

## A BILL

### To ascertain and declare Titles to Land.

[MR. HARGRAVE ;—9 October, 1861.]

**W**HEREAS it is expedient to afford effectual means for ascertaining Preamble.  
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  
5 assembled and by the authority of the same as follows :—

1. Every person entitled for his own benefit to an estate in fee Fee simple owner  
may apply for decla-  
ration of title.  
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  
and Claims Court constituted by this Act and hereinafter styled "the  
10 Court" for a Declaration that he has established his title to such land.

2. 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  
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 pro-  
15 ceeding 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 five years immediately prior to the date of application.

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



## Contents of Notice.

4. 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 and shall call the attention of all parties interested in the land to the subject matter of the application pending before the Court and invite incumbrancers and other persons having any interest in the land capable of being affected by a declaration under this Act 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. 10

## Security for costs.

5. The Court shall before taking any proceeding 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.

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

## Exclusion of certain charges from the definition of incumbrances.

7. 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. 25

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.

8. The Court if it entertains the application shall by means of local agents or in such other way as the Court thinks fit 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 shewn to such land or to any part thereof and with the result of such inquiry made the Court shall make a provisional declaration that the applicant has established his title to the whole or such part for the purpose of any disposition made in favour of a purchaser for valuable consideration subject to 30



to any incumbrance 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.

9. The Court may annex conditions to any such provisional declaration by requiring the applicant to give any indemnity or to obtain any consents or otherwise to act as the Court directs And may also reserve in such provisional declaration the rights of any person or classes of persons.

Power of Court to annex conditions.

10. 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 as aforesaid or by otherwise publishing the fact of such declaration stating in such notice the intention of the Court to confirm the same at some specified time not earlier than 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 also the time and manner at and in which opposing parties may be heard to shew 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 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.

Advertisement of provisional declaration.

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

Court to hear persons opposing.

12. The Court after hearing any parties desirous of being heard against the provisional declaration may by a further order annul the same or make it absolute with or without modifications or additions And if made absolute an appeal against the order making the same absolute may be lodged with the Court of Appeal hereinafter mentioned 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

Confirmation of provisional declaration of title.

tions



tions And where no appeal is lodged at the expiration of such period of *three* months the declaration shall be made final by order of the Court and where an appeal is lodged within such period 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 5 this Act be deemed not to have been lodged.

Effect of declaration.

13. Whenever an absolute declaration establishing the title of any person to land has been made final every purchaser for 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 10 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 declaration to such charges and interests if any as are hereinbefore declared not to be 15 incumbrances but free from all other estates incumbrances and interests whatsoever including all estates interests and claims of the Crown.

Evidence of declaration.

14. 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 under seal of the order making the declaration final 20 shall in all Courts be evidence of the declaration.

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

15. Any two or more persons entitled for their own benefit 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 25 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 hereinbefore enacted that any individual owner in fee may have his title established.

Trustee may apply for establishment of title.

16. 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 30 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 and shall unless the Court otherwise order be deemed to be costs charges and expenses incurred by him in the execution of his trust or in pursuance 35 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 be liable to any account in equity in respect thereof And when a final declaration



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

17. 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 10 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.

18. 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 15 interested in such sale remit the case to the Land Titles and Claims Court for the purpose of carrying into effect such portion of the order as relates to a sale And that Court shall thereupon examine the title and may if satisfied therewith regard being had to the circumstances of the case and to the 20 order made by the Supreme Court make a final declaration establishing the title of any person to the land and 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 Land Titles and Claims Court.

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

Court may make several declarations or conveyances.

20. 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 30 doubtful claims or 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 in the opinion of the Court be sufficient compensation for such claims or incumbrances and for all 35 costs charges and expenses that may be incurred by the claimants or incumbrancers in recovering the moneys due to them declare the title to be established without reference to such claims or incumbrances.

Court may accept indemnity.



Mode in which indemnity to be paid.

21. Any moneys 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 moneys to be invested in such securities as it thinks fit on an application being made by any parties interested in such moneys.

5

Distribution of purchase moneys.

22. The Court shall determine the rights and priorities of the several persons entitled to or interested in any moneys so paid and shall distribute the moneys among such persons in accordance with such rights and priorities.

Appropriation of moneys not immediately distributed.

23. 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 to attend the orders of the Supreme Court in Equity And the Land Titles and Claims 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 moneys and the investment or application thereof or the payment thereof out of Court as the circumstances of the case require.

Costs to be in discretion of Court.

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

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Disposition by Court of deeds.

25. 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 or delivered to the parties entitled to the custody thereof but previously thereto 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.

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26. 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 proceeding that may be instituted in the Court with respect to such land.

Power to lodge caution against proceedings in Court.

27. 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 every proceeding that may be instituted in the Court relating to the land in question.

Caution to be supported by affidavit.

28. 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 and Claims 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 by the Postmaster 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 ten days exclusive of the day of posting as the Court may by general or special order appoint.

Notice how served.

29. 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.

30. 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.

Purchaser not affected by omission to send notice.

31. After a caution has been lodged no declaration of title provisional absolute or final shall be made 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 sixty days shall have expired after the date of the service of such notice or the cautioner has entered an appearance whichever may first happen.

Effect of caution.

32. 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.

Compensation for improper lodging of caution.



Caution only to entitle the cautioner to notice.

33. 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 hereinbefore mentioned of proceedings being instituted in the Court.

Penalty on suppression of deeds and evidence.

34. Any person intervening as principal or agent in any proceeding before the Court for a declaration establishing any title to land who with intent to conceal from the Court the title or claim of any person 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 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 such Court may award not exceeding                      pounds And any declaration of title in respect of such land made by the Land Titles and Claims Court shall be void as against all persons convicted of any such misdemeanor.

Penalty on fraudulent alterations &c.

35. 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 such Court may award not exceeding                      pounds And any declaration of title in respect of such land shall be void as against all persons convicted of any such misdemeanor.

Conviction not to affect civil remedy.

36. 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.

Nothing in Act to exclude obligation to make discovery.

37. 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.



38. The Court for the purposes of this Act shall be the Court of <sup>Constitution of Court</sup> Commissioners of Claims to Grants of Land as constituted and appointed at the passing of this Act under the Act fifth William the Fourth number twenty-one which Court shall thenceforth be designated the “Land Titles 5 and Claims Court.”

39. The President and Commissioners of the said Court shall upon <sup>Appointment and tenure of office of President and Commissioners.</sup> every respective vacancy be appointed by the Governor by Commission under the Seal of the Colony and every President and Commissioner of the said Court shall hold his office during good behaviour but may be removed 10 therefrom on an Address presented to the Governor by both Houses of Parliament Provided that no person shall be appointed such President or Commissioner unless he be a Barrister having practised as such in the Colony for five years at the least next preceding his appointment.

40. Every President and Commissioner of the said Court shall <sup>Oath of President and Commissioners.</sup> 15 before he enters upon the execution of his office under this Act take before 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 President [or a Commissioner]  
20 “ of the Land Titles and Claims Court. ”

41. It shall be lawful for the Governor upon any vacancy in the <sup>Officers of Court.</sup> office of Secretary to the said Court to appoint a Secretary thereto and also from time to time as occasion shall require to appoint a Taxing Officer Accountant and such other officers and servants as the Governor 25 shall think fit.

42. The President Commissioners and Officers of the Court shall <sup>Remuneration.</sup> be remunerated for their duties under this Act by fees according to the scale set forth in the Schedule hereto.

43. The Court shall be a Court of Record and shall cause to be <sup>Court to be a Court of Record and have Seal.</sup> 30 prepared a Seal of which judicial notice shall be taken and all documents purporting to be sealed therewith shall be admissible in all Courts in evidence.

44. The Court shall by notice published in the *Gazette* appoint a <sup>Court to appoint time for commencement of proceedings.</sup> day not later than the first of February one thousand eight hundred 35 and sixty-two on and after which the Court will be prepared to entertain applications under this Act.

45. All Courts Judges and persons acting judicially shall take <sup>Judicial notice of signature of President and Commissioners.</sup> judicial notice of the signature of the President or other Commissioner of the Court or of the Secretary.



Powers of Court how  
to be exercised.

46. The concurrence of the President and one of the Commissioners 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 the President only or the two Commissioners jointly And if in any case such two Commissioners differ as to the propriety of making any order or 5 doing any act such order or act shall be deemed not to have been made or done.

Place and times of  
sitting.

47. The 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 10 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.

President and Com-  
missioners may sit in  
Chambers.

48. The President and Commissioners 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 15 in open Court.

When to sit in open  
Court.

49. The President and one at least of the Commissioners 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. 20

Privileges of Bar-  
risters and Solicitors.

50. No person shall be entitled to appear for any 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 in other respects enjoy the like privileges in the Court and be subject to the authority of the Court in like manner as they respectively 25 enjoy and are subject to in the Supreme Court.

Appeal.

51. The Court may in open Court review rescind or vary any order made by it or any Member of it in pursuance of this Act And any person aggrieved by any Order of the Court may appeal to the Supreme Court sitting in Banco in such manner within such time and subject to such 30 regulations and limitations as the Land Titles and Claims Court and the Chief Justice may prescribe Provided that no appeal shall lie from any refusal of the Court to entertain an application for establishment of title or to establish a title Provided also that any order made by the Supreme Court on appeal from the Land Titles and Claims Court shall be subject 35 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.



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

- 5 (1.) Enforcing the attendance of witnesses and the production of deeds books papers and documents.
- (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.
- 10 (4.) Enforcing any order whatever lawfully made by the Court.

53. Every person who being examined before the Court or the <sup>Penalty for false swearing.</sup> President or either Commissioner thereof or by any person authorized under the next preceding section to take evidence wilfully gives false evidence and every person who wilfully swears affirms or declares falsely 15 in any affidavit authorized under this Act to be received in evidence shall be liable to the pains and penalties of perjury.

54. The Court shall not be restrained in the execution of any of its <sup>Court or suitors not to be restrained by other Courts.</sup> 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 20 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 55. No proceeding before the Court shall abate or be suspended <sup>Proceedings not to abate by death &c.</sup> 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 30 which to the Court appears just.

56. The Court shall frame and cause to be printed and circulated <sup>Court to frame and promulgate forms of application &c.</sup> 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 35 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 57. The Court shall with the concurrence of the Chief Justice <sup>Court to frame rules.</sup> 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. 58.



Legal effect of rules.

Rules to be laid before Parliament.

Court to determine amount of payments to be made &amp;c.

58. All rules so made upon being published in the *Gazette* shall have the 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.

59. 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.
- (2.) The institution and conduct of any proceeding relating to land and obtaining copies of such proceedings or of other documents in the custody of the Court. 10
- (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 to the Colonial Treasurer and by him carried to a separate fund to be called the Land Titles Fund out of which shall be primarily applicable to the payment of the fees payable to 15 the President and Commissioners and the other expenses of carrying this Act into effect.

Principle on which fees to be determined.

60. In determining the amount of fees payable in respect of any proceedings under this Act as to land regard shall be had to the value of the land as ascertained in such manner as the Court by any general order 20 shall direct subject nevertheless to the following limitations :—

The amount of such fees in any case where the value of such land—

Does not exceed £100                      Shall not exceed £5.

Exceeds £100 and does not exceed £300 shall not exceed £10.

„ 300	„ 500	„ 15	25
„ 500	„ 1,000	„ 20	
„ 1,000	„ 2,000	„ 30	
„ 2,000	„ 5,000	„ 40	
„ 5,000 and upwards	.. ..	.. 50	

Indemnity to persons aggrieved by certificates erroneously issued.

61. If any person shall sustain any damage loss or injury by 30 reason of any mistake omission or error which may happen or be made in or respecting 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 also against the person by or in whose favour any such final declaration shall be so obtained or 35 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



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  
5 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  
10 Fund 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 favour such final declaration shall have been obtained or made his heirs executors or administrators all  
15 moneys which he may so pay or incur as last aforesaid with costs of suit.

62. In order to create an indemnity fund to the Government for Indemnity fund.  
or towards meeting the liabilities created by the next 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  
20 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 herein-  
25 before provided in respect of fees of Court.

63. Whenever in any proceeding under this Act there arises any Court may state case  
question of law or fact which cannot in the opinion of the Court be con- for Supreme Court  
veniently disposed of by it the Court may if such question is one of law or direct issue.  
direct a case to be stated for the opinion of the Supreme Court sitting in  
30 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 Jury to which such case or issue is referred.

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



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

65. 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 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 such 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 appoint a guardian or other person to appear on behalf of any infants or 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 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.

Short Title.

66. This Act shall be styled and may be cited as "The Land Titles Declaration Act of 1861."

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Legislative Council.

25<sup>o</sup> VICTORIÆ, 1861.

## 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 Preamble.  
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  
5 assembled and by the authority of the same as follows :—

1. 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-  
benefit of an estate in fee simple in land may apply to the Land Titles ration of title.  
and Claims Court constituted by this Act and hereinafter styled "the  
10 Court" for a Declaration that he has established his title to such land.

2. 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  
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 pro-  
15 ceeding 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 five years immediately prior to the date of application.

20 3. The Court upon being satisfied in manner aforesaid of there Notice to be given  
being *primâ facie* evidence for proceeding in the matter shall give public by the Court.  
notice of the application having been made and of the intention of the  
c 11—A Court

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



Court to entertain the same by advertisement in the *Gazette* and in any and such other newspaper 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.

4. 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 and shall call the attention of all parties interested in the land to the subject matter of the application pending before the Court and invite incumbrancers and other persons having any interest in the land capable of being affected by a declaration under this Act 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.

Security for costs.

5. The Court shall before taking any proceeding 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.

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

Exclusion of certain charges from the definition of incumbrances.

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

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.

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.

8. The Court if it entertains the application shall by means of local agents or in such other way as the Court thinks fit 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 shewn to such land or to any part thereof and with the result of such inquiry made the Court shall make a provisional declaration that the applicant has established his title to the whole or such part for the purpose of any disposition made in favour of a purchaser for valuable consideration subject to any incumbrance 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.

Power of Court to annex conditions.

9. The Court may annex conditions to any such provisional declaration by requiring the applicant to give any indemnity or to obtain any consents or otherwise to act as the Court directs. And may also reserve in such provisional declaration the rights of any person or classes of persons.

Advertisement of provisional declaration.

10. 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 as aforesaid or by otherwise publishing the fact of such declaration stating in such notice the intention of the Court to confirm the same at some specified time not earlier than 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 also the time and manner at and in which opposing parties may be heard to shew 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 in the same and of the right of parties



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.

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

12. The Court after hearing any parties desirous of being heard  
 15 against the provisional declaration may by a further order annul the same Confirmation of pro-  
 or make it absolute with or without modifications or additions And if made  
 provisional declaration  
 of title.  
 absolute an appeal against the order making the same absolute may be  
 lodged with the Court of Appeal hereinafter mentioned 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 addi-  
 tions And where no appeal is lodged at the expiration of such period of  
 three months the declaration shall be made final by order of the Court and  
 where an appeal is lodged within such period the declaration shall not be  
 deemed final until made so by order of the Court of Appeal Provided  
 25 that an appeal lodged and afterwards abandoned shall for the purposes of  
 this Act be deemed not to have been lodged.

13. Whenever an absolute declaration establishing the title of any  
 person to land has been made final every purchaser for valuable considera-  
 tion of the land mentioned in such declaration or of any part thereof or of  
 30 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 reser-  
 vations 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 declaration to  
 35 such charges and interests if any as are hereinbefore declared not to be  
 incumbrances but free from all other estates incumbrances and interests  
 whatsoever including all estates interests and claims of the Crown.

14. Every final declaration shall be deemed to have been duly  
 made and shall not be set aside by reason of any informality whatever  
 Evidence of declara-  
 tion.  
 40 and an office copy under seal of the order making the declaration final  
 shall in all Courts be evidence of the declaration.

15. Any two or more persons entitled for their own benefit  
 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  
 Part owners making  
 up complete owner-  
 ship may apply for  
 establishment of  
 title.  
 45 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 hereinbefore  
 enacted that any individual owner in fee may have his title established.

16. Any trustee of land with power to sell and any fiduciary donee  
 50 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  
 and shall unless the Court otherwise order be deemed to be costs charges  
 55 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  
 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 land any purchaser for valuable consideration thereof or of any part thereof or of any interest therein 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.

17. 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 Land Titles and Claims Court.

18. 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 and Claims Court 15 for the purpose of carrying into effect such portion of the order as relates to a sale And that Court shall thereupon examine the title and may if satisfied therewith regard being had to the circumstances of the case and to the order made by the Supreme Court make a final declaration establishing the title of any person to the land and such declaration shall have the 20 same effect as if it had been made on an application to the Court under this Act.

Court may make several declarations or conveyances.

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

Court may accept indemnity.

20. 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 incumbrances capable of being compensated by money and not involving any right to possess the land itself otherwise than as 30 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 moneys due to them declare the title to 35 be established without reference to such claims or incumbrances.

Mode in which indemnity to be paid.

21. Any moneys 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 moneys to be invested in such securities as it thinks fit on an applica- 40 tion being made by any parties interested in such moneys.

Distribution of purchase moneys.

22. The Court shall determine the rights and priorities of the several persons entitled to or interested in any moneys so paid and shall distribute the moneys among such persons in accordance with such rights and priorities.

45

Appropriation of moneys not immediately distributed.

23. 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 50 to attend the orders of the Supreme Court in Equity And the Land Titles and Claims 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 moneys and the 55 investment or application thereof or the payment thereof out of Court as the circumstances of the case require.

Costs to be in discretion of Court.

24. All costs charges and expenses incurred by any parties in or about any proceeding under this Act shall be taxed as between solicitor and



and client but the payment thereof shall be in the discretion of the Court 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.

25. 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 or delivered to the parties entitled to the custody thereof but previously thereto 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.

Disposition by Court of deeds.

26. 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 proceeding that may be instituted in the Court with respect to such land.

Power to lodge caution against proceedings in Court.

27. 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 every proceeding that may be instituted in the Court relating to the land in question.

Caution to be supported by affidavit.

28. 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 and Claims 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 by the Postmaster 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 ten days exclusive of the day of posting as the Court may by general or special order appoint.

Notice how served.

29. 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.

30. 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.

Purchaser not affected by omission to send notice.

31. After a caution has been lodged no declaration of title provisional absolute or final shall be made 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 sixty days shall have expired after the date of the service of such notice or the cautioner has entered an appearance whichever may first happen.

Effect of caution.

32. 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.

Compensation for improper lodging of caution.

33. 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 hereinbefore mentioned of proceedings being instituted in the Court.

Caution only to entitle the cautioner to notice.

34.



Penalty on suppression of deeds and evidence.

34. Any person intervening as principal or agent in any proceeding before the Court for a declaration establishing any title to land who with intent to conceal from the Court the title or claim of any person 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 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 such Court may award not exceeding pounds And any declaration of title in respect of such land made by the Land Titles and Claims Court shall be void as against all persons convicted of any such misdemeanor.

Penalty on fraudulent alterations &c.

35. 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 such Court may award not exceeding pounds And any declaration of title in respect of such land shall be void as against all persons convicted of any such misdemeanor.

Conviction not to affect civil remedy.

36. 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.

Nothing in Act to exclude obligation to make discovery.

37. 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.

Constitution of Court.

38. The Court for the purposes of this Act shall be the Court of Commissioners of Claims to Grants of Land as constituted and appointed at the passing of this Act under the Act fifth William the Fourth number twenty-one which Court shall thenceforth be designated the "Land Titles and Claims Court."

Appointment and tenure of office of President and Commissioners.

39. The President and Commissioners of the said Court shall upon every respective vacancy be appointed by the Governor or by Commission under the Seal of the Colony and every President and Commissioner of the said Court shall hold his office during good behaviour but may be removed therefrom on an Address presented to the Governor by both Houses of Parliament Provided that no person shall be appointed such President or Commissioner unless he be a Barrister having practised as such in the Colony for five years at the least next preceding his appointment.

Oath of President and Commissioners.

40. Every President and Commissioner of the said Court shall before he enters upon the execution of his office under this Act take before 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 President or a Commissioner of the Land Titles and Claims Court."



41. It shall be lawful for the Governor upon any vacancy in the office of Secretary to the said Court to appoint a Secretary thereto and also from time to time as occasion shall require to appoint a Taxing Officer Accountant and such other officers and servants as the Governor shall think fit. Officers of Court.
42. The President Commissioners and Officers of the Court shall be remunerated for their duties under this Act by fees according to the scale set forth in the Schedule hereto. Remuneration.
43. 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 all Courts in evidence. Court to be a Court of Record and have Seal.
44. The Court shall by notice published in the *Gazette* appoint a day not later than the first of February one thousand eight hundred and sixty-two on and after which the Court will be prepared to entertain applications under this Act. Court to appoint time for commencement of proceedings.
45. All Courts Judges and persons acting judicially shall take judicial notice of the signature of the President or other Commissioner of the Court or of the Secretary. Judicial notice of signature of President and Commissioners.
46. The concurrence of the President and one of the Commissioners 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 the President only or the two Commissioners jointly. And if in any case such two Commissioners differ as to the propriety of making any order or doing any act such order or act shall be deemed not to have been made or done. Powers of Court how to be exercised.
47. The 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.
48. The President and Commissioners 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. President and Commissioners may sit in Chambers.
49. The President and one at least of the Commissioners 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 to sit in open Court.
38. 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 one Judge shall be appointed thereto by the Governor with the advice of the Executive Council and shall hold his office during good behaviour but may be removed therefrom on an Address presented to the Governor by both Houses of Parliament. Provided that no person shall be so appointed unless he be a Barrister of England Ireland or of this Colony of five years standing at the least. Court constituted.
39. The said Judge shall rank immediately after the Puisne Judges of the Supreme Court. Precedence of Judge.
40. There shall be paid to the Judge of the said Court a salary of pounds a year which sum shall not be diminished during the continuance of such person in his said office and to the Secretary Taxing Officer Accountant Local Agents Clerks Messengers and Servants such salaries or other remuneration as the Governor with the advice aforesaid may from time to time determine. Judge's salary and Officer's remuneration.
41. The Governor with the advice aforesaid may grant to any Judge of the Court who has served for fifteen years as Judge or is disabled Retiring allowance to Judge.



- disabled by permanent infirmity from performing the duties of his office a pension by way of annuity not exceeding seven-tenths of his salary to continue during his life.
- Oath of Judge. 42. Every Judge of the said Court shall before he enters upon the execution of his office take before one of the Judges of the Supreme Court the following oath 5
- “ 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 Judge under the  
 “ ‘ Land Titles Declaration Act of 1861.’ ” 10
- Officers of Court. 43. There may be appointed for the purposes of this Act by the Governor with the advice aforesaid one Secretary one Taxing Officer one Accountant and such number of Clerks Local Agents Messengers and Servants as the Governor with the advice aforesaid shall think fit.
- Court to be a Court of Record and have Seal. 44. 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 all Courts in evidence. 15
- Court to appoint time for commencement of proceedings. 45. The Court shall by notice published in the Gazette appoint a day not later than the first of July one thousand eight hundred and sixty-two on and after which the Court will be prepared to entertain applications under this Act. 20
- Judicial notice of signature of Judge. 46. All Courts Judges and persons acting judicially shall take judicial notice of the signature of the Judge of the Court or of the Secretary. 25
- Place and times of sitting. 47. The 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. 30
- The Judge may sit in Chambers. 48. The Judge may sit in Chambers 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.
- When to sit in open Court. 49. The Judge shall sit in open Court for the determination of such questions arising upon the examination of titles as may be reserved by him for discussion in open Court. 35
- Privileges of Barristers and Solicitors. 50. No person shall be entitled to appear for any 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 in other respects enjoy the like privileges in the 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. 40
- Appeal. 51. The Court may ~~in open Court~~ review rescind or vary any order made by it ~~or any Member of it in pursuance of this Act other than such final declaration as aforesaid~~ And any person aggrieved by any Order of the Court whether final or otherwise 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 and Claims Court and the Chief Justice may prescribe Provided that no appeal shall lie from any refusal of the Court to entertain an application for establishment of title or to establish a title Provided also that any order made by the Supreme Court on appeal from the Land Titles and Claims 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. 55
- Powers of Court. 52. 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.  
 (2.) Issuing any Commission for the examination of witnesses or causing witnesses to be examined before any tribunal other than the Court.  
 5 (3.) Punishing persons refusing to give evidence or guilty of contempt.  
 (4.) Enforcing any order whatever lawfully made by the Court.

53. Every person who being examined before the Court or ~~the President or either Commissioner~~ **Judge** thereof or by any person authorized under the next preceding section 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. Penalty for false swearing.

54. 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. Court or suitors not to be restrained by other Courts.

55. 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. Proceedings not to abate by death &c.

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

57. 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. Court to frame rules.

58. All rules so made upon being published in the *Gazette* shall have the 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. Legal effect of rules. Rules to be laid before Parliament.

59. 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 :— Court to determine amount of payments to be made &c.

- (1.) Obtaining a declaration that a title is established.  
 (2.) The institution and conduct of any proceeding relating to land and obtaining copies of such proceedings or of other documents in the custody of the Court.  
 50 (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 to the Colonial Treasurer and by him carried to a separate fund to be called the Land Titles Fund out of which shall be primarily applicable to the payment of the fees payable to the President and Commissioners and the other expenses of carrying this Act into effect the account of the Consolidated Revenue of the Colony.

60. In determining the amount of fees payable in respect of any proceedings under this Act as to land regard shall be had to the value of the land to which the fees are to be determined. Principle on which fees to be determined.



the land as ascertained in such manner as the Court by any general order shall direct subject nevertheless to the following limitations :—

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

Indemnity to persons  
aggrieved by certi-  
ficates erroneously  
issued.

61. 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 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 also against the person by 15 or in whose favour 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 20 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 25 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 Fund of the Colony all moneys which he may pay or incur for or in respect 30 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 favour such final declaration shall have been obtained or made his heirs executors or administrators all moneys which he may so pay or incur as last aforesaid with costs of suit. 35

Indemnity fund.

62. In order to create an indemnity fund to the Government for or towards meeting the liabilities created by the next 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 40 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 herein- 45 before provided in respect of fees of Court.

Court may state case  
for Supreme Court  
or direct issue.

63. 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 50 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.

64. 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 55 Land Titles and Claims 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 and Claims Court otherwise directs.



65. 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 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 such 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 appoint a guardian or other person to appear on behalf of any infants or 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 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.

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

66. This Act shall be styled and may be cited as "The Land Titles Declaration Act of 1861."





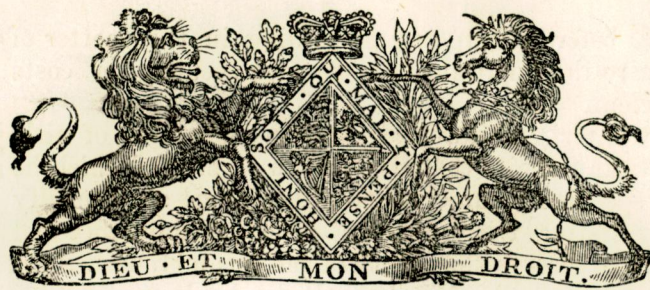


This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council Chamber,  
Sydney, 27th November, 1861. }

R. O'CONNOR,  
Clerk of the Legislative Council.

## New South Wales.



### ANNO VICESIMO QUINTO VICTORIÆ REGINÆ.

\*\*\*\*\*

No. .

An Act to ascertain and declare Titles to Land.

**W**HEREAS it is expedient to afford effectual means for ascertaining Preamble.  
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  
5 assembled and by the authority of the same as follows :—

1. 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-  
benefit of an estate in fee simple in land may apply to the Land Titles ration of title.  
Court constituted by this Act and hereinafter styled "the Court" for  
10 a Declaration that he has established his title to such land.

2. 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  
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 pro-  
15 ceeding 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 five years immediately prior to the date of application.

20 3. The Court upon being satisfied in manner aforesaid of there Notice to be given  
being *primâ facie* evidence for proceeding in the matter shall give public by the Court.  
notice of the application having been made and of the intention of the  
c 11— (b) Court

NOTE.—The clauses and parts of clauses *ruled through* are proposed to be *inserted* in Committee.



*Land Titles Declaration—1861.*

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

4. The notice so given shall point out the estate or interest which  
 5 the applicant claims to have in the land and the effect of the establishment  
 of his title by a declaration of the Court and shall call the attention of all  
 parties interested in the land to the subject matter of the application  
 pending before the Court and invite incumbrancers and other persons having  
 any interest in the land capable of being affected by a declaration under  
 10 this Act 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 declara-  
 tion.

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

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

7. The following charges and interests shall not be deemed incum-  
 brances within the meaning of this Act—

1. Quitrents.  
 25 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.

8. The Court if it entertains the application shall by means of  
 local agents or in such other way as the Court thinks fit make inquiry  
 35 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 shewn to  
 such land or to any part thereof and with the result of such inquiry  
 made the Court shall make a provisional declaration that the applicant  
 has established his title to the whole or such part for the purpose of any  
 40 disposition made in favour of a purchaser for valuable consideration subject  
 to any incumbrance specified in the declaration and subject in all cases  
 to such charges and interests as may be subsisting thereon and are herein-  
 before declared not to be incumbrances.

9. The Court may annex conditions to any such provisional  
 45 declaration by requiring the applicant to give any indemnity or to obtain  
 any consents or otherwise to act as the Court directs And may also  
 reserve in such provisional declaration the rights of any person or classes  
 of persons.

10. Upon such provisional declaration being made the Court shall  
 50 give notice of the same in such manner as it thinks fit by advertisement  
 and by posting as aforesaid or by otherwise publishing the fact of such  
 declaration stating in such notice the intention of the Court to confirm  
 the same at some specified time not earlier than twelve months from the  
 date of the notice and at a place named in the notice unless cause is first  
 55 shewn to the contrary and stating also the time and manner at and in  
 which opposing parties may be heard to shew 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 in the same and of the right of  
 parties

Contents of Notice.

Modification where  
the land subject to  
incumbrances.Exclusion of certain  
charges from the  
definition of incum-  
brances.Examination of title  
by Court.Power of Court to  
annex conditions.Advertisement of  
provisional declara-  
tion.



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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.

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

Court to hear person  
opposing.

12. 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 And if made absolute an appeal against the order making the same absolute may be lodged with the Court of Appeal hereinafter mentioned 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 And where no appeal is lodged at the expiration of such period of three months the declaration shall be made final by order of the Court and where an appeal is lodged within such period the declaration shall not be deemed final until made so by order of the Court of Appeal Provided  
 25 that an appeal lodged and afterwards abandoned shall for the purposes of this Act be deemed not to have been lodged.

Confirmation of pro-  
visional declaration  
of title.

13. Whenever an absolute declaration establishing the title of any  
 person to land has been made final every purchaser for valuable considera-  
 tion of the land mentioned in such declaration or of any part thereof or of  
 30 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  
 35 also except in so far as the contrary is expressed in the declaration to such charges and interests if any as are hereinbefore declared not to be incumbrances but free from all other estates incumbrances and interests whatsoever including all estates interests and claims of the Crown.

Effect of declaration.

14. Every final declaration shall be deemed to have been duly  
 made and shall not be set aside by reason of any informality whatever  
 40 and an office copy under seal of the order making the declaration final shall in all Courts be evidence of the declaration.

Evidence of declara-  
tion.

15. Any two or more persons entitled for their own benefit  
 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  
 45 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 hereinbefore enacted that any individual owner in fee may have his title established.

Part owners making  
up complete owner-  
ship may apply for  
establishment of  
title.

16. Any trustee of land with power to sell and any fiduciary donee  
 50 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 and shall unless the Court otherwise order be deemed to be costs charges  
 55 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 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

Trustee may apply  
for establishment  
of title.

to



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to sell any land any purchaser for valuable consideration thereof or of any part thereof or of any interest therein 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  
5 declaration establishing his title to such land.

17. 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  
10 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.

18. 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  
15 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 And that Court shall thereupon examine the title and may if satisfied therewith regard being had to the circumstances of the case and to the order made by the Supreme Court make a final declaration establishing  
20 the title of any person to the land and 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 Land Titles Court.

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

Court may make several declarations or conveyances.

20. 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 incumbrances capable of being compensated by money  
30 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 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  
35 incumbrancers in recovering the moneys due to them declare the title to be established without reference to such claims or incumbrances.

Court may accept indemnity.

21. Any moneys 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 moneys to be invested in such securities as it thinks fit on an application being made by any parties interested in such moneys.

Made in which indemnity to be paid.

22. The Court shall determine the rights and priorities of the several persons entitled to or interested in any moneys so paid and shall  
45 distribute the moneys among such persons in accordance with such rights and priorities.

Distribution of purchase moneys.

23. 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  
50 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 relation to the rights and interests therein And the Supreme Court in  
55 Equity may make such orders with respect to any such moneys and the investment or application thereof or the payment thereof out of Court as the circumstances of the case require.

Appropriation of moneys not immediately distributed.

24. All costs charges and expenses incurred by any parties in or about any proceeding under this Act shall be taxed as between solicitor  
and

Costs to be in discretion of Court.



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and client but the payment thereof shall be in the discretion of the Court 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.

25. 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 or delivered to the parties entitled to the custody thereof but previously thereto 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.

Disposition by Court of deeds.

26. 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 proceeding that may be instituted in the Court with respect to such land.

Power to lodge caution against proceedings in Court.

27. 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 every proceeding that may be instituted in the Court relating to the land in question.

Caution to be supported by affidavit.

28. 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 by the Postmaster 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 ten days exclusive of the day of posting as the Court may by general or special order appoint.

Notice how served.

29. 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.

30. 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.

Purchaser not affected by omission to send notice.

31. After a caution has been lodged no declaration of title provisional absolute or final shall be made 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 sixty days shall have expired after the date of the service of such notice or the cautioner has entered an appearance whichever may first happen.

Effect of caution.

32. 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.

Compensation for improper lodging of caution.

33. 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 hereinbefore mentioned of proceedings being instituted in the Court.

Caution only to entitle the cautioner to notice.



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34. Any person intervening as principal or agent in any proceeding before the Court for a declaration establishing any title to land who with intent to conceal from the Court the title or claim of any person other than the applicant to such land shall fraudulently suppress assist  
5 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 labor on the public roads for a term not exceeding three years or to be imprisoned for a term  
10 not exceeding two years with or without hard labor or to be fined such sum as such Court may award not exceeding pounds And any declaration of title in respect of such land made by the Land Titles Court shall be void as against all persons convicted of any such misdemeanor.
35. 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  
20 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  
25 labor or to be fined such sum as such Court may award not exceeding pounds And any declaration of title in respect of such land shall be void as against all persons convicted of any such misdemeanor.
36. No proceeding or conviction for any offence hereby declared to be a misdemeanor shall affect any remedy which any person aggrieved  
30 by such offence may be entitled to either at law or in equity against the person who has committed such offence.
37. 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  
35 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.
38. A Court to be called the "Land Titles Court" shall be established for the purpose of carrying into effect the provisions of this Act  
40 And one Judge shall be appointed thereto by the Governor with the advice of the Executive Council and shall hold his office during good behaviour but may be removed therefrom on an Address presented to the Governor by both Houses of Parliament Provided that no person shall be so appointed unless he be a Barrister of England Ireland or of  
45 this Colony of five years standing at the least.
39. The said Judge shall rank immediately after the Puisne Judges of the Supreme Court.
40. There shall be paid to the Judge of the said Court a salary of pounds a year which sum shall not be diminished during the  
50 continuance of such person in his said office and to the Secretary Taxing Officer Accountant Local Agent Clerks Messengers and Servants such salaries or other remuneration as the Governor with the advice aforesaid may from time to time determine.
41. The Governor with the advice aforesaid may grant to any Judge of the Court who has served for fifteen years as Judge or is disabled by permanent infirmity from performing the duties of his office a pension by way of annuity not exceeding seven-tenths of his salary to continue during his life

Penalty on suppression of deeds and evidence.

Penalty on fraudulent alterations &c.

Conviction not to affect civil remedy.

Nothing in Act to exclude obligation to make discovery.

Court constituted.

Precedence of Judge.

Judge's salary and Officers' remuneration.

Retiring allowance to Judge.



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40. Every Judge of the said Court shall before he enters upon the execution of his office take before one of the Judges of the Supreme Court the following oath :—

- 5 “ 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 Judge under the ‘ Land Titles  
“ ‘ Declaration Act of 1861.’ ”

41. There may be appointed for the purposes of this Act by the Governor with the advice aforesaid one Secretary one Taxing Officer one  
10 Accountant and such number of Clerks Local Agents Messengers and Servants as the Governor with the advice aforesaid shall think fit.

42. 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 all Courts in  
15 evidence.

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

20 44. All Courts Judges and persons acting judicially shall take judicial notice of the signature of the Judge of the Court or of the Secretary.

45. The Governor with the advice of the Executive Council shall provide a convenient place for the sittings of the Court with convenient  
25 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.

46. The Judge may sit in Chambers for the despatch of business and when in Chambers shall have the same jurisdiction and exercise the  
30 same powers as if sitting in open Court.

47. The Judge shall sit in open Court for the determination of such questions arising upon the examination of titles as may be reserved by him for discussion in open Court.

48. No person shall be entitled to appear for any 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 in other respects enjoy the like privileges in the 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.

40 49. The Court may review rescind or vary any order made by it other than such final declaration as aforesaid And any person aggrieved by any Order of the Court whether final or otherwise 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  
45 the Chief Justice may prescribe Provided that no appeal shall lie from any refusal of the Court to entertain an application for establishment of title or to establish a title Provided also that any order made by the Supreme Court on appeal from the Land Titles Court shall be subject to reversal or modification by the Privy Council in England in the same  
50 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.

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

- (1.) Enforcing the attendance of witnesses and the production of deeds books papers and documents.
- (2.) Issuing any Commission for the examination of witnesses or causing witnesses to be examined before any tribunal other than the Court.

(3.)



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- (3.) Punishing persons refusing to give evidence or guilty of contempt.  
(4.) Enforcing any order whatever lawfully made by the Court.
51. Every person who being examined before the Court or Judge thereof or any person authorized under the next preceding section 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. Penalty for false swearing.
52. 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. Court or suitors not to be restrained by other Courts.
53. 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. Proceedings not to abate by death &c.
54. 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 including such plans and according to such scale 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. Court to frame and promulgate forms of application &c.
55. 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. Court to frame rules.
56. All rules so made upon being published in the *Gazette* shall have the 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. Legal effect of rules. Rules to be laid before Parliament.
57. 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 :— Court to determine amount of payments to be made &c.
- (1.) Obtaining a declaration that a title is established.  
(2.) The institution and conduct of any proceeding relating to land and obtaining copies of such proceedings or of other documents in the custody of the Court.  
(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 to the Colonial Treasurer and by him carried to the account of the Consolidated Revenue of the Colony.~~
58. In determining the amount of fees payable in respect of any proceedings under this Act as to land regard shall be had to the value of the land as ascertained in such manner as the Court by any general order shall direct subject nevertheless to the following limitations :— Principle on which fees to be determined.
- The amount of such fees in any case where the value of such land—
- |                                       |                       |
|---------------------------------------|-----------------------|
| Does not exceed £100                  | Shall not exceed £5.  |
| Exceeds £100 and does not exceed £300 | shall not exceed £10. |
| 300                                   | 500                   |
| 500                                   | 1,000                 |
| 1,000                                 | 2,000                 |
| 2,000                                 | 5,000                 |
| 5,000 and upwards                     | .. .. .               |
- 59.



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59 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 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 also against the person by or in whose favour 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 Fund 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 favour such final declaration shall have been obtained or made his heirs executors or administrators all moneys which he may so pay or incur as last aforesaid with costs of suit.

Indemnity to persons aggrieved by certificates erroneously issued.

62. In order to create an indemnity fund to the Government for or towards meeting the liabilities created by the next 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.

Indemnity fund.

60. 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 Jury to which such case or issue is referred.

Court may state case for Supreme Court or direct issue.

61. 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 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.

Effect of opinion of Supreme Court or decision of Jury.

62. 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 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 such 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 appoint a guardian or other person to appear on behalf of any infants or incapable

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



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*Land Titles Declaration—1861.*

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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  
5 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.

63. This Act shall be styled and may be cited as "The Land Titles Short Title, Declaration Act of 1861."

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Sydney : Thomas Richards, Government Printer.—1861.

[Price, 3d.]