

Legislative Council.

23rd VICTORIA, 1859.

A BILL

To ascertain and declare Titles to Land.

WHEREAS it is expedient to afford means for ascertaining and Preamble.
declaring Titles to Land Be it 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
5 assembled and by the authority of the same as follows :—

1. This Act shall be styled and may be cited as "The Land Titles Short title.
"Declaration Act of 1859."

2. Every person entitled for his own benefit to an estate in fee Fee simple owner
simple in land or having a power of absolutely disposing for his own may apply for decla-
10 benefit of an estate in fee simple in land may apply to the Land Titles ration of title.
Court hereinafter constituted and hereinafter referred to as "the Court"
for a declaration that he has established his title to such land.

3. The application shall be made in such form as the Court directs Mode of application,
and shall be accompanied by an abstract of the title of the applicant and
15 a plan of the land according to a scale specified thereon and by such evi-
dence as the Court requires But the Court shall not take any pro-
ceedings in the matter of the application unless or until it is satisfied by
inquiries on the spot to be made as hereinafter mentioned or by other
20 sufficient evidence that the applicant or his predecessors in title has or have
been in possession or receipt of the profits of the land for a period of not
less than six years immediately prior to the date of application.

4. The Court upon being satisfied in manner aforesaid of there Notice to be given
being *prima facie* evidence for taking proceedings in the matter of the by the Court.
application shall give public notice of the application having been made
25 and of the intention of the Court to entertain the same by advertisement
in the *Gazette* and in any other newspaper if and as the Court thinks fit and
by causing copies of such notice to be posted on or near the land or otherwise
as the Court thinks fit.

Contents of Notice.

5. The notice so given shall point out the estate or interest which the applicant claims to have in the land and the effect of the Court declaring his title to be established. It shall call the attention of all parties interested in the land to the subject matter of the application pending before the Court and shall invite incumbrancers and other persons having any interest in the land capable of being affected by the declaration of the Court to come before the Court on a day to be named in such notice and assert their rights with a view of having the same reserved or established or of proving that the applicant is not entitled to such declaration of title as aforesaid. 10

Security for Costs.

6. The Court shall before taking any proceedings in the matter of any such application require the applicant to give such security for costs as the Court thinks sufficient.

Modification where the land subject to incumbrances.

7. The Court may entertain an application for declaration of title to land where the applicant admits that the land in respect of which he applies is subject to any specified incumbrance and the Court shall modify accordingly any notice given by stating the existence of such incumbrances and the intention of the Court to reserve the rights of the incumbrancers. 15

Exclusion of certain charges from the definition of incumbrances.

8. The following charges and interests shall not be deemed incumbrances within the meaning of this Act— 20

1. Quitrents
2. Rights of common or of way—watercourses—rights of water and other easements
3. Leases or agreements for leases for any term not exceeding twenty-one years or for any less estate in cases where there is an occupation under such leases or agreements 30

And all land shall unless the contrary is expressed in the declaration of title made by the Court be deemed to be subject to such of the above charges and interests as may for the time being subsist thereon. 35

Examination of title by Court.

9. The Court if it entertains the application shall by means of local agents or in such other way as the Court thinks fit proceed to make inquiry on the spot and otherwise as to the title of the applicant and the rights of tenants occupiers and others. And if satisfied with the title shown to such land or to any part thereof and with the result of the inquiries made the Court shall make a Provisional declaration that the applicant has established his title to the whole or part of the land for the purpose of any disposition made in favor of a purchaser for valuable consideration subject to the incumbrances 40

incumbrances if any specified in the declaration and subject in all cases to such charges and interests as may be subsisting thereon and are hereinbefore declared not to be incumbrances.

10. The Court may annex conditions to any Provisional declaration Power of Court to annex conditions.
 5 that a title is established by requiring the applicant to give any indemnity to obtain any consents or otherwise to act as the Court directs The Court may also reserve in any such Provisional declaration the rights of any persons or classes of persons.

11. Upon such Provisional declaration being made the Court shall Advertisement of provisional declaration.
 10 give notice of the same in such manner as it thinks fit by advertisement and by posting the same on or near the land to which it refers or by otherwise publishing the fact of such declaration pointing out in such notice the intention of the Court to confirm the same at a time not being earlier than *six* months from the date of the notice and at a place named
 15 in the notice unless cause is first shewn to the contrary and stating the time and manner at and in which opposing parties may be heard to show cause against the declaration with an explanation so far as is possible of the effect thereof if made final and the nature of the interests which should induce parties to appear before the Court and oppose or acquiesce
 20 in the same and of the right of parties appearing to be paid their costs in the event of their substantiating their opposition or appearing in accordance with the terms and rules laid down in the notice.

12. The Court shall at the time and place named in the notice Court to hear persons opposing.
 or at any subsequent time and place of which notice may be given by the
 25 Court hear any person alleging that the applicant is not entitled to a declaration of establishment of title or is entitled only subject to certain conditions or with the reservation of certain rights not specified in the Provisional declaration or alleging any other matter why such provisional declaration should not be made absolute or should be made absolute only
 30 with modifications or additions and the Court may adjourn from time to time if necessary any hearing in respect of the aforesaid matters.

13. The Court after hearing any parties desirous of being heard Confirmation of provisional declaration.
 against the Provisional declaration may by a further order annul the same or make it absolute with or without modifications or additions If made
 35 absolute an appeal may be lodged with the Court of Appeal hereinafter mentioned against the Order making the same absolute at any time within *three* months from the date of such order and the Court of Appeal may annul the declaration or confirm it with or without modifications or additions

tions Where no appeal is lodged the declaration shall be made final by order of the Court at the expiration of such period of *three* months and where an appeal is lodged the declaration shall not be deemed final until made so by order of the Court of Appeal Provided that an appeal lodged and afterwards abandoned shall for the purposes of this Act be deemed 5 not to have been lodged.

Effect of declaration.

14. Whenever an absolute declaration establishing the title of any person to land has been made final and the Order has been duly registered under the "Land Transfer and Registry Act of 1859" every purchaser for valuable consideration of the land mentioned in such declaration or of any 10 part thereof or of any interest therein shall be deemed to hold the same for an estate in fee simple or for such less estate as may be conveyed to him with the reservations and subject to the incumbrances if any appearing in the declaration or created since the date of the order making the same final and subject also except in so far as the contrary is expressed in the 15 declaration to such charges and interests if any as are herein-before declared not to be incumbrances but free from all other estates incumbrances and interests whatsoever including all estates interests and claims of Her Majesty Her Heirs and Successors.

Evidence of declaration of title.

15. Every final declaration shall be deemed to have been duly 20 made and shall not be set aside by reason of any informality whatever and an office copy of the Order making the declaration final shall be evidence of the declaration.

Part owners making up complete ownership may apply for establishment of title.

16. Any two or more persons entitled for their own benefit concurrently or successively or partly in one mode and partly in another 25 to such estates or interests in land as together make up the fee simple may if each of such persons has a power of disposition over his estate or interest apply to the Court to have their title established in the same manner and with the same incidents in and with which it is herein-before enacted that any individual owner may have his title established. 30

Trustee may apply for establishment of title.

17. Any trustee of land with power to sell and any fiduciary donee of a power to sell land may with a view to a sale apply to the Court for a declaration establishing his title to sell And the amount of all costs charges and expenses incurred by such trustee or donee in or about such application shall in all cases be ascertained and declared by the Court 35 and shall unless the Court otherwise orders be deemed to be costs charges and expenses incurred by him in the execution of his trust or in pursuance of his power and he may retain or reimburse the same to himself out of any

any money coming to him under the trust or power and he shall not be liable to any account in equity in respect thereof And when a final declaration has been made establishing the title of such trustee or donee to sell any purchaser for valuable consideration of the land mentioned in 5 such declaration or of any part thereof or of any interest in such land shall be deemed to hold the same for the same estate and with the same incidents as if he had purchased the same for valuable consideration from a person who had obtained a final declaration establishing his title to such land.

18. For the purpose of any application by such trustee or donee 10 for a declaration establishing his title to sell land the possession or receipt of the profits of such land by any person claiming consistently with the instrument creating the trust or power under which such trustee or donee proposes to sell shall be deemed to have been the possession or receipt of such trustee or donee or of his predecessors in title.

Possession consistent with settlement to be deemed possession of trustee.

15 19. Where any sale of the fee simple of land is about to be made in pursuance of any order of the Supreme Court in its equitable jurisdiction such Supreme Court may on the application of any parties interested in such sale remit the case to the Land Titles Court for the purpose of carrying into effect such portion of the order as relates to a sale 20 And the Court shall thereupon examine the title and if satisfied therewith regard being had to the circumstances of the case and to the order made by the Supreme Court may make a final declaration establishing the title of any person to the land and any such declaration shall have the same effect as if it had been made on an application to the Court under this Act.

Supreme Court in Equity may remit case of sale to Landed Estate Court.

25 20. The Court instead of making one declaration in the case of land in respect of which an application is made may with a view of suiting the convenience of the applicant and on his request make several declarations in respect of different portions of such land.

Power of Court to make several declarations or conveyances.

21. Where in any proceeding with respect to land under this 30 Act it appears to the Court that the land is subject to any uncertain or doubtful claims or to any uncertain or doubtful incumbrances capable of being compensated by money and not involving any right to possess the land itself otherwise than as a security for money the Court may upon such amount of money being paid in manner hereinafter mentioned as will 35 in the opinion of the Court be sufficient compensation for such claims or incumbrances and for all costs charges and expenses that may be incurred by the claimants or incumbrancers in recovering the monies due to them declare the Title to any land to be established without reference to such claims or incumbrances.

Power of Court to accept indemnity.

Mode in which indemnity to be paid.

22. Any monies payable in respect of such compensation as aforesaid may if the Court direct be paid to Trustees approved of by the Court to such account as the Court may direct and the Court may also direct such monies to be invested in such securities as it thinks fit on an application being made by any parties interested in such monies.

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Distribution of purchase monies.

23. The Court shall determine the rights and priorities of the several persons entitled to or interested in any monies so paid and shall distribute the monies among such persons in accordance with such rights and priorities rendering the surplus if any to the parties entitled thereto their executors administrators or assigns.

10

Appropriation of monies not immediately distributed.

24. Where any money paid in pursuance of this Act is not immediately distributable or the parties entitled thereto cannot be ascertained or where from any other cause the Court thinks it expedient for the protection of the rights of the parties interested therein it may order such money to be transferred to such account as the Court directs in trust 15 to attend the orders of the Supreme Court in Equity And the Land Titles Court may by its order declare the Trusts affecting such money so far as it has ascertained the same or state the facts or matters found by it in relation to the rights and interests therein and the Supreme Court in Equity may make such orders with respect to any such monies and the 20 investment or application thereof or the payment thereof out of Court as the circumstances of the case require.

Costs to be in the discretion of the Court.

25. All costs charges and expenses incurred by any parties in or about any proceedings under this Act shall be taxed as between solicitor and client but the payment thereof shall be in the discretion of the Court 25 regard being had by the Court to the fact that any applicant under this Act is liable *primâ facie* to pay all costs charges and expenses incurred by or in consequence of his application except in a case where parties appear whose rights are sufficiently secured without their appearance or where any costs charges or expenses are incurred unnecessarily or 30 improperly.

Disposition by Court of deeds.

26. When a declaration establishing the title of any person to land has been made final all such deeds and evidences of title delivered to the Court as relate exclusively to the land and are of no avail except for the purpose of substantiating the title shall be retained by 35 the Court but all other deeds and evidences of title delivered to the Court relating to the land or to any part thereof shall be returned to the parties entitled

entitled to the custody thereof but previously to their being so returned shall be stamped or otherwise marked in such manner as to give notice to any person inspecting the same of the proceedings taken by the Court in relation to the land or any portion of the land comprised therein.

5 27. Any person having or claiming such an interest in land as entitles him to object to any disposition thereof being made without his consent may lodge a Caution with the Court to the effect that the cautioner is entitled to notice of any proceedings that may be instituted in the Court with respect to such land.

Power to lodge caution against proceedings in Court.

10 28. Every such Caution shall be supported by an affidavit in such form as the Court directs stating the nature of the interest of the cautioner and such other matters as may be required by the Court and containing the name of the cautioner and also some address in the Colony where he may be served with notice of any proceedings that may be instituted in the
15 Court.

Caution to be supported by an affidavit.

29. Notice may be served on the cautioner either personally or by
sending it through the post in a pre-paid registered letter marked outside
“Land Titles Court” addressed to the cautioner at the address appointed
by him for service of notices and such notice if served by post shall unless
20 returned be deemed to have been served on the cautioner at the time when
it would be delivered to him in the ordinary course of the post but no
proceeding shall be taken on the faith of such notice having been duly
served until the expiration of such period not less than *five* days exclusive
of the day of posting as the Court may by general order appoint.

Notice how served.

25 30. The Postmaster General shall give directions for the immediate return to the Secretary of all letters marked as aforesaid and addressed to any person who cannot be found.

Directions in case of service by post.

31. No purchaser for valuable consideration shall be affected by the
omission to send or by the non-receipt of any notice by this Act directed
30 to be given.

Purchaser not affected by omission to send notice.

32. After a Caution has been lodged no declaration of title shall
be made or be made absolute or final in the case of any land to which such
caution refers until notice has been served on the cautioner to appear and
oppose the same if he thinks fit and *twenty-one* days have expired since the
35 date of the service of such notice or the cautioner has entered an appear-
ance which may first happen.

Effect of Caution.

Compensation for
improper lodging of
caution.

33. If any person lodges a caution with the Court without reasonable cause he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation as may be just and such compensation shall be recoverable in any action at law by the person who has sustained damage from the person who has so lodged the 5 caution.

Caution only to
entitle the cautioner
to notice.

34. A caution lodged in pursuance of this Act shall have no effect whatever, except that of entitling the cautioner to receive such notice as is herein-before mentioned of proceedings being instituted in the Court.

Penalty on suppres-
sion of Deeds and
Evidence.

35. Any person intervening as principal or agent in any proceeding 10 before the Court for a declaration establishing any title to land who shall with intent to conceal from the Court the title or claim of any person other than the applicant to such land suppress assist in suppressing or be privy to the suppression of any document in his possession or any fact within his knowledge shall be guilty of a misdemeanor and upon conviction 15 shall be liable at the discretion of the Court by which he is convicted to be kept to hard labour on the public roads for a term not exceeding *three* years or to be imprisoned for a term not exceeding *two* years with or without hard labor or to be fined such sum as the Court may award not exceeding pounds And any declaration of title in respect of such 20 land made by the Court shall be void as against all persons guilty of any such misdemeanor.

CLAUSE J.
Penalty on fraudu-
lent alterations, &c.

36. Any person intervening in any proceeding before the Court for a declaration establishing the title of any person to land who shall fraudulently alter assist in fraudulently altering or be privy to the 25 fraudulent alteration of any deed will certificate or other document relating to such land or shall give assist in giving or be privy to the giving of any false information to the Court in respect of such land knowing the same to be false shall be guilty of a misdemeanor and upon conviction shall be liable at the discretion of the Court by which he is convicted to be kept 30 to hard labor on the public roads for a term not exceeding *three* years or to be imprisoned for a term not exceeding *two* years with or without hard labor or to be fined such sum as the Court may award not exceeding pounds And any declaration of title in respect of such land shall be void as against all persons guilty of any such misdemeanor. 35

Conviction not to
effect civil remedy.

37. No proceeding or conviction for any offence hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved by such offence may be entitled to either at law or in equity against the person who has committed such offence.

38. Nothing in this Act contained shall entitle any person to refuse to make a complete discovery by answer to any Bill in Equity or to answer any question or interrogatory in any civil proceeding in any Court of Law or Equity or Insolvency But no answer to any such bill question or interrogatory shall be admissible in evidence against such person in any criminal proceeding.

Nothing in Act to
exclude obligation
to make discovery

39. A Court to be called the Land Titles Court shall be established for the purpose of carrying into effect the provisions of this Act And shall consist of two Judges one of whom shall be Chief Judge And the said Judges shall be appointed by the Governor with the advice of the Executive Council and shall hold their offices during good behaviour but may be removed on an Address presented to the Governor by both Houses of Parliament.

Establishment of
Court.

40. No person shall be appointed a Judge of the Court unless he is a practising barrister of ten years standing at the least or a practising solicitor of fifteen years standing at the least.

Qualification of
Judges.

41. Every Judge of the Court shall before he enters upon the execution of his office take in the presence of one of the Judges of the Supreme Court the following oath—

Oath of Judges.

“ I A.B. do swear that I will faithfully impartially and honestly according to the best of my skill and judgment fulfil all the powers and duties of a Judge under the “ Land Titles Declaration Act of 1859.”

42. The Judges of the Court shall rank immediately after the Puisne Judges of the Supreme Court.

Precedence of
Judges.

43. There shall be appointed for the purposes of this Act one Secretary one Taxing Officer one Accountant and such number of clerks local agents messengers and servants as the Court with the sanction of the Colonial Treasurer thinks fit.

Enumeration of
Officers of Court.

44. The Secretary Taxing Officer Accountant local agents clerks messengers and servants of the Court shall be appointed by the Court and may be removed by the Court and others appointed in their stead if the Court is of opinion that that they are negligent unskilful or untrustworthy in the performance of their duties or ought to be removed for any other just cause of which the Court shall be the sole Judge.

Appointment of
Secretary and other
Officers.

45. There shall be paid to the Chief Judge a salary of pounds a-year—to the other Judge a salary of pounds a-year—and to the Secretary Taxing Officer Accountant local agents clerks messengers and servants such salaries or other remuneration as the Court with the sanction of the Colonial Treasurer may determine.

Amount of Salaries
&c.

Retiring pension
of Judges.

46. The Governor with the advice of the Executive Council may by Letters Patent under the Seal of the Colony grant to any Judge of the Court who has served for fifteen years as a Judge or is disabled by permanent infirmity from the performance of the duties of his office a pension by way of annuity not exceeding *seven-tenths* of his salary to 5 continue during his life.

Court to be a Court
of Record and have
Seal.

47. The Court shall be a Court of Record and shall cause to be prepared a Seal of which judicial notice shall be taken and all documents purporting to be sealed therewith shall be admissible in evidence. 10

Court to appoint
time for commence-
ment of proceedings.

48. The Court shall by notice published in the *Gazette* appoint a day not later than the of one thousand eight hundred and sixty on and after which the Court will be prepared to entertain applications under this Act.

Judicial notice of
signature of Judges
and Registrar.

49. All Courts Judges and persons acting judicially shall take 15 judicial notice of the signature of either Judge of the Court or of the Secretary of the Court.

Powers of Court how
to be exercised.

50. The concurrence of both the Judges of the Court shall be essential to a declaration of title but with that exception all powers by this Act given to the Court may be exercised by one Judge And if in any 20 case the Judges differ as to the propriety of making any order or doing any act such order shall be deemed to have been refused and such Act shall be left undone.

Place and times of
sitting.

51. The Minister for Public Works shall provide a convenient place for the sittings of the Court with convenient offices for the 25 transaction of business by the Court and its officers And the Court shall hold its sittings at the place so provided and at such times as may from time to time be appointed by the Court.

Judges may sit in
Chambers.

52. The Judges of the Court may sit in Chambers either together or separately for the despatch of business and when in Chambers shall 30 have the same jurisdiction and exercise the same powers as if sitting in open Court.

When Court shall sit
in open Court.

53. The Judges of the Court shall sit together in open Court for the determination of such questions arising upon the examination of titles as may be reserved by them for discussion in open Court. 35

54. No person shall be entitled to appear for any other party in any proceeding in the Court unless he is a Barrister at Law or a Solicitor of the Supreme Court and all Barristers and Solicitors of the Supreme Court shall enjoy the like privileges in the Land Titles Court and be subject to the authority of the Court in like manner as they respectively enjoy and are subject to in the Supreme Court.

55. The Court may review rescind or vary any order made by it Appeal in pursuance of this Act No appeal shall lie from any refusal of the Court to entertain an application for establishment of title or to establish a title but any person aggrieved by any other Order of the Court may appeal to the Supreme Court sitting in Banco in such manner within such time and subject to such regulations and limitations as the Land Titles Court and the Chief Justice may prescribe and any order made on appeal from the Court shall be subject to reversal or modification by the Privy Council in England in the same manner and with the same incidents in and with which orders made by the Supreme Court on Appeals within the ordinary jurisdiction of such Court are subject to be reversed or modified.

56. The Court may examine any witnesses on oath and shall have Powers of Court. all like powers rights and privileges as are vested in the Supreme Court with respect to the following matters :—

- (1.) Enforcing the attendance of witnesses and the production of deeds books papers and documents.
- 25 (2.) Issuing any Commission for the examination of witnesses or causing witnesses to be examined before any tribunal other than the Court.
- (3.) Punishing persons refusing to give evidence or guilty of contempt.
- 30 (4.) Enforcing any order whatever lawfully made by the Court or either Judge thereof.

57. Every person who upon examination before the Court or either Judge thereof or any person authorized under this Act to take evidence wilfully gives false evidence and every person who wilfully swears affirms or declares falsely in any affidavit authorized under this Act to be received in evidence shall be liable to the pains and penalties of perjury.

Court or suitors not
to be restrained by
other Courts.

58. The Court shall not be restrained in the execution of any of its powers under this Act nor shall any person be restrained from making an application under this Act to the Court or doing any other act or giving any consent under the provisions of this Act by order of any other Court or by any other legal process nor shall the Court be required by Writ of 5 Mandamus or any writ of a like nature to do any act or take any proceeding under this Act nor shall any proceeding before the Court be removable by *certiorari* or other writ of a like nature.

Proceedings not to
abate by death, &c.

59. No proceeding before the Court shall abate or be suspended by any death or transmission or change of interest but in any such case it 10 shall be lawful for the Court when it sees fit to require notice to be given to persons becoming interested or to make any order for discontinuing suspending or carrying on the proceeding or otherwise in relation thereto which to the Court appears just.

Court to frame and
promulgate forms of
application, &c.

60. The Court shall frame and cause to be printed and circulated 15 or otherwise promulgated as it sees occasion forms of applications and directions indicating the particulars of the information to be furnished to the Court when any application is made to it under this Act with reference to title incumbrances and the circumstances of land and such other information as in the judgment of the Court may assist it in forming 20 an opinion on such application and also such other forms and directions as the Court may deem requisite or expedient for facilitating proceedings under this Act.

Power of Court to
frame rules.

61. The Court shall with the concurrence of the Chief Justice frame rules for regulating the course of procedure under this Act and 25 generally for the due execution of the powers vested in the Court under and for giving full effect to the objects of this Act.

Effect of rules and
power to alter.
Rules to be laid be-
fore Parliament.

62. Any rules so made upon being published in the *Gazette* shall have the full force of law and shall be laid before Parliament forthwith if in session or if not within fourteen days after the opening of the next 30 session.

Court to determine
amount of payments
to be made, &c.

63. The Court shall with the concurrence of the Chief Justice from time to time determine the amount of fees to be paid with respect to the following matters :—

(1.) Obtaining a declaration that a title is established.

35

(2.)

(2.) The institution and conduct of any proceedings relating to land and obtaining copies of such proceedings or of other documents in the custody of the Court.

5 (3.) Generally with respect to any other matters to be done by the Court or any officer thereof.

And all fees so paid shall be handed over the Colonial Treasurer and by him carried to the account of the Consolidated Revenue Fund of the Colony.

64. In determining the amount of fees payable in respect of any proceedings as to land under this Act regard shall be had to the value of Principle on which fees to be determined.
10 the land as ascertained in such manner as the Court by any general order directs subject nevertheless to the following limitations :

(1.) The amount of fees payable shall not in any case exceed *five* per cent. on the value of the land :

15 (2.) A maximum value shall be fixed and in the case of any estate exceeding such maximum value the Court may make payable in respect of such excess fees on such reduced scale as the Court thinks expedient.

65. Whenever in any proceeding under this Act there arises any question of law or fact which cannot in the opinion of the Court be conveniently disposed of by it the Court may if such question is one of law direct a case to be stated for the opinion of the Supreme Court sitting in Banco or if such question is one of fact an issue to be tried before a jury and may name the parties to such case or issue and the manner in which the proceedings in relation thereto are to be brought before the Court or
25 Jury to which such case or issue is referred.

66. The opinion of the Supreme Court upon any matter of law so referred shall be conclusive on all the parties to such case unless the Effect of opinion of Supreme Court or decision of Jury.
Land Titles Court directs a rehearing or appeal to be had and the decision of any Jury to whom any issue of fact is referred shall be conclusive
30 on all persons whomsoever unless the Land Titles Court otherwise directs.

67. In cases where any infants incapable persons or persons yet unborn are interested in the land in respect of the title to which any question of law or fact arises as aforesaid any parties interested in such land may apply to any Judge of the Supreme Court in Chambers for a
35 direction that the opinion of the Supreme Court upon any question so referred

referred shall be conclusively binding on all parties interested in such land And the Judge in Chambers shall hear the allegations of all parties appearing before him and may disapprove altogether or may approve either with or without modification of the directions of the Court in respect to any case to be tried as to the title of land And he may also 5 appoint a guardian or other person to appear on behalf of any infants incapable or unborn persons But if he is satisfied that the interests of such infants incapable or unborn persons will be sufficiently represented in any case so about to be tried he shall make an order declaring that all or some of such parties shall be conclusively bound and thereupon 10 the parties in that behalf named in the order shall be conclusively bound by any decision of the Supreme Court to the same extent as if they had been parties to the case.

LAND TITLES DECLARATION BILL.

ARRANGEMENT OF CLAUSES.

1. Short Title of Act.
2. Fee simple owner may apply for declaration of Title.
3. Mode of application.
4. Notice to be given by the Court.
5. Contents of notice.
6. Security for costs.
7. Modification where the land subject to incumbrances.
8. Exclusion of certain charges from the definition of incumbrances.
9. Examination of Title by Court.
10. Power of Court to annex conditions.
11. Advertisement of provisional declaration.
12. Court to hear persons opposing.
13. Confirmation of provisional declaration.
14. Effect of declaration.
15. Evidence of declaration of Title.
16. Part owners making together a complete ownership may apply for establishment of Title.
17. Trustee may apply for establishment of Title.
18. Possession consistent with settlement to be deemed possession of Trustee.
19. Supreme Court in Equity may remit case of sale to Landed Estate Court.
20. Power of Court to make several declarations.
21. Power of Court to accept indemnity.
22. Mode in which indemnity to be paid.
23. Distribution of purchase moneys.
24. Appropriation of moneys not immediately distributed.
25. Costs to be in the discretion of the Court.
26. Disposition by Court of deeds.
27. Power to lodge caution against proceedings in Court.
28. Caution to be supported by affidavit.
29. Notice how served.
30. Directions in case of service by post.
31. Purchaser not affected by omission to send notice.
32. Effect of caution.
33. Compensation for improper lodging of caution.
34. Caution only to entitle the cautioner to notice.
35. Penalty on suppression of deeds and evidence.
36. Penalty on fraudulent alterations &c.
37. Conviction not to affect civil remedy.
38. Nothing in Act to exclude obligation to make discovery.
39. Establishment of Land Titles Court.
40. Qualification of Judges.
41. Oath of Judges.
42. Precedence of Judges.
43. Officers of Court.
44. Appointment of Secretary and other officers.
45. Amount of Salaries &c.
46. Retiring pension of Judges.
47. Court to be a Court of Record and have Seal.
48. Court to appoint time for commencement of proceedings.
49. Judicial notice to be taken of signature of Judges and Registrar of Court.
50. Powers of Court how to be exercised.
51. Place and times of sittings of Court.
52. Judges may sit in chambers.
53. When Court to sit in open Court.
54. Privileges of Barristers, Solicitors, and Certificated Conveyancers.
55. Appeal from Court.
56. Powers of Court.
57. Penalty for false swearing.
58. Court or suitors not to be restrained by other Courts.
59. Proceedings not to abate by death &c.
60. Court to frame and promulgate forms of application &c.
61. Court to frame rules.
62. Effect of rules and rules to be laid before Parliament.
63. Court to determine amount of payments to be made &c.
64. Principle on which fees to be determined.
65. Power for Land Court to state case for Supreme Court or direct issue.
66. Effect of opinion of Supreme Court or decision of jury.
67. Application to Judge of Supreme Court in respect of incapacitated persons whose interests Judge may bind.

THE HISTORY OF THE
CITY OF BOSTON
FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
IN TWO VOLUMES
BY NATHANIEL BENTLEY
VOL. I.
BOSTON: PUBLISHED BY
J. B. ALLEN, 1825.

Legislative Council.

23^o VICTORIÆ, 1859.

A BILL

To ascertain and declare Titles to Land.

(As amended and agreed to in Select Committee.)

- W**HEREAS it is expedient to afford effectual means for ascertaining and declaring Titles to Land Be it 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. This Act shall be styled and may be cited as "The Land Titles Declaration Act of 1859 **1860.**"
2. Every person entitled for his own benefit to an estate in fee simple in land or having a power of absolutely disposing for his own benefit of an estate in fee simple in land may apply to the Land Titles Court hereinafter constituted and hereinafter referred to as "the Court" for a declaration that he has established his title to such land.
3. The application shall be made in such form as the Court directs and shall be accompanied by an abstract of the title of the applicant and a plan of the land according to a scale specified thereon and by such evidence as the Court requires But the Court shall not take any proceedings in the matter of the application unless or until it is satisfied by inquiries on the spot to be made as hereinafter mentioned or by other sufficient evidence that the applicant or his predecessors in title has or have been in possession or receipt of the profits of the land for a period of not less than ~~six~~ five years immediately prior to the date of application.
4. The Court upon being satisfied in manner aforesaid of there being *prima facie* evidence for taking proceedings in the matter of the application shall give public notice of the application having been made and of the intention of the Court to entertain the same by advertisement
- c 56—A in

NOTE.—The words to be omitted are ruled through; the words to be inserted are printed in black letter

in the **Government Gazette** and in any other newspaper if and as the Court thinks fit and by causing copies of such notice to be posted on or near the land or otherwise as the Court thinks fit.

Contents of Notice.

5. The notice so given shall point out the estate or interest which the applicant claims to have in the land and the effect of the **establishment of his title by a declaration of the Court declaring his title to be established** It shall call the attention of all parties interested in the land to the subject matter of the application pending before the Court and shall invite incumbrancers and other persons having any interest in the land capable of being affected by the declaration of the Court to come before the Court on a day to be named in such notice and assert their rights with a view of having the same reserved or established or of proving that the applicant is not entitled to such declaration of title as aforesaid. 5 10

Security for Costs.

6. The Court shall before taking any proceedings in the matter of any such application require the applicant to give such security for costs as the Court thinks sufficient. 15

Modification where the land subject to incumbrances.

7. The Court may entertain an application for declaration of title to land where the applicant admits that the land in respect of which he applies is subject to any specified incumbrance and the Court shall modify accordingly any notice given by stating the existence of such incumbrances and the intention of the Court to reserve the rights of the incumbrancers. 20

Exclusion of certain charges from the definition of incumbrances.

8. The following charges and interests shall not be deemed incumbrances within the meaning of this Act— 25

1. Quitrents
2. Rights of common or of way—watercourses—rights of water and other easements
3. Leases or agreements for leases for any term not exceeding *twenty-one* years or for any less estate in cases where there is an occupation under such leases or agreements 30

And all land shall unless the contrary is expressed in the declaration of title made by the Court be deemed to be subject to such of the above charges and interests as may for the time being subsist thereon.

Examination of title by Court.

9. The Court if it entertains the application shall by means of local agents or in such other way as the Court thinks fit proceed to make inquiry on the spot and otherwise as to the title of the applicant and the rights of tenants occupiers and others And if satisfied with the title shown to such land or to any part thereof and with the result of the inquiries made the Court shall make a Provisional declaration that the applicant has established his title to the whole or **such** part of the land for the purpose of any disposition made in favor of a purchaser for valuable consideration subject to the incumbrances if any specified in the declaration and subject in all cases to such charges and interests as may be subsisting thereon and are hereinbefore declared not to be incumbrances. 40 45

Power of Court to annex conditions.

10. The Court may annex conditions to any Provisional declaration that a title is established by requiring the applicant to give any indemnity or to obtain any consents or otherwise to act as the Court directs The Court may also reserve in any such Provisional declaration the rights of any persons or classes of persons. 50

Advertisement of provisional declaration.

11. Upon such Provisional declaration being made the Court shall give notice of the same in such manner as it thinks fit by advertisement and by posting the same on or near the land to which it refers or by otherwise publishing the fact of such declaration pointing out in such notice the intention of the Court to confirm the same at a time not being earlier than ~~six~~ **twelve** months from the date of the notice and at a place named in the notice unless cause is first shewn to the contrary and stating the time and manner at and in which opposing parties may be heard to show cause against the declaration with an explanation so far as is possible of the effect thereof if made final and the nature of the interests which should 60

should induce parties to appear before the Court and oppose or acquiesce in the same and of the right of parties appearing to be paid their costs in the event of their substantiating their opposition or appearing in accordance with the terms and rules laid down in the notice.

- 5 12. The Court shall at the time and place named in the notice or at any subsequent time and place of which notice may be given by the Court hear any person alleging that the applicant is not entitled to a declaration of establishment of title or is entitled only subject to certain conditions or with the reservation of certain rights not specified in the
10 Provisional declaration or alleging any other matter why such provisional declaration should not be made absolute or should be made absolute only with modifications or additions and the Court may adjourn from time to time if necessary any hearing in respect of the aforesaid matters.

13. The Court after hearing any parties desirous of being heard
15 against the Provisional declaration may by a further order annul the same or make it absolute with or without modifications or additions If made absolute an appeal may be lodged with the Court of Appeal hereinafter mentioned against the Order making the same absolute at any time within three months from the date of such order and the Court of Appeal may
20 annul the declaration or confirm it with or without modifications or additions Where no appeal is lodged the declaration shall be made final by order of the Court at the expiration of such period of three months and where an appeal is lodged the declaration shall not be deemed final until made so by order of the Court of Appeal Provided that an appeal lodged
25 and afterwards abandoned shall for the purposes of this Act be deemed not to have been lodged.

14. Whenever an absolute declaration establishing the title of any person to land has been made final and the Order has been duly registered under the Land "Transfer and Registry Act of 1859" every purchaser for
30 valuable consideration of the land mentioned in such declaration or of any part thereof or of any interest therein shall be deemed to hold the same for an estate in fee simple or for such less estate as may be conveyed to him with the reservations and subject to the incumbrances if any appearing in the declaration or created since the date of the order making the same final
35 and subject also except in so far as the contrary is expressed in the declaration to such charges and interests if any as are herein-before declared not to be incumbrances but free from all other estates incumbrances and interests whatsoever including all estates interests and claims of Her Majesty Her Heirs and Successors.

- 40 15. Every final declaration shall be deemed to have been duly made and shall not be set aside by reason of any informality whatever and an office copy of the Order making the declaration final shall be evidence of the declaration.

16. Any two or more persons entitled for their own benefit
45 concurrently or successively or partly in one mode and partly in another to such estates or interests in land as together make up the fee simple may if each of such persons has a power of disposition over his estate or interest apply to the Court to have their title established in the same manner and with the same incidents in and with which it is herein-before
50 enacted that any individual owner may have his title established.

17. Any trustee of land with power to sell and any fiduciary donee of a power to sell land may with a view to a sale apply to the Court for a declaration establishing his title to sell And the amount of all costs charges and expenses incurred by such trustee or donee in or about such
55 application shall in all cases be ascertained and declared by the Court and shall unless the Court otherwise orders be deemed to be costs charges and expenses incurred by him in the execution of his trust or in pursuance of his power and he may retain or reimburse the same to himself out of any money coming to him under the trust or power and he shall not
60 be liable to any account in equity in respect thereof And when a final declaration has been made establishing the title of such trustee or donee to

to sell any purchaser for valuable consideration of the land mentioned in such declaration or of any part thereof or of any interest in such land shall be deemed to hold the same for the same estate and with the same incidents as if he had purchased the same for valuable consideration from a person who had obtained a final declaration establishing his title to such land. 5

Possession consistent with settlement to be deemed possession of trustee.

18. For the purpose of any application by such trustee or donee for a declaration establishing his title to sell land the possession or receipt of the profits of such land by any person claiming consistently with the instrument creating the trust or power under which such trustee or donee proposes to sell shall be deemed to have been the possession or receipt of 10 such trustee or donee or of his predecessors in title.

Supreme Court in Equity may remit case of sale to Landed Estate Court.

19. Where any sale of the fee simple of land is about to be made in pursuance of any order of the Supreme Court in its equitable jurisdiction such Supreme Court may on the application of any parties interested in such sale remit the case to the Land Titles Court for the 15 purpose of carrying into effect such portion of the order as relates to a sale And ~~the~~ that Court shall thereupon examine the title and if satisfied therewith regard being had to the circumstances of the case and to the order made by the Supreme Court may make a final declaration establishing the title of any person to the land and any such declaration shall 20 have the same effect as if it had been made on an application to the Court under this Act.

Power of Court to make several declarations or conveyances.

20. The Court instead of making one declaration in the case of land in respect of which an application is made may with a view of suiting the convenience of the applicant and on his request make several declara- 25 tions in respect of different portions of such land.

Power of Court to accept indemnity.

21. Where in any proceeding with respect to land under this Act it appears to the Court that the land is subject to any uncertain or doubtful claims or to any uncertain or doubtful incumbrances capable of being compensated by money and not involving any right to possess the 30 land itself otherwise than as a security for money the Court may upon such amount of money being paid in manner hereinafter mentioned as will in the opinion of the Court be sufficient compensation for such claims or incumbrances and for all costs charges and expenses that may be incurred by the claimants or incumbrancers in recovering the monies due to them 35 declare the Title to any land to be established without reference to such claims or incumbrances.

Mode in which indemnity to be paid.

22. Any monies payable in respect of such compensation as aforesaid may if the Court direct be paid to Trustees approved of by the Court to such account as the Court may direct and the Court may also direct 40 such monies to be invested in such securities as it thinks fit on an application being made by any parties interested in such monies.

Distribution of purchase monies.

23. The Court shall determine the rights and priorities of the several persons entitled to or interested in any monies so paid and shall distribute the monies among such persons in accordance with such rights 45 and priorities ~~rendering the surplus if any to the parties entitled thereto their executors administrators or assigns.~~

Appropriation of monies not immediately distributed.

24. Where any money paid in pursuance of this Act is not immediately distributable or the parties entitled thereto cannot be ascertained or where from any other cause the Court thinks it expedient for 50 the protection of the rights of the parties interested therein it may order such money to be transferred to such account as the Court directs in trust to attend the orders of the Supreme Court in Equity And the Land Titles Court may by its order declare the Trusts affecting such money so far as it has ascertained the same or state the facts or matters found by it in 55 relation to the rights and interests therein and the Supreme Court in Equity may make such orders with respect to any such monies and the investment or application thereof or the payment thereof out of Court as the circumstances of the case require.

Costs to be in the discretion of the Court.

25. All costs charges and expenses incurred by any parties in or 60 about any proceedings under this Act shall be taxed as between solicitor and client but the payment thereof shall be in the discretion of the Court regard

regard being had by the Court to the fact that any applicant under this Act is liable *primâ facie* to pay all costs charges and expenses incurred by or in consequence of his application except in a case where parties appear whose rights are sufficiently secured without their appearance or where any costs charges or expenses are incurred unnecessarily or improperly.

26. When a declaration establishing the title of any person to land has been made final all such deeds and evidences of title delivered to the Court as relate exclusively to the land and are of no avail except for the purpose of substantiating the title shall be retained by the Court but all other deeds and evidences of title delivered to the Court relating to the land or to any part thereof shall be returned to the parties entitled to the custody thereof but previously to their being so returned shall be stamped or otherwise marked in such manner as to give notice to any person inspecting the same of the proceedings taken by the Court in relation to the land or any portion of the land comprised therein.

27. Any person having or claiming such an interest in land as entitles him to object to any disposition thereof being made without his consent may lodge a Caution with the Court to the effect that the cautioner is entitled to notice of any proceedings that may be instituted in the Court with respect to such land.

28. Every such Caution shall be supported by an affidavit in such form as the Court directs stating the nature of the interest of the cautioner and such other matters as may be required by the Court and containing the name of the cautioner and also some address in the Colony where he may be served with notice of any proceedings that may be instituted in the Court.

29. Notice may be served on the cautioner either personally or by sending it through the post in a pre-paid registered letter marked outside "Land Titles Court" addressed to the cautioner at the address appointed by him for service of notices and such notice if served by post shall unless returned be deemed to have been served on the cautioner at the time when it would be delivered to him in the ordinary course of the post but no proceeding shall be taken on the faith of such notice having been duly served until the expiration of such period not less than five ten days exclusive of the day of posting as the Court may by general or any special order appoint.

30. The Postmaster General shall give directions for the immediate return to the Secretary of all letters marked as aforesaid and addressed to any person who cannot be found.

31. No purchaser for valuable consideration shall be affected by the omission to send or by the non-receipt of any notice by this Act directed to be given.

32. After a Caution has been lodged no declaration of title shall be made or be made absolute or final in the case of any land to which such caution refers until notice has been served on the cautioner to appear and oppose the same if he thinks fit and ~~twenty one~~ sixty days have expired since the date of the service of such notice or the cautioner has entered an appearance which may first happen.

33. If any person lodges a caution with the Court without reasonable cause he shall be liable to make to any person who may have sustained damage by the lodging of such caution such compensation as may be just and such compensation shall be recoverable in any action at law by the person who has sustained damage from the person who has so lodged the caution.

34. A caution lodged in pursuance of this Act shall have no effect whatever, except that of entitling the cautioner to receive such notice as is herein-before mentioned of proceedings being instituted in the Court.

35. Any person intervening as principal or agent in any proceeding before the Court for a declaration establishing any title to land who shall with intent to conceal from the Court the title or claim of any person other

other than the applicant to such land shall fraudulently suppress assist in suppressing or be privy to the suppression of any document in his possession or any fact within his knowledge shall be guilty of a misdemeanor and upon conviction shall be liable at the discretion of the Court by which he is convicted to be kept to hard labour on the public roads for a term not exceeding *three* years or to be imprisoned for a term not exceeding *two* years with or without hard labor or to be fined such sum as the Court may award not exceeding pounds And any declaration of title in respect of such land made by the Court shall be void as against all persons guilty of any such misdemeanor. 5 10

CLAUSE J.
Penalty on fraudulent alterations, &c.

36. Any person intervening in any proceeding before the Court for a declaration establishing the title of any person to land who shall fraudulently alter assist in fraudulently altering or be privy to the fraudulent alteration of any deed will certificate or other document relating to such land or shall give assist in giving or be privy to the giving of any false information to the Court in respect of such land knowing the same to be false shall be guilty of a misdemeanor and upon conviction shall be liable at the discretion of the Court by which he is convicted to be kept to hard labor on the public roads for a term not exceeding *three* years or to be imprisoned for a term not exceeding *two* years with or without hard labor or to be fined such sum as the Court may award not exceeding pounds And any declaration of title in respect of such land shall be void as against all persons guilty of any such misdemeanor. 15 20

Conviction not to effect civil remedy.

37. No proceeding or conviction for any offence hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved by such offence may be entitled to either at law or in equity against the person who has committed such offence. 25

Nothing in Act to exclude obligation to make discovery.

38. Nothing in this Act contained shall entitle any person to refuse to make a complete discovery by answer to any Bill in Equity or to answer any question or interrogatory in any civil proceeding in any Court of Law or Equity or Insolvency But no answer to any such bill question or interrogatory shall be admissible in evidence against such person in any criminal proceeding. 30

Establishment of Court.

39. A Court to be called the Land Titles Court shall be established for the purpose of carrying into effect the provisions of this Act And shall consist of two Judges one of whom shall be Chief Judge And the said Judges shall be appointed by the Governor with the advice of the Executive Council and shall hold their offices during good behaviour but may be removed on an Address presented to the Governor by both Houses of Parliament And the said Chief Judge shall be and be deemed also a Judge of the Supreme Court of New South Wales to all intents and purposes and shall be appointed Judge of the said Land Titles Court and of the said Supreme Court by the Governor by Commission under the Great Seal of this Colony in the name and for and on behalf of Her Majesty, 40 45

Qualification of Judges.

40. No person shall be appointed a Judge of the Court unless he is a practising barrister of ten England Ireland or of this Colony of five years standing at the least or a practising solicitor of fifteen seven years standing at the least.

Oath of Judges.

41. Every Judge of the Court shall before he enters upon the execution of his office take in the presence of one of the Judges of the Supreme Court the following oath—
“I A.B. do swear that I will faithfully impartially and honestly according to the best of my skill and judgment fulfil all the powers and duties of a Judge under the “Land Titles Declaration Act of 1859 1860.” 50 55

Precedence of Judges.

42. The Judges of the Court shall rank immediately after the Puisne Judges of the Supreme Court.

Enumeration of Officers of Court.

43. 42. There shall be appointed for the purposes of this Act one Secretary one Taxing Officer one Accountant and such number of clerks local agents messengers and servants as the Court with the sanction of the Colonial Treasurer thinks Governor with the advice of the Executive Council shall think fit. 60 44.

44. 43. The Secretary Taxing Officer Accountant local agents clerks messengers and servants of the Court shall be appointed by the Court and may be removed by the Court and others appointed in their stead if the Court is of opinion that that they are negligent unskilful or untrustworthy in the performance of their duties or ought to be removed for any other just cause of which the Court shall be the sole Judge.

Appointment of Secretary and other Officers.

45. 44. There shall be paid to the Chief Judge a salary of pounds a-year—to the other Judge a salary of pounds a-year which sum shall not be diminished during the continuance of such persons in their said offices—and to the Secretary Taxing Officer Accountant local agents clerks messengers and servants such salaries or other remuneration as the Court with the sanction of the Colonial Treasurer Governor with the advice of the Executive Council may determine.

Amount of Salaries &c.

46. 45. The Governor with the advice of the Executive Council may by Letters Patent under the Seal of the Colony grant to any Judge of the Court who has served for fifteen years as a Judge or is disabled by permanent infirmity from the performance of the duties of his office a pension by way of annuity not exceeding seven-tenths of his salary to continue during his life.

Retiring pension of Judges.

47. 46. The Court shall be a Court of Record and shall cause to be prepared a Seal of which judicial notice shall be taken and all documents purporting to be sealed therewith shall be admissible in evidence.

Court to be a Court of Record and have Seal.

48. 47. The Court shall by notice published in the *Gazette* appoint a day not later than the of one thousand eight hundred and sixty on and after which the Court will be prepared to entertain applications under this Act.

Court to appoint time for commencement of proceedings.

49. 48. All Courts Judges and persons acting judicially shall take judicial notice of the signature of either Judge of the Court or of the Secretary of the Court.

Judicial notice of signature of Judges and Registrar.

50. 49. The concurrence of both the Judges of the Court shall be essential to a declaration of title but with that exception all powers by this Act given to the Court may be exercised by one Judge And if in any case the Judges differ as to the propriety of making any order or doing any act such order shall be deemed to have been refused and such Act shall be left undone.

Powers of Court how to be exercised.

51. 50. The Minister for Public Works Governor with the advice of the Executive Council shall provide a convenient place for the sittings of the Court with convenient offices for the transaction of business by the Court and its officers And the Court shall hold its sittings at the place so provided and at such times as may from time to time be appointed by the Court.

Place and times of sitting.

52. 51. The Judges of the Court may sit in Chambers either together or separately for the despatch of business and when in Chambers shall have the same jurisdiction and exercise the same powers as if sitting in open Court.

Judges may sit in Chambers.

53. 52. The Judges of the Court shall sit together in open Court for the determination of such questions arising upon the examination of titles as may be reserved by them for discussion in open Court.

When Court shall sit in open Court.

54. 53. No person shall be entitled to appear for any other party in any proceeding in the Court unless he is a Barrister at Law or a Solicitor of the Supreme Court and all Barristers and Solicitors of the Supreme Court shall enjoy the like privileges in the Land Titles Court and be subject to the authority of the Court in like manner as they respectively enjoy and are subject to in the Supreme Court.

Privileges of Barristers and Solicitors.

55. 54. The Court may review rescind or vary any order made by it in pursuance of this Act No appeal shall lie from any refusal of the Court to entertain an application for establishment of title or to establish a title but any person aggrieved by any other Order of the Court may appeal to the Supreme Court sitting in Banco in such manner within

Appeal.

within such time and subject to such regulations and limitations as the Land Titles Court and the Chief Justice may prescribe and any order made on appeal from the Court shall be subject to reversal or modification by the Privy Council in England in the same manner and with the same incidents in and with which orders made by the Supreme Court on Appeals within the ordinary jurisdiction of such Court are subject to be reversed or modified. 5

Powers of Court.

56- 55. The Court may examine any witnesses on oath and shall have all like powers rights and privileges as are vested in the Supreme Court with respect to the following matters :—

(1.) Enforcing the attendance of witnesses and the production of deeds books papers and documents. 10

(2.) Issuing any Commission for the examination of witnesses or causing witnesses to be examined before any tribunal other than the Court. 15

(3.) Punishing persons refusing to give evidence or guilty of contempt.

(4.) Enforcing any order whatever lawfully made by the Court or either Judge thereof.

Penalty for false swearing.

57- 56. Every person who upon examination before the Court or either Judge thereof or any person authorized under this Act to take evidence wilfully gives false evidence and every person who wilfully swears affirms or declares falsely in any affidavit authorized under this Act to be received in evidence shall be liable to the pains and penalties of perjury. 20

Court or suitors not to be restrained by other Courts.

58- 57. The Court shall not be restrained in the execution of any of its powers under this Act nor shall any person be restrained from making an application under this Act to the Court or doing any other act or giving any consent under the provisions of this Act by order of any other Court or by any other legal process nor shall the Court be required by Writ of Mandamus or any writ of a like nature to do any act or take any proceeding under this Act nor shall any proceeding before the Court be removable by *certiorari* or other writ of a like nature. 25 30

Proceedings not to abate by death, &c.

59- 58. No proceeding before the Court shall abate or be suspended by any death or transmission or change of interest but in any such case it shall be lawful for the Court when it sees fit to require notice to be given to persons becoming interested or to make any order for discontinuing suspending or carrying on the proceeding or otherwise in relation thereto which to the Court appears just. 35

Court to frame and promulgate forms of application, &c.

60- 59. The Court shall frame and cause to be printed and circulated or otherwise promulgated as it sees occasion forms of applications and directions indicating the particulars of the information to be furnished to the Court when any application is made to it under this Act with reference to title incumbrances and the circumstances of land and such other information as in the judgment of the Court may assist it in forming an opinion on such application and also such other forms and directions as the Court may deem requisite or expedient for facilitating proceedings under this Act. 40 45

Power of Court to frame rules.

61- 60. The Court shall with the concurrence of the Chief Justice frame rules for regulating the course of procedure under this Act and generally for the due execution of the powers vested in the Court under and for giving full effect to the objects of this Act. 50

Effect of rules and power to alter.

62- 61. Any rules so made upon being published in the *Gazette* shall have the full force of law and shall be laid before Parliament forthwith if in session or if not within fourteen days after the opening of the next session.

Rules to be laid before Parliament.

Court to determine amount of payments to be made, &c.

63- 62. The Court shall with the concurrence of the Chief Justice from time to time determine the amount of fees to be paid with respect to the following matters :— 55

(1.) Obtaining a declaration that a title is established.

(2.) The institution and conduct of any proceedings relating to land and obtaining copies of such proceedings or of other documents in the custody of the Court. 60

(3.) Generally with respect to any other matters to be done by the Court or any officer thereof.

And

Land Titles Declaration Bill—1859.

And all fees so paid shall be handed over the Colonial Treasurer and by him carried to the account of the Consolidated Revenue Fund of the Colony.

64. In determining the amount of fees payable in respect of any proceedings as to land under this Act regard shall be had to the value of the land as ascertained in such manner as the Court by any general order directs subject nevertheless to the following limitations:

- (1.) The amount of fees payable shall not in any case exceed five per cent. on the value of the land:
- (2.) A maximum value shall be fixed and in the case of any estate exceeding such maximum value the Court may make payable in respect of such excess fees on such reduced scale as the Court thinks expedient.

63. In determining the amount of fees payable in respect of any proceedings as to land under this Act regard shall be had to the value of the land as ascertained in such manner as the Court by any general order directs subject nevertheless to the following limitations:

The amount of such fees in any case where the value of such land—			
Shall not exceed £100		Shall not exceed £5.	
20	Shall exceed £100 and not exceed £300	shall not exceed £10.	
	" 300	" 500	" 15
	" 500	" 1,000	" 20
	" 1,000	" 2,000	" 30
	" 2,000	" 5,000	" 40
25	" 5,000 and upwards 50

64. If any person shall sustain any damage loss or injury by reason of any mistake omission or error which may happen or be made in or respecting the making of any final declaration under this Act the person aggrieved his heirs executors or administrators may bring an action against the Colonial Treasurer of the Colony and the person by or in whose favor any such final declaration shall be so obtained or made his heirs executors or administrators if resident in the Colony but if not then against the Colonial Treasurer alone to recover full compensation for any such damage loss or injury and upon proof of such damage loss or injury the plaintiff in such action shall recover such compensation as aforesaid against the defendants therein And in every such action it shall be lawful for the Colonial Treasurer and his co-defendant or either of them to plead in bar any tender which may have been made on paying into Court in the usual way according to the practice of the Court the amount of the money tendered or to pay money into Court and plead such payment in bar of the further maintenance of the action and whichever party shall succeed in such action shall be entitled to costs to be awarded and recovered according to the practice of the Court Provided that the Colonial Treasurer shall be reimbursed out of the Consolidated Revenue of the Colony all moneys which he may pay or incur for or in respect of damages or costs in any such action Provided also that in all such cases the Colonial Treasurer shall be entitled to recover by action in the Supreme Court from the person by whom or in whose favor such final declaration shall be obtained or made his heirs executors or administrators all moneys which he may so pay or incur as last aforesaid with costs of suit.

65. In order to create an indemnity fund to the Government for or towards meeting the liabilities created by the preceding section there shall in addition to the fees of Court be payable upon the issue of any final declaration the sum of in the pound on the estimated value of the land in respect of which such declaration shall be made and no such declaration shall be issued or take effect until payment thereof and the same shall be paid over to the Colonial Treasurer and by him carried to the account of the Consolidated Revenue Fund of the Colony and such value shall be ascertained in like manner as hereinbefore provided in respect of fees of Court.

Power for Court to state case for Supreme Court or to direct issue.

65. 66. Whenever in any proceeding under this Act there arises any question of law or fact which cannot in the opinion of the Court be conveniently disposed of by it the Court may if such question is one of law direct a case to be stated for the opinion of the Supreme Court sitting in Banco or if such question is one of fact an issue to be tried before a jury 5 and may name the parties to such case or issue and the manner in which the proceedings in relation thereto are to be brought before the Court or Jury to which such case or issue is referred.

Effect of opinion of Supreme Court or decision of Jury.

66. 67. The opinion of the Supreme Court upon any matter of law so referred shall be conclusive on all the parties to such case unless the 10 Land Titles Court directs a rehearing or appeal to be had and the decision of any Jury to whom any issue of fact is referred shall be conclusive on all persons whomsoever unless the Land Titles Court otherwise directs.

Application to Judge of Supreme Court in respect of incapacitated persons whose interest Judge may bind.

67. 68. In cases where any infants incapable persons or persons yet unborn are interested in the land in respect of the title to which any 15 question of law or fact arises as aforesaid any parties interested in such land may apply to any Judge of the Supreme Court in Chambers for a direction that the opinion of the Supreme Court upon any question so referred shall be conclusively binding on all parties interested in such land And the Judge in Chambers shall hear the allegations of all parties 20 appearing before him and may disapprove altogether or may approve either with or without modification of the directions of the Court in respect to any case to be tried as to the title of land And he may also appoint a guardian or other person to appear on behalf of any infants incapable or unborn persons But if he is satisfied that the interests of 25 such infants incapable or unborn persons will be sufficiently represented in any case so about to be tried he shall make an order declaring that all or some of such parties shall be conclusively bound and thereupon the parties in that behalf named in the order shall be conclusively bound by any decision of the Supreme Court to the same extent as if they had 30 been parties to the case.

Court of Claims abolished Repeal of Acts 5 William 4 No. 21 6 Vic. No. 11 18 Vic. No. 11 and part of 22 Vic. No. 1.

69. The Court of Commissioners to hear and determine upon claims to grants of Crown Land established by the Act fifth William 40 fourth number twenty-one is hereby abolished and the said Act and also the Acts sixth Victoria number eleven and eighteenth Victoria 35 number eleven and so much of the ninth section of the "Titles to Land" "Act of 1858" as authorizes any inquiry by the said Commissioners are hereby repealed and the Land Titles Court established by this Act shall have all the like powers and authorities and shall perform the like duties as by and under the said Acts are now vested in and may 40 be exercised and are required to be performed by the said Commissioners.

Duties and powers of that Court transferred to Court under this Act.

LAND TITLES DECLARATION BILL.

ARRANGEMENT OF CLAUSES.

1. Short Title of Act.
2. Fee simple owner may apply for declaration of Title.
3. Mode of application.
4. Notice to be given by the Court.
5. Contents of notice.
6. Security for costs.
7. Modification where the land subject to incumbrances.
8. Exclusion of certain charges from the definition of incumbrances.
9. Examination of Title by Court.
10. Power of Court to annex conditions.
11. Advertisement of provisional declaration.
12. Court to hear persons opposing.
13. Confirmation of provisional declaration.
14. Effect of declaration.
15. Evidence of declaration of Title.
16. Part owners making together a complete ownership may apply for establishment of Title.
17. Trustee may apply for establishment of Title.
18. Possession consistent with settlement to be deemed possession of Trustee.
19. Supreme Court in Equity may remit case of sale to Landed Estate Court.
20. Power of Court to make several declarations.
21. Power of Court to accept indemnity.
22. Mode in which indemnity to be paid.
23. Distribution of purchase moneys.
24. Appropriation of moneys not immediately distributed.
25. Costs to be in the discretion of the Court.
26. Disposition by Court of deeds.
27. Power to lodge caution against proceedings in Court.
28. Caution to be supported by affidavit.
29. Notice how served.
30. Directions in case of service by post.
31. Purchaser not affected by omission to send notice.
32. Effect of caution.
33. Compensation for improper lodging of caution.
34. Caution only to entitle the cautioner to notice.
35. Penalty on suppression of deeds and evidence.
36. Penalty on fraudulent alterations &c.
37. Conviction not to affect civil remedy.
38. Nothing in Act to exclude obligation to make discovery.
39. Establishment of Land Titles Court.
40. Qualification of Judges.
41. Oath of Judges.
42. Officers of Court.
43. Appointment of Secretary and other officers.
44. Amount of Salaries &c.
45. Retiring pension of Judges.
46. Court to be a Court of Record and have Seal.
47. Court to appoint time for commencement of proceedings.
48. Judicial notice to be taken of signature of Judges and Registrar of Court.
49. Powers of Court how to be exercised.
50. Place and times of sittings of Court.
51. Judges may sit in Chambers.
52. When Court to sit in open Court.
53. Privileges of Barristers, Solicitors, and Certificated Conveyancers.
54. Appeal from Court.
55. Powers of Court.
56. Penalty for false swearing.
57. Court or suitors not to be restrained by other Courts.
58. Proceedings not to abate by death &c.
59. Court to frame and promulgate forms of application &c.
60. Court to frame rules.
61. Effect of rules and rules to be laid before Parliament.
62. Court to determine amount of payments to be made &c.
63. Principle on which fees to be determined.
64. Indemnity to persons aggrieved by certificates erroneously issued.
65. Indemnity Fund.
66. Power for Land Court to state case for Supreme Court or direct issue.
67. Effect of opinion of Supreme Court or decision of jury.
68. Application to Judge of Supreme Court in respect of incapacitated persons whose interests Judge may bind.
69. Court of Claims abolished Repeal of Acts 5 William 4 No. 21 6 Vic. No. 11 18 Vic. No. 11 and part of 22 Vic. No. 1.

