

LAND (TITLES TO).

An Act to Remove certain Difficulties affecting Titles to Land. 22 VICTORIA No. 1.

[30TH JUNE, 1858.

WHEREAS from various causes many difficulties exist affecting the legal title to land in this colony or the establishment of the same in evidence for the removal of which difficulties it is expedient to make the several provisions hereinafter contained Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows—

1. In every case where before the commencement of this Act any person seized of or entitled to land in fee or entitled to have a Crown grant thereof made to him in fee shall have sold and have conveyed or contracted to convey the same land to the party purchasing such party shall be deemed as against the vendor his heirs and assigns to have taken or be entitled to (as the case may be) an estate in fee in the same land notwithstanding the absence of any words of inheritance in the instrument of conveyance or contract as the case may be unless a contrary intention shall appear by such instrument or otherwise Provided that this section shall not defeat any ejectment or suit now pending or brought within six months after the commencement of this Act nor prejudice the title of any person now in possession of the land and claiming under such vendor.

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\*4. No Crown grant of land heretofore issued and no deed in which the description of the land corresponds with that contained in such grant shall be void for want of certainty in such description in any case where the Governor shall after the commencement of this Act by an instrument in writing under his hand and the seal of the colony describe with sufficient certainty the land intended to have been comprised in such grant but in every such case the land so described as last aforesaid shall be taken to be the land described in the grant and

\* Sections 2 and 3 are repealed by 25 Vic. No. 13 s. 1.

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and in every such deed as aforesaid and to have been granted and conveyed thereby respectively.

Proviso to protect subsequent grants and adverse holders.

5. Provided always that nothing in the preceding section shall prejudice any person now in possession of the land or any part thereof claiming adversely to the grantee his heirs or assigns or shall affect any grant of the same land or any part thereof issued by the Crown subsequently to the first grant or any title to the land claimed under such subsequent grant.

New description to be advertised &c.

6. No such instrument shall be signed unless the intention to make and sign the same shall have been notified under the hand of the Secretary for Lands and Public Works by three separate publications in the *Government Gazette* and in some newspaper circulating in the district in which the land is situated three months at the least before the time of such signing containing therein the name of the grantee and of the party applying for such instrument and the description in the grant as well as that proposed to be substituted. And every such instrument shall be countersigned by such secretary and enrolled in the office for the registration of deeds.

The like provisions in case of error in names.

7. The like proceedings may be taken in respect of any Crown grant heretofore or hereafter issued in which there shall be any misnomer of the grantee or misdescription of the land granted and in every case where an instrument in writing shall have been so signed and enrolled as aforesaid stating therein the matters intended to be corrected and the name or description substituted or intended to be such name or description shall be taken to have been inserted originally in the grant and in every deed containing the erroneous name or description and such grant and every such deed shall operate and be construed accordingly.

Proof of instrument.

8. Any such instruments as aforesaid may be by separate writing or be indorsed on the grant to which it relates. And it shall be sufficient in any suit or action for the party adducing any such instrument to prove its enrolment without showing compliance with any other provision of the preceding section.

Cases may be referred to commissioners for claims to grants.

9. For any of the purposes contemplated by the five last preceding sections or any of them it shall be lawful for the Governor to cause inquiry to be made if he shall see fit so to do as to the interests of any person who may be affected or who shall represent that he will be affected by any proposed new description or correction of any error as aforesaid before the commissioners for claims to grants of land appointed under the Acts in that behalf and to refer accordingly any application for any such instrument as aforesaid and claim or caveat in opposition thereto for the report thereupon of such commissioners at the cost of the party or parties as in the case of persons applying for or entering a caveat against the issue of a grant and such commissioners shall thereupon have power to summon and examine the parties and all witnesses where evidence may be deemed necessary and to report to the Governor upon the matters as fully and in the same manner as upon an inquiry authorised in terms by the said Acts.

Conditions in grants.

10. No title to land shall be held bad either at law or in equity by reason of the breach or non-performance of any condition contained in the Crown grant of such land in any case where it shall appear by  
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any proclamation or by writing under the hand of the Governor <sup>22 VICTORIAE No. 1.</sup> countersigned by the Secretary for Lands and Public Works that no proceedings will be at any time taken on behalf of the Crown for avoiding the grant by reason of such breach or non-performance and every such proclamation may be in general terms applying to all conditions or may be limited to conditions of particular classes or a particular class of cases only.

11. In every case where before the commencement of this Act any Crown grant of land has been issued containing a proviso purporting to reserve or hold harmless the rights of all parties other than the grantee such proviso shall as against every *boná fide* purchaser or mortgagee for valuable consideration (whether before or after the passing of this Act) without actual notice of some adverse claim and against all persons claiming under such purchaser or mortgagee be inoperative and void unless the benefit of such proviso be sought by some suit or proceeding now pending or commenced within three years or (where the grant has issued during the last three years) within five years after the commencement of this Act. Parties claiming against grantees by matter of prior date.

12. In all other cases of land heretofore granted and now in the possession of the grantee his heirs or assigns the rights of all parties claiming adversely to such grantee by matter before the date of the grant shall as against every *boná fide* purchaser or mortgagee for valuable consideration without actual notice of the adverse claim and against all persons claiming under such purchaser or mortgagee be barred and extinguished both at law and in equity unless some suit or proceeding to establish or enforce those rights be now pending or shall be commenced within three years or (where the grant has issued during the last three years) within five years after the commencement of this Act. The like in certain other cases.

13. In every case of land hereafter granted by the Crown the rights of all parties claiming the same land adversely to the grantee by matter before the date of the grant shall as against every *boná fide* purchaser or mortgagee for valuable consideration without actual notice of the adverse claim and against all persons claiming under such purchaser or mortgagee be barred and extinguished both at law and in equity (whether there be such a proviso or reservation as aforesaid in the grant or not) unless some suit or proceeding to establish or enforce the same rights be commenced within five years after the grantee his heirs or assigns shall have been in occupation of the land under such grant. The like as to future grants.

14. Every promise heretofore made by any Governor of this colony of a grant of land in fee to any person shall (except as against the Crown) be deemed to have conferred upon him an interest in such land devisable by will or alienable by contract in like manner as equitable estates in land are devisable or alienable. And every such promise may be evidenced by any proclamation or by writing under the hand of the Governor or Colonial Secretary or by recital or statement in any Crown grant. Provided that this section shall not defeat any ejectment or suit now pending or commenced within six months after the commencement of this Act nor shall prejudice or affect the title of any person in possession of the land under any Crown Proclamations promising Crown grants.

22 VICTORIA No. 1. Crown grant or claiming adversely to the person first referred to his heirs or assigns.

Grants issued in apparent violation of 5 and 6 Vic. c. 36.

15. No Crown grant of land heretofore issued shall be invalidated or impeached by reason that the same was not made in pursuance or consideration of any sale or was in pursuance of a promise made on behalf of one of Her Majesty's Royal predecessors and not on behalf of Her Majesty anything in the Act of Parliament passed for regulating the sale of waste Crown lands in these colonies notwithstanding or that the sale (in cases of sale) may have been in some manner or to some person not authorised by that Act.

Lands of debtors or accountants to the Crown.

16. For the protection of purchasers and mortgagees under Crown debtors or accountants to the Crown be it enacted that it shall be lawful at any time for the Auditor-General to take and pass the accounts of any such debtor or accountant and upon satisfaction thereof to certify the same under his hand and thereupon it shall be lawful for the Governor if he shall see fit so to do by writing under his hand countersigned by the Colonial Secretary or Colonial Treasurer to release all or any of the lands of such debtor or accountant in respect of all claims of the Crown against him up to the date of such release and every such release shall have the effect of an absolute discharge of all the then lands of such debtor or accountant or of the particular lands specified as the case may be in the hands of any *bonâ fide* purchaser or mortgagee in respect of such claims.

Mistakes in registration.

17. No registration of any instrument under any Act now or heretofore in force for the registration of deeds or intended to be in pursuance of any such Act shall be defeated or made ineffectual by reason of any omission misdescription or error in any case where the identity of the instrument in evidence with the one alleged to have been registered is established and the substantial requirements of the Act have been complied with.

Registered deed.

Fraud of conveying party.

18. No instrument hereafter executed and registered under the provisions of any Act in force for the registration of deeds shall lose any priority to which it would be entitled by virtue of such registration by reason only of bad faith in the conveying party if the party beneficially taken under such instrument acted *bonâ fide* and there was a valuable consideration for the same paid or given.

Want of livery of seizin.

19. Livery of seizin shall not be deemed to have been necessary to give effect to any feoffment executed before the third day of January one thousand eight hundred and forty-two but every such feoffment shall be taken to have operated in the same manner as the same would have done in case there had been livery of seizin in the most valid form Provided that nothing in this section shall make any such feoffment operate as a tortious conveyance or shall prejudice or effect the title of any person now in possession of land the subject of any such feoffment and claimed adversely to the feoffee his heirs or assigns.

Informal acknowledgments on deeds.

20. Every deed affecting or intended to affect land in this colony which shall have been executed by any married woman or tenant in tail and which purports to have been acknowledged by such woman or tenant before some person having authority in that behalf shall be valid and effectual in its intended operation to all intents and purposes notwithstanding that the acknowledgment endorsed on such deed may not have been taken or certified in due form.

21. Every

21. Every acknowledgment heretofore or hereafter made by any married woman or other person taken before and certified by any judge chief magistrate of any city or town or any commissioner of the Supreme Court of this colony for taking acknowledgments or affidavits (or which shall purport to be so taken and certified) in any part of Her Majesty's dominions and whether the certificate be under seal or not shall be as valid and effectual as if the same had been in this colony taken before and certified in due form by a judge of the Supreme Court of New South Wales And the like with respect to acknowledgments made and certified in any foreign country before and by any British consul or vice-consul or purporting so to be.

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Certain acknowledgments to bar dower &c. provided for.

22. In all cases where a married man has conveyed or shall convey any land either absolutely or by way of mortgage a deed now or hereafter duly executed and acknowledged by his wife if such acknowledgment be duly certified shall be operative to bar her contingent right to dower although her husband be not a party to such deed.

Dower barred although husband not a party to deed.

23. All persons paying money to trustees entitled to receive the same shall be exonerated from liability in respect of the non-application or misapplication of such money unless such liability was expressly retained or imposed by the instrument creating the trust Provided that nothing in this section shall protect any person colluding with any trustee in a fraud or breach of trust or any person claiming under him unless such last-mentioned person be a purchaser or mortgagee for valuable consideration and without notice of the fraud or breach of trust.

Trustees' receipts.

24. Where the amount of principal and interest due on any mortgage shall be paid into the Supreme Court by any mortgagor under the provisions of "*The Trustee Act of 1852*" and the same shall afterwards be paid by virtue of any order of the court to the person mentioned in such order such payment shall operate as a re-conveyance of the land comprised in such mortgage to the person who shall at the time of such payment be entitled to the equity of redemption thereof provided that such order be registered in the office of the registrar of deeds before such payment shall take effect.

Money paid into court by mortgagor and afterwards paid out.

25. A covenant or undertaking whether now or hereafter entered into to produce to any purchaser lessee or mortgagee of land or his assigns any deed of or relating to such land shall be satisfied by a deposit of the deed permanently in the office of the registrar of deeds who shall give a receipt for and keep in his office a list of all deeds so deposited and shall permit any person on payment of the proper fees to inspect and obtain copies of every such deed.

Covenants to produce deeds.

26. In all cases where two or more persons shall have died under circumstances rendering it uncertain which of them survived the deaths shall for all purposes affecting the title to land be presumed to have taken place in order of seniority and the younger be deemed to have survived the elder.

Presumption of survivorship.

27. This Act shall commence on the first day of July next and may be cited for all purposes as "*The Titles to Land Act of 1858.*"

Commencement and title of Act.