

Land Registry.

No. XXVII.

AN ACT to simplify the Law relating to the Transfer of Landed Property in New Zealand. LAND REGISTRY.

[2nd November, 1860.]

WHEREAS it is desirable to facilitate the transfer of property in land by means of a registry of the title thereto: Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

I.—PRELIMINARY.

1. The Short Title of this Act shall be "*The Land Registry Act*," Short Title.
1860."

2. Registration under this Act shall commence in the several Registrars' districts, to be constituted as hereinafter provided, at such times respectively as the Governor shall from time to time appoint, by warrant under his hand, to be published in the *New Zealand Gazette*, after rules and forms to be made and promulgated under sections seventy-one and seventy-four of this Act shall have been laid on the table of both Houses of the General Assembly for fourteen days during the next Session. Commencement of registration.

II.—ESTABLISHMENT OF REGISTER OFFICE.

3. There shall be established within the Colony an office, to be called the "Land Register Office," for the purpose of registering the proprietorship of land and for transferring the same by registration. Land Registry Office to be established.

4. It shall be lawful for the Governor, in the name and on behalf of Her Majesty, from time to time, by Commission under the Public Seal of the Colony, to appoint a "Registrar-General of Land:" Provided always that the Registrar-General may be appointed and act as District Registrar of any district. Appointment of Registrar-General.

5. The Governor shall from time to time as he shall think fit, by Proclamation in the *New Zealand Gazette*, constitute throughout the Colony or in any part thereof Registrars' districts for the purposes of this Act, and such districts abolish and the boundaries of any district define and alter, and also declare by what local name each such district shall be designated. Districts to be constituted.

6. The Governor, in the name and on behalf of Her Majesty, shall from time to time, by warrant under his hand, appoint a fit and proper person to be "District Registrar of Land" of each such district. Appointment of District Registrars.

7. It shall be lawful for the Governor, if he shall think fit, at any time to appoint a fit person to be the Deputy of any District Registrar, to act in case of death illness or absence; and every Deputy, during the time he shall so act, shall have all the powers and privileges and perform all the duties and be subject to all the responsibilities of the District Registrar. Deputy District Registrars may be appointed.

8. In the event of the death of any District Registrar his Deputy shall act from the day of such death until he shall receive, under the hand of the successor of such District Registrar, a certificate to the effect that he has entered on his duties. In case of the absence or illness of any District Registrar his Deputy shall act from such time as he shall receive from the District Registrar a certificate under his hand to the effect that he is about to absent himself or that he is unable from illness to perform his duties; and such Deputy shall cease to act from such time as he shall receive from the District Registrar a certificate

Land Registry.

under his hand to the effect that he resumes his duties: Provided that in the event of illness incapacitating the District Registrar from certifying his own inability to perform his duties, his medical attendant may so certify in his stead.

When District Registrar not to act.

9. No District Registrar shall have power to act during such time as his Deputy shall be lawfully acting.

Clerks and messengers to be appointed.
Governor may remove officers &c.

10. The Governor shall also from time to time appoint a sufficient number of clerks and messengers.

11. It shall be lawful for the Governor, as he shall think fit, from time to time and at any time to remove any person appointed to any office or employment under this Act.

Registrar-General &c. to take oath.

12. Every Registrar-General, District Registrar, and Deputy District Registrar appointed under this Act shall take an oath, before some person specially authorized by the Governor (which oath such person is hereby authorized to administer), faithfully and to the best of his ability to execute and perform the duties of his office.

Officer to give security.

13. Every District Registrar and Deputy District Registrar, and, in case the Governor shall think fit, all or any of the clerks and subordinate officers to be appointed under this Act, shall give security for the due performance of the duties of his or their respective offices, in such manner and to such an amount as the Governor shall direct.

Offices of Registrar-General and District Registrars to have seals.

14. The Registrar-General and each District Registrar shall have a seal for his office, of which judicial notice shall be taken, and every document purporting to be sealed with any such seal shall be admissible in evidence without further proof.

Judicial notice to be taken of signature of Registrar-General and District Registrar.

15. All Courts, Judges, and persons acting judicially shall take judicial notice of the official signature of the Registrar-General and of each District Registrar and Deputy District Registrar appointed under this Act.

"Disqualification Act," 1858.

16. The Registrar-General, and every District Registrar, and every person holding any office of emolument in his and their departments, shall be subject to the provisions of "*The Disqualification Act, 1858*," in the same manner as if the said departments had been included in the Schedule thereto.

III.—PERSONS ENTITLED TO REGISTRATION.

Persons entitled to registration.

17. Any person and any Corporation sole or aggregate entitled absolutely for his or their own benefit to an estate in land in fee simple, at law and in equity, free from trusts and incumbrances, may apply to be registered as proprietor under this Act: Provided always that no transfer or charge of any land granted by the Crown in any district after the commencement in such district of registration under this Act, shall be valid or effectual either at law or in equity unless the grantee or his heirs shall have been first registered under this Act as the proprietor of such land.

Application may be made when land incumbered.

18. An application for registration may be entertained where the applicant admits that the land in respect of which he applies is subject to any specified incumbrance or trust, and the notices given shall be modified accordingly by stating the existence of such incumbrance or trusts, and that the rights of the incumbrancers or *cestui que* trusts will be reserved.

Certain charges not to be deemed incumbrances.

19. The following charges and interests shall not be deemed incumbrances within the meaning of this Act, that is to say,—

- (1.) Rights of way watercourses rights of water and other easements.
- (2.) Leases or agreements for leases for any term not exceeding seven years, in cases where there is an occupation under such leases or agreements.

And

Land Registry.

And all land shall be deemed to be subject to such of the above charges and interests as may be for the time being subsisting thereon.

IV.—MODE OF REGISTRATION.

- 20.** Applications for registration shall be made in duplicate in such form and manner as shall be from time to time prescribed by the rules hereinafter authorized to be made. Form and manner of application.
- 21.** The applicant shall, at the time of lodging his application, deposit with the District Registrar all deeds and documents in his possession or under his control constituting or in any way affecting his title to the land, and also copies of the same, together with a list of the names of all persons (if any) entitled to any estate or interest in the land, and also, for the more easy identification of the land, a plan thereof, showing the extent boundaries and relative position thereof. Deeds &c. to be deposited when application made.
- 22.** Upon receipt of the application the District Registrar shall transmit one of the duplicate copies of the application, together with the copies of the deeds and documents deposited relating thereto, to the Registrar-General, whose duty it shall be to examine such application deeds and documents, with a view to judge of the propriety of the District Registrar's proceedings. Duplicate copy of application and copies of deeds &c. to be transmitted to Registrar-General.
- 23.** The District Registrar, upon being satisfied that there are grounds for proceeding in the matter of the application, shall give such notices, public and private, as shall be prescribed by the rules hereinafter authorized to be made in that behalf, and such other notices (if any) as he may consider to be necessary in each particular case. Notices to be given.
- 24.** The object of such notices shall be to point out the estate or interest which the applicant claims to have in the land, to call attention to the subject matter of the application, and to invite incumbrancers and others having any interest in the land, capable of being affected by registration, to come before the District Registrar, at a time and place to be fixed by such notices, and establish their right, with a view to having the same reserved or of proving that the applicant is not entitled to the registration applied for. Object of notice.
- 25.** The District Registrar shall at the time and place stated in the notice, or at any subsequent time and place, of which notice may be given by the District Registrar, hear any persons alleging that the applicant is not entitled, in respect of the land specified in his application, to be registered as proprietor under this Act, or is so entitled only subject to certain conditions or with the reservation of certain rights, and the District Registrar may adjourn the hearing from time to time if he thinks fit. Registrar to hear persons appearing.
- 26.** The District Registrar, as soon as conveniently may be after the expiration of the time fixed by such notice as aforesaid, shall proceed to examine the title and the register of deeds kept under any Act for the time being in force for registering deeds applicable to the land in question (for which examination no fee shall be payable to the Registrar of Deeds), and to consider any objections which may have been raised to the title of the applicant. District Registrar to examine titles.
- 27.** If upon such examination it shall clearly appear to the District Registrar that the applicant is entitled to be registered under this Act as the proprietor of the land in respect of which he requires to be registered, the District Registrar shall enter the applicant on the register as the proprietor thereof. If applicant found entitled to registration he shall be entered on register accordingly.
- 28.** If on such examination there shall appear to be any doubt as to the validity of the applicant's title, the District Registrar shall if he think fit, and the applicant desire to proceed, direct such steps to be taken such notices given and such acts done and shall hear such persons as may appear to the District Registrar proper or necessary for investigating the title. Proceedings in case of doubt as to validity of title.
- 29.** If

Land Registry.

If upon further investigation title established, applicant to be registered.

29. If upon such further investigation the applicant's title shall be clearly established as valid, to the satisfaction of the District Registrar, he shall enter the applicant on the register as proprietor of the land.

When any applicant has been registered, as proprietor, what deeds and evidences of title to be given up.

30. When any applicant has been registered as proprietor of any land, all such deeds and evidences of title deposited with the District Registrar as relate exclusively to the land and are of no avail, except for the purpose of substantiating the title to the land, shall be retained by the District Registrar.

What returned.

31. All other deeds and evidences of title deposited with the District Registrar shall be returned to the parties entitled to the custody thereof; but previously to their being so returned shall be stamped or otherwise marked in such manner as to give notice to any person inspecting such deeds or evidences of title, that the land or a portion thereof has been placed upon the register.

V.—LAND CERTIFICATES.

Land certificate to be given on registry.

32. On the entry of the name of the proprietor upon the register, the District Registrar shall deliver to him a certificate, hereinafter called a "Land Certificate," authenticated by the seal of his office and signed by the District Registrar, stating the name place of abode addition of such proprietor and containing or having indorsed thereon a description of the land, together with a plan showing the extent boundaries and relative position thereof in respect of which he is registered, and referring to the incumbrances reservations and other matters (if any) of which notice has been entered on the register.

VI.—REGISTERED PROPRIETORS' ESTATE.

Nature of registered proprietors' estate.

33. The registry as proprietor of land of any person shall confer on the person so registered an indefeasible estate in fee simple, subject to the incumbrances reservations and other matters (if any) entered on the register and hereafter included under the term incumbrances, and subject also 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 estates interests and claims of Her Majesty, her heirs and successors.

Entry of discharge of any incumbrance.

34. When upon the first registration of any land, notice of any incumbrances affecting such land has been entered on the register, the District Registrar shall, on proof of the discharge of such incumbrance and subject to such rules as shall be prescribed by the Governor in Council respecting the mode of proof, enter a memorandum of such discharge on the register, and upon such entry being made the incumbrance shall be deemed to be discharged.

VII.—INCUMBRANCES.

Mortgage deed to be delivered to District Registrar and particulars to be entered or registered.

35. When the registered proprietor of any land shall charge the same by way of mortgage or otherwise, the deed of charge shall be delivered to the District Registrar, who shall retain the same and shall enter on the register the particulars of the charge and the name of the person in whose favour the charge is made as the proprietor of such charge.

Certificate of charge to be given.

36. Upon such entry being completed the District Registrar shall deliver to the proprietor of the charge a certificate of charge containing the particulars of the entry made on the register.

Priority of registered charges.

37. Registered charges on the same land shall take priority of all unregistered charges, and as between themselves shall rank according to the order in which they are entered on the register and not according to the order in which they are created.

Land Registry.

38. The proprietor of a charge shall have all such remedies for the recovery of the moneys due to him in respect of such charge as shall be contained or implied in the deed or instrument creating the same.

Remedies of proprietors of charge.

39. The proprietor of a charge under a deed or instrument conferring a power of sale may, in exercise of such power, transfer the land or any part thereof in the same manner as if he were registered proprietor of such land; subject, nevertheless, to compliance with any prescribed conditions.

Proprietor of charge with power of sale may transfer land.

40. The District Registrar, on the deposit with him of the discharge of any charge, shall enter a memorandum thereof on the register, and upon such entry being made the land shall be thereby absolutely discharged.

Discharges of charges.

VIII.—TRANSFER OF LAND AND CHARGES.

41. A separate register shall be kept of charges, on which alone transfers of charges shall be entered.

Separate register of charges.

42. Whenever any registered proprietor of land or any charge shall transfer such land or any part thereof or such charge, the transfer shall be delivered to the District Registrar and retained by him.

Deeds of transfer to be deposited with Registrar.

43. The District Registrar, previously to entering the name of the transferee on the register as proprietor of the land or charge, may require the verification of the transfer, by affidavit or otherwise, as he may think fit.

District Registrar may require transfer to be verified.

44. Upon being satisfied of the authenticity of the transfer, the District Registrar shall enter the name of the transferee as proprietor of the land or charge therein comprised.

Registry of transfer.

45. The transferor shall be deemed to remain the proprietor of the land or charge until the name of the transferee is entered on the register in respect thereof.

When transferee to be deemed owner.

46. Upon completion of the registry of the transferee, the District Registrar shall deliver to him a fresh land certificate or certificate of charge, stating, in the case of land, the incumbrances (if any) subsisting on the land. The District Registrar shall also, in cases where part only of the land is sold, deliver to the transferor a fresh land certificate containing or having indorsed thereon a description of the land retained by him.

Land certificate or certificate of charge to be delivered to transferee.

47. A transfer of land made for a valuable consideration shall when registered confer on the proprietor to whom the same is made an indefeasible estate in fee simple in the land transferred, subject to the incumbrances (if any) appearing on the register, and subject also 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 claims and interests of Her Majesty, her heirs and successors.

Estate of transferee of and for valuable consideration.

48. A transfer of land made without valuable consideration shall when registered confer on the proprietor to whom the same is made an estate in fee simple in the land transferred, but subject as follows, that is to say,—To the incumbrances (if any) appearing on the register, also to such charges and interests (if any) as are hereinbefore declared not to be incumbrances, also to any unregistered estates rights or equities subject to which the transferor held the same, but free from all other estates incumbrances and interests whatsoever, including all estates claims and interests of Her Majesty, her heirs and successors.

Estate of voluntary transferee of land.

IX.—TRANSMISSION OF LAND AND CHARGES.

49. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any lands, such person shall be registered in the place of the deceased proprietor or proprietors

Transmission of land on death.

Land Registry.

as may, on the application of any person interested in the land, be proved to the satisfaction of the Registrar-General to be the proprietor of the land in his own right, or to be a fit person capable of protecting and giving effect to the rights of all parties interested, and for the like purpose such inhibitions shall be registered as the Registrar-General shall think fit.

Transmission of charge on death.

50. On the death of the sole registered proprietor or of the survivor of several joint registered proprietors of any charge, the executor or administrator of such sole deceased proprietor or of the survivor of such joint proprietors shall be entitled to be registered in his place.

Fiduciary proprietors

51. Any person registered as aforesaid otherwise than as a proprietor in his own right, or any executor or administrator when registered in the place of any deceased proprietor of any land or charge, shall hold the land or charge in respect of which he is registered in trust for the persons and purposes to which it is applicable by law, but (subject to such inhibitions as aforesaid) he shall for the purpose of any registered dealings with such land in favour of a purchaser for valuable consideration be deemed to be absolute proprietor thereof.

Bankruptcy or insolvency.

52. Upon the bankruptcy or insolvency of any registered proprietor of any land or charge, his assignees shall be entitled to be registered in his place.

Marriage of female proprietors.

53. The husband of any female proprietor of land shall be entitled to be registered as co-proprietor with his wife, but he shall be described on the register as co-proprietor in right of his wife, and on his death the original registry of the wife, with a change if necessary in the name, shall revive and confer the same rights as if her husband had never been registered as co-proprietor with her.

Title of husband and wife.

54. Where land is registered in the joint names of husband and wife, no registered dealings with such land shall take place until the wife has been examined by the District Registrar apart from her husband and has assented to such disposition, after full explanation of her rights on the land and the effect of the proposed disposition: Provided that in such case it shall not be necessary that the deed of transfer of such land be acknowledged as deeds by married women disposing of land are required by law to be acknowledged.

Nature of title of assignee.

55. The assignees of any bankrupt or insolvent proprietor shall hold the land or charge in respect of which they are registered subject to the equities upon and subject to which the bankrupt or insolvent held the same, but they shall, for the purposes of any registered dealings with such land in favour of a purchaser for valuable consideration, be deemed to be absolute proprietors thereof.

Evidence of transmission of registered proprietorship.

56. The fact of any person having become entitled to any land or charge in consequence of the death or bankruptcy or insolvency of any registered proprietor, or of the marriage of any female proprietor, shall be proved in such manner as the general rules hereinafter authorized to be made, or, if such general rules shall make no such provision, the Registrar-General may from time to time direct.

X.—THE EFFECT AND PROTECTION OF UNREGISTERED DISPOSITIONS.

Effect of unregistered dispositions.

57. The registered proprietor alone shall be entitled to transfer or charge property by a registered disposition, but any person, whether the registered proprietor or not, having a sufficient estate or interest in or power over registered land, may by any unregistered lease settlement will or other instrument create the same demises estates for life estates tail or other estates and interests as he might create if the land were not registered; and any lessee or other person entitled to or claiming any right in such estates or interests may protect the same from being impaired

Land Registry.

impaired by any act of the registered owner by entering on the register such notices inhibitions or other restrictions as are hereinafter mentioned, but subject thereto no purchaser for valuable consideration of any registered land or registered interest in land shall be affected by any notice express implied or constructive of an unregistered disposition.

58. Any lessee or other person entitled to or interested in a lease or agreement for a lease of registered land made subsequent to the last transfer of the land on the register, where the term granted exceeds seven years, or where the occupation is not in accordance with such lease or agreement, may apply to the District Registrar to register notice of such lease or agreement, and, when so registered, every registered proprietor of the land and every person deriving title through him, excepting proprietors of charges registered prior to the registration of such notices, shall be deemed to be affected with the notice of such lease or agreement.

Lessee may apply for registry of notice of lease.

59. In order to register notice of a lease or agreement for a lease, the applicant shall deposit the original or a duplicate thereof with the District Registrar, and the District Registrar shall make an entry thereof on the register, identifying the original or duplicate so deposited, and the original or duplicate so deposited shall be deemed to be the instrument of which notice is given.

Manner of registering notice of lease.

60. Any person who shall, subsequent to the last transfer of the land on the register, become interested under any lease settlement deed will contract for sale or other unregistered instrument, or by devolution in law, or as a judgment creditor, or otherwise howsoever in any land or charge registered in the name of any other party, may by inhibition prevent any dealing with the land by the registered proprietor to the prejudice of the person so interested, but not further or otherwise.

Inhibition may be lodged.

61. In order to register such inhibition the applicant shall deposit the same in a form to be from time to time prescribed by the Registrar-General, accompanied by the original written instrument, if there be one, or a copy thereof, and if there be no such instrument, then by a memorial or other document setting forth the nature of the interest, with full particulars thereof, authenticated in such manner as the District Registrar shall require, and thereupon the District Registrar shall make an entry in the register of the land or charge, identifying the inhibition so deposited.

Inhibition to be deposited with written instrument &c. and entry made on registry.

62. Before such entry is cancelled no dealing with such land or charge by the registered proprietor shall be had which may in any way prejudicially affect the rights or interests of any person so interested as aforesaid, unless such dealing be authorized by other power than that conferred by the registered proprietor alone.

No dealing with land or charge except with consent of persons interested.

63. When two or more inhibitions are lodged with respect to the same land or to the same charge, the parties interested thereunder shall, as between themselves, have priority according to the dates at which their inhibitions are lodged and not according to the dates of the creation of the claims in respect of which such inhibitions have been lodged.

Priority of inhibitions.

64. Any inhibition shall be cancelled by the District Registrar with the consent of all the persons interested for the time being therein, or upon its being shown to his satisfaction by the applicant that the interests of such persons have ceased, or that their interests are not such in respect of which equity would prevent a sale or charge of the land in question by the registered proprietor thereof, or any transfer or charge of such registered proprietorship which may at the time be proposed to be made.

Inhibitions may be cancelled.

65. If any person shall lodge an inhibition without reasonable cause he shall be liable to make to any person who may have sustained damage

Penalty for improper lodging of inhibition.

Land Registry.

damage by the lodging of such inhibition such compensation as may be just, and such compensation shall be recoverable as damages in an action at law by the person who has sustained damage from the person who lodged the inhibition.

XI.—INDEMNITY.

Power to Registrar to accept indemnity.

66. When in any proceeding under this Act with respect to any land it shall appear to the District Registrar that the land is subject to uncertain or doubtful claims or subject to any uncertain or doubtful incumbrances, he may, with the approval in writing of the Registrar-General, (upon such amount of money being paid as hereinafter mentioned or secured, to the satisfaction of the Registrar-General, as will in the opinion of the Registrar-General 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,) act in respect of such land without reference to such claims and incumbrances.

Indemnity money to be paid to Colonial Treasurer.

67. Any money payable in respect of such compensation shall be paid to the Colonial Treasurer, to be carried by him to a separate account to the credit of such matter as the Registrar-General shall direct, and a Judge of the Supreme Court may direct such money to be invested as he may think fit, on an application being made to him by any parties interested in such moneys for the investment thereof.

Supreme Court to distribute money.

68. The Supreme Court shall determine the rights and priorities of any claimants or incumbrancers entitled to or interested in any moneys so paid to the Colonial Treasurer under this Act, and shall distribute the moneys among such persons in accordance with such rights and priorities, rendering the surplus (if any) to the parties entitled thereto, their executors, administrators, or assigns.

XII.—INSPECTION AND STATE OF REGISTER.

Persons interested may inspect register and make extracts and copies.

69. Subject to such rules and regulations as may be imposed, and to the payment of such fees as may be fixed, any person registered as proprietor of any land or charge, and any person authorized by any such proprietor, or any person having an interest in any such land or charge, may inspect and make copies of and extracts from any register or document in the custody of the District Registrar relating to such land or charge.

Certificate of state of title.

70. The District Registrar shall, on the request of the registered proprietor of any land or charge, or of any person authorized by him, certify in writing under his hand and under the seal of his office the state of the title of such registered proprietor, specifying the name of such proprietor and the charges inhibitions and other matters (if any) appearing on the register and relating to such land or charge.

XIII.—RULES AND REGULATIONS.

Rules may be made.

71. It shall be lawful for the Governor in Council from time to time to make rules orders and regulations for the following purposes :—

- (1.) For making authenticating and preserving maps and surveys for the purpose of registration under this Act.
- (2.) For regulating the procedure of the Registrar-General's and District Registrar's Offices.
- (3.) For establishing forms books records and indices requisite for the purpose aforesaid.
- (4.) And generally for the regulation of all matters relating to registration under this Act (except the matters in reference to

to

Land Registry.

to which rules and orders are hereby authorized to be made by the Judges of the Supreme Court);

And from time to time to rescind and to amend or alter the same.

72. All such rules orders and regulations, being published in the *Government Gazette*, shall have the effect of law. Effect of rules.

73. The Registrar-General may from time to time make regulations for the correction of errors and supplying of omissions in entries made in registers under this Act, and any such regulations may vary alter or revoke. Registrar-General may make regulations for correction of errors and omissions in register.

74. The Registrar-General shall cause to be printed and promulgated, as he sees occasion, forms of application and directions indicating the particulars of the information to be furnished to the Registrar when any application is made to him under this Act, and also forms of transfer charges and other instruments, and such other forms and directions as he may deem requisite or expedient for facilitating proceedings under this Act. Registrar-General to frame forms of application &c.

75. It shall be lawful for the Registrar-General, and for the District Registrar of any district, subject to the approval of the Registrar-General, to prescribe such regulations as they may from time to time deem necessary for the orderly transaction of the business of their respective offices. Registrar-General and District Registrar may make regulations.

XIV.—FEES.

76. The fees to be taken under this Act shall be fixed varied and abolished from time to time as the Governor in Council shall direct and appoint: Provided always that all fees shall be prepaid. Governor in Council to fix fees.

77. All fees received by the Registrar-General under this Act shall be paid over to the Colonial Treasurer for the use of Her Majesty for the public uses of the Colony. Registrar-General's fees to be paid over to Colonial Treasurer.

78. All fees received by District Registrars shall be deemed to be ordinary revenue within the meaning of "*The Ordinary Revenue Act, 1858*," and the offices of District Registrars be deemed to be included in the Schedule to "*The Surplus Revenues' Act, 1858*." District Registrar's fees to be ordinary revenue and subject to *Surplus Revenue Act*.

XV.—ASSURANCE FUND.

79. Upon the first registration of any land under this Act, except the applicant be the immediate grantee of such land from the Crown, there shall be paid to the District Registrar the sum of one halfpenny in the one pound sterling, and on every subsequent registration the sum of one farthing in the pound sterling, on the value of such land; such value to be ascertained in such manner as the Registrar-General, from time to time by any general order (which he is hereby authorized to make), shall direct. Halfpenny in the pound on value to be levied.

80. All sums so received shall be paid over to the Colonial Treasurer, and shall be by him carried to a separate account, to be called "*The Land Assurance Fund Account*," and shall be invested from time to time in such securities as he may deem eligible. Sums to be paid to Colonial Treasurer.

XVI.—COMPENSATION.

81. If any person, in consequence of the omission mistake or misfeasance of any officer of the Register Office, shall lose or be deprived of any estate charge incumbrance right or interest, he shall be entitled to recover the estimated value of the same at the time the act matter or thing was done or happened whereby such loss or deprivation was occasioned. Persons losing estates &c. may recover value against Registrar-General.

82. In any action for damage or loss occasioned by any such omission mistake or misfeasance, the plaintiff shall be entitled to recover the amount of damage or loss actually sustained and no more. Actual loss may be recovered.

Land Registry.

Actions to be brought against Registrar-General.

83. Every such action as aforesaid shall be brought against the Registrar-General as the nominal defendant, and no other person, within ten years after the act matter or thing occasioning such loss, deprivation or damage shall have been done or happened, and not afterwards: Provided always that notice of every such action and of the cause thereof shall be served upon the Attorney-General of the Colony and upon the Registrar-General one calendar month at least before the commencement of such action.

Registrar-General may compromise claims.

84. It shall be lawful for the Registrar-General, with the consent of the Attorney-General and the Colonial Treasurer, to compromise with any person claiming a right of action as aforesaid.

Registrar-General may bring actions.

85. The Registrar-General, on behalf of Her Majesty, shall be entitled as nominal plaintiff to sue any person whatever and recover damages on account of any wilful misfeasance whereby any loss or damage has been sustained by reason of any compensation paid under this Act, and all sums of money received by the Registrar-General as such nominal plaintiff shall be paid to the Colonial Treasurer, and by him placed to the credit of the "Assurance Fund."

Rules of Supreme Court to apply, and same right of appeal as in ordinary actions.

86. In the conduct of actions under this Act the same rules of procedure and practice shall apply and there shall be the same rights of appeal as are in force or exist for the time being in respect of ordinary actions in the Supreme Court.

"Crown Costs Act, 1858," to apply.

87. An Act of the General Assembly of New Zealand, intituled "*The Crown Costs Act, 1858*," shall apply to all actions under this Act, and all costs received by the Registrar-General shall be paid to the Colonial Treasurer, and by him be placed to the credit of the "Assurance Fund."

Registrar-General not personally liable. How damages &c. to paid.

88. The Registrar-General, as nominal plaintiff or defendant under this Act, shall not be liable in person or property upon any judgment recovered, nor shall any writ of execution whatever issue thereon, but all damages and costs recovered against the Registrar-General, and all costs incurred by him, and all sums paid by way of compromise as aforesaid, shall be paid by the Colonial Treasurer out of the "Assurance Fund," and, if such fund be insufficient for such purpose, then out of the ordinary revenue of the Colony.

XVII.—GENERAL PROVISIONS.

Rules as to registry.

89. The following rules shall be observed with respect to registry:—

- (1.) No notice of any trust implied express or constructive shall be receivable by the District Registrar or entered on the register.
- (2.) Upon the occasion of the registry of two or more persons as proprietors of the same land or of the same charge, an entry may with their consent, certified as the Registrar shall require, be made on the register to the effect that, when the number of such proprietors is reduced below a certain specified number, no registered disposition of such land or charge shall be made except with the sanction of a Judge of the Supreme Court.
- (3.) A Judge of the Supreme Court may, upon the application of any registered proprietor for the time being, or of any person beneficially interested in the land or charge, cause a transfer of the land to be made to any new proprietor or proprietors solely or jointly with or in the place of any existing proprietor, or make such order in the premises as such Judge thinks just.

District Registrar may require proof in

90. The District Registrar may from time to time, until any application

Land Registry.

application is finally disposed of, require any proofs he may think fit in support of or opposition to any application made to him under this Act.

support of or opposition to any application.

91. Evidence required by the District Registrar may be given on oath, either *vivâ voce* or in writing, by affidavit or otherwise, as he shall think fit.

Evidence may be taken on oath.

92. The Registrar-General and every District Registrar, Deputy District Registrar, Solicitor of the Supreme Court, and Justice of the Peace, are hereby authorized to administer oaths for the purposes of this Act.

Registrar-General &c. may administer oath.

93. Every entry on the register of any person as proprietor of any land or charge shall be deemed to have been duly made, and shall not be set aside by reason of any informality error or omission whatever except as is hereinafter provided to the contrary by sections one hundred and seventeen, one hundred and eighteen, or one hundred and nineteen of this Act.

Entry on register conclusive.

94. It shall be lawful for the District Registrar (subject to any regulations to be made under this Act), upon such evidence as to him may appear sufficient, to correct errors in entries and supply entries omitted, but he shall not render illegible an original entry, and shall specify in the margin the day and hour of each correction made or omission supplied.

District Registrar may make corrections and supply omissions.

95. Every correction so made shall be as effectual as if made at the same time as the original entry, and every omitted entry so supplied shall be as effectual as if made at the time when the same ought to have been made, but not so as to invalidate any act done previously to the actual time of the correction or supplying of the omission.

Corrections and omissions supplied to be effectual.

96. Every land certificate and every certificate of charge shall be *primâ facie* evidence of the entry made on the register in respect of the matter mentioned in such certificate.

Certificates *primâ facie* evidence.

97. If any land certificate or certificate of charge is lost mislaid or destroyed, the District Registrar may, on being satisfied of the fact, grant a new certificate in the place of the former one.

New certificates may be granted in place of one lost.

98. The District Registrar may, upon the delivery up to him of a land certificate or certificate of charge, grant a new certificate in the place of the one so delivered up.

Also in place of one delivered up.

99. No official person, acting under the authority of this Act, shall be individually liable to any action suit or proceeding for or in respect of any act or matter *bonâ fide* done or omitted to be done in the exercise or supposed exercise of the powers of this Act.

No person acting under this Act liable in respect of Acts done *bonâ fide*.

100. Where a suit is instituted for specific performance of a contract relating to registered land or a registered charge, the Court having cognizance of such suit may, by summons or by such other mode as it deems expedient, cause all or any of the parties who have registered interests in such land, or have entered up notices of leases or agreements for leases or inhibitions against such land, to appear in such suit, and show cause why such contract should not be specifically performed; and any order made by the Court in such suit shall be binding on all parties who shall be by such order declared to be bound.

Power of Court in suits for specific performance.

XVIII.—APPEALS.

101. The District Registrar if he shall think fit may and if requested in writing by the applicant shall refer any case or any question arising thereout at any time to the Registrar-General for his opinion, and the decision of the District Registrar on such application or question shall be in conformity with the opinion of the Registrar-General, certified under his hand.

Applications and questions may be referred to Registrar-General.

Land Registry.

Applicants may require ground of decision to be set forth in writing.

102. If any applicant shall be dissatisfied with any decision of the District Registrar, whether the opinion of the Registrar-General shall have been taken on the matter or not, it shall be lawful for such applicant to require the Registrar-General or District Registrar to set forth in writing the grounds of such decision.

Applicant may appeal.

103. The applicant may appeal against the decision of the District Registrar to a Judge of the Supreme Court in a summary way, by whom the matter shall be heard and determined, and who shall make such orders interlocutory and final as he may think fit; and the District Registrar, upon being served with such order or an official copy thereof, shall obey the same.

Judges may make rules touching appeals.

104. The Judges of the Supreme Court may from time to time make vary and abolish rules and regulations touching such appeals.

Questions of fact may be tried by a jury.

105. Provided always if at any time it shall appear to the Judge that there is in dispute a question of fact of sufficient importance, he may, before making any final order in the case, direct an issue to be tried to determine such fact, and such issue shall be in such form and subject to such terms and shall be tried at such time and place as such Judge may direct.

XIX.—QUESTIONS MAY BE REFERRED TO SUPREME COURT.

Power to Registrar-General to state case for Supreme Court or direct issue to be tried.

106. Whenever in any proceeding under this Act there arises any question of law or fact which, in the opinion of the Registrar-General, cannot be properly disposed of by the District Registrar, the Registrar-General may, if such a question is one of law, direct a case to be stated for the opinion of the Supreme Court, or if such question is one of fact, an issue to be tried before a Judge of the Supreme Court and a special or common jury, for the purpose of determining such question of law or fact. The Registrar-General may also 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 Court or decision of jury.

107. The opinion of the Supreme Court shall be conclusive on all the parties to such case unless the Court authorizes an appeal to be had and the same is duly prosecuted accordingly, and the decision of any jury to whom any issue of fact is referred shall be conclusive on all persons whatsoever unless the Supreme Court grants a new trial.

Application to Court in respect of incapacitated persons.

108. In cases where infants incapable persons or persons yet unborn are or may be 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 a Judge of the Supreme Court in Chambers for a direction that the opinion of the Supreme Court to whom any question is referred under this Act upon any question so referred shall be conclusively binding on all parties interested in such land.

Judge may approve or disapprove of directions of Registrar-General.

109. The Judge in Chambers shall hear the allegations of all the parties appearing before him. He may disapprove altogether or may approve, either with or without modification, of the directions of the Registrar-General in respect of any case to be tried as to the title to land. He may also appoint a guardian or other person to appear on behalf of any infants or incapable or unborn persons.

Infants &c. bound in certain cases.

110. If such Judge is satisfied that the interests of such infants or 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 to the same extent as if they had been parties to the case.

Land Registry.

111. The Supreme Court shall exercise generally jurisdiction over the Registrar-General, District Registrar, and other officers and persons appointed under this Act, as over Courts offices and officers of inferior jurisdiction, and shall have power to make such orders and decrees, applicable to particular cases only, as shall in the judgment of such Supreme Court appear requisite for effectuating the provisions of this Act, for enforcing the execution of their respective duties by the Registrar-General, District Registrar, and the said other officers and persons respectively, and for preserving and giving effect to the rights of parties affected by this Act, all which orders and decrees the Registrar-General, District Registrar, and the said other officers and persons respectively shall obey and give effect to.

Supreme Court to have jurisdiction over Registrar-General and other officers.

112. Any person having or claiming any estate or interest in land or in any charge thereon affected or which may be affected by this Act may apply for relief in a summary way by petition to the Supreme Court, and the Supreme Court may in a summary way hear such petition, either with or without notice to parties interested, and may make and direct such inquiries and the institution of such proceedings as to it shall seem fit, and may by any decree or order upon such petition declare the rights of such parties, and may make such orders and decrees as shall appear requisite for giving effect to such rights so far as the same shall not expressly conflict with the provisions of this Act, all which orders and decrees the Registrar-General and District Registrars respectively shall obey and give effect to.

Supreme Court may give summary relief.

113. The Judges of the Supreme Court shall have power from time to time to make rules and orders for regulating proceedings in the Supreme Court under this Act, and from time to time to rescind alter or add to such rules and orders, and such rules and orders rescissions alterations and additions being published in the *Government Gazette* shall have the effect of law.

Supreme Court may make rules &c.

XX.—COSTS.

114. All costs charges and expenses incurred by any District Registrar in or about any proceedings before the Supreme Court or a Judge thereof shall be paid by the applicant; and all other costs charges and expenses shall be in the discretion of the Judge, Registrar-General, or District Registrar respectively, before whom the same are incurred, regard being had to the fact that every 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 cases where parties appear whose rights are sufficiently secured without their appearance, or where costs charges or expenses are unnecessarily or improperly incurred.

Costs.

115. The amount of costs to be paid by any party in respect of any proceedings before the Registrar-General or any District Registrar shall be fixed by him, and an order for payment of the same made by the Registrar-General or District Registrar respectively may be enforced in the same manner as an order made for payment of costs by a Justice of the Peace. At any time during the proceedings on any application the applicant may be required by the Registrar-General or District Registrar to give security for payment of costs and expenses, as he may think fit.

How fixed and enforced. Security for costs may be required.

XXI.—PENALTIES.

116. Every person who, upon examination before any person authorized under this Act to take evidence, wilfully gives false evidence, and every person who wilfully swears falsely in any affidavit authorized

Penalty for false swearing.

Land Registry.

authorized under this Act to be made, shall be liable to the pains and penalties of perjury.

Penalty on suppression of deeds and evidence.

117. If in the course of any proceedings under this Act before the Supreme Court or the Registrar-General or any District Registrar, any person intervening in such proceedings as principal or agent shall, with intent to conceal from the Supreme Court or the Registrar-General or any District Registrar respectively, the title or claim of any person, other than the applicant, to any land the subject of such proceedings, suppress assist in suppressing or be privy to the suppression of any document in his possession or fact within his knowledge, the person so suppressing assisting in suppressing or privy to suppression shall be guilty of a misdemeanour, and any act done in reference to the land the subject of such proceedings shall be void as against all persons guilty of any such misdemeanour.

Penalty on fraudulent alteration &c.

118. If in the course of any proceedings under this Act before the Supreme Court or the Registrar-General or any District Registrar, any person intervening in such proceedings fraudulently alters assists in fraudulently altering or is privy to the fraudulent alteration of any deed will certificate or other document relating to any land the subject of such proceedings, or gives assists in giving or is privy to the giving of any false information to the Supreme Court, the Registrar-General, or any District Registrar in respect of such land, knowing the same to be false, such person shall be guilty of a misdemeanour, and any act done in reference to the land the subject of such proceedings shall be void as against all persons guilty of any such misdemeanour.

Certain fraudulent acts to be misdemeanours.

119. If any person fraudulently procures assists in fraudulently procuring or is privy to the fraudulent procurement of any order of the Supreme Court in relation to registered land, or fraudulently procures assists in fraudulently procuring or is privy to the fraudulent procurement of the entry on the register of any notice of lease or inhibition, or of the erasure from the register or alteration on the register of any notice of lease or inhibition, such person shall be guilty of a misdemeanour, and any order procured by fraud, and any act consequent on such order, and any entry erasure or alteration so made by fraud, shall be void as between all parties or privies to such fraud.

Certain fraudulent acts by District Registrars &c. to be misdemeanour.

120. If any District Registrar or the Deputy of any District Registrar shall fraudulently make or cause to be made any false entry on the register of his district, or shall fraudulently omit to make any entry on such register which by this Act he is authorized or required to make, or shall fraudulently alter suppress erase obliterate or destroy any entry on or from such register, such Registrar or District Registrar shall be guilty of a misdemeanour.

Punishment of misdemeanours.

121. Every person guilty of a misdemeanour under this Act shall upon conviction be liable, at the discretion of the Court by which he is convicted, to be kept in penal servitude for a term not exceeding three years, or to be imprisoned for a term not exceeding two years, with or without hard labour, or to be fined such sum as the Court may award.

Conviction not to affect civil remedy.

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

Forgery to be felony.

123. If any person is guilty of the following offences or any of them, that is to say,—

- (1.) Forges or procures to be forged or assists in forging the seal of the office of Registrar-General or of any District Registrar, or the name signature or handwriting of any officer

Registration of Deeds Amendment.

officer of any Register Office in cases where such officer is by this Act expressly or impliedly authorized to affix his signature.

- (2.) Stamps or procures to be stamped or assists in stamping any document with any forged seal of the Registrar-General's or District Registrar's Office.
- (3.) Forges or procures to be forged or assists in forging the name signature or handwriting of any person whomsoever to any instrument which is by this Act, or in pursuance of any power contained in this Act, expressly or impliedly authorized to be signed by such person.
- (4.) Uses with an intent to defraud any person whomsoever any document upon which any impression or part of the impression of any seal of the Registrar-General's or District Registrar's Office has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged.

Such person shall be guilty of felony.

124. Any person convicted of felony under this Act shall be liable, at the discretion of the Court by which he is convicted, to penal servitude for the term of his life or any term not less than three years, or to imprisonment for any term not exceeding two years, with or without hard labour.

Punishment of felony.

125. Nothing in this Act contained shall entitle any person to refuse to make a complete discovery in the Supreme Court, or to answer any question or interrogatory in any civil proceeding in any Court of Law or Equity, or in any Court of Bankruptcy or Insolvency; but no such discovery question or interrogatory shall be admissible in evidence against such person in any criminal proceeding under this Act.

Penalty not to exclude obligation to make discovery.

No. XXVIII.

AN ACT to amend the Law relating to the Registration of Deeds in the Colony of New Zealand.

REGISTRATION OF DEEDS AMENDMENT

[2nd November, 1860.]

WHEREAS by an Ordinance passed by the Governor of New Zealand, with the advice and consent of the Legislative Council thereof, intituled "*An Ordinance to provide for the Registration of Deeds and Instruments affecting Real Property*," provision was made for the registration of deeds and other instruments in the Colony of New Zealand: And whereas by certain Acts and Ordinances passed by the Superintendents and Provincial Councils of several of the Provinces of the Colony, the respective Superintendents thereof are empowered to do all the acts and exercise all the powers authorized to be done and exercised by the Governor by the said recited Ordinance: And whereas it is expedient that the said several acts and powers should be hereinafter done and exercised solely by the Governor of the Colony:

Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act shall be "*The Registration of Deeds Amendment Act, 1860.*"

Short Title.

2. The