



AN BILLE UM CHLARU TEIDIL, 1963
REGISTRATION OF TITLE BILL, 1963

As passed by both Houses of the Oireachtas

EXPLANATORY MEMORANDUM

PURPOSE OF THE BILL

The purpose of the Bill is to amend and consolidate the law relating to the registration of the title to land and to provide for the gradual extension of compulsory registration to all land in the State.

The existing law relating to registration of title is contained in the Registration of Title Acts, 1891 and 1942, and in miscellaneous provisions in other enactments such as the Land Purchase Acts and the Administration of Estates Act, 1959. The Bill proposes to repeal the Acts of 1891 and 1942 and the other provisions mentioned and to re-enact them, with amendments where necessary. The text of the Bill contains brief side notes indicating (a) the provisions which are new to the law and (b) the existing statutory enactments which are being consolidated.

At present, registration of title is compulsory only in respect of land bought out under the Land Purchase Acts or acquired by local authorities under such enactments as the Labourers Acts and the Derelict Sites Acts. The Bill provides for the gradual extension of compulsory registration to all land. In the main, the property affected by the extension will be that in urban areas. In due course, the system of registration of title will completely replace the system of registration of deeds and result in the closing of the Registry of Deeds.

PART I

PRELIMINARY AND GENERAL

Section 1 provides for the short title of the Act.

Section 2 provides that the Act shall come into operation on a date to be appointed by order of the Minister for Justice.

Section 3 is the interpretation section. "Land" includes land of any tenure; houses or other buildings and parts thereof, whether divided vertically, horizontally or otherwise; mines and minerals; and incorporeal hereditaments. "Leasehold interest" means an interest in land under a lease for a term of years of which more than twenty-one are unexpired at the date of registration. "Prescribed" means prescribed by general rules made under *section 126*. The "Registrar" means the Registrar of Titles. None of the other definitions calls for special mention.

Section 4 provides that the expenses of administering the Act shall, subject to the sanction of the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Section 5 is the repeals section.

Section 6 provides for the continuance of existing registering authorities, offices and registers and of all instruments and documents which rely for their authority or validity on any of the repealed enactments.

PART II

LAND REGISTRY, REGISTERS, REGISTERING AUTHORITIES AND JURISDICTION

Section 7 provides for the establishment of the central and local offices which together constitute the Land Registry. The latter term is, for the first time, given statutory recognition. The central office will, as at present, be the office for registration of all land in the State and the functions of the local offices will be as prescribed.

Section 8 provides for the maintenance in the central office of registers of ownership of (1) freehold land, (2) leasehold interests and (3) incorporeal hereditaments and other rights in land. The first two of these three registers are concerned with ownership of land in the physical or tangible sense of the word, i.e., ground or soil, buildings erected thereon, mines and minerals, etc. The third register is concerned with ownership of incorporeal or intangible rights (such as sporting rights and rights of way) enjoyed over land independently of the ownership of the land. The registers to be kept under this section are the same as those at present maintained in the Land Registry.

Section 9 relates to the appointment and qualifications of the Registrar of Titles, who is to be responsible for the management and control of the central office. The section is largely a re-enactment of existing provisions in the Registration of Title Acts, 1891 and 1942.

Section 10 re-enacts the existing law relating to local registrars. The county registrar of each county (except Dublin) will be the local registrar for that county and will manage the local office.

Section 11 provides for continuation of the arrangement whereby the relations between the Registrar and the local registrars are determined by general rules.

Section 12 deals with the staffing of the central and local offices.

Section 13 provides that the powers and duties of the Registrar and local registrars may be exercised by such members of the staff as are authorised in that behalf by the Minister for Justice.

Section 14 provides for the fixing by the Minister for Justice, with the consent of the Minister for Finance, of the fees to be taken in connection with registration. In determining the level of fees, the aim, as at present, will be to make the Land Registry self-supporting. Payment of the relevant fee (if any) will be a condition precedent to the performance by the Registrar of any function or obligation imposed on him by the Act.

Section 15 deals with the official seals of the Registrar and local registrars.

Section 16 continues the existing powers which are vested in the Registrar enabling him to summon persons before him, to require the production of documents and to examine persons on oath. Persons failing to comply with a requirement of the Registrar under the section will be guilty of an offence in respect of which they will be liable, on summary conviction, to a fine not exceeding £100. The maximum penalty under the existing law (Section 10 of the Act of 1891) is £20.

Section 17 provides that the Registrar of Titles may sue or be sued by that name.

Section 18 deals with the jurisdiction of the High Court and Circuit Court in matters relating to registration of title.

Section 19 provides for re-enactment of the existing law relating to appeals to the court against decisions of the Registrar and reference to the court by the Registrar of questions in respect of which he entertains a doubt.

Section 20 provides for re-enactment of the existing law relating to the enforcement by the High Court of an order made by the Registrar.

Section 21 provides for re-enactment of the existing law requiring a registering authority to obey the order of a court of competent jurisdiction in relation to registered land.

Section 22 provides for re-enactment of the existing law dealing with the powers of the court in an action for the specific performance of a contract relating to registered land or a registered charge.

PART III

REGISTRATION OF OWNERSHIP

This Part (comprising *sections 23 to 108*) constitutes the main body of the Bill and deals with registration of ownership. It provides for the consolidation, with amendments, of Parts II and III of the Registration of Title Act, 1891, as amended by the Registration of Title Act, 1942. Provision is made for (a) the gradual extension of compulsory registration of title to all land, including mines and minerals and incorporeal hereditaments, (b) the amendment in various respects of the substantive law relating to registration and (c) the introduction of various changes in registration procedure. The object of the proposed amendments and changes is to cure defects which, over the years, have manifested themselves in the existing law and generally to improve the system of registration of title so as to enable it to cope with the conditions expected to be encountered in registering urban property.

Section 23 summarises the cases in which registration of title to land will be compulsory. *Subsection (1)* deals with freehold land and *subsection (2)* with leasehold interests. *Subsection (1) (a)* repeats the provisions of the existing law which make registration compulsory in the case of land that has at any time been sold and transferred to any person under the Land Purchase Acts or the Labourers Acts. *Subsections (1)(b) and 2(a)* extend compulsory registration to cases where land is acquired, after the commencement of the Act, by a statutory authority (i.e. a Government Department, local authority or other statutory body). *Subsections (1) (c) and (2) (b)* refer to cases in which registration becomes compulsory as a result of an order being made under *section 24* declaring a particular county or county borough to be a "compulsory" area. *Subsection (3)* declares that the provisions of the Act relating to registration (including provisions as to compulsory registration) do not apply to estates or interests in reversion, remainder or expectancy. In other words, only estates or interests in possession are subject to registration.

Section 24 provides the principal new machinery for the extension of compulsory registration. *Subsection (1)* provides that the Minister for Justice may, by order, apply the section to any county or county borough or part thereof, with effect from a specified day, which must not, however, be earlier than six months after the making of the order. This six months interval is designed to give ample notice to those likely to be affected by the introduction of compulsory registration in the area concerned. *Subsection (2)* provides that, in an area to which the section applies, registration will be compulsory on the occasion of any conveyance on sale of freehold land or grant or assignment on sale of a leasehold interest. *Subsection (3)* defines the terms "conveyance on sale" and "assignment on sale" and makes it clear, *inter alia*, that sale is

used in the popular and commercial sense of the word to denote a transfer from a vendor to a purchaser in return for money or money's worth. The estate or interest purported to be conveyed or assigned must be one capable of registration under the Bill.

Section 25 provides the sanction for the enforcement of the compulsory registration provisions. By virtue of this section a conveyance on sale or grant or assignment on sale in any case in which registration is compulsory will not vest the estate or interest purported to be conveyed, granted or assigned unless, within six months, the purchaser becomes registered as owner. The Registrar or, if he refuses, the court may extend the six months period. When the purchaser gets registered, his title will relate back to the date of the instrument, and any dealings with the land in the intervening period will have effect accordingly. The Land Commission will be exempt from the sanction imposed by the section.

Section 26 provides for the procedure for the registration of land purchased under the Land Purchase Acts. *Subsection (1)* deals with land the purchase of which was completed before 1892 and which, although subject to compulsory registration since 1892, may not yet have been registered. In order to assist in the registration of such land the Land Commission may furnish the Registrar with information in relation thereto, including the name of the person who appears to be in possession, and the Registrar is then required to register that person as owner of the land. *Subsection (2)* deals with cases of land vested by the Land Commission in a purchaser after 1891. In such cases the Land Commission is required to furnish the Registrar with certain documents to be prescribed by general rules under *section 126* and the Registrar is thereupon required to register the ownership of the land. *Subsection (3)* provides that ownership registered in accordance with the provisions of the section shall be registered with a possessory title unless the Registrar is satisfied that a better title is warranted. *Subsection (4)* provides that land vested by the Land Commission in a purchaser after 1891 shall be deemed to be registered land as from the date of the vesting and shall be exempt from the provisions of the Acts relating to the Registry of Deeds.

Section 27 provides for the two classes of owners who may be registered, i.e., "full owners" and "limited owners". A full owner of land is the person entitled to the fee simple, or, in the case of a leasehold interest, the person absolutely entitled to that interest. If the owner is entitled as life tenant, or has the powers of a life tenant under the Settled Land Acts, he is registered as limited owner.

Section 28 provides for the delivery to every registered owner of a "land certificate". This is a certificate of the owner's title to the land in respect of which he is registered and corresponds to the title deeds in respect of unregistered land. The Registrar is not obliged to deliver the certificate unless the appropriate fee is paid (see *subsection (3) of section 14*).

Section 29 provides that, where the Judicial Commissioner of the Land Commission amends a vesting order, the Registrar shall, on the lodgment with him of a copy of the relevant instrument, rectify the register in conformity with the vesting order as so amended.

Section 30 provides that any disposition of land which, if unregistered, would be fraudulent and void, shall continue so notwithstanding that the disposition may have been registered in the Land Registry. However, where a registration is made under a fraudulent disposition, that disposition can only be set aside as against parties and privies to the fraud and volunteers claiming under them; it cannot be set aside as against a registered transferee for value, or a registered chargee for value, claiming under a party to the fraud. This is because of the provisions of the Act which protect registered dispositions for valuable consideration [*sections 31 (1), 52 (1), 55 (1), 64 (4) and 68 (2) (3)*]. *Subsection*

(2) provides that any entry, erasure or alteration made by fraud in the register shall be void as between all parties or privies to the fraud.

Section 31 deals with the conclusiveness of the register. Subsection (1) provides that the register shall be conclusive evidence of the owner's title as appearing thereon. This means that the register is conclusive evidence that the person named in it as owner is the owner and that his ownership is "full" or "limited", as the case may be. It also means that the register is conclusive evidence of any rights, privileges or appurtenances noted as belonging or appurtenant to the land and of any burdens entered as affecting the land. The provision is a re-enactment of subsection (1) of section 34 of the Act of 1891, except that the reference to the register being conclusive evidence of "any right, privilege, appurtenance or burden" is new. The reason for the change is to remove any doubts which may have arisen on the subject as a result of the decision of the Court of Appeal in Northern Ireland in the case of *Miscampbell v. McAlister* [1930] N.I. 74, in which it was held that the register was not conclusive evidence of a burden as entered thereon. So far as persons dealing for value with a registered owner are concerned, the importance of subsection (1) lies in the fact that it abrogates the equitable doctrine of notice in relation to such transactions. A purchaser for value who becomes registered as new owner is not affected by anything that does not appear on the register (other than the burdens mentioned in section 72). Subsection (2) deals with the case where a person registered as owner of land is dead at the date of such registration. The subsection provides that the registration shall not be invalid by reason of the death and that any person who proves that he is entitled to the land may be registered as owner. This provision re-enacts subsection (2) of section 63 of the Land Act, 1923, but extends to all registered land and not just land bought under the Land Purchase Acts.

Section 32 deals with the rectification of official errors in registration. The words "originating in the Land Registry" are used to clarify and emphasise that the section does not apply to the rectification of errors occurring outside the Land Registry. (See interpretation of section 34 (2) of the 1891 Act in *In re Cooke's Application* [1948] I.R. 318). Provision is made for rectification by the Registrar in cases where there is agreement in writing between the parties. Otherwise, the section is a re-enactment of section 34(2) of the Act of 1891.

Section 33 deals with applications for first registration of freehold land and provides for three classes of title with which such registration may be made. An application for registration may be made by such person, and shall be made in such form and be accompanied by such evidence of title, as may be prescribed [subsection (2)]. The three classes of title with which registration may be made are "absolute", "qualified" or "possessory" [subsection (1)]. The application must be for registration with an absolute or possessory title [subsection (3)]. The best of these three classes is the absolute title, which is virtually indefeasible and cannot be bettered. Before such title can be granted the Registrar must approve the title [subsection (4)]. If the title of an applicant for registration can be established only for a limited period or only subject to specified reservations, the Registrar may grant a qualified title. As the term signifies, such a title is subject to the qualifications or limitations noted on the register, but is otherwise the same as an absolute title [subsection (5)]. A possessory title will be dependent upon actual occupation of the land or upon receipt of the rents and profits issuing out of the land and not necessarily upon documentary proof. It will be granted on such evidence as may be prescribed [subsection (6)]. Where registration of ownership is not compulsory, the Registrar must not, with one exception, effect registration with a qualified or possessory title without the consent of the applicant. The exception is where application is made for registration with a possessory title and the Registrar is satisfied that a qualified title would be warranted.

Section 34 provides that, on first registration of ownership of freehold land, the Registrar must enter on the register all burdens which appear, on examination of the title, to affect the land, except those burdens which affect without registration (see *section 72*). In the case of registration with a possessory title no examination of title would normally be made and no burdens would, as a rule, be entered on the register.

Section 35 provides that, where land is at present registered 'subject to equities' pursuant to subsection (3) of section 29 of the Act of 1891, the title to that land shall be deemed to be a possessory title within the meaning of the new Act. Otherwise, unless it is one of the rare cases already registered as a qualified or possessory title (see *section 36*), the title shall be deemed to be an absolute one.

Section 36 provides that, where land is at present registered with a qualified or possessory title (land acquired under the Labourers Acts or the Small Dwellings Acquisition Acts may be so registered under the existing law), the title to the land shall be deemed to be a qualified or possessory title, as the case may be, within the meaning of the new Act.

Section 37 deals with the effect of registration of a person as first registered owner of freehold land with an absolute title. *Subsection (1)* provides that registration as "full owner" will vest an estate in fee simple in the land together with all rights, privileges and appurtenances attached thereto. Under *subsection (2)*, where the registration is as "limited owner", that is to say, in the case of settled land, the effect will be to vest an estate in fee simple (together with all rights, privileges and appurtenances) in the person so registered and in the other persons entitled to the various estates and interests comprised in the settlement. Whether the person is registered as full or limited owner, his estate will be subject to the burdens registered as affecting the land (see *section 69*) and the burdens which, though unregistered, affect registered land (see *section 72*), but will be free from all other rights, including rights of the State [*subsection (3)*]. If, however, the registered owner holds the land as trustee, registration will not discharge or relieve him from his personal obligation, as trustee, to execute his trust [*subsection (4)*]. In other words, although *subsection (3)* destroys the equitable estate of a beneficiary under a trust subject to which the registered owner held immediately prior to first registration, *subsection (4)* preserves the personal obligation of the registered owner under the trust as an equity enforceable against him. The Bill provides for the protection of such equities by the entry of cautions or inhibitions (see *sections 97 and 98*).

Section 38 provides that the effect of registration as first registered owner of freehold land with a possessory title shall be the same as if the title were absolute, except that the registration will not affect or prejudice the enforcement of any right adverse to the registered owner and created before registration [*subsection (1)*]. In this context "right" includes, in the case of land bought out under the Land Purchase Acts, any equities arising from the fact that the fee simple interest vested in the registered owner is deemed to be a graft on his previous tenant interest in the land. In all such cases registration with a possessory title under this Bill will, for all purposes, be the equivalent of registration 'subject to equities' under existing law [*subsection (2)*].

Section 39 provides that the effect of registration as first registered owner of freehold land with a qualified title shall be the same as if the title were absolute, except that the registration will not affect or prejudice the enforcement of any right noted on the register as excepted from the effect of registration.

Section 40 deals with applications for first registration of leasehold interests and provides for four classes of title with which such registration may be made. An application for registration

may be made by such person, and shall be made in such form and be accompanied by such evidence of title, as may be prescribed [subsection (2)]. The four classes of title with which registration may be made are "absolute", "good leasehold", "qualified" or "possessory" [subsection (1)]. The application must be for registration with an absolute, good leasehold or possessory title [subsection (3)]. Before an absolute title can be granted the Registrar must approve the title both to the leasehold interest and to the freehold estate, and to any intermediate leasehold interest that may exist [subsection (4)]. An applicant will be registered as owner with a good leasehold title where the title to the leasehold interest is approved by the Registrar [subsection (5)]. If the title either of the lessor to the reversion or of the lessee to the leasehold interest can be established only for a limited period or only subject to specified reservations, the Registrar may grant a qualified title. Such a title is subject to the qualifications or limitations noted on the register [subsection (6).] A possessory title will be dependent upon actual occupation of the land or upon receipt of the rents and profits issuing out of the land and not necessarily upon documentary proof. It will be granted on such evidence as may be prescribed [subsection (7)]. Where registration of ownership is not compulsory, the Registrar must not, with one exception, effect registration with a qualified or possessory title without the consent of the applicant. The exception is where application is made for registration with a possessory title and the Registrar is satisfied that a qualified title would be warranted.

Section 41 provides that, on first registration of ownership of a leasehold interest, the Registrar must enter on the register all burdens which appear, on examination of the title, to affect the interest, except those burdens which affect without registration (see *section 72*). In the case of registration with a possessory title no examination of title would normally be made and no burdens would, as a rule, be entered on the register.

Section 42 provides that, where the ownership of a leasehold interest is at present registered with a note (under *section 53* of the Act of 1891) to the effect that the title of the lessor to make the lease has been investigated and found to be good and valid, the title to that leasehold interest shall be deemed to be an absolute title. Otherwise, unless it is one of the rare cases already registered as a qualified or possessory title (see *section 43*), the title shall be deemed to be a good leasehold one.

Section 43 provides that, where a leasehold interest is at present registered with a qualified or possessory title (land acquired under the Labourers Acts or the Small Dwellings Acquisition Acts may be so registered under existing law), the title to the interest shall be deemed to be a qualified or possessory title, as the case may be, within the meaning of the new Act.

Section 44 deals with the effect of registration of a person as first registered owner of a leasehold interest with an absolute title. *Subsection (1)* provides that registration as "full owner" will vest the leasehold interest in that person together with all rights, privileges and appurtenances attached thereto. Under *subsection (2)*, where the registration is as "limited owner", that is to say, in the case of settled land, the effect will be to vest the leasehold interest (together with all rights, privileges and appurtenances) in the person so registered and in the other persons entitled to the various estates and interests comprised in the settlement. Whether the person is registered as full or limited owner, his estate will be subject to the burdens registered as affecting the interest (see *section 69*) and the burdens which affect without registration (see *section 72*), as well as all implied and express covenants, obligations and liabilities incident to the registered interest, but will be free from all other rights, including rights of the State [subsection (3)]. If, however, the registered owner holds

the leasehold interest as trustee, registration will not discharge or relieve him from his personal obligation, as trustee, to execute his trust [subsection (4)].

Section 45 provides that the effect of registration as first registered owner of a leasehold interest with a good leasehold title shall be the same as if the title were absolute, except that the registration will not affect or prejudice the enforcement of any right adverse to the title of the lessor to grant the lease.

Section 46 provides that the effect of registration as first registered owner of a leasehold interest with a possessory title shall be the same as if the title were absolute, except that the registration will not affect or prejudice the enforcement of any right adverse to the registered owner and created before registration.

Section 47 provides that the effect of registration as first registered owner of a leasehold interest with a qualified title shall be the same as if the title were absolute, except that the registration will not affect or prejudice the enforcement of any right noted on the register as excepted from the effect of registration.

Section 48 provides for the transfer of land from the register of owners of leasehold interests to the register of owners of freehold land in cases where a registered leasehold interest is converted into a fee farm grant or grant in perpetuity. The section re-enacts subsection (2) (d) of section 53 of the 1891 Act.

Section 49 deals with acquisition of title to registered land by possession. The section replaces section 52 of the Act of 1891. *Subsection (1)* provides that the Statute of Limitations, 1957, shall apply to registered land as it does to unregistered land, subject to the provisions of the rest of the section. *Subsection (2)* provides that a person who claims to have acquired a title to registered land by possession may apply to the Registrar to have himself registered as owner. The Registrar, if satisfied that the applicant has acquired the title, may register him as owner. *Subsection (3)* provides that, upon the applicant's registration as owner, the title of the person whose right of action to recover the land has expired by virtue of the Statute of Limitations shall be extinguished. It is to be noted that rights being acquired under the Statute are included amongst the burdens which, though unregistered, affect registered land [see section 72 (1) (p)].

Section 50 provides for the conversion of qualified and possessory titles into absolute or good leasehold titles and for the conversion of good leasehold titles into absolute. The process of conversion may be carried out either in consequence of the production of additional evidence as to the title or as a result of the lapse of time, or both. It may also be carried out either on the initiative of the Registrar or on an application by the registered owner or other person entitled. *Subsection (1)* gives the Registrar a general power to convert an inferior title into an absolute or good leasehold title, if he is satisfied as to the title. *Subsection (2)* applies to land other than land vested by the Land Commission under the Land Purchase Acts and is designed to ensure that possessory and qualified titles will be converted as soon as possible after first registration. With this object in view, *paragraph (a)* provides that every application for registration of a transfer or other disposition for value shall be accompanied by the relevant documents of title which will enable the Registrar to consider whether the title can be converted. *Paragraph (b)* empowers the Registrar to refuse or postpone the registration sought until all the required documents have been submitted to him. *Paragraph (c)* provides that, where land has been registered for fifteen years with a possessory title, the Registrar shall, whenever he receives an application for a transfer or other disposition for value, if satisfied that the registered owner is in possession and after giving such notices, if any, as may be prescribed, convert the title to absolute or good leasehold, as the case may be. *Sub-*

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section (3) applies to land which has been vested by the Land Commission under the provisions of the Land Purchase Acts and is designed to expedite the elimination from the registers of the notices of equities to which the bulk of existing registered land is subject. Land bought out under the Land Purchase Acts is registered 'subject to equities' because, owing to the large number of transactions involved, the Land Commission cannot and do not examine the title of a purchaser to his previous tenant interest in the land. The fee simple vested in him by the Commission is deemed to be a graft on his previous interest, and the equities subject to which his registration as owner is effected are those arising by virtue of that fact. Although the Act of 1891 provides for cancellation of the notice of equities on application by the registered owner, the number of cancellations effected annually is relatively small. *Paragraph (a) of subsection (3)* provides that, where the title registered is or is deemed to be possessory (this includes cases subject to the notice of equities) and the ownership has been registered for more than thirty years, the Registrar may, on the occasion of the registration of any transfer, charge or transmission on death, if satisfied that no right adverse to the registered owner and protected by the possessory title subsists, convert the title to absolute. *Paragraph (b)* provides that, on the occasion of any transfer for value or creation of a charge for value, where there has been a registered transfer of the land for value more than twelve years previously, the Registrar may, if satisfied that no right adverse to the registered owner and protected by the possessory title subsists, convert the title to absolute. *Paragraph (c)* empowers the Registrar, in any case to which *paragraph (b)* applies, to insist on production of such evidence of the title as he thinks proper and to refuse or postpone the registration until his requirements have been met. *Subsection (4)* provides that no conversion of title shall be made under the section until any outstanding claim adverse to the title of the owner has been disposed of. *Subsection (5)* provides that, where any person other than the owner suffers loss by reason of any conversion of title effected under the section, the loss shall be treated as one to which *section 120* applies, or, in other words, as a loss in respect of which compensation may be claimed from the State.

Section 51 deals with the transfer of registered land. *Subsection (1)* provides that every registered owner of land may transfer it and that his transferee shall be registered as owner in his place. In the case of a limited owner, that is to say, a person entitled as tenant for life under a settlement, the right to transfer is subject to the restrictions imposed by the Settled Land Acts. *Subsection (2)* provides that a transfer must be in the prescribed form or in such other form as may appear to the Registrar to be sufficient to convey the land. The transfer does not, however, vest the land in the transferee. It only confers on him, as against the transferor, an equity to be registered. To complete his title every transferee must get himself entered on the register as the owner of the land transferred. *Subsection (3)* provides that, on registration of the transferee as owner, the Registrar must deliver to him a land certificate. Where part only of the land is transferred, the Registrar will allow the transferor to retain his land certificate with a suitable entry as to the part transferred, or will deliver to him a new land certificate in respect of the part retained by him.

Section 52 deals with the effect of a transfer of freehold land registered with an absolute title. *Subsection (1)* provides that, on registration of a transferee as full owner, the transfer shall operate as a conveyance by deed under the Conveyancing Acts and vest in the transferee an estate in fee simple in the land together with all rights, privileges and appurtenances attached thereto, subject to the burdens registered as affecting the land and the burdens which, though unregistered, affect registered land, but free from all other rights, including rights of the State.

There is an important difference in the effect of registration of a transferee under a transfer for value and under a voluntary transfer. Registration of a transferee for value vests the land in him free from all rights other than the burdens enumerated in *subsection (1)*: registration of a voluntary transferee vests the land in him subject to those burdens and subject also to all the unregistered rights that affect his transferor [*subsection (2)*]. Where the registration is as limited owner, the effect will be to vest an estate in fee simple (together with all rights, privileges and appurtenances) in the transferee and in the other persons entitled to the various estates and interests comprised in the settlement.

Section 53 provides that the effect of a transfer of freehold land registered with a possessory title shall be the same as if the title were absolute, except that it will not affect or prejudice the enforcement of any right protected by the possessory title.

Section 54 provides that the effect of a transfer of freehold land registered with a qualified title shall be the same as if the title were absolute, except that it will not affect or prejudice the enforcement of any right noted on the register as excepted from the effect of registration.

Section 55 deals with the effect of a transfer of a leasehold interest registered with an absolute title. *Subsection (1)* provides that, on registration of a transferee as full owner, the transfer shall operate as a conveyance by deed under the Conveyancing Acts and vest in the transferee the leasehold interest so transferred together with all rights, privileges and appurtenances attached thereto, subject to the burdens registered as affecting the interest, the burdens which affect without registration and all implied and express covenants, obligations and liabilities incident to the leasehold interest, but free from all other rights, including rights of the State. Here again, there is an important difference in the effect of registration of a transferee under a transfer for value and under a voluntary transfer. Registration of a transferee for value vests the interest in him free from all rights other than the burdens enumerated in *subsection (1)*: registration of a voluntary transferee vests the interest in him subject to those burdens and subject also to all the unregistered rights that affect his transferor [*subsection (2)*]. Where the registration is as limited owner, the effect will be to vest the leasehold interest (together with all rights, privileges and appurtenances) in the transferee and in the other persons entitled to the various estates and interests comprised in the settlement.

Section 56 provides that the effect of a transfer of a leasehold interest registered with a good leasehold title shall be the same as if the title were absolute, except that it will not affect or prejudice the enforcement of any right adverse to the title of the lessor to grant the lease.

Section 57 provides that the effect of a transfer of a leasehold interest registered with a possessory title shall be the same as if the title were absolute, except that it will not affect or prejudice the enforcement of any right protected by the possessory title.

Section 58 provides that the effect of a transfer of a leasehold interest registered with a qualified title shall be the same as if the title were absolute, except that it will not affect or prejudice the enforcement of any right noted on the register as excepted from the effect of registration.

Section 59 provides that statutory restrictions on the alienation, assignment, sub-division or sub-letting of land shall be burdens which, though not registered, affect registered land and that it shall be the duty of the Registrar to note such provisions on the register. The main provisions to which this section relates are provisions in the Land Purchase Acts which prohibit the sub-

division, without the consent of the Land Commission, of lands bought out by means of advances made by the Commission.

Section 60 provides that, in the case of the defeasance of the estate or interest of a registered owner in the circumstances mentioned at *paragraphs (a) to (g) of subsection (1)*, the Registrar shall, on the application of the person to whom the ownership of the land passes and on production of the prescribed evidence, register that person as owner of the land. *Paragraph (a)* is self explanatory. *Paragraph (b)* relates to cases where land is acquired by deed poll (for example by a local authority) in pursuance of some statutory provision. *Paragraph (c)* is self explanatory. *Paragraph (d)* relates to cases in which the registered owner or his predecessor in title has granted a power of appointment, that is to say, a power given under a settlement or trust authorising the donee to make an appointment of the registered land. *Paragraph (e)* relates to cases where a vesting takes place under a vesting order, as, for example where the land of a bankrupt registered owner is vested in assignees or trustees for the benefit of his creditors. *Paragraph (f)* covers the type of case in which land becomes vested in somebody by statute. An example is where certain land is vested in a local authority under section 5 (1) of the Small Dwellings Acquisition Act, 1899. *Paragraph (g)* is self explanatory. *Subsection (2)* provides that, unless the application for registration referred to in *subsection (1)* is made with the concurrence of the existing registered owner or, if he is dead, of his personal representatives or, if he is not full owner, of such persons as may be prescribed, the Registrar shall give notice of the application to the said persons and may, if he thinks fit, refuse to register the applicant as owner except in pursuance of an order of the court.

Section 61 deals with the transmission of registered land from a limited owner and on death. *Subsection (1)* provides that, where the estate of a person registered as limited owner under a settlement terminates, the person to whom the land passes under the settlement may, on application in the prescribed manner, be registered as full or limited owner according to his estate or interest. *Subsection (2)* provides that, where a sole registered full owner, or the survivor of joint tenants registered as full owners, dies, the Registrar shall recognise the personal representatives of the deceased as alone having any rights in respect of the land; and registered dispositions by the personal representatives shall have the same effect as if they were made by the registered owner. *Paragraph (a) of subsection (3)* provides that an application for registration made by a person who claims to be by law entitled to the land of a deceased full owner shall authorise the Registrar to register that person as full or limited owner, as the case may be. The paragraph distinguishes, however, between the case in which the person entitled is also the personal representative and the case in which he is not. In the former instance an application for registration alone will suffice, as the estate of the deceased owner is vested in the person entitled as personal representative. In the latter case the application must be accompanied by an assent or transfer from the personal representative. *Paragraph (b)* is a new provision. At present, on production of an assent or transfer from the personal representative, it is the practice of the Registrar to examine the will of the deceased owner in order to satisfy himself that its terms are being properly interpreted and implemented. If the owner died intestate the Registrar similarly satisfies himself that the rules of intestate succession are being observed. It is not appropriate that the Registrar should have any responsibility for ensuring that the personal representatives are acting correctly in such cases and *paragraph (b)* proposes to relieve him of this duty. The proposal is that the position of the Registrar *vis-à-vis* personal representatives be the same as that of a purchaser. A purchaser from personal representatives is not concerned with the terms of the will of the deceased or the observance of the rules of intestate succession but is entitled to assume that the personal representatives are acting correctly in selling the property of the deceased. This provision will considerably reduce the volume of

work in the Land Registry. *Subsection (4)* provides that the cost of registration under *subsection (3)* shall be borne by the person whose ownership is registered, thus making it clear that it is not an administration cost to be borne by the estate of the deceased. This is the existing law (see *subsection (4)* of section 37 of the Act of 1891, as inserted therein by section 22 of the Administration of Estates Act, 1959). *Subsection (5)* provides that where a court makes an order under section 20 (4) of the Administration of Estates Act, 1959, vesting registered land in a person entitled thereto (the personal representative having failed to transfer the land to him), the court may at the same time order that such person be registered as owner of the land. This enables the person entitled to procure his registration without further formality other than a simple application to the Registrar. *Subsection (6)* provides that the Registrar shall not be required to register personal representatives in their capacity as such but may enter on the register a note of the death of the registered owner and the names of the personal representatives. *Subsection (7)* authorises the court, after a lapse of six years from the death of a registered owner, to order that an applicant for registration (claiming to be entitled thereto in succession to the deceased) be registered as owner. The court is empowered to make the order if it is satisfied that the personal representatives of the deceased are dead or out of the jurisdiction. The provision covers the type of case where, for example, a registered owner dies leaving his land to his eldest son but the personal representative (normally, his widow) dies without transferring the land to the son. *Subsection (8)* provides that *subsections (2) to (6)* shall apply only in cases of death on or after the 1st June, 1959. The subsections in question are largely a re-enactment of provisions in the Administration of Estates Act, 1959, which are at present applicable in the case of deaths occurring on or after the date mentioned. Cases of death occurring before the 1st June, 1959, were governed by *subsection (2)* of section 37 of the Act of 1891, as amended by section 27 of and the Second Schedule to the Registration of Title Act, 1942, and it is necessary to make it clear that this will continue to be so. *Subsection (9)* provides accordingly.

Section 62 makes provision for the creation and registration of charges on registered land and for the registration of the ownership of such charges. A registered charge may be created by the registered owner of the land to be affected; and the owner of the charge shall be registered as such [*subsection (1)*]. A charge created otherwise than by will may be executed by an instrument of charge in the prescribed form, or in such other form as may appear to the Registrar to be sufficient to charge the land so long as it expressly charges or reserves out of the land the payment of the money secured [*subsection (2)*]. A mortgage will not of itself be sufficient to charge registered land [*subsection (3)*]. Any power to borrow or lend money on the security of a mortgage is to be construed as including power to do so on the security of a registered charge [*subsection (4)*]. This provision will apply to bodies acting under statutory powers (e.g. local authorities, building societies and industrial and provident societies) as well as to insurance companies, private trustees etc. On registration of the owner of a charge, the Registrar will be required to deliver to him a certificate of charge in the prescribed form [*subsection (5)*]. On registration of the owner of a charge securing the repayment of any principal sum of money, the instrument of charge will operate as a mortgage by deed within the meaning of the Conveyancing Acts and give the owner the powers of a mortgagee. These powers are (i) a power to sell, (ii) a power to insure the property, (iii) a power to appoint a receiver and (iv) a power, when in possession, to cut and sell timber [*subsection (6)*]. There are two changes in this provision as compared with the corresponding existing provision (*subsection (4)* of section 40 of the Act of 1891). In the first place, the powers mentioned are confined to the owner of a charge for value, as it is clearly undesirable that the owner of a voluntary charge, no matter how trivial or how created, should, for the purpose of enforcing the charge, have power to sell the land without reference to the

court. The second change is a drafting one and is designed to put beyond any doubt the fact that the powers conferred on the owner of a charge created for value include the power to sell the estate or interest which is subject to that charge. Under the Conveyancing Acts, a mortgagee, in the exercise of his power to sell, is authorised to convey the property sold "for such estate and interest as is the subject of the mortgage". This estate and interest is the one vested in the mortgagee as security for his loan. In the case of registered land, however, no estate is vested in the owner of a charge and it has been argued, therefore, that the powers conferred in his case by the Conveyancing Acts do not include a power to convey the estate of the registered owner because that estate is not the subject of the mortgage. The matter was considered by the High Court in *In re Neely* [1936] I.R.381, where it was decided that the owner of a charge on registered land did have the power to convey the land. Nevertheless, it has been deemed prudent to put the matter beyond doubt by writing into subsection (6) the words "including the power to sell the estate or interest which is subject to the charge". Subsection (7) provides that, when repayment of the principal money secured by a charge has become due, the registered owner of the charge or his personal representative may apply to the court in summary manner for possession of the land and, upon obtaining possession, shall be deemed to be a mortgagee in possession. This provision enables the owner of a charge to exercise his power of sale and give vacant possession to a purchaser without having to institute a mortgage suit. Such a suit often involves the chargeant and registered owner in unnecessary expense. The provision is a re-enactment of section 13(a) of the Registration of Title Act, 1942. Subsection (8) deals with the remedies which the owner of a charge by way of annuity has for recovering and compelling payment of the annuity. These remedies are laid down in the Conveyancing Acts and consist of a power to distrain upon the land, a power of entry upon the land and a power to lease the land to trustees. Subsections (9) and (10) deal with registration of a transferee of land from the registered owner of a charge for value who sells in pursuance of the powers referred to in subsection (6). The transferee is placed in the same position as a transferee for value from the registered owner of the land itself, and he takes the land free from the charge and from all registered burdens that rank *puisne* to the charge. Subsection (11) is a re-enactment of subsection (7) of section 40 of the Act of 1891 and is self explanatory.

Section 63 is designed to obviate difficulties arising from the decision in *In re Moley* [1957] N.I. 144 in relation to charges by way of mortgage on registered land. In that case a registered owner of freehold land purported to mortgage the land by way of demise for a term of years. A land purchase annuity was still payable and no consent to the demise had been obtained from the Ministry of Finance. (Official consent to letting and subdivision of land subject to a land purchase annuity is necessary both in Northern Ireland and here.) The mortgage by demise was accepted by the Registrar of Titles in Northern Ireland and was entered as a charge on the land. On an application by the registered owner of the land it was held by the court that, as the Ministry of Finance had not consented to the demise, the mortgage was void. The decision was upheld in the Court of Appeal. In the course of his judgement in the lower court the Chancery Judge expressed doubt whether, even if there had been a consent to the demise by the Ministry, a mortgage by demise was capable of registration under section 40 of the Registration of Title Act, 1891. Section 63 will validate mortgages purporting to have been registered prior to the commencement of the new Act. A similar provision was enacted in Northern Ireland in their Land Registry Charges Act, 1957.

Section 64 provides for the transfer of a registered charge and re-enacts section 41 of the Act of 1891. A registered owner of a charge may transfer it; and his transferee, when registered, has the same powers of enforcing it as the original chargeant. If the

transfer is voluntary, the transferee takes the charge subject to all unregistered rights subject to which his transferor held it; if it is for value he acquires the charge free from all rights except those registered as burdens on the original charge and such burdens as may affect without registration. The transferee gets the same title to the charge as a transferee of land gets to the land under a transfer for value or not for value, as the case may be.

Section 65 deals with the discharge of registered charges and re-enacts section 42 of the Act of 1891. Briefly, it provides that a charge may be cancelled at the request of the registered owner of the charge or on his receipt for the amount due.

Section 66 provides that the provisions of the Bill with respect to the transmission of registered land (*section 61*) and the defeasance of the estate or interest of the registered owner (*section 60*) shall apply, with the prescribed modifications, to transmissions and defeasances in the case of registered charges. The section re-enacts section 43 of the Act of 1891.

Section 67 provides that the registered owner of a charge shall not, merely by reason of such ownership, be entitled to the possession of the relevant land certificate. There is a consequential provision voiding any stipulation in relation to a registered charge whereby the registered owner of the charge is to get possession of the land certificate. The section re-enacts section 14 of the Registration of Title Act, 1942.

Section 68 re-enacts the substance of section 44 of the Act of 1891. *Subsection (1)* provides that, subject to the provisions of the Bill, the registered owner of land shall alone be entitled to transfer or charge the land and the registered owner of a charge shall alone be entitled to transfer the charge. The provisions of the Bill authorising the registration of a transferee otherwise than under a transfer from the registered owner are those in *sections 60, 61, 62, 90 and 103*. *Subsection (2)* provides that nothing in the Bill shall prevent a person from creating any right in or over any registered land or registered charge but that all such rights shall be subject to the provisions of the Bill with respect to registered transfers of land or charges for valuable consideration (see *sections 52, 55 and 64*). This subsection thus recognises that unregistered rights can be created and exist outside the register. These rights are equities affecting, not the land, but its owner. They are protected and preserved not by registration but by the entry of cautions or inhibitions (see *sections 97 and 98*). An example of such a right is the right of a beneficiary under a trust. Trusts cannot be registered (*section 92*). They must remain unregistered rights—equities enforceable against the registered owner, as trustee, and against all volunteers claiming under him, but liable to be defeated at any time by the registration of a new owner under a transfer for value from the trustee owner, unless protected by caution or inhibition. *Subsection (3)* provides that an unregistered right in or over registered land shall not affect the registered owner of a charge created on the land for valuable consideration. This subsection completes the chain of provisions which protect a "purchaser", that is to say, a person acquiring land, or an interest in land, for value.

Section 69 deals with the burdens which must be registered if they are to affect registered land as against registered transferees or chargeants for value. These burdens are listed at *paragraphs (a) to (s) of subsection (1)*. The burdens enumerated in

paragraphs (a) to (l) and in paragraph (s) are those specified in section 45 of the Act of 1891. Those in paragraph (m) are provided for in the Forestry Act, 1946, and the opportunity is being availed of to write them into the Bill. The rights of the Land Commission or of local authorities referred to in paragraph (n) represent an addition to the list of burdens which may be registered. Their insertion gives statutory recognition to the current practice of registering these rights on the application of the bodies concerned. The burdens specified in paragraphs (o), (p), (q) and (r) are, with one exception, prescribed in the Land Registration Rules, 1959, as burdens under section 45 of the Act of 1891. The exception is an exclusive right of residence on registered land, which, under existing law, is not a burden on the land but constitutes an equitable life estate (see note on section 81). In general, the burdens which may be registered under this section are those which are commonly created on land and with which an intending purchaser or chargeant for value would be vitally concerned. The registration of these burdens is an integral part of the machinery established by the Bill for the protection of such persons against undisclosed transactions affecting registered land. Subsection (2) provides that a burden under the section may be registered on the application of the registered owner of the land or of any person entitled to or interested in the burden, but, if the burden is to be registered without the concurrence of the registered owner of the land, an order of the court will normally be required. Subsection (3) deals with covenants or conditions relating to the use or enjoyment of the land and provides that these may normally be modified or discharged only by order of the court. However, they may be discharged or modified by the Registrar where there is consent of all the parties interested in their enforcement. This latter provision is new and is designed to obviate the need for court proceedings in cases where there is no dispute between the parties affected. Subsection (4) provides for the modification or cancellation by the Registrar of any other type of burden registered under this section.

Section 70 provides that, in the case of certain burdens which may be registered under section 69 as affecting registered land, the ownership of the burdens shall also be registered in the appropriate register. The burdens to be affected by this provision will be those prescribed by general rules. They will include such burdens as leases for more than twenty-one years, rent charges and sporting rights. The provision is a corollary to the provisions contained in sections 23 and 24 extending the scope of compulsory registration. It is desirable that, where, for example, a long lease is carved out of registered freehold land, the ownership of that lease should be registered forthwith even though the area in which the land is situated is not a "compulsory" area.

Section 71 provides for the registration of judgment mortgages on registered land and clarifies the effect of such registration. The section is basically a re-enactment of section 21 of the Act of 1891. Subsection (1) provides that the manner of registration of a judgment mortgage affidavit shall be as prescribed. Subsection (2) relaxes the provisions of the Judgment Mortgage (Ireland) Act, 1850, as to the manner in which registered land sought to be attached must be described in the affidavit. Section 6 of that Act requires the affidavit to contain specific particulars of the land and of the barony, town or parish in which they are situated. In the case of registered land, the Land Registry folio invariably includes these particulars, but, in *Murphy v. McCormack* [1930] I.R. 322, the Supreme Court held that, notwithstanding that the affidavit referred expressly to the folio of the register, the omission of the barony from the affidavit rendered the judgment mortgage invalid. It is now proposed that a reference to the folio and county shall constitute sufficient identification in affidavits registered after the commencement of the new Act. Subsection (3)

provides that the affidavit shall be expressed to be made by the creditor or other person authorised by the Judgment Mortgage (Ireland) Acts. *Subsection (4)* sets out the effect of registration of a judgment mortgage affidavit which complies with the requirements of the Judgment Mortgage Acts (as amended by this Bill). The subsection is declaratory of the existing law as contained in court decisions interpreting section 21 and other relevant provisions of the Act of 1891. (See, for example, *In re Strong* [1940] I.R. 382). A judgment mortgagee is a volunteer and his mortgage ranks in priority after any rights that affect the estate of the debtor at the time of registration of the affidavit. The means which a judgment mortgagee has of enforcing his charge is to apply to the court. He has not got the power of sale which an ordinary mortgagee has under a mortgage by deed. *Subsection (4)* preserves these two principles. It may be noted that the function of the Registrar in relation to applications for the registration of judgment mortgage affidavits is purely ministerial, that is to say, apart from the matters mentioned in *subsections (2)* and *(3)*, he has no function to see whether the affidavit complies with the requirements of the Judgment Mortgage Acts. Consequently, registration of an affidavit does not imply that a valid judgment mortgage has been created.

Section 72 relates to the burdens which affect registered land even though they are unregistered. These burdens are listed at paragraphs (a) to (q) of *subsection (1)*. The burdens enumerated in paragraphs (a), (b) and (c)—other than estate duty—and in paragraphs (f) to (j) are those specified in section 47 of the Act of 1891. Estate duty was inserted by section 8 of the Finance Act, 1894. The burdens at paragraphs (d) and (e) are included for the first time to clarify the effect, in relation to registered land, of vesting orders and other instruments made under the Land Purchase Acts. Their inclusion makes it clear that a purchaser of registered land whose transfer is registered after the making, publication or execution, as the case may be, of such an order or instrument takes the land subject to the rights thereby created. The burden at (j) replaces “statutory tenancies” provided for in the 1891 Act; the altered wording is designed to ensure that the burden covers all rights under the Landlord and Tenant Acts and the Rent Restrictions Act, 1960. The burden specified at (k) replaces the rights and equities protected by the existing notice of equities as provided for by section 29 (3) of the Act of 1891. The burdens specified at (l) and (m) are provided for in section 16 of the Registration of Title Act, 1942. Those in paragraphs (n) and (o) are provided for in the Labourers Act, 1936, and are incorporated here by way of consolidation. The rights mentioned in *paragraph (p)* are included as a corollary to *section 49*, which provides that the Statute of Limitations, 1957, shall apply to registered land as to unregistered land, subject to the provisions of that section. The burdens referred to in *paragraph (q)* are included for indexing purposes; they are dealt with separately in *sections 59* and *73*. *Subsection (2)* provides that, where it is proved to the satisfaction of the Registrar that any land registered or about to be registered is exempt from, or has ceased to be subject to, any burden included in *paragraph (a), (b) or (c) of subsection (1)*, he may enter notice of that fact on the register. *Subsection (3)* provides that, where the existence of any burdens to which the section applies is proved to the satisfaction of the Registrar, he may, with the consent of the registered owner or applicant for registration, or in pursuance of an order of the court, enter notice thereof on the register.

Section 73 relates to registration of ownership of mines, minerals and mining rights and re-enacts, with some drafting amendments, section 48 of the Act of 1891. A person may be registered as owner of land with or without all or any of the mines and minerals therein, or he may be registered as owner of any mines and minerals [*subsection (1)*]. A registered owner of land is not

necessarily to be deemed to be the owner of the mines and minerals therein [subsection (2)]. Where a person is registered as owner of land but the registration does not extend to all the mines and minerals therein, all powers and rights over the land which are incident to mining purposes and which are not created by express grant or reservation after the first registration of the land, shall be burdens which, though not registered, affect the land. Under the Minerals Development Acts the ownership of all gold, silver and petroleum is vested in the State. As regards other minerals, it is tentatively estimated that more than 50 per cent are State-owned.

Section 74 deals with the priority of registered burdens and re-enacts section 49 of the Act of 1891. The section is concerned, firstly, with the priority *inter se* of those registered burdens created or arising after first registration whose priority would rank according to the date of their creation if they were unregistered. Unless there is an entry to the contrary in the register, their priority after registration is determined by the order in which they are entered in the register and not by the date of their creation. This provision does not affect registered burdens whose priority is fixed by statute, such as a charge under the Land Reclamation Act, 1949, as these are not burdens which, if unregistered, would rank in priority according to the date of their creation. Moreover, the provision does not affect judgment mortgages, which have no existence as burdens prior to registration. The section also fixes the priority of registered burdens (whose priority, if they were unregistered, would rank according to the date of their creation) relative to all other burdens created or arising since the first registration of the land, except the burdens in section 72. Unless there is an entry to the contrary in the register, the first mentioned burdens obtain by registration priority over all judgment mortgages and all registered burdens created or arising after first registration whose priority is fixed by statute.

Section 75 regulates the priority of a registered charge created to secure future advances. Advances made on the security of such a charge are entitled to priority over any subsequent charge, except as to advances made after the date of, and with express notice in writing of, the subsequent charge. This section re-enacts section 77 of the Act of 1891 but extends the benefit of that section to the owner of a charge created to secure future advances up to an unspecified amount (as well as the owner of a charge in respect of advances up to a fixed amount).

Section 76 provides that a power to charge registered land, or a trust for securing money on registered land, may be exercised or executed only by the creation of a registered charge; and the person in whom the power or trust is vested shall have the same power to create the authorised charge as the registered owner of the land. The priority of a charge so created and registered is the priority of the registered power or trust.

Section 77 relates to cases in which a person is authorised by statute to charge land with the payment of money. For example, a personal representative is authorised to create such a charge for the purpose of paying estate duty. This section empowers him to charge registered land as if he were the registered owner of the land.

Sections 78 and 79 are designed to cure doubts as to whether terms of years for the purpose of raising money out of registered land (as, for example, to provide portions for younger children in the case of a settled estate) are registrable in the Land Registry. The sections provide that such terms shall be treated as charges, in conformity with the general principle that money advanced on the security of registered land shall be advanced by way of charge only. Section 78 provides for the case where a term of

years is vested for the purpose of raising money out of land which is already registered. *Section 79, subsection (1)*, provides for the case where such a term is vested prior to the first registration of the land. *Subsection (2)* provides that, where, prior to first registration, land has been mortgaged to raise money, the mortgage shall operate, and be registered, as a charge on the land.

Section 80 relates to incumbrances created by a company which is the registered owner of registered land. The section is declaratory of the existing law and makes it clear that all such incumbrances must be registered or protected under this Bill if they are to affect a person dealing with the land for valuable consideration.

Section 81 alters the law with respect to exclusive rights of residence in or on registered land. Under existing law such a right is not a charge or burden on the land but constitutes an equitable life estate in the property. This was decided by the Supreme Court in the case of the *National Bank v. Keegan* [1931] I.R. 344. The creation of rights of residence is a common device in this country to provide for the support and maintenance of parents and relatives. These rights are usually conferred in wills or under marriage settlements. They can be of two kinds, namely, a general right of residence charged on the property and usually coupled with a charge of maintenance, or a particular right of residence created by reserving or giving a right to the exclusive use during life of a room or rooms in a dwelling-house. Whether the right of residence be exclusive or non-exclusive, it is always intended to be personal to the grantee and it is anomalous, therefore, that such a right should be deemed to convey a life estate, entitling the grantee, for example, to let the accommodation reserved to him or her and introduce strangers into the dwelling-house. The above section seeks to remedy this anomaly, insofar as registered land is concerned, by providing that a right of residence, whether it be a general right of residence on the land or an exclusive right of residence in or on part of the land, shall be deemed to be personal and to create a burden on the land. The section does not interfere with the case where an exclusive right of residence is given in or on the whole of the land. It is quite clear that in such a case the intention is to convey a life estate and the anomalous situation mentioned above does not arise in that instance.

Section 82 is a new provision authorising the Registrar to make an entry on the folio of registered land of rights appurtenant to the land (e.g. rights of way). It is desirable that such rights should be capable of being registered not only as burdens on the folio comprising the servient tenement (as is the present practice) but also as appurtenances on the folio comprising the dominant tenement.

Section 83 provides for the making of general rules appertaining to registration in the register of incorporeal hereditaments and other rights. Rules may be made adapting or applying, with or without modification, the provisions of the Act for the purposes of such registration. The section re-enacts the substance of section 54 of the Act of 1891.

Section 84 deals with the maps to be kept in the central office for registration purposes. The first two subsections are a re-enactment of section 56 of the Act of 1891. They provide for the keeping in the central office of the latest available Ordnance Survey maps [*subsection (1)*] and for the marking on the maps (to be known as "registry maps") in the prescribed manner of all lands the title to which is registered under the Act [*subsection (2)*]. In practice much of the mapping effected in the Land Registry since 1891 is on maps which have become out-of-date. Furthermore, in the case of some holdings, photo-mapping was used as an emergency measure at one stage. Again, in the

case of certain building sites it is not possible to show the necessary detail on the available Ordnance Survey maps and, accordingly, the architects' maps furnished on application for registration have had to be used for the purpose. *Subsection (3)* is designed to validate the practice which has had to be adopted in the Land Registry in such cases.

Section 85 re-enacts section 55 of the Act of 1891 and provides that land is to be described in the registers by the names of the denominations on the Ordnance Survey maps or by reference to such maps. On these maps land in cities and urban districts is shown as intersected by named streets and roads; elsewhere it is shown as divided into townlands. Accordingly, land in a city or urban district is described in the registers as a parcel of specified dimensions adjoining, or abutting on, the street or road shown and named on the Ordnance Survey map. Land not in a city or urban district is described as a specified area of the townland in which it is situated. On the appropriate registry map a plan is drawn of the land of which the ownership is registered. The identity and surface dimensions of the land are thus established in every case by the particulars in the register and the appropriate registry map. However, the description of land in a register or on a registry map is not conclusive either as to the extent or boundaries of the land unless there is an entry on the register to the contrary. The provision restricting the conclusiveness of the register as to the extent of land described in it takes account of the small discrepancies in areas and dimensions that are usually covered by the conveyancing formula of "or thereabouts" in a conveyance of unregistered land. The State is thus protected against claims for loss from errors in registration due to discrepancies which arise from different methods of survey and the varying skill of surveyors. The provision is not meant to be, and cannot be relied on as, a protection against substantial misstatements of the area or dimensions of a parcel of land as it exists.

Section 86 provides that the boundary of registered land may be made conclusive on all persons where it has been defined by, for example, a Land Judge's conveyance or a vesting order of the Land Commission.

Section 87 enables land owners who prefer peace to litigation to define by agreement the boundary between their properties and to have the boundary entered on the register as conclusive.

Section 88 provides for the settlement of boundaries by the Registrar where part of registered land is transferred. If, on any transfer, a dispute arises as to the boundaries of the land transferred, the Registrar will have jurisdiction to decide between the parties.

Section 89 defines what is meant by an owner of unregistered land for the purposes of the provisions of the Bill relating to boundaries.

Section 90 provides for the case of a person who, although not the registered owner or the personal representative of such owner, is nevertheless entitled to registered land or a registered charge and wishes to deal with the property by way of transfer, charge or equitable deposit prior to his registration as owner. The section will empower such a person to transfer, charge or create a lien on the land or charge (or, in the case of the Land Commission, to exercise any other rights of ownership of land) without first procuring registration. Any such dealing or exercise of rights by a person so empowered will, however, be subject to the burdens or rights affecting his title which would be entered on the register if he were registered as owner. It will also be liable to defeat not only by a prior registered disposition for value from the person entitled to be registered as owner, but also by a prior registered disposition for value from the actual registered owner or his personal representative.

Section 91 deals with undivided shares and co-owners and re-enacts section 64 of the 1891 Act. *Subsection (1)* provides for the registration of an owner of an undivided share or shares in land or a charge, with an entry to show the extent of his share. *Subsection (2)* provides for the registration of two or more persons as owners of land or a charge and that they shall be deemed to be joint tenants unless there is an entry to the effect that they are tenants in common. *Subsection (3)* provides that, where two or more persons are registered as joint tenants, an entry may, with their consent, be made in the register prohibiting a registered disposition of the land or charge, except by court order, when the number of owners falls below a specified figure. This is designed to restrain dealings with trust property by a reduced number of trustees. *Subsection (4)* relates to the case where any number less than all the joint registered owners is entitled to transfer the land or charge. In such circumstances an entry to that effect may be made in the register and the requisite number of owners will then be empowered to make a registered disposition of the land or charge.

Section 92 deals with notices of trusts and relieves a purchaser for value of registered land from the duty of satisfying himself that the land is not subject to a trust. It re-enacts the substance of section 17 of the Registration of Title Act, 1942. *Subsection (1)* provides that notice of a trust shall not be entered on the register. *Subsection (2)* provides that even where a document disclosing a trust is lodged for registration it shall not thereby affect with notice of the trust either the Registrar or any person acquiring for valuable consideration an estate or interest in the land or in a burden thereon. *Subsection (3)* extends these provisions to express, implied and constructive trusts.

Section 93 provides for the furnishing of an affidavit of discovery (to the effect that all documents of title and all facts material to the title have been disclosed) on any occasion on which the title to land falls to be investigated by the Registrar. *Subsection (1)* re-enacts subsection (1) of section 66 of the 1891 Act but is extended to cover cases in which the Registrar, in the course of his duties, investigates the title on his own initiative. *Subsection (2)* re-enacts subsection (2) of section 66 of the 1891 Act and enables the Registrar to insist on a statement as to the source of the deponent's information. It also empowers him to refuse to proceed until any further evidence he requires is furnished.

Section 94 deals with the production of documents of title when an application is made for registration or when the Registrar has occasion to investigate a title. The section re-enacts section 67 of the 1891 Act as amended by section 25 of the 1942 Act. It enables the Registrar, where the applicant (or a trustee for him) has a right to production of documents affecting the title in the custody of another person, or where the Registrar considers such documents to be necessary for the purpose of his investigation, to require the person having custody of the documents to show cause why he should not produce them and, if that person fails to do so within the stipulated period, the Registrar may order their production.

Section 95 re-enacts section 68 of the 1891 Act. It empowers the Registrar, on an application for registration, to require production of documents of title for stamping, so as to give notice to persons dealing with the land that the title to it has been registered.

Section 96 provides machinery whereby a person having an interest in unregistered land (otherwise than under an instrument registered in the Registry of Deeds) may take steps to protect that

interest in the event of an application being made to have the ownership of the land registered. (If the interest is one which will be disclosed by a search in the Registry of Deeds the protection of the section is not necessary, as the interest will be revealed by the investigation of title carried out by the Land Registry). The section re-enacts section 61 of the Act of 1891. *Subsection (1)* enables such a person to lodge a caution with the Registrar entitling him to notice of any application for registration of the land. He must produce an affidavit indicating his right or interest. *Subsection (2)* provides that, on an application for registration in such a case, notice must be served on the cautioner, who must appear and oppose the application within the prescribed time. *Subsection (3)* provides that a person who lodges a caution without reasonable cause must compensate any person damaged by the caution.

Sections 97 and 98 provide machinery for the protection of the interests of persons having unregistered rights in or over registered land or a registered charge. These rights are the rights of beneficiaries under trusts, express or constructive, which bind the registered owner. The only estate which can exist in registered land is that vested by registration in the person named as owner in the register. A beneficiary under a trust has no estate. He does, however, have an "equity" against the registered owner which enables him to compel the owner to deal with the land vested in him, in accordance with the trust. This "equity" cannot be registered as a burden on the land, nor is it one of the burdens which affect land without being registered. No entry concerning the "equity" can be made in the register, for neither trusts, nor notices of them, can be entered there (*section 92*). Furthermore, the "equity" may be destroyed by the registration of a new owner under a disposition for value from the registered trustee owner. The owner of the "equity" is, however, given a simple and effective method of protecting himself against loss from a breach of trust by the registered owner. Through the system of cautions and inhibitions provided for in the above mentioned sections he can prevent any registration that would vest the legal ownership of the trust property in anyone who would not be bound by the trust. Broadly speaking, a caution is designed for the temporary protection of unregistered rights pending their conversion into registered interests under instruments lodged in the Land Registry for that purpose, or pending litigation. This method is appropriate where, for example, a registered owner has entered into a contract to sell his property and the would-be purchaser wishes to protect the "equity" or inchoate right which he has to become registered as new owner of the land. Unregistered rights that cannot be converted by registration, or whose conversion may be delayed indefinitely or for prolonged periods, should be protected by an inhibition. This is the appropriate method of protecting the rights of beneficiaries under express trusts against dispositions in breach of trust by registered trustee owners. *Section 97* provides for cautions affecting registered land or a registered charge and re-enacts section 69 of the 1891 Act, with the addition of *subsection (6)* which is new. *Subsection (1)* enables a person with a right in or over registered land or a registered charge to lodge a caution with the Registrar requiring notice of any dealing to be served on the cautioner. An affidavit showing his right or interest must be produced. *Subsection (2)* provides that the Registrar shall serve notice on the cautioner when any dealing is lodged for registration. *Subsection (3)* provides that, after the specified time passes, the caution shall lapse (unless the Registrar makes an order to the contrary) and the dealing may proceed as if no caution were lodged. *Subsection (4)* provides that the Registrar may, if he thinks fit, further delay registration of the dealing if the cautioner appears within the specified time and gives whatever security may be required by the Registrar. *Subsection (5)* makes the cautioner liable for compensation for damage suffered by reason of a caution lodged without reasonable cause. *Subsection (6)* is a new provision enabling the Registrar,

at his discretion, in a case in which the cautioner is a statutory authority (as defined in *section 3*), to accept a certificate instead of an affidavit. *Section 98* provides for a system of inhibitions affecting registered land or a registered charge and substantially re-enacts *section 70* of the 1891 Act. *Subsection (1)* provides that, on an application by a person interested in registered land or a registered charge, the court may make an order, or the Registrar an entry in the register, inhibiting dealings for a period or except on certain conditions. *Subsection (2)* provides that, where an order is made by the court, the Registrar shall, on the application of the person who has obtained the order, make an entry on the register. *Subsection (3)* empowers the court or the Registrar to annex conditions to such an order or entry, or to cancel it. The Registrar shall not, however, have power to discharge an order of the court. *Subsection (4)* provides that an inhibition shall not restrict the exercise of the powers of a tenant for life under the Settled Land Acts, and that it may be cancelled or modified at the instance of all the persons shown on the register as having an interest in it.

Section 99 deals with settled land and the registration of limited owners. It re-enacts, with amendments, *section 71* of the 1891 Act. *Subsection (1)* provides for entry in the register of the names of the trustees (if any) of the settlement under which a limited owner is registered. *Subsection (2)* clarifies certain aspects of the effect of registration of a limited owner. By virtue of *paragraph (a)* the person so registered shall have no greater power over the estates and interests of other persons under the settlement than are enjoyed by a life tenant under the Settled Land Acts. *Paragraph (b)* provides that such registration shall not confer on persons who acquire the limited owner's estate any greater interest than they would otherwise have. *Paragraph (c)* ensures that registration of a limited owner shall not deprive any trustee under the settlement of any power over the land, e.g. a power to raise money by creating a registered charge thereon. *Subsection (3)* provides that, where the estate of a limited owner passes to another person as assignee thereof, the other person may have his name entered on the register as assignee. If such an entry is not made the limited owner may continue effectively to deal with the land as if no assignment had taken place. *Subsection (4)* provides that the registered owner of a charge on the estate of a registered limited owner shall not, as such, be an assignee within the meaning of this section. The provision is designed to cure doubts in regard to the validity of registered charges held by banks and other bodies on the estates of registered limited owners. Up to quite recently chargeants were not described on the register as assignees and, if the courts were to hold that a chargeant is, in fact, an assignee, the omission of that description in the register would render the charges of no effect. *Subsection (5)* provides for entry of the name of a new trustee in the register. *Subsections (6)* and *(7)* re-enact *subsection (5)* of *section 71* of the 1891 Act and deal with settlements to which *section 63* of the Settled Land Act, 1882, applies. The latter section deems land held on trust for sale to be settled land for the purposes of that Act. However, since under a trust for sale the trustees (and not the tenant for life) are normally intended to have control, *section 7* of the Settled Land Act, 1884, provides that the powers of the tenant for life under such a trust shall be exercisable only by order of the court. Until such an order is made the trustees are empowered to sell without the consent of the tenant for life. Accordingly, the tenant for life in these cases may be registered as limited owner only if a court order as aforesaid is in force or if the trust itself gives him the powers of a tenant for life. *Subsection (8)* re-enacts *subsection (6)* of *section 71* of the 1891 Act. It provides that neither the registration of a limited owner nor any reference in the register to the settlement under which he was appointed as life tenant will affect any person with notice of the trusts of the settlement.

Section 100 re-enacts section 72 of the 1891 Act. *Subsection (1)* provides that a trustee or other person acting in a fiduciary capacity may apply to the court for directions where he is in doubt as to who should be registered or as to any other matter. *Subsection (2)* provides that such a person (including a limited owner exercising his statutory powers) shall be entitled to claim expenses incurred under this Act as expenses appropriate to his trust or duty. The expenses of applications or proceedings in the Land Registry in such cases may be finally determined by the Registrar.

Section 101 deals with infants and re-enacts section 74 of the 1891 Act. *Subsection (1)* provides that an infant registered owner shall be described on the register as such. *Subsection (2)* provides for representation of an infant for the purposes of the Act by such person as may be appointed by the court or prescribed by general rules.

Section 102 provides for representation of persons of unsound mind and re-enacts subsection (1) of section 75 of the 1891 Act and section 18 of the 1942 Act. *Subsection (1)* provides for representation of a lunatic, so found by inquisition, by the committee of his estate. Under *subsection (2)*, a lunatic not so found may be represented by his committee or guardian duly appointed under the lunacy legislation or by a guardian appointed by the court. *Subsection (3)* deals with a person of weak mind temporarily incapable of managing his affairs. It provides that he may be represented by his guardian appointed under the lunacy legislation or by a guardian appointed by the court.

Section 103 deals with the bankruptcy of a registered owner and re-enacts, with amendments, section 76 of the 1891 Act. *Subsection (1)*, which replaces subsection (2) of section 76 of the 1891 Act, provides for the furnishing by the registrar of the bankruptcy court to the Registrar of Titles of notice of every petition of bankruptcy and petition for arrangement that is presented to him. If it appears to the Registrar that any registered land or charge is affected by the petition he will be obliged to enter in the register an inhibition against dealings in that land or charge for three months from the date of the petition. This differs in two important respects from the existing law as laid down in the 1891 Act. Firstly, the registrar of the bankruptcy court is at present required to furnish notice of a petition only in a case where the debtor is a registered owner; and, in fact, he must, in the notice, give particulars identifying the land or charge affected. This arrangement does not in practice work satisfactorily, as the registrar of the court seldom knows whether a debtor is the owner of registered property. Accordingly, the onus is now to be placed on the Land Registry of ascertaining, by a search of the registers, whether a debtor is, in fact, the owner of registered land or a registered charge. The second change provided for by the subsection as compared with the existing law is that, where a debtor is identified as a registered owner, instead of merely noting the presenting of the petition on the register, an inhibition will be entered against dealings in the land or charge affected. The present procedure means that the land or charge may be dealt with but that anybody acquiring it (even a purchaser for value) takes subject to the result of the bankruptcy proceedings. A more realistic approach is to prohibit any dealing with the property until the proceedings are completed. *Subsection (2)* enables the Registrar, in a case in which he has difficulty in establishing whether the debtor is a registered owner, to make enquiries, issue notices and generally to take such action in the matter as he considers advisable. *Subsection (3)* provides for cancellation of the inhibition where, by virtue of the developments referred to in paragraphs (a), (b) and (c), the land or charge affected does not become vested in assignees or trustees for the benefit of the creditors of the registered owner. The registrar of the court will be obliged

to furnish notice to the Registrar of such developments. *Subsection (4)* re-enacts subsection (1) of section 76 of the 1891 Act. It provides that the assignees or trustees in whom a bankrupt's property has vested by law for the benefit of his creditors shall be entitled to be registered as new owners, or, where the bankrupt is a registered limited owner, as his assignees.

Section 104 re-enacts section 80 of the 1891 Act and provides that it shall be the duty of the Registrar to satisfy himself that the appropriate stamp duties have been paid in respect of all documents relied upon in an application for registration.

Section 105 deals with land certificates and certificates of charge and re-enacts section 81 of the 1891 Act. *Subsection (1)* provides for production of the certificate for all transactions with the land or charge, so that the certificate may be altered to conform with the register or cancelled, as the case requires. The obligation to produce the certificate may be modified by general rules. *Subsection (2)* enables the Registrar to order the production of the certificate on an application by the registered owner or any other person entitled to require its production, provided the dealing for which it is needed is one which does not require the consent of the party having custody of the certificate. *Subsection (3)* provides that the right of custody of a certificate, or a lien on it, shall not be affected by production of the document under this section. *Subsection (4)* provides that a certificate is *prima facie* evidence of what it contains. *Subsection (5)* enables a lien to be created on registered land or a registered charge by deposit of the certificate just as a lien may be created on unregistered land by deposit of the title deeds.

Section 106 deals with addresses and notices and re-enacts section 82 of the 1891 Act. *Subsection (1)* requires persons entered as owners or cautioners or as entitled to any notice, or in any other capacity, to furnish an address in the State. *Subsection (2)* provides for service of notices by the Registrar either personally or by registered post directed to the person at the address furnished. Such a letter, if unreturned, will be deemed to have been received by the addressee, unless there is contrary evidence. *Subsection (3)* saves a registered purchaser for valuable consideration from being affected by failure to send any such notice or by its non-receipt by the appropriate person, unless he knew of the fact before his registration.

Section 107 is designed to give statutory expression to the principle that the registers are open to inspection by the public. This principle has been observed in practice ever since the system of registration of title was first introduced. *Subsection (1)* provides that any entry in, or index to, a register and any registry map may be inspected by any person at such times and on such conditions as may be prescribed. *Subsection (2)* provides that any person may apply to the Registrar to make an official search in a register or registry map and to issue a certificate of the result of the search.

Section 108, taken in conjunction with *subsection (2)* of the previous section, provides for the introduction of a special system of official searches for the benefit of purchasers, lessees and chargeants. In effect, one of these searches will not only reveal the state of the register at the date of the search but also give the purchaser, lessee or chargeant a period of fourteen days within which he may complete and register his transaction in priority to any other dealing affecting the same land lodged during that period.

PART IV

DEVOLUTION ON DEATH AND DESCENT ON INTESTACY

Part IV of the Bill (*sections 109 to 114*) deals with the devolution of registered land on the death of the registered owner and the rules of beneficial succession to such land where the registered

owner dies intestate. In so far as devolution is concerned the Bill proposes no change but merely provides for consolidation of the existing law. At present the devolution of compulsorily registered land (mainly rural land) is governed by Part IV of the 1891 Act. Part II of the Administration of Estates Act, 1959, makes provision for other registered land. In relation to succession on intestacy the Bill proposes an important change by providing that all registered land shall descend as personalty to the next-of-kin. Under the existing law registered freehold land not subject to Part IV of the 1891 Act (mainly urban land) descends as realty to the heir-at-law. The Bill thus abolishes primogeniture in so far as any registered land is concerned.

Section 109 is self-explanatory. All registered land will henceforth be subject to the same rules of devolution and descent.

Section 110 applies the law as to devolution of real estate, at present contained in Part II of the Administration of Estates Act, 1959, to all registered land. Part II of that Act provides that real estate (i.e., freehold land) shall on the death of the owner devolve on his personal representatives in the same way as personalty. Land subject to Part IV of the 1891 Act is at present specifically excluded from the provisions of Part II of the 1959 Act, as its devolution is taken care of by the 1891 Act. The present section aims at achieving legislative tidiness by making the devolution of all registered land subject to the general law relating to the devolution of real estate.

Section 111 provides for the distribution of registered land on intestacy as if it were personal estate. This provision applies to all registered land, whether it be real estate at present subject to Part IV of the 1891 Act, or real estate not so subject. In so far as real estate not at present subject to Part IV of the 1891 Act is concerned the provision is new. In the case of deaths intestate after the commencement of this Act, such real estate will descend to the next-of-kin of the deceased registered owners instead of to the heirs-at-law. The change will chiefly affect urban land.

Section 112 is a corollary to the alteration made by the previous section in the rules of intestate succession. *Subsection (1)* abolishes all existing rules, modes and canons of descent and of devolution by special occupancy in relation to any registered freehold land, except in so far as they may apply to an entailed estate. This alters the law in so far as it relates to registered freehold land not subject to Part IV of the 1891 Act. The present rules as to the descent of real estate to the heir-at-law are based on preference of the eldest over the younger males of equal degree (primogeniture) and preference of males over females. They had their origin in the feudal system of land ownership. Special occupancy is a peculiar rule which arises in relation to estates *pur autre vie*. An estate of this kind is created when a life tenant (A) assigns his interest to another person (B). B's estate endures so long as A remains alive. At common law B could not devise his interest and it devolved on his death according to the rules of occupancy. "Occupancy" was invented to explain the title to land which was neither inheritable nor devisable and which therefore would belong to the first occupier after B's death. If the estate was granted "to B and his heirs" the land passed on B's death to his heir as special occupant. The heir was allowed this special right to occupy the land by reason of the mention of "heirs" in the grant; the heir did not take by descent from B and the land in his hands was not liable for B's debts. The abolition of the rule of special occupancy means that an estate *pur autre vie* to which the rule at present applies will, on the death intestate of the owner, devolve on his personal representatives in the same way as all other registered land. It is to be observed that *subsection (1)* makes an exception for entailed estates. This is because a limitation in tail is in effect a settlement of a series of successive life estates. The object of the original settlor is that the estate shall, unless barred by the tenant in tail, descend from generation to generation, thus

keeping the land in the family. This puts an entailed estate in a category distinct from other property and it would be contrary to the object of the settlement to provide that an entailed estate should descend as if it were personalty. Entailed estates are exceptional and are the concern of only a small section of the population. Subsection (2) abolishes dower, tenancy by the curtesy and escheat in relation to all registered freehold land (including entailed estates). Dower is the right of a widow to a life estate in one-third of her husband's realty provided that issue capable of inheriting might have been born alive and that her right to dower has not been barred or otherwise taken away from her under the Dower Act, 1833, by a declaration in a deed or will or by any absolute disposition of the land, whether by deed or will. Tenancy by the curtesy is the estate for life taken by a widower in the whole of the lands of his intestate wife where she was solely seised of an estate of inheritance in the lands and where issue of the marriage capable of inheriting has been born alive. Dower and tenancy by the curtesy have already been abolished by the Act of 1891 in relation to land subject to Part IV of that Act. Escheat is the right of the State or of a mesne lord to succeed to freehold estates on the death of the owner intestate and without heir and, as such, is appropriate only to land which descends as realty to the heir-at-law. It has no application to land which descends as personalty. Where the owner of personal property dies intestate leaving no next-of-kin the property passes to the State under the doctrine of *bona vacantia*. This doctrine will henceforth apply to registered land. Escheat is being abolished for the first time in relation to any registered freehold land.

Section 113 provides that sections 109 to 112 will apply only in cases of death after the commencement of the Act. In cases of death before such commencement, Part IV of the Act of 1891, although repealed, will continue to apply to land to which it applies at present.

Section 114 is based on section 89 of the Act of 1891 and provides for the future constructions to be placed on the words "heir" or "heirs" used in relation to registered freehold land. Under paragraph (a), where, either before or after the commencement of the Act, these words are used as words of limitation, that is, to indicate the nature and extent of an estate to be conveyed, they will have the same effect as if the Act had not passed. Thus, a grant to "A and his heirs" will still convey a fee simple. Under paragraph (b), if the words are used, before the commencement of the Act, as words of purchase, that is, to indicate the person in whom land is to vest, they will have the same meaning as if the Act had not passed. Here, the heir is a *persona designata* and a change in the meaning of the word used before commencement of the Act would, in some cases, change the effect of documents completed before such commencement. Under paragraph (c), if the words are used as words of purchase after the commencement of the Act, they will, unless a contrary intention appears, mean the persons entitled to succeed under the new rules of intestate succession. Under paragraph (d), the words used in any other way will mean the personal representatives of the person in relation to whom they are used.

PART V

MISCELLANEOUS PROVISIONS

Section 115 re-enacts section 15 of the 1942 Act and voids any stipulation in a contract for the sale of registered land which attempts to preclude the intending purchaser from making requisitions in relation to burdens generally or any particular burden which, though unregistered, may affect the land. The section applies also to a contract for the charging of registered land or for the transfer of a registered charge.

Section 116 re-enacts the substance of section 19 of the Act of 1891 and of section 12 of the Act of 1942. *Subsection (1)* provides that registration under the proposed Act of the ownership of any estate or interest shall, as from the date of such registration, exempt that estate or interest from the provisions of the Acts relating to the Registry of Deeds. This means that any deed or document relating to the registered estate or interest and executed or coming into operation after that date will not require to be registered in the Registry of Deeds. However, the registration of such ownership will not operate to exempt from the Registry of Deeds any deed or document relating to any other estate or interest (other than a deed or document creating such other estate or interest). For example, where the ownership of a freehold estate is registered and a leasehold interest is carved out of the freehold, the lease itself will be exempt from the Registry of Deeds but not any document assigning or otherwise dealing with the leasehold interest. *Subsection (2)* provides for the filing in the Registry of Deeds of a memorial of the registration made under this Act of the ownership of an estate or interest. *Subsection (3)* provides that, where any enactment requires any deed or document to be registered in the Registry of Deeds, registration under this Act of the title under such deed or document (within the period, if any, specified in the enactment) shall satisfy the requirement.

Section 117 re-enacts the substance of section 46 of the 1891 Act. *Subsection (1)* provides that the registration of a burden under this Act shall have the same effect as, and make unnecessary, registration of any deed or document relating to the burden in the Registry of Deeds. However, in the case of a leasehold interest the ownership of which is not registered under this Act, only the lease shall be so exempt. *Subsection (2), paragraph (a)*, provides that the registration as a burden under this Act of a judgment, order, inquisition, recognizance or State bond shall have the same effect as, and make unnecessary, the registration thereof in the Registry of Judgments. *Paragraph (b)* provides that such burdens must be re-registered every five years if they are to continue to affect registered land as against purchasers, mortgagees or creditors.

Section 118 re-enacts section 90 of the 1891 Act and indemnifies the Registrar and local registrars, and all persons acting under their authority, against any proceedings in respect of anything *bona fide* done or omitted to be done in the course of their duties.

Section 119 deals with penalties for fraud and re-enacts section 91 of the 1891 Act. *Subsection (1)* specifies certain acts which shall constitute misdemeanours. They include the suppression of documents or facts in the course of proceedings before the Registrar or the court, the fraudulent procuring of any entry in a register and the making of false statements. Conviction in respect thereof will render the guilty party liable to imprisonment for a term not exceeding two years or a fine not exceeding five hundred pounds. *Subsection (2)* provides that the civil remedy of any person aggrieved by such an offence will not be affected by a proceeding or conviction under this Act. *Subsection (3)* provides that nothing in this Act shall entitle a person to refuse to provide evidence for the purpose of any legal proceedings but that such evidence shall not be admissible in criminal proceedings under this Act. A person will not, for example, be able to refuse to give evidence in civil proceedings on the grounds that it might render him liable to conviction of an offence under this Act.

Section 120 provides for compensation by the State in respect of loss incurred by owners and others as a result of official errors in registration or entries in the registers obtained by forgery or fraud. The section re-enacts, with certain amendments, the provisions of section 22 of the Registration of Title Act, 1942. *Subsection (1)* provides that the section shall apply to loss sustained by any person by reason of (a) the rectification by the court of official errors in registration, (b) official errors which are not rectified, (c) entries

in the register obtained by forgery or fraud, (d) errors in official searches and (e) mistakes made by the Land Registry in office copies of the register or of documents or plans filed in the Registry. The provision for payment of compensation in the type of case mentioned at (e) is new and is designed to remedy an obvious omission in the scope of the present system of compensation. *Subsection (2)* repeats subsection (2) of section 22 of the Act of 1942. *Subsection (3)* is new and aims to remedy an injustice in the present law to which attention was drawn by the decision of the High Court in *In re The Wicklow County Council* [1958] 92 I.L.T.R. 110. The court held in that case that the costs of a successful application for rectification of an error in the register did not constitute a loss to which section 22 of the Act of 1942 applied and that, consequently, compensation was not payable under that section in respect of such costs. *Subsection (4)* and (5) are a repetition of the corresponding provisions of the Act of 1942, except for two changes which occur in *subsection (5)*. *Paragraph (e)* of that subsection is new and provides that compensation shall include the costs incurred by a claimant in establishing his claim. This change merely gives statutory effect to what is already the current practice in compensation cases. The second change is that paragraph (e) of subsection (4) of section 22 of the Act of 1942, which prohibits an appeal from a decision of the court under the subsection, is not being re-enacted. This means that an appeal will lie from a decision by the Circuit Court or High Court where the court has adjudicated on a determination made by the Registrar of a claim for compensation. *Subsection (6)* re-enacts subsection (5) of section 22 of the Act of 1942.

Section 121 provides that, in order to protect the Central Fund against claims for compensation under *section 120*, the Registrar may, when he discovers an official error in registration, enter an inhibition in the register preventing any dealing with the property affected by the error pending its correction. The provision is a re-enactment of section 24 of the Act of 1942.

Section 122 amends paragraph (c) of subsection (2) of section 2 of the Statute of Limitations, 1957. That paragraph provides that a person registered as owner of land "subject to equities" shall not, by reason only of such registration, be a trustee for the purposes of the Statute. The effect of the paragraph is to allow a registered owner in such cases to plead the Statute. Under this Bill, registration "subject to equities" will be classified as registration with a possessory title and it is necessary, therefore, to provide that registration with such a title will not make a person a trustee for the purposes of the 1957 Statute.

Section 123 abolishes the need for words of limitation in transfers of freehold registered land. Words of limitation are words which mark out the limits of the estate to be taken under a conveyance or other instrument. In the case of deeds, the law was in former times exceedingly strict upon this point. Before 1882, the only way of creating a fee simple by a direct grant *inter vivos* was by a limitation to the grantee "and his heirs". This rule was mitigated by the Conveyancing Act, 1881, which provided that, in deeds executed after the 31st December, 1881, the fee simple should pass if the expression "in fee simple" was used. The requirement about the use of words of limitation is a relic of feudalism which has already been abolished in England and is proposed for abolition here also. *Subsection (1)* provides accordingly. *Subsection (2)* dispenses with the need to use the word "successors" in a transfer to a corporation sole. *Subsection (3)* dispenses with the need for the phrase "to the use of" in voluntary transfers. This is yet another technicality of feudal origin the abolition of which will help to simplify registered conveyancing.

Section 124 provides that for the purpose of any proceedings in the Land Registry an affidavit may be sworn before a Peace Commissioner. It is the practice in the Land Registry to accept

affidavits sworn by a Peace Commissioner although, in fact, Peace Commissioners do not appear to be authorised to swear affidavits for this purpose. The purpose of the section is to validate the existing practice.

Section 125 provides for the sending of notification to the Minister for Transport and Power whenever application is made for the registration of land which comprises foreshore. This is because, in general, the ownership of foreshore is vested in the State, its management being entrusted to the Minister for Transport and Power.

Section 126 provides for the making of rules and orders. It authorises the Registration of Title Rules Committee, with the concurrence of the Minister for Justice, to make general rules for carrying into effect the objects of the Act. In general, these rules will govern the conduct of the business in the Land Registry, the relations between the central and local offices, the procedure to be observed in connection with registration and all other matters directed or authorised by the Bill to be prescribed [subsection (2)]. The constitution of the Rules Committee will continue to be determined by section 73 of the Courts of Justice Act, 1936 [subsection (1)]. The Committee consists of the Land Judge, the Registrar of Titles, a practising barrister nominated by the Bar Council and a practising solicitor nominated by the Council of the Incorporated Law Society. *Subsection (3)* provides for the registration in the Land Registry of all titles recorded (before 1891) under the Record of Title (Ireland) Act, 1865. *Subsection (4)* empowers the Minister for Justice to fix by order the times at which the Land Registry and Registry of Deeds shall be open to the public.

Section 127 preserves rights of the State to any property as *bona vacantia*.

SCHEDULE

The Schedule lists the repeals provided for by *section 5*. The first three repeals are designed to end the anomalous position whereby releases of charges created under the Acts in question require to be registered in the Registry of Deeds although the land to which the charges relate is registered land. The Registration of Title Acts, 1891 and 1942, are being repealed in full and re-enacted in the Bill (with amendments) for the purpose of consolidation. Subsection (6) of section 3 of the Irish Land Act, 1903, which excepted demesne lands from the provisions of Part IV of the 1891 Act, and section 60 of the Land Act, 1923, which cancelled the exception, are being repealed. All registered land will henceforth be subject to *Part IV* of the Bill. The remaining provisions of the Land Acts; section 74 of the Courts of Justice Act, 1936 (which gave the Registration of Title Rules Committee the power to make general rules); paragraph (c) of subsection (2) of section 2 of the Statute of Limitations, 1957 (which provides that a person registered as owner of land subject to equities shall not be a trustee for the purposes of the Statute); and section 22 of the Administration of Estates Act, 1959 (which amended section 37 of the 1891 Act) are also being repealed and re-enacted for the sake of consolidation. The repeal of the words in paragraph (d) of subsection (2) of section 2 of the Statute of Limitations, 1957, is consequential on the repeal of section 86 of the 1891 Act (which is not being re-enacted). Certain words are repealed in section 24 of the Statute of Limitations, 1957, as provided for in *subsection (4) of section 49* of the Bill. Paragraph (a) of section 9 of the Administration of Estates Act, 1959, is superseded by *section 110* of the Bill.

Roinn Dlí agus Cirt
Meitheamh, 1964

