— 1844. —

[*Originally* No. 3 of 1844.

No. 28 of 1931. Law Rev. Ord., 1937.]

No. 1 of 1844.

An Ordinance to provide for the registration of deeds, conveyances, wills, and judgments affecting real or immovable property.

[28th February, 1844.]

WHEREAS it is expedient to prevent secret and fraudulent conveyances, and to provide means whereby the title to real and immovable property may be easily traced and ascertained :—

Short title.

1. This Ordinance may be cited as the Land Registration Ordinance, 1844.

Registration of instruments affecting land.

Establishment of Land Office for registration of instruments affecting land.

2. The Land Office shall be a public office for the registration of deeds, conveyances, and other instruments in writing, and wills and judgments; and all deeds, conveyances, and other instruments in writing, and wills, and all judgments, by which deeds, conveyances, and other instruments in writing, and wills and judgments, any parcels of ground, tenements, or premises in this Colony, may be affected, may be entered and registered in the said office in the manner hereinafter directed.

Priority of registered instruments; effect of non-registration.

3.—(1) All such deeds, conveyances, and other instruments in writing, and wills and judgments, made, executed, or obtained and registered in pursuance hereof, shall have priority one over the other according to the priority of their respective dates of registration.

(2) All such deeds, conveyances, and other instruments in writing, and wills and judgments, as last aforesaid which are not registered shall (as against any subsequent *bonâ fide* purchaser or mortgagee for valuable consideration of the same parcels of ground, tenements, or premises) be absolutely null

* For registration in Land Office of memoranda of modifications and exemptions under the Buildings Ordinance, 1935, see No. 18 of 1935, s. 165.

and void to all intents and purposes: Provided that nothing herein contained shall extend to *bonâ fide* leases at rack rent for any term not exceeding three years.

Notice of unregistered instrument not to affect registered instrument.

4. No notice whatsoever, either actual or constructive, of any prior unregistered deed, conveyance, or other instrument in writing, or will or judgment, shall affect the priority of any such instrument as aforesaid as is duly registered.

Period within which instruments to be registered after execution.

5. All deeds, conveyances, and other instruments in writing, and wills and judgments, which are duly registered within the respective times next mentioned, that is to say, all deeds, conveyances, and other instruments in writing (except wills) which, if executed in this Colony, are registered within one month, or which, if executed in any other place, are registered within twelve months, after the time of execution thereof respectively, and all wills which, if the devisor dies in this Colony, are registered within one month, or which, if the devisor dies in any other place, are registered within twelve months, after the decease of every devisor respectively, and all judgments which are registered within one month after the entering up or recording thereof, shall severally be in like manner entitled to priority, and shall take effect respectively by relation to the date thereof only in the same manner as if this Ordinance had not been passed.

Mode of registration.

Delivery into Land Office of memorial of instrument to be registered.

6. The registration intended by this Ordinance shall be made in manner following, that is to say, a memorial containing the particulars hereinafter specified shall be delivered into the Land Office, signed, in the case of a deed, conveyance, or other instrument in writing, except a will, by some or one of the parties to the original instrument, or, if such parties are dead or absent from the Colony, then by one or more of the witnesses to such instrument, and in the case of a will by some or one of the devisees or his guardian or trustees, and in the case of a judgment by a party to the action in which such judgment is delivered or by his agent or by a person claiming under or through such party.

Verification of memorial.

7. Every such memorial shall be verified by the oath of some competent person that the same contains a just and true account of the several particulars therein set forth, which oath shall be taken before any justice of the peace.

Particulars to be contained in memorial.

8.—(1) The memorial of any deed, conveyance, or other instrument in writing, and of any will, shall contain the date of such deed, conveyance, or other instrument, or of such will, and the particular nature and object thereof, the names and additions of all the parties to such deed, conveyance, or other instrument, and of the devisor and devisee or devisees of such will, and the names and additions of all the witnesses thereto and shall especially particularise and express the parcels of ground, tenements and premises affected or intended to be affected by such deed, conveyance, or other instrument, or by such will, and the proper and ordinary or accustomed names of the places where the same are situated, and (except in the case of a will) the pecuniary or other consideration for the same, in the form or to the effect of the form in the First Schedule. First Schedule.

(2) The memorial of any judgment shall contain the names and additions of the plaintiffs and defendants respectively, the sum thereby recovered or secured, if any, the time of entering up or recording the same, and the sum of money *bonâ fide* due thereon, if any.

(3) Provided always that when there are more writings than one for perfecting the same conveyance, devise, or security affecting the same parcels of ground, tenements, and premises, all such writings shall be stated in one and the same memorial, in which it shall be sufficient to particularise such parcels, tenements and premises only once.

Numbering, receipt for, and indorsement of certificate on memorial.

9.—(1) On the delivery of any such memorial as aforesaid, the Land Officer shall number the memorial according to the order of time in which it has been so delivered, and shall give a receipt for it, in which receipt shall be specified the certain day and time of day when the memorial was so delivered, and the proper number thereof in the register of the Land Office.

(2) The Land Officer shall also in like manner immediately indorse on the back of the memorial a certificate, containing the day and the time of day when the memorial was so delivered, and the name and place of abode of the person verifying it, and shall sign the certificate when so indorsed.

(3) Such certificate shall be taken and allowed as evidence of the registration, and of the time of registration, of the deed,

*As amended by Law Rev. Ord. 1937.

conveyance, or other instrument, or of the will or judgment, of which the memorial has been so made.

Registration and custody of memorial.

10. Every such memorial shall, as soon after the receipt thereof as practicable, be carefully registered by the Land Officer, in regular succession as received, according to its proper number, in a particular book to be kept by him for that purpose, and shall afterwards be deposited by him in some secure place in his office, and there kept for future reference when required.

Indices of lands registered and of parties to instruments.

11. The Land Officer shall also keep an index of the parcels of ground, tenements, and premises mentioned in every such memorial and also a like index or indices of the names of the several parties to deeds, conveyances, and other instruments in writing, and of the devisors and devisees in the case of wills, and of the plaintiffs and defendants in the case of judgments, with accurate references in all such indices respectively to the number and page of registry of the memorial to which any entry in such indices relates.

Entry of satisfaction of mortgage or judgment and registration of certificate of satisfaction.

12. In the case of any mortgage or judgment registered, if at any time afterwards such verified certificate as is hereinafter next mentioned is brought to the Land Officer, signed by the respective mortgagors and mortgagees or plaintiffs and defendants or their agents respectively, and attested by two credible witnesses, whereby it appears that the whole of the moneys due on such mortgage or judgment have been fully paid, or that such mortgage or judgment is otherwise satisfied, then the Land Officer shall make a short entry or memorandum thereof on the memorial and on the margin of the registry of such mortgage or judgment, and shall afterwards carefully register the certificate in one of the registry books of his office, and the Land Officer shall make an entry thereof in his indices referring accurately to the page of registry of the certificate.

Contents, verification, and custody of certificate of satisfaction of mortgage or judgment.

13.—(1) Every such certificate shall contain the following particulars, that is to say, in the case of a mortgage the names and additions of the original parties, the date of the instrument, the sum thereby secured, and the time of payment or other satisfaction thereof; and in the case of a judgment the names and additions of the plaintiffs and defendants, the time of entering up or recording the same, the sum thereby recovered,

if any, and the date of payment or other satisfaction of the amount *bonâ fide* due thereon, if any.

(2) Every such certificate shall be verified by the oath of some competent person that the same contains a just and true account of the several particulars therein set forth, which oath shall be made and taken before any justice of the peace.

(3) On the back of such verified certificate the Land Officer shall immediately indorse the date when the same was received by him, and the name and place of abode of the person verifying the same, and the certificate shall, after being so indorsed and entered as aforesaid, be safely kept in his office for future reference when required.

Registration of lis pendens.

Registration of *lis pendens* as judgment. *

14. The provisions of this Ordinance relating to judgments (subject to the provisions hereinafter contained) shall extend to *lites pendentes* within the intent and meaning of the Acts of Parliament 2 & 3 Victoria, chapter 11, and 13 & 14 Victoria, chapter 35.

Particulars to be contained in memorial. †

15. The memorial of any such *lis pendens* shall be sufficient if it is signed by the plaintiffs or persons claiming to be plaintiffs to the said *lis pendens*, and contains the names and additions of the said persons and of the defendants or persons whose estate is intended to be affected thereby, and the day when the bill, information, or special case was filed, and the sum of money thereby claimed or in controversy; but the said memorial shall be verified in all other respects as is provided in the case of judgments.

Case of *lis pendens* not registered.

16. Notwithstanding the said Acts of Parliament, no *lis pendens* shall be registered in the Registry of the Supreme Court, or elsewhere than in the Land Office; and a *lis pendens* not registered in the said office shall not bind any purchaser or mortgagee of the estate intended to be thereby affected.

Extension of Acts of Parliament.

17. So much of the said Acts of Parliament and of the Acts of Parliament 3 & 4 Victoria, chapter 82, and 18 & 19 Victoria, chapter 15, as requires the re-registering of judgments

* 13 and 14 Vict. c. 35 rep. 46 and 47 Vict. c. 49 s. 3.
† As amended by Law Rev. Ord., 1937.

and *lites pendentes* after every successive period of five years, beginning from the entry thereof respectively, shall extend to all judgments, *lites pendentes* and orders, registered in the Land Office, and by which it is intended to affect any estate.

Effect of registry and re-registry and extension of 18 & 19 Vict. c. 15, s. 11.

18. Subject to the provisions of section 11 of the Act 18 & 19 Victoria, chapter 15, for the relief of purchasers and mortgagees for valuable consideration against the judgments, Crown debts, and liabilities of paid-off mortgagees (which provisions are hereby extended to this Colony), every *lis pendens* registered or re-registered, and also every judgment or order re-registered in manner aforesaid, shall have the same force and effect as a judgment registered and not further or otherwise.

Vacation of registration of lis pendens.

Power to the court to order vacation of *lis pendens*. 30 & 31 Vict. c. 47, s. 2.

19. The court or judge before whom any property sought to be bound is in litigation, may on the determination of the *lis pendens*, or during the pendency thereof, where the said court or judge is satisfied that the litigation is not prosecuted *bonâ fide*, or for other good cause shown, make an order for the vacating of the registration in the Land Office of such *lis pendens* without the consent of the party who registered it, and may direct the party on whose behalf the registration was made to pay all the costs and expenses occasioned by the registration or the vacating thereof, including the costs of the application to vacate, or may make such other order as to such costs or any of them as to the said court or judge may seem just.

Mode of making application to the court. 30 & 31 Vict. c. 47, s. 2.

20. The application to vacate a *lis pendens* under section 19 may be in a summary way by petition or motion in court or by summons in chambers, and may be made by any person interested in the property against which the *lis pendens* has been registered, whether such person is a party to the *lis pendens* or not.

Entry of discharge by Land Officer. 30 & 31 Vict. c. 47, s. 2.

21. If an order is made for vacating any such registration, the Land Officer shall, on the filing with him of a memorial and an office copy of such order, enter a discharge of such *lis pendens* on the register, and may issue certificates of such entry.

Miscellaneous.

Deposit of deeds, etc., in Land Office for safe custody.

22. It shall be lawful for any person to deposit in the Land Office for safe custody any deed, conveyance, power of attorney, or other instrument in writing whatsoever, or his last will and testament, of which deeds, conveyances, powers of attorney, or other instruments, wills, and testaments the Land Officer shall (first giving a receipt for the same) immediately make an entry in a book to be kept for that purpose, to which book he shall keep an accurate alphabetical index having reference as well to the name of the testator or parties to each such deed or instrument as to the person depositing the same; and the Land Officer shall carefully and securely keep all such deeds, conveyances, powers of attorney, or other instruments, wills, and testaments in his office until required by the party depositing the same to deliver them back again: Provided that every such will or testament shall be enclosed within a cover or envelope, sealed with the seal of the testator, whose name shall be indorsed by the Land Officer thereon, and every such will or testament shall remain in the said office until the decease of the testator, unless he previously requires the same to be delivered back, and on the death of the testator the Land Officer shall (after examining such will or testament) deliver the same to the executor first named therein, or to such other person as may be duly authorized to receive the same.

Penalty on officers for wilful neglect.

23. If the Land Officer or any other person employed in the Land Office wilfully neglects or omits to number, register, or enter in manner hereinbefore directed any memorial or certificate delivered into the said office, he shall be liable in damages to the party injured to the extent of the loss or injury sustained.

Penalty for destroying memorial etc., with intent to defraud.

24. If the Land Officer or any clerk or person whosoever wilfully destroys, embezzles, or secretes, forges, counterfeits, razes, defaces, or alters any memorial or any part thereof, or any indorsement thereon, or any entry or registry thereof in any book in the said office, with intent to defraud or injure any person, such Land Officer, clerk, or person so offending shall be guilty of felony, and shall be liable to imprisonment for any term not exceeding fourteen years.

Verification of correction in memorial of registry.

25. Any correction by erasure, interlineation, or otherwise in any memorial of the registry of any document shall be noted and set forth at length in red ink in the margin of the memorial wherein it is made, together with the reasons for making the same, and shall be attested and verified by the signature of the Land Officer.

Fees. Second Schedule. *

26.—(1) The fees mentioned in the Second Schedule shall be paid for and in respect of the several matters and things therein stated.

Such fees shall be paid by means of stamps which shall be duly cancelled by the Land Officer.

(2) Subject to the provisions of sub-section (3), the true consideration shall be stated in all documents registered in the Land Office.

(3) Where the amount or value of the consideration money is not stated in any deed, assignment, mortgage or other instrument tendered for registration in the Land Office, or where no consideration money or merely nominal consideration money passes thereunder, the value of the property, to which such deed, assignment or other instrument relates, shall be determined by the Land Officer and the like fees shall be paid as if the value so determined were the amount or value of the consideration money.

FIRST SCHEDULE.

PARTICULARS OF MEMORIAL OF REGISTRATION. [s. 8.]

1. Date of instrument or will.

2. Nature and object thereof.

3. Names and additions of the parties or of the devisors or devisees.

4. Names and additions of the witnesses thereto.

5. Description of the land or premises conveyed in or affected by the instrument or will.

6. Name and description of the place where situate.

7. Consideration and to whom and how paid.

8. Any other particulars which the case may require.

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* As amended by No. 28 of 1931 [16.10.31].

SECOND SCHEDULE.

TABLE OF FEES PAYABLE TO THE LAND OFFICER. [s. 26.]

1. For registering every deed, assignment, mortgage or other instrument in writing (except as hereinafter provided) where such deed, assignment, mortgage or other instrument relates only to one lot or one section or portion of a lot as registered or intended to be registered in the Land Office,

Where the amount or value of the consideration money

Does not exceed $500	$ 1
Exceeds $500 but does not exceed $1,000	$ 3
Exceeds $1,000 but does not exceed $5,000	$3 for every $1,000 or part thereof
Exceeds $5,000	$ 15

2. For registering every other deed, assignment, mortgage or other instrument in writing, except as hereinafter provided,

Where the amount or value of the consideration money

Does not exceed $500	$ 1
Exceeds $500 but does not exceed $1,000	$ 3
Exceeds $1,000 but does not exceed $5,000	$3 for every $1,000 or part thereof
Exceeds $5,000	$ 30

Provided that where the amount or value of the consideration money exceeds $20,000 and the deed, assignment, mortgage or other instrument relates to three or more lots, or sections or portions of lots, a further fee of $3 shall be paid in respect of the third and of each subsequent lot, section or portion.

3. For registering every will, probate, letters of administration, judgment, decree, prohibitory order, or other order of court, or receiving any verified certificate for each lot, section or portion of a lot to which such document relates ..... $ 3

* As amended by No. 28 of 1931 [16.10.31].

4. For registering a *lis pendens* ..... $ 3

5. For entering a discharge of a *lis pendens* ..... $ 6

6. For a certificate of such entry of discharge ..... $ 3

7. For receiving for safe custody any deed, will, or other instrument ..... $ 15

8. For every search ..... $ 1

9. For certificate of receipt of any document, or certifying a copy thereof, and for every other certificate ..... $ 15

10. For every uncertified copy of any will, deed, memorial, or other instrument, per folio of 72 words .....75 cts.

11. For registering memorial of a writ of foreign attachment $ 3

12. For filing a certificate that a writ of foreign attachment is dissolved, or that the judgment in the action is satisfied ..... $ 3

13. For the signature of the Governor to any Crown lease or other document issued from the Land Office, including affixing the public seal to such lease or other document, where such seal is necessary ..... $ 10

14. For plans attached to a Crown lease and counterpart, or other document .... $ 20

15. *For legal charges for and incidental to the preparation and issuing of a Crown lease and counterpart ..... $ 30

16. For the Survey when a Crown lease is issued for the whole or any portion of a lot formerly held under demise by Crown lease ..... $ 20

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* For exemption where more than one Crown lease is required, *see* G.N. 119 of 1932 [Order by G. in C. under Ord. No. 5 of 1870 (Crown Fees)].