

Right Hon. Mr. Forbes.

LAND TRANSFER (HAWKE'S BAY).

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A BILL INTITULED

AN ACT to authorize the making of a New Land Transfer Register for the Land Registration District of Hawke's Bay (in Replacement of the Land Transfer Register destroyed by Fire following the Hawke's Bay Earthquake of the Third Day of February, Nineteen hundred and thirty-one) and for Matters incidental thereto.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the Land Transfer (Hawke's Bay) Act, 1931, and shall be read together with and deemed part of

Title.
Short Title and commencement.

the Land Transfer Act, 1915 (hereinafter referred to as the principal Act).

(2) This Act shall be deemed to have come into force on the fourth day of February, nineteen hundred and thirty-one.

Interpretation.

2. In this Act, if not inconsistent with the context,—

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“Certificate of title” includes a folium of the provisional register :

“Conclusive” used with reference to a certificate of title, or to the register copy of a certificate of title, or to a registered instrument, or to the entry of a memorial of a registered instrument, means that such certificate of title or register copy or registered instrument or entry, as the case may be, has the same effect as if the certificate of title or register copy or registered instrument or entry had been issued, made, registered, or entered under the provisions of the principal Act :

“Destroyed” means lost, destroyed, or rendered indecipherable by or in consequence of the Hawke's Bay earthquake :

“District” means the Land Registration District of Hawke's Bay :

“New register” means the Register for the district made under the authority of this Act, and includes a provisional register :

“Old register” means the Register for the district in existence immediately prior to the third day of February, nineteen hundred and thirty-one, and includes the provisional register :

“Registrar” means the District Land Registrar for the district :

The expressions “transfer”, “mortgage”, and “lease” mean respectively memorandum of transfer, memorandum of mortgage, and memorandum of lease :

“The Hawke's Bay earthquake” or “the earthquake” means the earthquake that occurred in Hawke's Bay on the third day of February, nineteen hundred and thirty-one, and includes all fires consequent thereon or incidental thereto :

“The said date” means the third day of February, nineteen hundred and thirty-one.

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THE NEW REGISTER.

3. Subject to the provisions of this Act, the Registrar is hereby authorized and directed to make a new register for the district.

Registrar directed to make new register.

Provisions applicable where Outstanding Duplicates of Instruments Extant.

Provisions applicable in cases where outstanding duplicates have not been destroyed.

4. (1) The provisions of this section shall apply only in cases where certificates of title or other instruments that were registered in the old register or duplicates of instruments that were embodied in the old register have not been destroyed.

(2) In any case to which this section applies, the Registrar may cause copies of such instruments or duplicates as aforesaid to be prepared. Such copies shall, upon being duly authenticated under the hand and seal of the Registrar, and subject to the provisions of this Act, have the same force and effect as the corresponding folios of the old register, or the corresponding original instruments, as the case may be.

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(3) In the case of certificates of title, the Registrar, in lieu of making and authenticating copies as provided for in the *last preceding* subsection, may issue new certificates of title which shall, subject to the provisions of this Act, have the same force and effect as if they
 5 were certificates of title issued under the provisions of the principal Act. Every such certificate shall have endorsed thereon a memorandum to the effect that it is issued in lieu of a certificate of title the register copy of which has been destroyed.

(4) In any case where an instrument was executed in triplicate,
 10 and whether or not a triplicate was presented for registration, if two copies of such instrument have been destroyed, the provisions of subsection *two* of this section shall apply with respect to the remaining triplicate if the Registrar is satisfied that the same is a true triplicate of such instrument. Unless and until the Registrar endorses thereon
 15 a memorandum to the effect that it is conclusive, no such remaining triplicate shall be conclusive as to any memorials that may have been endorsed upon the triplicate that was retained by the Registrar, and the Registrar shall endorse upon it a memorandum that it is not conclusive as to such memorials (if any). Subject to the foregoing
 20 provisions of this subsection, every such remaining triplicate shall for the purposes of this section be regarded as if it were the registered triplicate upon which memorials were or may have been endorsed by the Registrar.

5. (1) Except as provided in subsection *three* hereof, no certificate
 25 of title issued under the *last preceding* section, or issued in substitution for any such certificate of title, or issued in respect of any part of the land comprised in any such certificate of title, and no copy of any instrument authenticated under that section, shall, until the expiration of one year from the date of the issue of such certificate of title, or
 30 from the date of the issue of the first such certificate where more than one certificate of title has been issued, or from the date of the Registrar's authentication of such copy, as the case may be, or until the expiration of one year from the date of the passing of this Act, whichever period is the later to expire, be conclusive as to the
 35 proprietorship of any mortgage, lease, easement, or *profit à prendre*, or as to the non-existence on the third day of February, nineteen hundred and thirty-one, of—

Evidential value of certificates and other instruments issued or authenticated under last preceding section.

- (a) Any charge created otherwise than by a registered mortgage (not including a sub-mortgage); or
- 40 (b) Any registered lien; or
- (c) Any estate or interest claimed by any person who had lodged a caveat to protect such estate or interest; or
- (d) Any Proclamation taking the land or any part of it; or
- (e) Any restriction or other matter in respect of which any
 45 memorial may have been registered in the old register; or
- (f) Any encumbrance upon or other dealing with any mortgage, lease, easement, or *profit à prendre* registered on or before the said date.

(2) Any person claiming the benefit of any such charge, lien, estate
 50 or interest, encumbrance, or other dealing as is referred to in the *last preceding* subsection may re-register such charge or lien in the manner provided for the registration of the same in the old register, or may

lodge a caveat or a new caveat to protect such charge, lien, estate or interest, or encumbrance, or other dealing. Upon the expiration of the time limited by the said subsection every such charge or lien in respect of which a memorial has not been entered on the new register by the Registrar, or that has not been re-registered, or in respect of which a caveat has not been lodged, and every caveat lodged to protect an interest in respect of which a new caveat has not been lodged, shall, as against any person thereafter becoming a registered proprietor *bona fide* and for value, be deemed never to have been registered or lodged, as the case may be. 5

(3) If the Registrar is satisfied, upon such evidence as may seem to him to be sufficient, that the land comprised in any certificate of title or dealt with by any other instrument referred to in the *last preceding* section was not on the said date subject to any such charge, lien, estate or interest, encumbrance, or other dealing as is mentioned in subsection *one* of this section, the Registrar may endorse upon the copy prepared and authenticated, or upon the new certificate of title issued, as respectively provided for in the *last preceding* section, a memorandum to the effect that it is conclusive as to such matters, or as to any one or more of them, and it shall thereupon be conclusive accordingly. 10 15 20

Provisions applicable where Registered Instruments and Outstanding Duplicates destroyed.

Where outstanding copy of certificate of title destroyed new certificate may be issued on application of registered proprietor or mortgagee.

6. (1) Any person claiming to have been on the said date the registered proprietor, or a mortgagee under a registered mortgage, of an estate of freehold, evidenced by any certificate of title, in any land, if he knows or believes that such certificate of title was destroyed, may make application to the Registrar, in the form in the Schedule to this Act or in such other form as may be prescribed, for the issue of a new certificate of title for such land. Such application shall have endorsed thereon or shall be accompanied by a plan of the land of which the applicant claims to have been the registered proprietor or mortgagee, and shall include a statement of the registered encumbrances, liens, and interests, statutory and other charges, restrictions, and caveats to which, within the knowledge or belief of the applicant, the land was subject; and the statements contained in such application shall be verified by the statutory declaration of the applicant. The plan shall be as full and accurate as the circumstances of each case will permit without the making of a new survey of the land. 25 30 35

(2) The Registrar, if he is satisfied, after the making of such inquiries and the sending of such notices, if any, as he may deem necessary or advisable, that the certificate of title was destroyed, and that the applicant was the registered proprietor or a mortgagee as aforesaid, may issue a new certificate of title for the land the subject of the application. 40

Memorandum of interests admitted by proprietor or mortgagee.

7. (1) The Registrar shall endorse on every such new certificate of title a memorandum setting forth the encumbrances, liens, and interests, statutory and other charges, restrictions, and caveats to which the land appears to him to be subject. 45

(2) In any case in which it seems to him proper so to do, the Registrar may at any time cancel any such memorandum, or he may add to or amend the statements contained in any such memorandum, by a further memorandum: 50

Provided that in any case where by any such addition or amendment it is shown that any interest in the land is subject to any further encumbrance, lien, interest, charge, restriction, or caveat, the Registrar shall forthwith send by registered letter to every registered proprietor
5 adversely affected by such addition or amendment a notice that such addition or amendment has been made.

(3) Every such memorandum shall be *prima facie* proof of the existence of the estates or interests or of the matters referred to in it.

8. The Registrar, in any case where he knows or believes that
10 the certificate of title for any land was destroyed, may, if it seems to him proper so to do, of his own motion or at the instance of any person claiming an estate or interest in the land, issue a new certificate of title for such land. The provisions of the *last preceding* section shall, with the necessary modifications, apply to every such certificate of title.

Where outstanding copy of certificate of title destroyed Registrar may issue new one.

15 *Interim Certificates of Title.*

9. Every certificate of title issued pursuant to section *six* or section
10 *eight* of this Act shall have endorsed thereon a memorandum to the effect that it is an interim certificate of title.

"Interim" certificate of title.

10. (1) Except as provided in the *next succeeding* subsection, or
20 in section *eleven* or section *twelve* of this Act, an interim certificate of title shall not be conclusive.

Effect of interim certificate of title.

(2) The Registrar may at any time, on such evidence as seems
25 to him to be sufficient, endorse upon an interim certificate of title a memorandum to the effect that it is conclusive as to all estates and interests evidenced thereby, or that it is conclusive as to any one or more of such estates and interests, or that it is conclusive as to the description and delineation of the land comprised therein, and the said certificate of title shall thereupon be conclusive according to the tenor of such memorandum.

30 (3) Any certificate of title issued in substitution for an interim certificate of title or issued for any part of the land comprised in an interim certificate shall be an interim certificate, with respect to which the provisions of the *last preceding* subsection shall apply.

35 11. (1) The registered proprietor, or a mortgagee, of land comprised in an interim certificate of title may at any time make application in writing to the Registrar, to endorse upon such certificate a memorandum that it is conclusive. Such application shall be accompanied by such evidence as may be necessary to establish, without reasonable doubt, the ownership of the land comprised in the certificate of title,
40 and the encumbrances, liens, interests, charges, and restrictions (if any) to which the land is subject.

Application to make interim certificate conclusive.

(2) Upon receipt of any such application the Registrar shall consider the evidence submitted in support thereof, and may require the production of further evidence in support thereof.

45 (3) If the Registrar is satisfied with any such evidence or further evidence, he shall endorse upon the interim certificate of title a memorandum as provided for by the *last preceding* section.

(4) If the Registrar is not satisfied with such evidence or further
50 evidence, he may, at the expense of the applicant, publish notice of the application once in the *Gazette* and twice at an interval of not less

than two weeks in some newspaper or newspapers published and circulating in the district. Such notice shall limit and appoint a time, not less than one month from the date of the last publication thereof, within which any person claiming to have been the registered proprietor of, or claiming to be entitled to the benefit of any encumbrance, lien, or interest upon or in, the land may present for registration an appropriate instrument, in the same manner as if the old register had not been destroyed, for the purpose of re-evidencing such encumbrance, lien, or interest, or may lodge a caveat in Form L in the Second Schedule to the principal Act to protect the same, whether such encumbrance, lien, or interest was registered in the old register or not.

(5) After the expiration of the time limited in any such notice, the Registrar shall, unless in his opinion there is good and sufficient reason to the contrary, endorse upon the interim certificate of title for the land referred to in such notice a memorandum to the effect that it is conclusive, or that it is conclusive except as to the description and delineation of the land comprised therein, as to him shall seem proper in the circumstances, and the certificate of title shall thereupon be conclusive according to the tenor of such memorandum; but subject, nevertheless, to the rights, if any, of any person who shall theretofore have lodged a caveat.

(6) The Registrar may at any time thereafter, if he is reasonably satisfied that the interim certificate correctly sets forth the description and delineation of the land comprised therein, endorse a further memorandum to the effect that such certificate of title is conclusive as to the description and delineation of the land, and the certificate shall thereupon be conclusive according to the tenor of such memorandum.

Interim certificates of title to become conclusive after six years.

12. Every interim certificate shall, after the expiration of six years from the date of its issue, be conclusive as to all matters except the description and delineation of the land comprised therein, whether or not the Registrar has endorsed thereon a memorandum to that effect. For the purposes of this section, in cases where an interim certificate has been issued in substitution for an interim certificate or in respect of part of the land comprised in a former interim certificate, the period of six years aforesaid shall begin to run on the date of the issue of the original interim certificate.

Leasehold Interests in Crown Lands or other Lands administered by the Hawke's Bay Land Board.

Where outstanding copy of lease or license lost or destroyed.

13. (1) Where, with respect to Crown lands or other lands administered by the Hawke's Bay Land Board, a lease or license a duplicate of which was embodied in the old register as a folium thereof has been destroyed, the Commissioner of Crown Lands for the Hawke's Bay Land District shall, on application by the lessee or licensee or by a mortgagee, prepare and execute and shall present for registration a new lease or license of the land for the unexpired residue of the term, and subject to the terms and conditions, as nearly as they can be ascertained, of the destroyed lease or license. The Registrar shall thereupon register such new lease or license in the new register in the manner in which the destroyed lease or license was registered. Every lease or license issued under this section shall have endorsed thereon a memorandum to the effect that it is an interim lease or license.

(2) The provisions of sections *seven, nine, ten, eleven, and twelve* of this Act shall apply, with the necessary modifications, to every interim lease or license issued under this section in the same manner as they apply to interim certificates of title.

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Other Interests.

14. (1) Any person claiming to have been the registered proprietor on the said date of any estate or interest in or of any charge or lien upon any land, other than an estate of freehold in respect of which a certificate of title existed on the said date, or other than a leasehold interest under a lease or license embodied in the old register as a folium thereof, and knowing or believing that the instrument under which he claims has been destroyed may, without payment of any fee, lodge a caveat in Form L in the Second Schedule to the principal Act to protect such estate or interest, charge, or lien. Every such caveat shall operate to preserve for all purposes the priority of the estate or interest, charge, or lien to protect which such caveat was lodged.

Establishing interests other than freeholds and certain leaseholds.

(2) Upon the registration of an instrument for the purpose of evidencing any such estate or interest, charge, or lien, such caveat shall be deemed to have lapsed.

(3) No such caveat shall prevent the registration of any instrument in which, or by endorsement on which, the rights of the caveator are admitted. The consent of the caveator to the registration of any such instrument shall not be necessary.

15. (1) Every proprietor whose estate or interest is subject to an encumbrance, lien, or interest acquired under or by virtue of an instrument that was destroyed, upon being requested so to do by the person who was on the said date the proprietor of such encumbrance, lien, or interest, or by the successor in title of such person, shall be bound, in the same manner as if he had contracted so to do, but without cost to himself, to execute an appropriate instrument having as nearly as possible the same effect, after registration, as the destroyed instrument had.

Registered proprietor bound to execute new instruments where originals destroyed.

(2) No instrument so executed by any such person shall, unless therein expressed or necessarily implied to the contrary as regards the person executing the same, have any greater effect as against any person or any estate or interest than the destroyed instrument had, and no such instrument shall, unless therein expressed or necessarily implied to the contrary, operate so as to relieve any person, other than any party to it, from the obligation to perform any covenant that may have been expressed or implied in any destroyed instrument.

(3) Notwithstanding anything to the contrary in the principal Act, every new instrument executed and registered to replace a destroyed instrument shall have the same priority over any other instrument as the destroyed instrument had, notwithstanding that such new instrument may be registered subsequently to the registration of such other instrument. Where a new instrument has such priority the Registrar shall add to the memorial of such new instrument a memorandum indicating the priority.

Native Freehold Land.

Partition orders
of Native
freehold land.

16. (1) Notwithstanding anything to the contrary in the Native Land Act, 1909, or in any other Act, the Registrar shall not be bound to register any partition order affecting any Native freehold land or any other land that is or was subject to the jurisdiction of the Native Land Court, or to register any other order having the effect of vesting in any person an estate of freehold in any such land, unless and until he is reasonably satisfied either—

(a) That on the said date there was no interest of any kind and no caveat registered in the old register or under the Deeds Registration Act, 1908, as the case may be, affecting the land comprised in such partition order or other order ; or

(b) That every such interest or caveat has been re-registered or otherwise protected in accordance with the provisions of this Act.

(2) For the purposes of this section, the expression " Native freehold land " has the same meaning as in the Native Land Act, 1909.

Miscellaneous.

Power to compel
production of
instruments, &c.

17. (1) In addition to the powers conferred on him by the principal Act, the Registrar may, in respect of land in the district, exercise all or any of the powers conferred by the following provisions of this section.

(2) He may require any person having in his possession or under his control any grant, certificate, or other instrument of title, or any plan, search notes, report on title, or other written or printed document evidencing or tending to evidence in any manner the boundaries, extent, or position of, or the state of the title to, or the encumbrances upon, any parcel of land in the district, to produce the same within a reasonable time to be fixed by a notice requiring such production and indicating the particular documents or kind of documents required, and to deposit the same in the Land Registry Office of the district for such time as may be necessary to enable the Registrar to examine or make copies of the same.

(3) He may make such copies or records of, or such extracts from, any such plans or documents as he thinks fit.

(4) He may require any person of any of the classes hereinafter mentioned to give any information, explanation, or evidence, in writing upon oath or otherwise, concerning the subject-matter of such application, title, or claim, or, except in the case of a solicitor or agent acting as hereinafter mentioned, to attend before him and give such information, explanation, or evidence orally upon oath or otherwise. The classes of persons herein referred to are the following :—

(a) Any person making an application under the provisions of this Act ; or

(b) Any person being, or claiming to be entitled as, a registered proprietor on the old register ; or

(c) Any person claiming to become the registered proprietor of any estate or interest in any land in the district ; or

(d) Any person being the solicitor or agent of, and acting on behalf of, any of the aforesaid persons.

18. If upon a requisition in writing made by the Registrar for any purpose mentioned in the *last preceding* section any person without reasonable cause refuses or neglects to comply with such requisition, he shall be liable to the penalties provided for by section one hundred and eighty-four of the principal Act.

Penalty for not producing documents or attending to give information.

19. Until a folium of the new register is made in respect of any parcel of land the Registrar shall accept for registration or lodgment every instrument or document relating to such parcel of land that appears to be in order and that could have been registered or lodged if the old register had not been destroyed. He shall file and index every such instrument or document, and upon the making of a folium of the new register for such parcel of land he shall deal in the usual manner with all such instruments or documents that are then found to be in order affecting such parcel of land, in such a manner as to preserve their relative priorities in accordance with the provisions of the principal Act and of this Act.

Instruments may be lodged although relative folium of register not reconstructed.

20. (1) The Registrar may acquire and file as records of his office such plans or copies of plans as shall appear to him to be desirable as evidencing or tending to evidence the boundaries of any land in the district comprised in any certificate of title or in any destroyed deposited plan, and no fee shall be payable for the checking or deposit of any such plan or copy of plan.

Providing for copies of plans to be filed, without fees.

(2) The provisions of this section shall extend and apply to plans of surveys made since the said date for the purpose of replacing deposited plans that were destroyed, or for the purpose only of fixing the boundaries of the land comprised in any certificate of title existing on the said date.

(3) Except in the case of plans referred to in subsection *two* of this section, the Registrar shall endorse on every plan or copy of plan filed as aforesaid a memorandum showing from whom the plan or copy was acquired, and, if possible and necessary, by whom and under whose authority it was made.

21. (1) No person having or claiming any estate or interest in or any charge or lien upon any land who had notice by personal service or otherwise, or was aware of any proposed act of the Registrar, shall be entitled to commence any action for the recovery of damages under the provisions of the principal Act in respect of any loss he may have sustained by reason of such act of the Registrar unless, within a reasonable time after receiving such notice or becoming aware of such proposed act, he has taken the appropriate steps in accordance with the provisions of this Act or the principal Act to protect his estate or interest, charge, or lien.

Conditions as to compensation for mistake of Registrar.

(2) No person shall be entitled to commence any action for the recovery of damages under the provisions of the principal Act in respect of any loss he may have sustained by reason of an interim certificate of title or interim lease or license becoming or being made conclusive as against any estate or interest, charge, or lien he may have had in or over the land comprised in such certificate of title, lease, or license unless action to recover the same is commenced within six years from the date when such certificate of title or such lease or license has become or been made conclusive :

Provided that any person being under the disability of infancy, unsoundness of mind, or absence from New Zealand may bring any action as aforesaid after the expiration of the aforesaid period of six years but within three years from the date on which such disability ceases.

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No fee for certificate of title or for provisional lease or mortgage issued in lieu of destroyed one.

22. No fee shall be payable to any District Land Registrar for a provisional or new certificate of title or for a provisional lease or license or mortgage of any land, wheresoever situated, issued in lieu of a destroyed certificate of title, lease, license, or mortgage, and it shall not be necessary for any District Land Registrar to advertise notice of his intention to issue any such certificate, lease, license, or mortgage if he is reasonably satisfied that the certificate, lease, license, or mortgage in lieu of which it is to be issued was destroyed by the earthquake :

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Provided that nothing in this section shall affect the liability of any person to pay any fee outstanding and unpaid in respect of any destroyed certificate of title or other instrument.

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Exemption from stamp duty and fees.

23. The following instruments shall be exempt from stamp duty or registration fees, as the case may be, namely :—

- (a) Every instrument executed or registered in substitution for a registered instrument that has been destroyed, if the Registrar is satisfied that such new instrument is substantially to the same effect as the destroyed instrument :
- (b) Every affidavit or statutory declaration required by this Act, or required by the Registrar for the purposes of this Act :
- (c) Every statutory declaration made by a licensed surveyor in respect of any survey plan made for the purpose only of replacing a deposited plan that was destroyed by the earthquake, or for the purpose only of fixing the boundaries of the land comprised in any certificate of title existing on the said date :
- (d) Every caveat lodged under the provisions of this Act, and every withdrawal of any such caveat.

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Registrations may be effected in City of Wellington.

24. All acts of registration and other acts required to be done for the purposes of this Act may be as effectively done in the City of Wellington as in the district.

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Schedule.

SCHEDULE.

Section 6.

APPLICATION FOR INTERIM CERTIFICATE.

Application.

I, [*Name, address, and occupation*], being the person who was on the 3rd day of February, 1931, registered as the proprietor [*or mortgagee*] of an estate in fee-simple in the land described in the declaration hereunder written, do hereby apply under the provisions of the Land Transfer (*Hawke's Bay*) Act, 1931, for the issue of an interim certificate of title for the said land in my name [*or in the name of (insert name, occupation, and address of owner entitled to certificate)*], who was the registered proprietor in fee-simple on the said date].

Dated this day of , 193 .

[*Signature.*]

Witness :

Occupation :

Address :

DECLARATION.

I, THE above-named [Insert name in full], do hereby solemnly and sincerely declare—

(1) That the outstanding duplicate of the certificate of title for all parcel[s] of land situated in the Borough [Town District, County, or as the case may be] of , containing acres roods perches, more or less, being Section Number [Allotment, on Deposited Plan , or other sufficient description]: as the same is delineated on the plan endorsed on or annexed hereto, was destroyed by or in consequence of the earthquake that occurred in the Hawke's Bay district on the 3rd day of February, 1931.

(2) That on the said date the registered proprietor of an estate in fee-simple in the land above described was

(3) That as full particulars as I am able to furnish of all registered encumbrances, liens, and interests, statutory or other charges, restrictions, and caveats that I know or believe to have affected the land above described on the said 3rd day of February, 1931, are truly set forth in the First Schedule hereto.

(4) That set forth in the Second Schedule or annexed hereto is such evidence in support of my application as I am able to furnish or refer to.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Justices of the Peace Act, 1927.

Declared at , this day of , 193 , before me— Justice of the Peace [Solicitor, or Notary Public]. [Signature.]

First Schedule.—Encumbrances, &c., to which the Land is subject.

Table with 4 columns: Number (if known), Nature of Encumbrance, &c., Names, Occupations, and Addresses of Parties, Amounts of Charges secured, Interest payable, Rent payable, and Dates of Payment, &c. (if known).

Second Schedule.

(Here mention search notes, reports on title, Registrar's minutes, rate demands, valuation certificates, or other evidence in support of the application, and state whether annexed hereto or only referred to.)

[NOTE.—A plan to be endorsed or annexed, as full and accurate as the case will permit without making a new survey. Distances to be shown in links. Commencing-point to be fixed by reference to some known position such as a street corner, or original section or allotment boundary.]