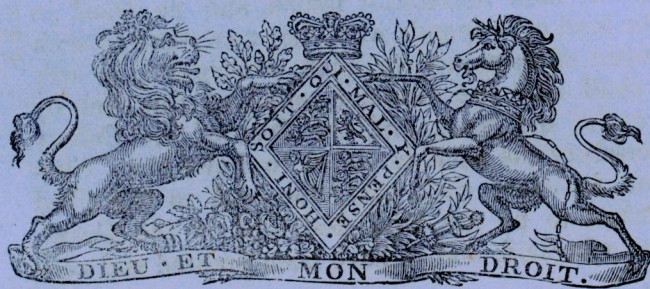


This PUBLIC BILL, having been this day passed by the LEGISLATIVE COUNCIL, is ready for presentation to the LEGISLATIVE ASSEMBLY, for its concurrence.

Legislative Council Chamber, }
Sydney, 27 November, 1857. }

WM. MACPHERSON,
Clerk of the Legislative Council.

New South Wales.



ANNO VICESIMO PRIMO

VICTORIÆ REGINÆ.

No. .

An Act to remove certain difficulties affecting Titles to Land.

WHEREAS, from various causes, many difficulties exist affecting the Preamble.
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
5 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 Certain informal purchases in fee.
person seized of or entitled to land in fee, or to have a Crown Grant
10 thereof made of or entitled to land in fee, shall have conveyed or contracted to convey
the same land, the party purchasing or contracting for such land shall be
deemed, as against the vendor or contractor his heirs and assigns, to have
taken or to be entitled to (as the case may be) an estate in fee in the same
land, notwithstanding the absence of any words of perpetuity or limitation
15 in the instrument of conveyance or contract, as the case may be, unless
a contrary intention shall appear in 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 shall prejudice the title of any person now in posses-
20 sion of the land by virtue of a title derived from such vendor or party
contracting.

2. It shall not hereafter be necessary for any Sheriff to make an Sales of land by Sheriff.
actual seizure of land under any Writ, in order to authorise a sale thereof,
but instead of such seizure he shall cause Notice of the Writ, and of the
25 intended day and place of sale and the particulars of the property, to be
published, in such manner as the Judges of the Supreme Court or the
Judge

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Judge at Moreton Bay if the land be in that district shall from time to time direct.—And the publication of such Notice shall be equivalent to an actual levy by him on the land indicated by such Notice.

3. Every deed of sale heretofore or hereafter executed by any Sheriff of the land of a judgment debtor, or of the right, title, and interest of such debtor to and in any land, shall be *primâ facie* evidence of the existence of a valid Judgment and Writ to support a levy by such Sheriff on the land, and of the fact of a levy having been duly made on such land, if stated in the deed, or of such Notice as aforesaid having been duly published, if that fact be so stated. And no such deed shall be deemed invalid by reason only of non-registration within one calendar month, as now prescribed by law.
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 described 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 in every such Deed as aforesaid, and to have been granted and conveyed thereby respectively.
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.
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.
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 so 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.
8. Any such instrument 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 shewing compliance with any other provision of the preceding section.
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 any claim or caveat in opposition thereto for the report thereupon

Deeds of Sale by Sheriff.

For remedy of insufficient descriptions in Grants.

Proviso to protect subsequent Grants and adverse holders.

New description to be advertised, &c.

The like provisions in case of error in names.

Proof of instrument.

Cases may be referred to Commissioners for Claims to Grants.

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upon 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 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 authorized in terms by the said Acts.

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 any Proclamation or by writing under the hand of the Governor, 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 *bonâ 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.

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 *bonâ 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.

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 *bonâ 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.

14. Every Promise heretofore made by any Governor of this Colony of a Grant of land in fee to any person, shall 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 Grant, or claiming adversely to the person first referred to his heirs or assigns.

15. No Crown Grant of land heretofore issued shall be invalidated or impeached, by reason that the same was not in pursuance or consideration of any sale, or that it was in pursuance of a promise made on behalf of

Conditions in Grants.

Parties claiming against Grantees by matter of prior date.

The like in certain other cases.

The like as to future Grants.

Proclamations promising Crown Grants.

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

of

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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,
5 not authorized by that Act.

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
10 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 counter-signed 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
15 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.

17. No Recognizance or Bond to the Crown, hereafter entered
20 into or executed, shall affect Land in the hands of any *bonâ fide* Purchaser or Mortgagee for valuable consideration, and without actual Notice of such Recognizance or Bond, unless a copy of the same shall have been filed in the Office of the Prothonotary of the Supreme Court, before the execution of the conveyance to such Purchaser or Mortgagee. And the
25 Prothonotary shall keep a book in which he shall enter the names of the Parties to every such Recognizance or Bond, with proper references to the copy filed; which book, with the instruments therein referred to, may be searched at all reasonable times, on payment of the ordinary fee for a search in his office.

18. No registration of any Instrument under any Act now or
30 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
35 is established, and the substantial requirements of the Act have been complied with.

19. No Instrument hereafter executed, and registered under the provisions of any Act in force for the Registration of Deeds, shall lose any
40 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 taking under such instrument acted *bonâ fide*, and there was a valuable consideration for the same paid or given.

20. Livery of Seizin shall not be deemed to have been necessary,
45 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 affect the title of
50 any person now in possession of land, the subject of any such Feoffment, and claimed adversely to the Feoffee, his heirs or assigns.

21. All Deeds affecting or intended to affect land in this Colony,
55 which have been executed by Married Women, or other persons, (in their own right, or in respect of Dower), and which purport to have been acknowledged by such Women or other Persons, before some person having authority in that behalf shall be valid and effectual in their intended operation, to all intents and purposes, notwithstanding that the acknowledgments indorsed on such Deeds may not have been taken or certified in due form.

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22. 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, 5 (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 10 made and certified in any Foreign Country before and by any British Consul, or Vice-Consul; or purporting so to be.

Certain acknowledgments to bar Dower, &c., provided for.

23. 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 15 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.

24. All persons paying money to Trustees, entitled to receive the same, shall be exonerated from liability in respect of the non-application or mis-application of such money, unless such liability was expressly retained, 20 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.

25. Every License under the hand of the Governor, for the occupation of any Crown Land beyond the limits called the Boundaries of Location, shall be deemed a Lease from the Crown for the term mentioned therein; and, if renewed, shall be taken to be a continuing demise for the united term; and so on, for as long a period as shall be covered by the 30 several renewals—if more than one. And every such License, notwithstanding any uncertainty in the description contained therein, shall be deemed to include all Land usually occupied under the same, or under any License of which the existing one is a renewal.

Licenses of Crown Lands.

26. For the purposes of the last preceding section, every License 35 shall be taken to be a renewal, which shall be issued upon, or within sixty days after, the expiration of another License, to the same effect in substance, and for the same or no longer term; and which shall by name or other description indicate the same Land, whether the Licenses be to the same person or not. Provided that nothing herein shall be construed to 40 entitle any Licensee to maintain Trespass, or recover Mesne Profits, in respect of any period anterior to the time of his actual possession.

Renewals thereof.

27. 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 45 paid by virtue of any Order of the Court to the person mentioned in such Order, such payment shall operate as a reconveyance 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 50 payment shall take effect.

Money paid into Court by mortgagor and afterwards paid out.

28. A Covenant or Undertaking, whether now or hereafter entered into, to produce to any Purchaser, Lessee, or Mortgagee of Land, or his Assigns, any Title or other Deed of or relating to such Land, shall be satisfied by a deposit of the Deed permanently in the office of the Registrar 55 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.

29. In all cases where two or more persons shall have died under circumstances rendering it uncertain which of them survived, the deaths shall 60 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.

30. This Act shall commence on the first day of January next; and may be cited, for all purposes, as "The Titles to Land Act of 1857." 70

Commencement and title of Act.

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