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VICTORIÆ REGINÆ.

A.D. 1895.

No. 640.

An Act relating to Homesteads.

[Assented to, December 20th, 1895.]

BE it Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province in this present Parliament assembled, as follows :

PART I.

INTRODUCTORY.

1. This Act may be cited as "The Homestead Act, 1895." Short title.
2. In the construction of this Act— Interpretation.
 - "Family" includes children and wife, or husband :
 - "Homestead" means a homestead registered pursuant to this Act :
 - "Registrar" means the Registrar-General of Deeds, and includes any Deputy Registrar when acting for the Registrar-General :
 - "Settlor" includes any person applying to register a homestead :
3. This Act is divided into parts as follows :— Division.
 - PART I.—Introductory :
 - PART II.—Departmental and Official :
 - PART III.—Procedure to secure Registration of Homesteads :
 - PART IV.—Effect of Registration of Homesteads.

4. The

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PART I.

Object.

4. The object of this Act is to provide a simple mode of securely settling homesteads for the benefit of settlers and their families.

Application of Act.

5. Notwithstanding the provisions of "The Real Property Act, 1886," this Act shall apply to land subject to the provisions of the said Act as well as to land which is not so subject, and the Registrar shall make all entries in the Register Book necessary for giving effect to the provisions of this Act.

Liability of homesteads for taxes, &c.

6. Nothing herein contained or hereby implied shall affect the liability of any land to be taken compulsorily under any statutory provision, or for the payment of rates and taxes.

Preservation of rights.

7. Subject to the express provisions of this Act, all estates and interests in any homestead, or in any land the subject of any application for registration as a homestead, and all rights in relation thereto, shall continue unaffected.

PART II.

PART II.

DEPARTMENTAL AND OFFICIAL.

Department.

8. The department of the Registrar shall be charged with the execution of this Act.

Register of Homestead.

9. There shall be a Register of Homestead kept by the Registrar at the Lands Titles Registration Office, at Adelaide.

Homestead certificate.

10. The Registrar shall issue a homestead certificate in respect of any land which he shall be required to register as a homestead pursuant to this Act.

Form.

11. Every homestead certificate shall be in the form contained in the First Schedule, and shall be registered in a book to be kept by the Registrar, and to be called the Register of Homesteads.

Prior indorsement.

12. Before any homestead certificate shall be registered—

(a) If the land affected is held under the provisions of "The Real Property Act, 1886," the Registrar shall indorse on the certificate of title relating thereto and the duplicate thereof the following memorandum :—" Settled in pursuance of 'The Homestead Act, 1894.' "

(b) If the land affected is not held under the provisions of "The Real Property Act, 1886," the Registrar shall indorse a similar memorandum on the last conveyance, and a memorial of such memorandum shall be registered in the General Registry Office.

Registration of certificate.

13. Homestead certificates shall be registered in the Register of Homestead in the same manner, so far as practicable, as certificates of title are registered in the Register Book, and each homestead certificate shall form a separate folium of the Register of Homesteads.

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PART II.

14. So soon as the homestead certificate shall have been registered pursuant to the preceding section, but not before, the homestead shall be deemed to be registered pursuant to this Act. Effect.

15. The Registrar may demand and receive in respect of the several matters provided for in this Act the several fees specified in the Fifth Schedule, and shall pay the same to the Treasurer as part of the revenue of the province. Fees.

16. The Governor may make regulations for carrying this Act into effect. Regulations.

17. The provisions of "The Real Property Act, 1886," relating to the signing and sealing of instruments, and to their registration, and to the reception of such instruments, or copies thereof, in evidence, and to the making of regulations and declarations, and to the alteration of fees and schedules, shall, so far as practicable, apply to similar matters under this Act. Application of Real Property Act.

PART III.

PART III.

PROCEDURE TO SECURE REGISTRATION OF HOMESTEADS.

18. Applications for the registration of homesteads may be made to the Registrar in the form contained in the Second Schedule, and the statements made in every application shall be verified by the declaration of the applicant. Applications.

19. No application shall be received except in respect of land upon which the applicant is residing and has resided as his home for at least one year immediately prior to the making of the application, nor in respect of any land of the value, with the improvements thereon, of more than One Thousand Pounds, nor in respect of any land of which the applicant is not either the owner for an unencumbered estate in fee simple or the holder of a perpetual lease from the Crown. Applicants.

20. On the receipt of any application for the registration of a homestead, the Registrar shall cause notice thereof to be published in the *Government Gazette* and in one daily paper and one local paper (if any) circulating in the district in which the homestead is situated, in manner prescribed by regulation, and shall post a copy of such notice to each creditor of the applicant. Notice.

21. Any creditor of the applicant may, within six months after the first publication of the notice provided for in the last section, enter a caveat against the granting of the application. Caveats.

22. Every caveat shall be in the form contained in the Third Schedule, and the statements made in every caveat shall be verified by the declaration of the caveator. Form of caveat.

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PART III.

Procedure upon
caveat.

23. On the receipt of any caveat the Registrar shall cause a copy to be forwarded to the applicant, and the applicant may summon the caveator in chambers before any Judge of the Supreme Court, or the Special Magistrate of the Local Court of Adelaide, to show cause why such caveat should not be removed, and such Judge or Magistrate, on the hearing of such summons, may order the removal of the caveat, or may make any order in relation thereto which he shall think fit.

Withdrawal by
caveat.

24. Any caveat may be withdrawn by the caveator by notice to the Registrar in the form contained in the Fourth Schedule.

Compensation.

25. If any person without reasonable cause enters or refuses to withdraw any caveat, compensation to the applicant may be awarded against him on the hearing of any summons for the removal of the caveat.

Effect of caveat.

26. After the receipt of a caveat within the time provided the Registrar shall not proceed further with the application for the registration of a homestead until the caveat is withdrawn or removed.

Condition to removal
of caveat.

27. No order shall be made for the removal of a caveat unless the applicant shall satisfy the Judge, or Special Magistrate, that he can pay and discharge his debts and liabilities without recourse to the land included in the application for registration as a homestead.

Procedure in default
or removal of caveat.

28. If within the time limited for the receipt of caveats no caveat is received against an application for the registration of a homestead, or if all caveats which have been received within such time are subsequently withdrawn or removed, then, on the expiration of such time or such withdrawal or removal, as the case may be, the Registrar shall proceed to register the land included in the application as a homestead in manner hereinbefore provided.

Protection of creditors
at time of registra-
tion of homestead.

29. No settlement of a homestead shall prevail against the claim of a creditor of the settlor in respect of a debt owing to such creditor by the settlor at the time of the registration of the homestead.

PART IV.

PART IV.

EFFECT OF REGISTRATION OF HOMESTEADS.

Effect of registration.

30. The effect of the registration of a homestead as regards the land the subject of such registration shall be to settle the same as follows:—

1. For the benefit, use, or occupation of the settlor and family, until the period for distribution.
2. For distribution at the period for distribution amongst the family of the settlor then living :
3. So

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3. So that no alienation or attempted alienation by the settlor or family shall have any force or effect, except as provided in sections 34 and 36.

4. So that the estate and interest of the settlor and family shall continue personal, absolute, indefeasible, and unaffected, to the value of One Thousand Pounds only, notwithstanding any bankruptcy, insolvency, assignment, judgment, order, execution, sale, transfer, matter, or thing, which but for this Act would or could directly or indirectly have affected any estate or interest in the land.

31. If reasonable cause therefor be shown to a Judge of the Supreme Court, he may order such proceedings as may be necessary to ascertain whether the value of any homestead exceeds One Thousand Pounds, and for making the surplus (if any) available for creditors and re-settling the balance, as nearly as the circumstances will allow, in the manner provided for by this Act.

Judge of Supreme Court may order proceedings.

32. A Judge of the Supreme Court may at any time, if it shall appear to him desirable for the benefit of the settlor and his family, order that a homestead shall be sold, and the proceeds thereof be settled or applied, as nearly as the circumstances shall allow, in accordance with the provisions of this Act.

Judge may order sale of homestead.

33. The period for distribution of a homestead shall be the date of the death of the settlor, or the time when all the children of the settlor shall have attained twenty-one years of age, or died under that age, whichever shall last happen.

Period for distribution.

34. The settlor during life may regulate the occupation of the homestead by himself and family as the settlor shall think fit, or, in the case of a husband, may, with the consent of the wife, or, in the case of a wife, with that of the husband, let such homestead, and after the death of the settlor such occupation shall be regulated pursuant to any direction contained in the will of the settlor, and so far as no such direction shall extend the widow or widower of the settlor shall regulate such occupation, and after the death of such widow or widower, subject to any direction given pursuant to this section, all the children shall be equally entitled to occupation of the homestead.

Regulation of occupation.

35. No lease of any homestead shall be for a longer term than three years from the making thereof, and such lease shall be granted without fine or premium, and shall reserve the best rent which can be reasonably obtained therefor as incident to the immediate reversion, to be paid at the least by quarterly payments; and the protection afforded by this Act to the homestead shall, so far as applicable thereto, apply in all respects to the rent.

No lease to exceed three years.

36. The settlor, by direction contained in his will, may regulate the distribution of the homestead pursuant to sub-division 2 of section

Regulation of distribution.

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section 30 in such manner as he shall think fit, and may include grandchildren in the benefit of such distribution, but subject to any such direction the widow or widower of the settlor (if living) shall take one-third and the children then living shall equally between them take the residue, grandchildren taking the share of their deceased parent, or, if there shall be no widow or widower then living, the whole of the homestead. If no child or grandchild shall at the period for distribution take any share or interest in the homestead, then the widow or widower, if living, shall take the whole.

Exclusion from participation.

37. Any regulation of occupation or distribution provided for by the two preceding sections may provide for the exclusion from participation of any persons who but for such regulation would be entitled to share therein, but so that no such regulation shall give any right, estate, or interest to any person not mentioned in such sections.

Rescission of registration.

38. The registration of a homestead shall be rescinded by operation of law—

- (a) By the settlor, within twelve months after the date of the registration, becoming bankrupt, insolvent, or making any assignment for the benefit of his creditors, or taking the benefit of any Act for the relief of insolvent debtors:
- (b) By the death of the settlor within twelve months of the date of the registration, if the estate is insufficient for the payment and discharge of his debts and liabilities without recourse to the homestead.

Cesser of registration.

39. The registration of a homestead shall cease to operate at the period for distribution, except for the purpose of giving effect to estates or interests acquired by virtue of such registration.

Notification of rescission or cesser.

40. On the registration of a homestead being rescinded by operation of law, or on such registration ceasing to operate, the Registrar shall enter a memorial of such rescission or cesser on the homestead certificate, and on the certificate of title or last conveyance of the land affected, and in the case of land which is not held under "The Real Property Act, 1886," a memorial of such rescission or cesser shall also be registered in the General Registry Office.

Land under old system.

41. In the case of land which is not held under "The Real Property Act," 1886, no homestead certificate or registration shall operate, except as regards the estate or interest of which the settlor is seised of or entitled to at the time of making the application.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

T. FOWELL BUXTON, Governor.

SCHEDULES.

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SCHEDULES.

FIRST SCHEDULE.

Homestead Certificate, not Transferable.

[*Insert name, address, and occupation*] is now the proprietor of a homestead estate in all that piece of land [*describe land according to the certificate of title or last indenture of conveyance, and refer to the volume and folio of the certificate of title or the registration reference to the indenture of conveyance upon which the indorsement has been made.*]

Dated the day of , 18 .

, Registrar.

SECOND SCHEDULE.

Form of Application.

I, [*name, occupation, and address*], do hereby declare that I am the owner of an estate of freehold in fee simple in all that piece of land [*describe the land fully according to the certificate of title or last indenture of conveyance, and, if under the Real Property Act, refer to the registered volume and folio thereof*], hereby apply to have the land above described registered as a homestead under "The Homesteads Act, 1894." And I further declare that I am residing upon the said land and that I have resided thereon as my home for at least one year prior to the date of this application, namely, since the day of 18 [*here state date of commencement of residence*], and that the said land with the improvements thereon is of the value of £ and no more, and that I am able to pay and discharge all my debts and liabilities, of which a Schedule is hereto attached, with the names and addresses of my creditors, without recourse to the said land, and that there is no person entitled to the possession or occupation of the said lands adversely to my estate: And further that there is no mortgage, lien, incumbrance, or charge upon the said land or any part thereof. And I make this solemn declaration conscientiously believing the same to be true and appoint [*here insert address within the city of Adelaide*] as the address to which notices in respect of this application may be sent.

Dated at this day of 18 .

Made and subscribed by the above-named this day of 18 , in the presence of—

[*Signature of applicant.*]

Schedule showing the Debts and Liabilities of the Applicant.

Name and Address of Creditor.	Amount of Debt or Liability.

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THIRD SCHEDULE.

Caveat Forbidding Registration of Homestead under "The Homestead Act, 1895."
To the Registrar-General.

Take notice that I, [*insert name, occupation, and address*], shall be prejudicially affected by the land included in the application of _____ of _____, and dated the _____ day of _____ 18____, being brought under the provisions of "The Homestead Act, 1895," that I am a creditor of the said _____ and the particulars of my claim are as follows: [*here set forth nature and amount of debt, and, if secured, particulars of security held*]. And I forbid the registration of the said land as a homestead in pursuance of "The Homestead Act." I appoint _____ as the place at which notices and proceedings relating to this caveat may be served.

Dated this _____ day of _____ 18____.
Signed this _____ day of _____ in the presence of _____

FOURTH SCHEDULE.

Withdrawal of Caveat.

To the Registrar-General.

Take notice that I (or we) [*put in name or names, or, if the caveators be a partnership, firm, not incorporated, the usual name or style of such firm, and the occupation, place of business, or residence of caveator or caveators*] hereby withdraw the caveat lodged by me (or us) on the _____ day of _____ 18____, against the application, dated the _____ day of _____ 18____, of _____, for registration of a homestead under "The Homestead Act, 1895."

Dated this _____ day of _____, 18____.
[*Signature of caveator.*]

FIFTH SCHEDULE.

Fees Payable for the Performance of the several Acts, Matters, and Things herein specified.

	£	s.	d.
Filing application	0	10	0
Search	0	2	0
Indorsement	0	5	0
On the lodging of any caveat	0	5	0
On withdrawal of any caveat	0	5	0
Taking any declaration.....	0	2	6

To these charges will be added the postage upon notices to the creditors of the applicant (if any).