crown ;
- (e) upon lands the tenancy whereof has been determined as mentioned in paragraph (d) of this section being again leased by the Crown to another Crown tenant, the agreement shall be deemed to be binding upon him in the same manner and to the same extent as if he were a party to the same, and every such Crown tenant shall, when making application for such vacant land, be deemed to have had full notice and knowledge of the agreement and the terms and conditions thereof and of the obligations imposed upon him by this paragraph with respect thereto.

331. (1) The Governor in Council may by Order in Council, in any case where he deems it necessary so to do, extend the operation of the provisions of this Division so as to make the same applicable to lands held in fee-simple adjacent to holdings under this Act which might receive benefit if enclosed with the said holdings or any of them by a ring fence, and to the registered proprietors or other the owners of the said

Application
of Division
to freehold
lands
(1910,
s. 171A (10))

lands held in fee-simple ; and upon such publication of such Order in Council the provisions of this Division shall be applicable to the said lastmentioned lands and the registered proprietors or owners thereof in like manner and to the same extent as if the said lands were holdings under this Act and the said proprietors or owners were Crown tenants.

(2) The Registrar of Titles shall, by virtue of this section, have power and authority to, and shall make or cause to be made, any necessary entries or endorsements or notings in or on the appropriate register book concerned and do and execute all such other acts, matters and things as may be necessary and proper to give full effect to any Order in Council made under this subsection.

Body
corporate
(1910,
s. 171A (11),
(13))

332. (1) Notwithstanding any Act or law or rule or practice of law, the group of persons who are parties to or are otherwise bound by any agreement registered with the Department under the provisions of this Division shall be deemed to be a body corporate under the name specified in the agreement, and may sue and be sued as a body corporate may sue and be sued.

Agreement
not affected
by transfer
or
assignment
of holding

(2) An agreement registered under this section shall not be affected by the transfer or assignment of any holding which is subject to such agreement, but the agreement shall continue in full force and effect as if the transferee of the holding were one of the original parties to the agreement.

Division XIV.—Surrenders

Right to
surrender
(1910, s. 122)

333. A lessee of any holding may at any time surrender his lease upon giving to the Minister one year's notice in writing of the intention to surrender, or paying one year's rent in advance in lieu of notice, and upon paying all money due to the Crown by way of rent or otherwise in respect of the holding up to the date of the surrender.

PART XI.—GRANTS, RESERVES AND RESERVATIONS FOR
PUBLIC PURPOSES

Division I.—Deeds of Grant in Trust and Reserves

334. (1) The Governor in Council may from time to time grant in trust, or by Order in Council reserve and set apart, any Crown land which, in the opinion of the Governor in Council, is or may be required for any public purpose. Grants and reservations for public purposes (1910, s. 180)

(2) Before any land is granted in trust or, in the case of land reserved and set apart which is to be placed under the control of trustees, before the land is so placed the persons who are to be the trustees shall (except in the case of a reservation for a cemetery) pay to the office in Brisbane of the Department the actual cost of the survey, if any, specially made of the land in question.

(3) Any land which, immediately prior to the commencement of this Act, is reserved and set apart or deemed to be reserved and set apart for any public purpose under the repealed Acts, and to which the provisions of "*The Forestry Act of 1959*" do not apply, and the fee-simple whereof has not been granted by the Crown, shall be deemed to be a reserve for such public purpose under this Act, and be deemed to have been so reserved and set apart under this section.

(4) The Governor in Council may from time to time by Order in Council, rescind in whole or in part or amend, alter, vary or otherwise modify an Order in Council reserving and setting apart any Crown land for any public purpose or any prior Order in Council made under this subsection.

Division II.—Appointment, Duties and Powers of Trustees

335. (1) The Governor in Council may, by Order in Council, place any land reserved and set apart for any public purpose under the control of trustees; and may declare the style or title of such trustees and the trusts of the land. Trustees of land without a grant (1910, s. 181)

Such trustees are in this Part referred to as trustees of reserves.

Local
Authority
or body
corporate
may be
appointed
trustee

(2) A Local Authority or a body corporate constituted by, under or pursuant to any Act or Commonwealth Act with power to take, compulsorily or otherwise, and hold land, or any estate or interest in land, for any purpose may be appointed trustee of land granted in trust or reserved and set apart (it being hereby declared that in every such case the land in question may be granted in trust or reserved and set apart as if it were required for a public purpose).

Mayor or
Chairman
may be
trustee
(1910, s. 162)

336. (1) The Mayor for the time being of the Council of a City or Town, or the Chairman for the time being of the Council of a Shire may be appointed a trustee of a reserve or of land granted in trust without being individually named ; and in every such case each successive holder of the office in question of Mayor or Chairman shall during his continuance in that office be a trustee of such reserve or land granted in trust.

Minister or
Crown
officer
may be
trustee

(2) The holder for the time being of the office of a Minister for this State or of any other office under the Crown in right of this State may be appointed a trustee of a reserve or of land granted in trust without being named ; and in every such case each successive holder of the office in question shall during his continuance in that office be a trustee of that reserve or land granted in trust.

Land may
be held by
trustees in
official name
without
specifying
their
individual
names
(1958, s. 34)

337. (1) It shall be sufficient, in any deed of grant whereby any Crown land is granted in trust, or in any Order in Council whereby any Crown land reserved and set apart for a public purpose is placed under the control of trustees, to specify the trustees by the official name of " The Trustees of the (*stating the style or title of the trustees or otherwise sufficiently identifying the trust*) " without individually naming them.

(2) There shall be kept in the Department a register of trustees of all Crown lands for the time being granted in trust or placed under the control of trustees by an official name which does not individually name the trustees.

Such register shall be in or to the effect of the prescribed form, and there shall be entered therein the individual names of the first trustees and all other particulars indicated therein.

From time to time, upon the appointment under this Act of any new trustee, there shall be inserted in such register the name of the new trustee, and how the vacancy in the trust occurred, whether by death, retirement or otherwise, and the date of the appointment of the new trustee, and also the date of the insertion of his name in such register, and the officer making any such entry shall sign his name in such register as indicated therein.

Such register may be amended at any time by rectifying any error or supplying any omission therein or therefrom, and the officer making the rectification shall initial such amendment and add the date thereof, but shall not render illegible the part so rectified.

(3) A book purporting to be the register of trustees hereinbefore referred to in this section shall, on production thereof by the Secretary of the Commission for the time being or by any person appointed in writing so to do by him, be received and taken in all legal proceedings and on all occasions whatsoever as sufficient evidence (except in case of fraud or collusion) for and against not only the immediate parties but for and against third persons, mortgagees and all others whom it may concern, as to who are or were the trustees of and also of the vacancies which occurred in the trust in question, and of the appointment of new trustees to fill such vacancies and of the date of the insertion of their names as aforesaid in such register of trustees and of their consent to act and of all other matters recorded therein, in pursuance of this section.

Production
of register
sufficient
evidence

Judicial notice shall be taken of such book, and of any signature or initials therein ; and any extract purporting to be an extract from such register of trustees, and certified under the hand of the said secretary shall be received and taken in all legal proceedings and in all dealings with the land the subject of the trust as sufficient evidence of the several extracted matters comprised in such extract without the production of such register, and judicial notice shall be taken of the signature of the said secretary to every such extract.

(4) Any mortgage, lease or other dealing of or in any land to which this section applies shall, if signed by a majority of the trustees for the time being named in the register of trustees, be as effectual as if such mortgage, lease or other dealing had been duly signed by all the trustees.

Existing trusts

(5) The Governor in Council may by Order in Council declare the official name by which any land granted in trust to trustees specified by their individual names may be held by the trustees for the time being thereof on and after the date of the publication in the *Gazette* of the Order in Council without any such trustees being individually named.

(6) The Registrar of Titles shall, by virtue of this section, have power and authority to make, and shall make or cause to be made, any necessary entries or endorsements in the register book concerned and do and execute all such other acts, matters and things as may be necessary and proper to give full effect to any Order in Council made under subsection (5) of this section.

Trustees shall be deemed to be owners for the purpose of legal proceedings (1910, s. 184)

338. (1) For the purposes of any action or proceeding in any court it shall be sufficient to describe the trustees of land granted in trust or the trustees of a reserve by their style or title or official name without naming any of them ; and they may by such style or title or official name sue and be sued, take action for removal of trespassers or for protection of property under their control or for injury to or misuse of such property, and shall for the purposes of any action or proceeding be deemed to be the absolute owners of any property, real or personal, under their control. No action or proceeding shall abate by reason of the death, removal or retirement of a trustee.

Noxious plants

(2) It shall be the duty of all such trustees to destroy noxious plants on the land under their control.

By-laws (1910, s. 186)

339. The trustees of land granted in trust or of a reserve may, from time to time, make by-laws for all or any of the following purposes :—

(a) regulating their meetings and the conduct and management of the affairs and business of the trust ;

- (b) protecting the land and property of every description under their control from trespass, injury or misuse ;
- (c) regulating the use and enjoyment of the land and property of every description under their control ; imposing reasonable fees or charges therefor ;
- (d) imposing penalties, not exceeding fifty pounds, for any breach of a by-law ;
- (e) generally, for carrying out the objects and purposes of the trust.

The by-laws may provide that the land or any part thereof to be specified with reasonable certainty shall be a public place within the meaning and for the purposes of any Act conferring or imposing upon members of the Police Force powers or duties with respect to public places or providing for the punishment of offences committed in public places. Thereupon such land or part thereof shall be a public place accordingly.

Such by-laws shall not have effect until they are approved by the Governor in Council and published in the *Gazette*, but, upon such approval and publication, shall have the force of law.

When a Local Authority is appointed trustee of a reserve, by-laws (or, in the case of Brisbane City Council, ordinances), may be made by it under "*The Local Government Acts, 1936 to 1961*," (or "*The City of Brisbane Acts, 1924 to 1960*"), or under this Act, or under both Acts, as the Local Authority thinks fit, for the purpose of the control, management and regulation of the reserve.

340. (1) (a) A trustee of land granted in trust or of a reserve shall be deemed to vacate his office as such if he dies, or resigns, or refuses to act, or becomes incapable of acting, or, subject to paragraph (c) of this subsection, is absent for more than twelve months from the electoral district within which the land or reserve is situated, or if he is otherwise disqualified from holding office as such trustee, and the Governor in Council may appoint a new trustee to fill the vacancy.

New trustees (1910, s. 187)

(b) A person may be appointed or continue to hold office as trustee of any land granted in trust or of a reserve notwithstanding that he is not an elector of or is absent from the electoral district within which the land or reserve is situated if, in the opinion of the Governor in Council, he is actively and effectively interested in the trust:

Provided that a person who is not enrolled as an elector for any electoral district shall be disqualified from being appointed or holding office as a trustee of land granted in trust or of a reserve.

(c) A trustee absent for more than twelve months from the electoral district within which the land granted in trust or reserve is situated shall not be deemed to vacate his office as such until the Governor in Council appoints another trustee in his stead.

(2) The Governor in Council may, from time to time, by notification published in the *Gazette*, alter the number of the trustees of land granted in trust or of a reserve, whether by increasing or decreasing the number, and make any necessary additional appointments of trustees.

(3) If the Governor in Council is of opinion that it is in the public interests or that there is any other just and sufficient reason for so doing he may, in his absolute discretion, remove any trustee or trustees of any land granted in trust or of a reserve from office and may (unless he decreases the number of trustees) appoint a new trustee or new trustees in the stead of any trustee or trustees so removed.

Accounts,
&c., of trust
(1910, s. 188)

341. (1) Trustees of land granted in trust or of a reserve shall keep proper books and accounts in respect of the trust and, if thereunto directed by the Minister, shall keep such books and accounts in respect of the trust as the Minister directs.

The books and accounts shall be open and available at all times for inspection by any person authorised in that behalf by the Minister and such authorised person may take such notes, copies or extracts thereof or therefrom as he may deem necessary.

The trustees shall furnish the Minister with all such information and returns in respect of the trust as he may from time to time require.

All moneys received for or on behalf of the trust by the trustees shall be paid by the trustees into a bank, to the credit of a general or separate trust account, until such moneys are applied by the trustees to the purposes for which they have been received.

(2) The trustees of land granted in trust or of a reserve shall cause the books and accounts in respect of the trust to be audited once at least in every calendar year and the trustees shall, within thirty days after the completion of the annual audit, furnish to the Minister a report thereon by the auditor.

The Minister may direct the trustees to have such annual audit made by a person approved by the Auditor-General and the trustees shall thereupon appoint an auditor approved by the Auditor-General.

(3) The Auditor-General may examine or audit, and the Minister may cause any officer of the Public Service or any person appointed by the Minister in that behalf to examine or audit the books and accounts in respect of any trust mentioned in this section, and for the purposes of such examination or audit the Auditor-General or any officer or any person so appointed may examine any books, accounts and documents relating to such accounts, and may make and take away with him any copy of or extract from any such book, account or document.

Power of
audit of
books

(4) A person shall not obstruct or attempt to obstruct the Auditor-General or any officer or person appointed or authorised under this section in the exercise of his powers or the performance of his duties under this section, or without lawful excuse refuse to produce any book, account, document, writing, paper or instrument in his possession or under his control, or to permit the making and taking away of any copy of or extract from any book, account or any document, or to answer any question asked by the Auditor-General or such officer or person for the purpose of the exercise of such powers or the performance of such duties.

(5) Every manager or other principal officer of any bank with which trustees, or any trustee, or any agent, servant or representative of trustees of any land granted in trust or reserve have or has deposited any moneys, whether in his own account or in any general or separate trust account, shall disclose every such account to the

Auditor-General or to any officer or person appointed or authorised under this section upon demand made by the Auditor-General or any officer or person so appointed or authorised, and shall permit the Auditor-General or any officer or person so appointed or authorised to make and take away with him a copy of or extract from any book or any such accounts, or of any document or writing relating to such accounts.

(6) Any trustee or other person who contravenes or fails to comply with any provision of this section shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(7) This section shall apply and extend to any person having the custody or possession of any book, account, register, document or writing of a trust hereinbefore in this section mentioned.

No power of
sale
(1910,
s. 185 (1))

342. Notwithstanding anything contained in any Act, the trustees of land granted in trust or the trustees of a reserve shall not have power to sell or transfer any land under their control, but the trustees of land granted in trust may, with the approval of the Governor in Council, surrender and transfer such land to the Crown :

Provided that the trustees of land granted in trust may, with the prior approval of the Governor in Council, transfer the estate or interest of the trustees in the land to a Local Authority or other body corporate constituted by, under or pursuant to any Act or Commonwealth Act, and stamp duty under "*The Stamp Acts, 1894 to 1961*," shall not be payable in respect of any such transaction.

Leasing by Trustees

Limitation
on power
to lease
(1910,
s. 185 (2))

343. (1) The trustees of land granted in trust or the trustees of a reserve shall not, without the prior approval in writing of the Minister, lease or agree to lease the whole or any part of the land under their control.

(2) Application for such approval shall be made to the Minister, shall be signed by the trustees and shall state the following particulars :—

(a) the grounds on which the trustees consider it necessary or desirable that the whole or part of the land under their control should be leased ;

- (b) the term of the proposed lease and the conditions thereof ;
- (c) the rent to be reserved ; and
- (d) the purposes for which such rent is to be applied.

(3) The application shall be accompanied by a draft of the proposed lease.

(4) The Minister may, in his absolute discretion, refuse to approve the proposal or, if the Minister is satisfied that the proposed lease is—

- (a) not detrimental to the public interests ;
- (b) not inconsistent with the purpose for which the land was granted in trust or reserved and set apart ; and
- (c) not for an excessive term and complies otherwise with the requirements of section three hundred and forty-four of this Act,

approve the proposal in whole or in part, and in either case subject to such conditions, reservations and modifications as he deems fit.

344. The following provisions shall apply to every lease of land granted in trust or reserved for a public purpose, namely :—

Provisions applicable to leases (1910, s. 185 (2))

- (a) the term shall not exceed twenty years ;
- (b) the lease shall not contain any covenant or agreement for renewal of lease or for purchase of the leased land, and the rent to be reserved shall be the highest annual rent which can reasonably be obtained ;
- (c) save to the extent exempted by the Minister, the lessee shall—
 - (i) at all times destroy all noxious plants on, and keep free therefrom, the land comprised in the lease ;
 - (ii) hold the land so that the same may be used for the public purpose for which it was granted or reserved without undue interruption or obstruction ;

(d) the lease shall contain a covenant that the trustees may terminate the lease upon the failure of the lessee to observe or perform any covenant or condition of the lease which is expressed to be binding upon him.

Minister's
approval to
be endorsed
on lease

345. When a lease under this Division has been duly executed in accordance with the terms and conditions approved by the Minister the original and all other executed copies of such lease shall be forwarded to the Minister for endorsement thereon of his approval of the lease.

Thereafter one copy shall be retained in the Department.

A lease to which this Division applies which is not endorsed with the Minister's approval shall have no validity or effect in law and in the case of a lease with respect to land granted in trust shall not be capable of registration under "*The Real Property Acts, 1861 to 1960.*"

Application
of rents
(1910,
s. 185 (2)
(vi))

346. The trustees of land granted in trust or of a reserve shall apply solely for the purposes of the trust, all moneys received by way of rent or otherwise in respect of any lease of such land or reserve or any part thereof.

Dealings
with leases

347. (1) A lessee shall not transfer, mortgage or sublet a lease to which this Division applies unless the lessee has first obtained the written approval of the Minister and the trustees of the land granted in trust or as the case may be, of the reserve.

If the lessee contravenes this subsection the lease may be terminated by the Minister pursuant to section three hundred and forty-eight of this Act.

(2) A transfer, mortgage or sublease of a lease of land, or any part of land, granted in trust shall not without the Minister's approval endorsed on the instrument of transfer, mortgage or sublease, be capable of registration under "*The Real Property Acts, 1861 to 1960.*"

Cancellation
of leases by
Minister

348. (1) Notwithstanding any provision of any lease to which this Division applies, the Minister may, upon being satisfied that the lessee has failed to observe or perform any covenant or condition of the lease which is

expressed to be binding upon the lessee, or that it is desirable in the public interests so to do, by notice in writing, cancel such lease.

(2) Upon cancellation under this section of a lease the lessee shall forthwith vacate the land and shall have no right or claim to any compensation whatsoever and any improvements effected by him upon the land pursuant to his lease shall, unless the Minister in writing permits their removal, become the property of the trustees.

(3) If the lessee fails forthwith to vacate the land he shall be deemed to be a person in unlawful occupation of Crown land and the provisions of sections three hundred and seventy-two and three hundred and seventy-three of this Act shall, with and subject to all necessary adaptations, apply.

(4) Upon receipt of a notice that the Minister has cancelled a lease registered with respect to land granted in trust, the Registrar of Titles shall, by virtue of this subsection, have power and authority to make, and shall make or cause to be made any necessary entries or endorsements in the register book concerned and do and execute all such other acts, matters and things as may be necessary and proper to give full effect to such cancellation.

349. When an Order in Council reserving and setting apart any land is rescinded any lease to which this Division applies of such land or any part thereof shall by virtue of the rescission of such Order in Council be terminated and the lessee shall forthwith vacate the land and have no right or claim to compensation whatsoever.

Effect of termination of trust upon lease

350. The trustees of land granted in trust or of a reserve shall not permit or allow any person or body corporate to occupy the whole or any part of the land so granted or reserved, for any purpose contrary to or inconsistent with the purpose for which the land was so granted or reserved :

Use of land contrary to trust prohibited

Provided that, except with the prior consent in writing of the Minister, the trustees shall not in any circumstances permit a person to occupy the land or any part of the land so granted or reserved for a period longer than one month, and whether continuously or intermittently.

Mortgaging of land granted in trust

Mortgage
of land
granted
in trust
(1910,
s. 185 (3))

351. (1) In order to raise funds for effecting permanent improvements on any land granted in trust, or for adding to or maintaining permanent improvements already effected on such land, or for such other purposes as may be from time to time approved by the Governor in Council, either generally or in any particular case, the Governor in Council may, by Order in Council, grant to the trustees of such land liberty to mortgage the said land upon such terms, conditions and stipulations as he thinks proper ; and the trustees shall be at liberty to effect such mortgage accordingly in pursuance of such Order in Council.

(2) If the trustees default in the payment of the moneys secured by, or fail otherwise in the observance of any of the covenants expressed in the bill of mortgage, the mortgagee shall give to the Minister one month's notice in writing before he shall exercise any right or remedy had by him under the mortgage in respect of the default.

(3) Notwithstanding any provision of "*The Real Property Acts, 1861 to 1960,*" or anything contained in the bill of mortgage, the mortgagee shall not sell the land until payment shall have been made to the Minister of the amount of the unimproved value of the land, as at the date of the notice by the mortgagee as aforesaid, such value to be as agreed upon between the Minister and the mortgagee or failing such agreement as determined by the Court upon reference in that behalf by the Minister :

Provided that the Minister may consent in writing to the sale if the mortgagee gives to him security or an undertaking to his satisfaction in respect of such payment.

(4) For the purposes of this section the unimproved value of the land shall be the amount which, in the opinion of the Minister or the Court, as the case may be, experienced persons would be willing to pay for the fee-simple of the land, assuming it were unimproved, freed and discharged from the trusts, and were offered for sale on such reasonable terms and conditions as a *bona fide* seller would require.

(5) Upon compliance by the mortgagee with the provisions of subsections (2) and (3) of this section the mortgagee shall be entitled, if default as aforesaid continues, to sell the land freed and discharged from the trusts expressed in the grant, provided that in the first instance the land shall be offered for sale by public auction.

(6) Upon sale of the land the mortgagee shall lodge with the Minister—

- (a) the relative deed of grant ;
- (b) a properly executed surrender thereof (which the mortgagee is hereby empowered to execute) subject, however, to any other encumbrances registered over the land ;
- (c) a request, duly executed by the mortgagee and witnessed by a justice of the peace, for the issue of a fresh deed of grant free of the trusts in the name of the purchaser, and endorsed with the consent of the purchaser to take such fresh deed of grant ;
- (d) a declaration by the mortgagee setting out—
 - (i) the gross amount received from the sale of the land ;
 - (ii) the amount of the mortgage debt as at the date of sale of the land ;
 - (iii) particulars of the expenses incurred in selling the property; and
 - (iv) the amount, if any, remaining in the hands of the mortgagee after deducting any amount paid to the Minister as the unimproved value of the land, the amount of the mortgage debt and the expenses incurred in selling the land ; and
- (e) the surplus amount, if any, referred to in subparagraph (iv) of paragraph (d) of this subsection.

(7) Upon receipt of the documents and, if any, money, referred to in subsection (6) of this section (and where the mortgagee has given to the Minister security or an undertaking in respect of payment of the unimproved value, upon payment to the Minister of the excess of the amount secured or undertaken to be

paid over the money received by the Minister under subsection (6) of this section) the Minister shall cause the surrender to be registered, and thereafter, a fresh deed of grant of the land concerned to issue in the name of the purchaser freed and discharged from the trusts, but subject to the encumbrances, if any, subject to which the surrender was made.

The Registrar of Titles shall endorse on the fresh deed of grant without fee (anything in any Act notwithstanding) particulars of the encumbrances, if any, subject to which the surrender of the deed of grant was made.

(8) The mortgagee may, with the consent of and subject to such conditions (including conditions varying the provisions of subsections (6) or (7) of this section), as may be imposed by the Minister, sell the land in subdivisions.

(9) Upon sale by the mortgagee of the land or any subdivisions of the land granted in trust, the trust shall be deemed to be wound up and the Minister may appoint some person to realise any property or other assets of the trust which is or are not subject to the bill of mortgage under which sale of the land was effected.

All money received by such person shall be paid to the Minister and together with any surplus money received from the mortgagee pursuant to paragraph (e) of subsection (6) of this section may be disposed of as the Minister may direct.

Division III.—Resumption of Surplus Land Granted in Trust

Court to determine whether or not the trust includes surplus land

352. (1) If it appears to the Minister that the area of any land granted in trust exceeds the area reasonably required for the purposes of the trust he may cause to be referred to the Court for hearing and determination the matter of whether or not the whole of such land is required for the purposes of the trust and if not, what part is not so required.

(2) If the Court determines that part of such land is surplus to the requirements of the trust, the Governor in Council, after survey of the part specified in the Court's determination, may, by Proclamation published in the

Gazette, resume such part, without paying any compensation whatsoever for the land, or for any item or factor associated with such resumption except improvements or developmental works effected by the trustees on such part.

(3) From and after the date named in the Proclamation, the land therein specified shall become absolutely vested in the Crown, freed and discharged from any trusts, encumbrances, or other estates or interests whatsoever and may be dealt with as Crown land under this Act.

(4) The Minister shall thereupon cause to be delivered to the Registrar of Titles a copy of the Proclamation and the plan of survey signed by the Minister, and the Registrar of Titles shall forthwith register such copy of the Proclamation and plan.

(5) Any person in possession of any instrument evidencing the title to the land part whereof has been resumed under this section shall, upon receiving notice from the Registrar of Titles, deliver up to him such instrument to be endorsed by the Registrar of Titles.

Any person refusing or neglecting to deliver up such instrument shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(6) Upon receipt of the instrument evidencing title to the land, the Registrar of Titles shall, at the direction of the Minister, issue a fresh certificate of title with respect to the land remaining after resumption. Such fresh certificate of title shall be subject to the trusts expressed in the instrument of title of the land at the time of resumption and shall have endorsed thereon any subsisting mortgage or other encumbrance, estate or interest which was endorsed on the instrument lodged in accordance with subsection (5) of this section.

No fee shall be payable for or in respect of the issue of any such certificate or the making of any such endorsement.

(7) The provisions of "*The Public Works Land Resumption Acts, 1906 to 1955*," shall, with and subject to all necessary adaptations, extend and apply in every case where compensation for improvements or developmental works is payable under this section.

Division IV.—Winding up of Trusts

Power of
Governor in
Council to
determine
trust
(1910, s. 189)

353. (1) The Governor in Council may, by Order in Council, declare that land granted in trust shall revert to the Crown if at any time—

- (a) the trust becomes inoperative or fails of an object ; or
- (b) the affairs of the trust are not being properly managed in the public interests ; or
- (c) the land is being used in a manner contrary to the purpose of the trust ; or
- (d) for any other reason it appears to the Governor in Council desirable so to do,

whereupon the land concerned shall revert to the Crown freed and discharged from the trusts and all encumbrances, estates or interests whatsoever and may be dealt with by the Crown as if the same had never been granted.

(2) Upon the issue of an Order in Council pursuant to subsection (1), of this section the Registrar of Titles shall, by virtue of this section, have power and authority to make, and shall make or cause to be made, any necessary entries or endorsements in the register book concerned and shall do and execute all such other acts, matters and things as may be necessary and proper to give full effect to such Order in Council.

Winding up
of trust
(1910,
s. 189A)

354. (1) If the Order in Council reserving any land for a public purpose is rescinded by the Governor in Council, or if any land granted in trust reverts to the Crown under section three hundred and fifty-three of this Act, the Minister may order any trust in respect of the reserve or land to be wound up and thereupon—

- (a) all property and all powers, authorities, immunities, rights, obligations and duties which immediately before the date of such winding up order were vested in, exercisable by, or imposed upon the trustees or any other body of persons or person on behalf of the trustees in relation to the trust shall by virtue of and without further or other authority than this section be transferred to, vested in, exercisable by, imposed upon, and executed by such person as the Minister appoints to wind up the trust ; and

(b) the person appointed by the Minister to wind up the trust shall realise such property, and after making provision for the costs and expenses of the winding up shall apply the proceeds towards payment firstly of the amount owing to any mortgagee or, if more than one, mortgagees according to their respective priorities, and secondly, towards the debts and obligations of the trust. If any moneys remain in his hands he shall remit the same to the Minister for disposal as the Minister may direct.

If there are any improvements upon the land the subject of a winding up order, which have been effected by a lessee pursuant to a subsisting lease from the trustees approved by the Minister, the person appointed to wind up the trust may, if the lease conferred upon the lessee the right to remove such improvements on the expiration of the lease, permit the lessee to remove such improvements within thirty days after such permission is granted. The person so appointed may extend such period of thirty days, if in his opinion, the extension is warranted.

(2) When an order is made by the Minister under subsection (1) of this section the persons who were, immediately prior to the making thereof, the trustees of the trust to which such order relates and every other body of persons or person referred to in paragraph (a) of subsection (1) of this section shall forthwith do and execute such acts and things as in the opinion of the person appointed by the Minister to wind up the trust are necessary to carry the order of the Minister into effect, and every such trustee, body of persons or person who or which fails to comply with the provisions of this subsection shall be guilty of an offence and liable to a penalty of not more than one hundred pounds.

In the case of an offence against this subsection, by a body of persons which is not a corporation, every member of its governing body by whatever name called shall be deemed to have committed the offence and shall be liable accordingly.

(3) This section shall apply with respect to any trust in respect of any land granted in trust or reserved for a public purpose notwithstanding that such land

reverted to the Crown or, as the case may be, that the Order in Council reserving the land was rescinded, prior to the commencement of this Act.

Indemnity

355. No person shall have any right or remedy in law against the Crown, the Minister, the Commission, any member thereof, or any officer of the Department arising from any action taken pursuant to any of the provisions contained in Divisions I. to IV., both inclusive, of this Part.

Meaning of
"lessee"

356. In Divisions I. to IV., both inclusive, of this Part the term "lessee" means a person who is the lessee from trustees of land granted in trust or of a reserve.

Powers, &c.,
of Local
Authority
as trustee

357. Where a Local Authority, is the trustee of land granted in trust or of a reserve under this Act it shall, notwithstanding any provision of any other Act, as such trustee have, perform and be subject to all the powers, duties and obligations conferred or imposed by Divisions II., III. and IV. of this Part upon trustees of lands granted in trust or of reserves under this Act.

Division V.—Reservations in Deeds of Grant

Resumption
of reserva-
tions for
public
purposes
(1910, s. 190)

358. (1) Notwithstanding anything in any other Act, in every case in which a deed of grant, whether issued before, on or after the commencement of this Act, contains a reservation of part of the land comprised therein for public purposes, and specifies the area of the land reserved, whether or not the land reserved is described so as to identify it, the Governor in Council may, for any of the public purposes mentioned in the reservation, at any time and from time to time resume possession from the person for the time being entitled thereto—

- (a) where the land comprised in the reservation is identified by description, of any part of the land comprised in the reservation ; or
- (b) where the land comprised in the reservation is not identified by description, of any part of the land comprised in the grant provided that the area or aggregate of the areas possession whereof is so resumed shall not exceed the area specified in the reservation.

In respect of any land possession of which has been so resumed no compensation whatsoever for the land, or for any item or factor associated with such resumption of possession, shall be payable except for improvements or developmental works effected on such land.

(2) When resumption of possession as aforesaid ^{Procedure} is required, the Minister shall—

- (a) cause, if necessary, an authorised surveyor to make a survey and prepare a plan, signed by him as evidence of the accuracy thereof, showing the land possession of which is being resumed ;
- (b) cause a notice, with a copy of the plan, to be served upon the owner of the land, stating that it is the intention of the Crown to resume possession of the area of land shown on the plan for the purpose of the reservation, and calling upon the owner to send to the Minister, within a period of thirty days after service upon him of such notice, his objections, if any, in writing, to such resumption.

(3) (a) If objection is not duly made or if, after consideration of any objection duly made the Governor in Council is satisfied that resumption of possession of the land is required, the Governor in Council may declare by Proclamation that possession is resumed of such area of land as from the date specified in the Proclamation. ^{Governor in Council may declare resumption, &c.}

(b) The Minister shall thereupon cause to be delivered to the Registrar of Titles a copy of the Proclamation and, if a survey has been made, the plan of survey signed by the Minister, and the Registrar of Titles shall forthwith register such copy of the Proclamation and, if any, plan.

(c) Any person in possession of any instrument evidencing the title to the land from which possession of part thereof has been resumed shall, upon receiving notice from the Registrar of Titles, deliver up to him such instrument to be endorsed by the Registrar of Titles.

Any person refusing or neglecting to deliver up such instrument shall be guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds.

(d) Upon receipt of the instrument evidencing title to the land, the Registrar of Titles shall, at the direction of the Minister, issue a fresh certificate or

certificates of title with respect to the land remaining after resumption. Such fresh certificate or certificates of title shall have endorsed thereon any subsisting mortgage or other encumbrance, estate or interest which was endorsed on the instrument or instruments lodged in accordance with paragraph (c) of this subsection.

To the extent to which resumption of possession has not exhausted the reservation every such fresh certificate of title shall be subject to the reservation which, if there are two or more fresh certificates of title, shall be apportioned among them as the Minister directs.

No fee shall be payable for or in respect of the issue of any such certificate or the making of any such endorsement.

(4) The provisions of "*The Public Works Land Resumption Acts, 1906 to 1955*," shall, with and subject to all necessary adaptations, extend and apply in every case where compensation for improvements or developmental works is payable under this section.

Sale of
reservation
which is not
required
(1910, s. 191)

359. (1) In any case of a grant of land in fee-simple, whether made before, on or after the commencement of this Act, where by the deed of grant either—

- (a) a part of the land identified by area and description has been reserved for public purposes ; or
- (b) a part of the land has been reserved for public purposes, specifying the area of the land reserved, but not describing the part reserved so as to identify it,

the Governor in Council may, if the land reserved, or any part thereof, is not required for public purposes, sell to the owner of the land, the whole or any part of the reserved land.

(2) The price to be paid shall be determined by the Court as at the date on which the application by the owner of the land to purchase the reserved land, or part thereof, is received by the Minister or on the date on which the Minister makes (without a prior application to purchase) an offer to sell the reserved land or part thereof to the owner of the land, as the case may be :

Provided that if the Minister and the owner of the land agree upon the unimproved value as at the relevant date of the land to be sold, it shall not be necessary for

the Court to determine the matter and the amount of the unimproved value so agreed upon shall be the price to be paid.

(3) (a) Where the land reserved is described in the deed of grant so as to identify it, the unimproved value of such land, or as the case may be, the part thereof to be sold, shall be determined by the Court to be the price to be charged therefor.

(b) Where the land reserved is not described in the deed of grant so as to identify it, the unimproved value per acre of the land, including the reservation, described in the grant shall be determined by the Court and shall be the price per acre to be charged for the land to be sold.

(4) For the purposes of this section the unimproved value of land shall be the amount which experienced persons would be willing to pay for the fee-simple of the land, assuming it were unimproved, and were offered for sale on such reasonable terms and conditions as a *bona fide* seller would require.

(5) Where, in the opinion of the Minister it is desirable, an owner may, in lieu of paying in money the purchasing price of any land purchased under this section, surrender to the Crown other freehold land the value whereof is equal to such purchasing price and the situation whereof is satisfactory to the Minister.

Such other land may be part of the land comprised in the deed of grant containing the reservation to which the purchase relates or it may be comprised in some other deed of grant.

The Minister shall not accept the surrender unless and until the Court, upon reference by the Minister, determines that the values respectively of the land purchased and of the land to be surrendered are equal.

(6) Upon payment of the price agreed upon or determined or upon acceptance by the Minister of a surrender pursuant to subsection (5) of this section in lieu of such payment, the owner of the land shall surrender to the Crown his title to the land, whereupon a fresh deed of grant shall be issued to him pursuant to section nine of this Act.

Such fresh deed of grant shall be for the whole of the land described in the surrendered title freed and discharged, so far as relates to the land sold to and purchased by him, from the reservation to which the

surrendered title was subject, but subject otherwise to such reservation, and to any mortgage or other encumbrance, estate or interest subject to which the surrender was made.

Dealing
otherwise
than by sale
with
unrequired
reservation
(1910, s. 191)

360. (1) In any case where the owner of the land is not agreeable to purchase the area reserved or part thereof, or refuses to pay the price determined by the Court with respect to such area or part, and such area or part, in the opinion of the Minister, is sufficient in extent to be used by any person or persons other than the owner of the land, the Governor in Council may by Proclamation resume possession of the area reserved or part thereof in question, and thereafter deal with such land as Crown land under this Act.

(2) In respect of the land possession of which has been resumed under this section no compensation whatsoever for the land, or for any item or factor associated with such resumption of possession shall be payable, except for improvements or developmental works on such land.

(3) For the purposes of giving effect to the provisions of this section the provisions of subsections (2), (3) and (4) of section three hundred and fifty-eight of this Act shall, with and subject to all necessary adaptations, apply.

(4) In the event of the Minister and the owner of the land being unable to agree as to the boundaries, not identified by description in the deed of grant, of the land, possession of which is to be resumed pursuant to this section, such boundaries shall be as determined by the Court upon a reference by either party in that behalf, and in every such case one of the boundaries of such land shall adjoin or be an existing road but so as not to deprive the owner of the land of access to the land comprised in his instrument of title.

(5) Where not described in the deed of grant so as to be identified the qualities and capabilities of the land, possession of which is resumed pursuant to this subsection, shall be as far as practicable the same as the average qualities and capabilities of the whole of the land granted in fee-simple.

(6) In any case where the qualities and capabilities of different parts of the land described in the deed of grant are unequal an allowance may be made in the

area of the reservation or the part of the reservation possession whereof is resumed under this section so as to ensure that the unimproved value thereof bears to the total unimproved value of all land described in the deed of grant the same proportion as the area of the reservation or part in question of the reservation bears to such total area.

361. In this Division the term "owner", in relation to any land granted in fee-simple, means the person for the time being registered under "*The Real Property Acts, 1861 to 1960,*" as the proprietor of the land for an estate in fee-simple. ^{Meaning of "owner"}

PART XII.—ROADS

Division I.—Dedication, Opening and Closure

362. (1) The Minister, with the approval of the Governor in Council, may by notification published in the *Gazette*, declare any Crown land open as a road for public use and such land shall thereby be dedicated as a road accordingly. ^{Opening of Crown lands as roads}

(2) Crown land may also be dedicated as a road for public use upon and by the registration and deposit in the Office of the Surveyor-General of a plan of survey which exhibits distinctly delineated thereon the land thereby dedicated as such road.

(3) (a) An unsurveyed road through a pastoral lease or occupation license may be sufficiently dedicated as a road for public use by its delineation by a dotted line on a map or plan published by the Department whether before or after the commencement of this Act.

The location of such a road may be varied in accordance with an amended delineation shown by a later map or plan so published.

(b) Where the width of a road so delineated is not shown on such map or plan it shall be deemed to be of a width of three chains.

(c) The location of such a road may at any time be defined by the Minister, by notice published in the *Gazette*, according to the best description which is

procurable notwithstanding that such description has not been prepared after actual survey. The dedication of such a road shall not be set aside by reason only of any imperfection in such description if the location of the road has been defined with reasonable certainty.

(d) The Minister may, from time to time, by notice published in the *Gazette*, declare that, by reason of a better description becoming available, the defined location of any such road is amended in accordance with the new description stated in the notice.

(4) The ownership of land comprised in all roads opened or dedicated under this section or opened or dedicated under the repealed Acts shall be and remain vested in the Crown.

Application
for closing
unrequired
roads
(1910, s. 192)

363. The owner of any land held in fee-simple, or the lessee of any land held from the Crown under this Act or any other Act, which land adjoins a road which is not required for public use may apply in writing to the Minister that the road may be closed either permanently or temporarily.

The Minister shall cause notice of such application to be published once at least in the *Gazette* and in a newspaper circulating in the locality of the road and also for such period as the Minister directs (being not less than one month or more than two months) to be conspicuously posted on the road proposed to be closed and at the nearest District Land Office and police station.

At the expiration of such period, the Governor in Council may approve of such application with or without modification.

Doubts as to
dedication to
be resolved
by Court
(1910, s. 192)

364. In any case in which any doubt exists or any question arises as to the dedication of any land for public use as a road, and wherein action for closure is proposed under this Act, the Minister shall have authority to, and may if he deems it expedient so to do, refer the matter to the Court. Whereupon the Court or, upon appeal thereto, the Land Appeal Court shall hear and determine the matter of the reference and shall certify its determination to the Minister who shall notify in the *Gazette* the decision so certified to him.

Notwithstanding anything contained in this Act or any other Act, the determination of the Court or, upon appeal thereto, Land Appeal Court shall be final and conclusive of the matters determined by the Court or Land Appeal Court with respect to the dedication concerned.

The Registrar of Titles or the Registrar of Dealings shall, by virtue of this section, have power and authority to make, and shall cause to be made, any necessary entries or endorsements in the appropriate register book or, as the case requires, register kept in the Department, and shall do and execute all such other acts, matters and things as may be necessary and proper to give full effect to any determination of the Court or Land Appeal Court certified to the Minister under this section and notified in the *Gazette* by him.

365. (1) When the permanent closure of any road is approved the Governor in Council shall, by notification published in the *Gazette*, close such road permanently and may—

Grant or
lease of
closed road
(1910, s. 193)

- (a) if the applicant is the owner of land held in fee-simple—
 - (i) sell to such owner or to the several owners of adjoining lands held in fee-simple the land, or parts respectively as determined by him of the land, comprised in the closed road at such price as the Minister thinks reasonable ; and
 - (ii) issue to such owner or owners a fresh deed of grant or fresh deeds of grant under and in accordance with the provisions of section nine of this Act or, if it appears appropriate so to do, a deed of grant or deeds of grant for the land comprised in the closed road ;
- (b) if the applicant is the lessee under the Crown of any land held from the Crown under this Act or any other Act, order such closure, and thereupon the land, or parts as determined by him of the land, comprised in the closed road may be added to the land leased by such lessee or to adjoining lands respectively held under lease by several lessees.

The area and rent of every lease concerned shall be adjusted according to the area so added ;

- (c) if the area of the land comprised in the closed road is in the opinion of the Governor in Council sufficient in extent to be economically and profitably used by any person other than the owner or lessee of adjoining land, either deal with the land comprised in the closed road as prescribed by paragraphs (a) or (b) of this section or cause such land to be dealt with and disposed of in any way in which Crown land may be dealt with and disposed of under this Act.

(2) Where both freehold land and land held under the Crown for a lesser estate than freehold adjoin the closed road, the Governor in Council may deal with the land comprised in the closed road partly under paragraph (a) and partly under paragraph (b) of subsection one of this section.

When temporary enclosure only may be authorised (1910, s. 194)

366. (1) When the temporary closure of any road is approved the Governor in Council shall, by notification published in the *Gazette*, close such road temporarily.

Thereupon the Minister shall issue to the applicant a license in the prescribed form authorising him and his successors in the occupation of the adjoining land to enclose the road and, subject to subsections (2) and (6) of this section, keep it enclosed for so long as he or they shall pay an annual rent to be fixed by the Minister, which rent shall be payable in advance on the first day of January in every year.

Every such license subsisting at or issued after the commencement of this Act shall be known and referred to as a "road license."

Conditions

(2) Every such license may be subject to such conditions as the Minister in his discretion may determine and upon failure by the licensee to comply with any such conditions the Minister may cancel the license without any inquiry or other process of law.

Thereupon the road shall again become open to public use as a road, and the Minister shall cause notification accordingly to be published in the *Gazette*.

(3) A road license may be transferred with the permission of the Minister. Transfer of license

Every such transfer shall be registered in the appropriate register kept in the Department.

(4) The Minister may, on or before the first day of December in any year, give notice to the holder of a road license that, from and including the next ensuing year, the annual rent will be increased or decreased to a stated amount, and the rent shall be increased or decreased accordingly. Notice by Minister that rent of closed road increased

(5) The provisions of section two hundred and forty-nine of this Act apply, with and subject to all necessary adaptations, to a road license. Forfeiture

(6) If at any time it appears to the Governor in Council expedient to reopen any road in respect of which a road license has been issued, he may cancel the road license upon giving not less than six months' notice to the holder thereof. Power to reopen

Upon such cancellation the road shall again become open to public use as a road, and the Minister shall cause notification accordingly to be published in the *Gazette*.

367. (1) Where there is under the carriageway of a bridge, viaduct or other work on a road, any land not used and not required for public use as a road, any person notwithstanding that he is not the owner of adjoining land may make application to the Minister for the temporary closure of the part of the road under such carriageway. Temporary closure of road under carriageway of bridge, &c.

(2) The application shall be dealt with by the Minister and considered by the Governor in Council as if it were an application made pursuant to the provisions of section three hundred and sixty-three of this Act.

(3) If the application is approved by the Governor in Council the provisions of section three hundred and sixty-six of this Act shall, with and subject to all necessary adaptations, apply.

Closure of roads in other cases (1910, s. 195)

368. A road which, after such public notice and inquiry as the Minister deems advisable is found to be not required for public use may be permanently closed by the Governor in Council by notification published in the *Gazette*.

Thereupon the land comprised in such road may be dealt with and disposed of as Crown land under this Act.

The power conferred by this section is in addition to and not in derogation of any other power to close a road conferred by this Act upon the Governor in Council.

Roads dedicated to the public by private persons (1910, s. 196)

369. All land which, having been before, is at the commencement of this Act, or which may on or after the commencement of this Act be, dedicated by the owner thereof, not being the Crown, to public use as a road shall, by virtue of such dedication be vested (and in the case of land so dedicated before the commencement of this Act, is hereby declared to have always been vested) in the Crown and may be dealt with in the same manner as roads which have been dedicated to public use by the Crown.

Division II.—Power to Construct Roads

Minister may construct roads (1934, s. 2)

370. (1) The Minister shall have the power to clear, form, construct and maintain in such manner as he may deem fit roads serving lands made available or to be made available for lease or sale under this Act or any other Act.

The Minister shall not, in respect of anything done or omitted to be done by him or by any person acting under his authority pursuant to his power under this section, be subject to any duty, obligation, liability or responsibility except to the extent to which a Local Authority would be subject to that duty, obligation, liability or responsibility were the act or omission committed by it.

(2) The power to make regulations under this Act includes power to make such regulations as the Governor in Council deems necessary or convenient for the purposes of this section including regulations conferring upon the Minister for the purposes of this section any right, power, protection, privilege or obligation relating to roads had by a Local Authority or by the Commissioner of Main Roads under "*The Local Government Acts, 1936 to 1961,*" or "*The Main Roads Acts, 1920 to 1962.*"

Without limit to the generality of the foregoing provisions of this subsection, regulations may be made regulating, prohibiting or restricting traffic or any class of traffic upon any road constructed or under construction by the Minister pursuant to this section or upon any part of any such road or confining traffic or any class of traffic to any specified part of any such road.

(3) At any time after the completion of the construction of any road constructed by the Minister pursuant to this section the Governor in Council may, by Order in Council, fix a date on and after which the provisions of "*The Local Government Acts, 1936 to 1961,*" shall apply to the road.

On and after the date so fixed—

- (a) the Minister shall not be subject to any duty, obligation, liability or responsibility whatsoever in respect of the road ;
- (b) any regulations made pursuant to this section shall cease to apply to the road ;
- (c) the provisions of "*The Local Government Acts, 1936 to 1961,*" shall apply in respect of the road as if it had been constructed by the Local Authority in the Area whereof it is situated.

(4) Until the date fixed by the Governor in Council by Order in Council pursuant to subsection (3) of this section, "*The Local Government Acts, 1936 to 1961,*" do not apply to a road constructed or under construction pursuant to this section.

PART XIII.—GENERAL

*Division I.—Miscellaneous Provisions**Purchases or Exchanges*

Power to
purchase or
exchange
(1910, s. 197)

371. The Governor in Council, on behalf of Her Majesty, by agreement with the owner thereof or, in the case of land held from the Crown for a lesser estate than fee-simple, the holder under the Crown thereof, may acquire any land of any tenure, either by way of purchase or by granting any Crown land of equal value in fee-simple or for any lesser estate in exchange for such land.

Where any land proposed to be acquired or granted by the Crown by way of exchange as aforesaid is improved the value thereof for the purposes of the exchange shall be the improved value.

In every case of an exchange as aforesaid the Court shall determine the respective values of the lands the subject of the exchange.

Trespass,
&c.
(1910, s. 203)

372. (1) Any person, not lawfully claiming under a subsisting lease or license, or otherwise under this Act or any other Act, or under prior authority in writing of the Minister or Commission, who occupies any Crown land or any reserve, whether or not the reserve is under the control of trustees, or who resides or erects any structure, or erects, constructs, places or maintains any other improvement or thing whatsoever, or depastures stock, on any Crown land or any reserve, or who clears (which term includes destruction of trees), digs up, encloses or cultivates any Crown land or any reserve or any part thereof, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding fifty pounds and, in addition, to a daily penalty not exceeding ten pounds for any offence under this section which is continued after conviction therefor.

(2) In respect of any offence under this section in relation to clearing, digging up or cultivating, any person found guilty of such an offence shall, in every case, be liable for all loss and all damage caused by that

offence in addition to the prescribed penalty for the offence, and evidence proving or tending to prove the amount of such loss or damage shall be admissible in the proceedings and upon convicting the offender the justices may, in addition to the penalty imposed, order him to pay the amount thereof proved to their satisfaction.

For the purposes of this subsection the loss and damage caused by the offender shall include the value of any tree destroyed, which value shall be taken to be the sale price ordinarily obtainable on the sale of the tree then and there standing.

(3) Upon convicting any person for an offence under this section, whether or not a penalty as aforesaid is imposed, the justices in their discretion may, upon the application of the complainant, issue a warrant in terms of subsection (1) of section three hundred and seventy-three of this Act to remove such person from the land or reserve in respect whereof the offence was committed and, as the case requires, an order in terms of subsection (2) of section three hundred and seventy-three of this Act requiring such person to remove from such land or reserve any structure or other improvement or thing whatsoever, erected, constructed, placed or maintained thereon by him without any lease, license, permit or other authority therefor.

(4) For the purposes of this section the term " Crown land " includes any road.

373. (1) Any Commissioner or officer authorised in that behalf by the Minister who has reason to believe that any person is in unlawful occupation of any Crown land or any reserve (whether or not the reserve is under the control of trustees) or is in possession of any Crown land under colour of any purchase, lease or license that has been terminated by forfeiture, cancellation or otherwise, may make complaint before justices, who shall hear and determine the matter in a summary way, and, on being satisfied of the truth of the complaint, shall issue their warrant, addressed to the Commissioner or to such authorised officer or to any member of the

Removal of
trespassers
(1910, s. 204)

Police Force, requiring him forthwith to remove such person from such land, and to take possession of the same on behalf of the Crown ; and the person to whom the warrant is addressed shall forthwith carry the same into execution.

A lessee or his manager or a licensee of any land held from the Crown, or a person who is purchasing any land from the Crown, may in like manner make a complaint against any person in unlawful occupation of any part of the land comprised in the lease or license or being purchased and the like proceedings shall thereupon be had.

Removal of
unauthorised
improvements,
&c.,
on Crown
lands or
reserves

(2) (a) When any structure or other improvement or thing whatsoever is erected, constructed, placed or maintained on any Crown land or any reserve (whether or not under the control of trustees) and—

(i) the person claiming ownership of such structure, improvement or thing does not on demand produce any lease, license, permit or other authority therefor whether under this Act or any other Act ; or

(ii) after reasonable inquiries made by the Commissioner or any officer thereunto directed by the Commissioner, the owner thereof cannot be found,

then upon complaint before justices made by the Commissioner, acting with the authority of the Commission (or, in the case of a reserve under the control of trustees, the Commissioner acting with the authority of the Commission or any person acting with the authority of the trustees), the justices shall hear and determine the matter in a summary way and upon being satisfied of the truth of the complaint, shall order such structure or other improvement or thing to be removed from such Crown land or reserve within the time fixed in the order by and at the expense of the person found to be the owner.

(b) Notwithstanding that the person alleged in any complaint under this subsection to be the owner of the structure or other improvement or thing the subject of the complaint has not been served with the complaint and is not present, if the justices are satisfied that the Commissioner (or, in the case of a complaint in respect of a reserve authorised by the trustees

thereof, such trustees) made or caused to be made reasonable inquiries for the purpose of finding such owner but has been unable to find him, the justices may proceed in the absence of the owner and as if the complaint had been duly served, or they may make such order as to substituted service by public advertisement or otherwise as they deem fit in the circumstances and may for the purpose of enabling such substituted service enter any necessary adjournment.

Substituted service, if ordered, shall be sufficient service of the complaint for all purposes of the hearing and determination thereof and the making of any order thereon.

(c) If, after any inquiry made by the Commissioner or any officer thereunto directed by the Commissioner (or, as the case requires, the trustees of the reserve concerned), the owner of the structure or other improvement or thing in question is not known or cannot be found, the order as aforesaid of justices may be posted on some conspicuous part of the land on which the structure or other improvement or thing is situated and no other service or publication of such order need be given or made.

(d) If any structure or other improvement or thing is not removed from any Crown land or reserve in compliance with any order made by justices under this section, such structure or other improvement or thing shall become and be forfeited to the Crown (or, where the order has been made in relation to a reserve upon complaint authorised by the trustees thereof, shall become the property of such trustees) and may be sold for removal or otherwise disposed of as the Commission or trustees may determine.

To the extent to which the sale price, if any, of any structure or other improvement or thing forfeited to the Crown or to the trustees under this subsection is insufficient to defray the costs incurred by the Commission or the trustees with respect to the removal or disposal otherwise of the same, such costs may be recovered by the Commission or the trustees from the person, if any, who claimed ownership of such structure or other improvement or thing, by action as for a debt in any court of competent jurisdiction.

(3) The powers granted under the foregoing provisions of this section shall be in addition to and not in diminution of or substitution for the powers of trustees of reserves to take action pursuant to the provisions of section three hundred and thirty-eight of this Act.

(4) For the purposes of this section the term " Crown land " includes any road.

Limitation
of acquisition
of land
by possession
(1910,
s. 203A)

374. No title to any land which has been either before, on or after the commencement of this Act—

(a) dedicated, opened, declared or otherwise notified as a road for public use under any Act or in connection with the alienation of any Crown land ; or

(b) left between Crown grants as a road or driftway ; or

(c) reserved or dedicated under this Act or any other Act for or to any public purpose ; or

(d) reserved in any Crown grant,

or to any Crown land shall by reason of adverse possession be allowed to be asserted or established as against—

(i) the Crown ; or

(ii) persons holding such land in trust for any public purpose.

Nothing in this Act shall affect the operation of any provision of "*The Real Property Acts, 1861 to 1960,*" or the title to any land which has in any proceedings, other than summary proceedings, to which the Crown has been a party been adjudged not to be Crown land.

Rights of
pasturage
for travelling
stock
(1910, s. 205)

375. (1) Any person in charge of stock being driven by land along any road ordinarily used for the purpose of travelling stock or along any road declared under any Act to be a stock route, and passing through a pastoral lease or land comprised in an occupation license from which the road is not fenced out, may depasture such stock on any land within a distance of half a mile from the centre line of the road which is not part of an enclosed garden or paddock under cultivation or which is not within a distance of one mile from the principal homestead or head station.

In any case where there is on one side of any road referred to in this subsection a fence distant not more than half a mile from the centre line of such road, the stock may be depastured—

- (a) on any land between such fence and the centre line of the road which is not part of an enclosed garden or paddock, or within a distance of one mile from the principal homestead or head station ; and
- (b) on any land on the other side of the road from such fence which—
 - (i) is distant not more than one mile from such fence ;
 - (ii) is not separated from such road by a fence or a stock proof barrier ; and
 - (iii) is not part of an enclosed garden or paddock under cultivation, or within a distance of one mile from the principal homestead or head station.

This subsection applies so as not to authorise the depasturing of any stock upon land comprised in a pastoral lease or occupation license which is lawfully separated by a fence or stock proof barrier from the road in question.

This subsection applies so as not to authorise, justify or excuse any failure to travel stock which is an offence under subsection (2) of this section.

(2) Any person in charge of stock being driven by land along any road or stock route or across any reserve who—

- (a) unlawfully depastures such stock upon any land comprised in a pastoral lease, selection or occupation license ; or
- (b) fails to travel such stock from the hour and day of commencement of their travel along any road or stock route or across any reserve until the corresponding hour of the day of any inspection by a Commissioner, Land Ranger, an officer authorised in that behalf

Straying or
loitering
stock

by the Minister or person authorised in that behalf by a Local Authority or by the owner, lessee, licensee or occupier of any land abutting on a road or a stock route or reserve along or across which such stock are being travelled, or from the hour of the day of any one such inspection until the corresponding hour of the day of any other such inspection, a distance averaging six miles per day towards their destination,

shall be guilty of an offence against this Act and liable to a penalty of not less than ten pounds or more than one hundred pounds.

(3) Proceedings for an offence under subsection (2) of this section shall not be instituted later than fourteen days after (but not including) the day when the commission of the offence was completed.

(4) Subject to subsection (3) of this section proceedings for an offence under this section may be instituted by any person mentioned in paragraph (b) of subsection (2) of this section.

(5) In applying subsection (2) of this section—

(a) any period in which stock are prevented from travelling by rain, flood or other unavoidable cause ; or

(b) any period during which stock are lawfully depastured elsewhere than on a road, stock route, or reserve and during which period, save with the permission of the lessee or licensee in question, such stock are not depastured under the authority of subsection (1) of this section ; or

(c) any period during which stock are lawfully depastured or lawfully detained under any other Act or law,

shall not be taken into account.

(6) In this section “stock” means horses, cattle, sheep, camels, asses and mules.

376. A person who sells a prickly-pear plant shall be guilty of an offence against this Act and liable to a penalty of not more than fifty pounds.

Sale of prickly-pear plants prohibited (1910, s. 205A)

In this section—

- (a) the term “sell” and derivatives of that term include barter, and also include agree to sell, or offer or expose for sale, or keep or have in possession for sale, or receive, send, forward or deliver for or on sale, or authorising, causing, permitting, suffering or attempting any of such acts or things ; and
- (b) the term “prickly-pear plant” includes any flower, seed, fruit, cutting, live root, slip or other viable part of a prickly-pear plant.

377. (1) All offences against this Act may be prosecuted in a summary way under “*The Justices Acts, 1886 to 1960.*”

Jurisdiction of justices (1910, s. 206)

Subject to any express provision of this Act, any such offence may be so prosecuted upon the complaint of a Commissioner, land ranger or officer authorised in that behalf by the Minister or Commission, or of any person aggrieved.

(2) Notwithstanding anything in any other Act, when any person is convicted before any justices of any offence against this Act, the justices shall not reduce the penalty to be imposed in respect of such offence below any prescribed minimum amount of penalty.

(3) When the same act or omission is an offence both under this Act and under some other Act or law, the offender may be prosecuted either under this Act or under the other Act or law in question, but so that he shall not be twice punished for that act or omission.

When offence not to be twice punished

(4) Proceedings for an offence against any provision of section two hundred and fifty of this Act may be instituted at any time within twelve months after the commission of the offence or within six months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

(5) Any person guilty of an offence against this Act for which no specific penalty is provided shall be liable to a penalty of not more than one hundred pounds.

Obstruction,
&c., of Com-
missioners
and other
officers and
authorised
persons

378. Any person who in any way assaults, threatens, obstructs, hinders or interferes with the Minister, any member of the Commission, any Commissioner, or any other officer or person acting under the authority of the Minister or Commission, in the exercise of any of the powers conferred or the discharge of any of the duties imposed on the Minister, member of the Commission, Commissioner or such other officer or person by this Act or such authority, or attempts so to do, shall be guilty of an offence against this Act and liable to a penalty of not less than ten pounds or more than one hundred pounds.

Where an act which is an offence against this section is also an offence against some other provision of this Act the offender may be prosecuted either under this section or under such other provision, but so that he shall not be twice punished for the same act.

Annual
Report

379. A report on the operation of this Act shall each year be made by the Commission to the Minister for submission to Parliament.

Exemption
from Stamp
Duty
(1929, s. 78)

380. Notwithstanding anything contained in any Act to the contrary the Governor in Council may by Order in Council exempt from stamp duty any documents prescribed in such order which documents relate to the settlement of Crown lands.

Service of
notices,
documents,
&c. (1925,
Regs. 27
and 28)

381. (1) Wherever by this Act any application, notice, document or communication is directed to be sent, served, delivered or forwarded to, or upon the Minister or the Commission, unless otherwise prescribed, the same shall be addressed to the Secretary of the Commission who shall have authority to correspond with all persons and otherwise act under the direction of the Minister or the Commission.

(2) Any notice, communication or other document required to be given or served by the Minister to or upon any person may be signed by the Minister or the Secretary of the Commission, and unless otherwise prescribed, may be sent by post addressed to such person at his last known place of address or to him at the holding (or the head station thereof) the subject of the notice, communication or other document or left for him at such holding or head station.

Division II.—Regulations, Rules, &c.

382. (1) The Governor in Council may, from time to time, make regulations, not inconsistent with this Act, providing for all or any purposes whether general or to meet particular cases that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act and, without limit to the generality of the foregoing provisions of this section—

Regulations
(1910, s. 209)

- (a) prescribing and defining the manner of doing or performing any survey or any other act or thing under or for the purposes of this Act, and where necessary the time when or within which it shall be done or performed ;
- (b) prescribing forms of registers, books, documents, instruments and writings, and the conditions, stipulations, reservations and exceptions that shall be inserted or that shall be implied in grants, leases, licenses and other instruments ;
- (c) defining the duties of officers ;
- (d) prescribing the duties and responsibilities of the Commission, the regulation of meetings, proceedings and the conduct of business of the Commission ;
- (e) regulating procedure in Commissioners' Courts ;
- (f) regulating public parks and reserves in cases not otherwise provided for by law.

(2) The regulations may impose fees in respect of any inspection, survey, lease, license, registration, certificate, permit, objection or other matter issued, granted or made by any officer or other person under this Act, and may impose fees of court.

Fees of different amounts may be prescribed both in respect of different matters and, by reference to different persons, localities, or other circumstances, the same matter.

Offences
against
regulations

(3) Any person who offends against any regulation shall be liable to a penalty not exceeding fifty pounds.

Any person who offends against any regulation relating to any public park or reserve may be arrested by a member of the Police Force or by any officer thereunto authorised by such regulation or any other regulation.

(4) The power to make with respect to any persons or any matters or things whatsoever, any regulation under this Act shall include power to make that regulation so that it may be of general or specially limited application according to time, place, purposes, class, or circumstances, or otherwise as is prescribed, and so that any regulation of specially limited application may or may not differ from any other regulation of specially limited application with respect to the same persons, matters, or things.

The power to make regulations with respect to any matter shall include power to make regulations under this section prohibiting that matter either generally or to meet particular cases.

The power to make regulations under this Act shall include power to repeal, amend, or otherwise modify any regulation in force at the commencement of this Act and continued in force by virtue of any provision of this Act.

(5) Regulations may be made under this Act at any time after the passing hereof.

(6) The power conferred by this Act to make, issue or publish any notification shall be construed as including power exercisable in the like manner and subject to the like conditions, if any, to revoke, alter, amend or otherwise modify the notification.

Power to
make rules
of court
(1910, s. 210)

383. A Judge of the Supreme Court and not less than three members of the Court may, from time to time, make rules of court prescribing forms for all matters or proceedings in the Court or the Land Appeal Court, and otherwise regulating the practice and procedure of such courts.

All such rules of court shall be approved by two or more of the Judges of the Supreme Court, and shall be published in the *Gazette*.

384. The power of the Judges of the Supreme Court to make rules of court includes power to make rules regulating practice and procedure in respect of appeals to the Full Court under this Act. Supreme Court may make rules (1910, s. 211)

385. (1) Every Proclamation, Order in Council, regulation or rule made under this Act shall— Publication of Proclamations, &c. (1910, s. 207)

- (a) be published in the *Gazette* ;
- (b) upon its publication in the *Gazette*, be judicially noticed and such publication shall be conclusive evidence of the matters contained therein ;
- (c) subject to this Act, take effect from the date of such publication unless, in the case of any such Proclamation, Order in Council, regulation, or rule, a later date is specified in that or any other Proclamation, Order in Council, regulation, or, as the case may be, rule for its commencement when in such event it shall take effect from that later date ; and
- (d) in the case of every regulation, be laid before the Legislative Assembly within fourteen sitting days after such publication if the Legislative Assembly is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(2) If the Legislative Assembly passes a resolution of which notice has been given at any time within fourteen sitting days after any regulation has been laid before it disallowing such regulation or part thereof, that regulation or part shall thereupon cease to have effect, but without prejudice to the validity of anything done in the meantime or to the making of a further regulation.

THE SCHEDULE

Date of Act	Title of Act	Extent of Repeal
4 V. No. 2	" <i>The Military Lands Act of 1840</i> "	The whole
18 V. No. 10	" <i>The Military Lands Act of 1854</i> "	The whole
27 V. No. 1	" <i>Military Lands Act</i> " (of 1863) ..	The whole
1 E. VII. No. 23	" <i>The Agricultural Lands Special Purchase Act of 1901</i> "	The whole
5 E. VII. No. 20	" <i>The Special Agricultural Selections Act of 1905</i> "	The whole
5 E. VII. No. 21	" <i>The Ideraway Estate Special Purchase Act of 1905</i> "	The whole
6 E. VII. No. 26	" <i>The Lands for Closer Settlement Special Purchase Act of 1906</i> "	The whole
6 E. VII. No. 32	" <i>The Closer Settlement Act of 1906</i> "	The whole
1 G. V. No. 15	" <i>The Land Act of 1910</i> "	The whole
2 G. V. No. 19	" <i>The Land Sales Proceeds Act of 1911</i> "	The whole
3 G. V. No. 13	" <i>The Prickly-pear Destruction Act of 1912</i> "	The whole
4 G. V. No. 9	" <i>The Prickly-pear Destruction Act Amendment Act of 1913</i> "	The whole
4 G. V. No. 19	" <i>The Land Act Amendment Act of 1913</i> "	The whole
4 G. V. No. 21	" <i>The Closer Settlement Act Amendment Act of 1913</i> "	The whole
5 G. V. No. 32	" <i>The Land Act Amendment Act of 1914</i> "	The whole
6 G. V. No. 18	" <i>The Agricultural Settlers' Relief Act of 1915</i> "	The whole
7 G. V. No. 19	" <i>The Land Act Amendment Act of 1916</i> "	The whole
7 G. V. No. 30	" <i>The Clermont Flood Relief Act of 1917</i> "	The whole
7 G. V. No. 32	" <i>The Discharged Soldiers' Settlement Act of 1917</i> "	The whole
8 G. V. No. 5	" <i>The Agricultural Settlers' Relief Act Amendment Act of 1917</i> "	The whole
8 G. V. No. 10	" <i>The Closer Settlement Act Amendment Act of 1917</i> "	The whole
8 G. V. No. 15	" <i>The Clermont Flood Relief Act Amendment Act of 1917</i> "	The whole
8 G. V. No. 21	" <i>The Land Act Amendment Act of 1917</i> "	The whole
9 G. V. No. 8	" <i>The Land Acts Amendment Act of 1918</i> "	The whole
10 G. V. No. 5	" <i>The Seaforth Repurchased Estate Act of 1919</i> "	The whole
10 G. V. No. 12	" <i>The Jimbour Selections Act of 1919</i> "	The whole

THE SCHEDULE—*continued*

Date of Act	Title of Act	Extent of Repeal
10 G. V. No. 21	" <i>The Discharged Soldiers' Settlement Act Amendment Act of 1920</i> "	The whole
10 G. V. No. 24	" <i>The Land Acts Amendment Act of 1920, No. 2</i> "	The whole
10 G. V. No. 30	" <i>The Land Act Amendment Act of 1920</i> "	The whole
13 G. V. No. 34	" <i>The Land Acts Amendment Act of 1922</i> "	The whole
14 G. V. No. 14	" <i>The Upper Burnett and Callide Land Settlement Act of 1923</i> "	The whole
14 G. V. No. 18	" <i>The Closer Settlement Act Amendment Act of 1923</i> "	The whole
14 G. V. No. 20	" <i>The Sugar Workers' Selections Act of 1923</i> "	The whole
14 G. V. No. 33	" <i>The Land Acts (Review of Cattle Holding Rents) Amendment Act of 1923</i> "	The whole
14 G. V. No. 34	" <i>The Prickly-pear Land Act of 1923</i> "	The whole
15 G. V. No. 22	" <i>The Tully Sugar Works Area Land Regulations Ratification Act of 1924</i> "	The whole
15 G. V. No. 33	" <i>The Land Acts Amendment Act of 1924</i> "	The whole
16 G. V. No. 27	" <i>The Land Acts Amendment Act of 1925</i> "	The whole
17 G. V. No. 6	" <i>The Prickly-pear Land Act Amendment Act of 1926</i> "	The whole
17 G. V. No. 15	" <i>The Sugar Workers' Selections Act Amendment Act of 1926</i> "	The whole
17 G. V. No. 31	" <i>The Discharged Soldiers' Settlement Acts Amendment Act of 1926</i> "	The whole
18 G. V. No. 12	" <i>The Agricultural Township Portions Act of 1927</i> "	The whole
18 G. V. No. 17	" <i>The Land Acts Amendment Act of 1927</i> "	The whole
20 G. V. No. 15	" <i>The Land Acts Amendment Act of 1929</i> "	The whole
21 G. V. No. 26	" <i>The Tully Sugar Works Area Land Regulations Amendment Act of 1930</i> "	The whole
21 G. V. No. 28	" <i>The Prickly-pear Land Acts Amendment Act of 1930</i> "	The whole
21 G. V. No. 43	" <i>The Land Acts Amendment Act of 1930</i> "	The whole
22 G. V. No. 39	" <i>The Land Acts Amendment Act of 1931</i> "	The whole
23 G. V. No. 6	" <i>The Prickly-pear Land and Forestry Administration Act of 1932</i> "	The whole
23 G. V. No. 16	" <i>The Land Acts Amendment Act of 1932</i> "	The whole

THE SCHEDULE—continued

Date of Act	Title of Act	Extent of Repeal
25 G. V. No. 27	" <i>The Land Acts (Crown Dues) Relief Act of 1934</i> "	The whole
25 G. V. No. 31	" <i>The Land Acts Amendment Act of 1934</i> "	The whole except ss. 17 and 19
1 E. VIII. No. 3	" <i>The Land Acts Amendment Act of 1936</i> "	The whole except s. 16
1 G. VI. No. 18	" <i>The Land Acts and Other Acts Amendment Act of 1937</i> "	The whole except s. 30
6 G. VI. No. 10	" <i>The Land Acts and Other Acts Amendment Act of 1941</i> "	The whole except Part VI.
7 G. VI. No. 16	" <i>The Land Acts and Another Act Amendment Act of 1943</i> "	The whole
7 G. VI. No. 38	" <i>The Land and Water Resources Development Act of 1943</i> "	Ss. 9-20 (both inclusive) and Parts III., V. and VI.
9 G. VI. No. 25	" <i>The War Service Land Settlement Acquisition Act of 1945</i> "	The whole
10 G. VI. No. 13	" <i>The Land Acts Amendment Act of 1946</i> "	The whole
10 G. VI. No. 23	" <i>The War Service Land Settlement Act of 1946</i> "	Part II. and ss. 30 to 35 (both inclusive)
11 G. VI. No. 11	" <i>The Irrigation and Water Supply Commission Act of 1946</i> "	Part IV.
11 G. VI. No. 19	" <i>The War Service (Sugar Industry) Land Settlement Act of 1946</i> "	The whole
12 G. VI. No. 17	" <i>The Land Acts and Other Acts Amendment Act of 1948</i> "	The whole
13 G. VI. No. 6	" <i>The Land Acts and Other Acts Amendment Act of 1948</i> "	The whole except Part IV.
13 G. VI. No. 50	" <i>The Land Acts and Other Acts Amendment Act of 1949</i> "	The whole except Part V.
14 G. VI. No. 8	" <i>The War Service Land Settlement Validation Act of 1950</i> "	The whole except ss. 3, 4, 5, 9 and 10
15 G. VI. No. 11	" <i>The Land Acts and Other Acts Amendment Act of 1951</i> "	The whole except Parts VII. and IX.
1 Eliz. II. No. 51	" <i>The Land Acts Amendment Act of 1952</i> "	The whole
2 Eliz. II. No. 24	" <i>The Land Acts Amendment Act of 1953</i> "	The whole
6 Eliz. II. No. 36	" <i>The Land Acts and Other Acts Amendment Act of 1957</i> "	The whole
7 Eliz. II. No. 71	" <i>The Land Acts and Other Acts Amendment Act of 1958</i> "	The whole except s. 45
8 Eliz. II. No. 25	" <i>The Crown Land Development Act of 1959</i> "	The whole

THE SCHEDULE—*continued*

Date of Act	Title of Act	Extent of Repeal
8 Eliz. II. No. 43	" <i>The City of Rockhampton (Lands Purchase) Act of 1959</i> "	The whole
8 Eliz. II. No. 45	" <i>The Land Acts and Other Acts Amendment Act of 1959</i> "	The whole
8 Eliz. II. No. 74	" <i>The Land Acts and Other Acts Amendment Act of 1959, No. 2</i> "	The whole
10 Eliz. II. No. 23	" <i>The Land Acts and Other Acts Amendment Act of 1961</i> "	The whole
10 Eliz. II. No. 51	" <i>The Land Acts Amendment Act of 1961</i> "	The whole
10 Eliz. II. No. 52	" <i>The Crown Land Development Act Amendment Act of 1961</i> "	The whole
11 Eliz. II. No. 11	" <i>The Land Acts Amendment Act of 1962</i> "	The whole

Abbreviations used in this Schedule are :—

- E.—Edward
- Eliz.—Elizabeth
- G.—George
- V.—Victoria
- s.—Section
- ss.—Sections