AN ACT

For obtaining a Declaration of Title.

WHEREAS, it is expedient to enable persons having interest in land to obtain in certain cases a Judicial Declaration of their Title to the same, so as to enable them to make a Title to persons claiming under them as purchasers for a valuable consideration;

Be it therefore enacted by the Governor on Her Majesty's behalf by and with the advice and consent of the Legislative Council and House of Assembly of Vancouver Island and its dependencies as follows:

Parties claiming to be entitled to land may petition to the Supreme Court for Declaration of Title.

I. Every person claiming the absolute fee, or any other or less estate than the absolute fee, or any legal or equitable interest whatever in real estate, and every person entitled to apply for registration under the Land Registry Act, 1860, may apply to the Supreme Court by petition in a summary way for a Declaration of Title under this Act; provided always that no deposit of title deeds shall be deemed to create an equitable interest in real estate so as to confer the right of applying for such Declaration of Title.

Petition to set forth the particulars affecting title.

II. Every such petition shall state what incumbrances, estates, rights and interests, if any, the petitioner admits to affect his title, and subject to which he seeks to have his title declared, and shall be in such form as the Court shall by general order direct.

Two persons interested may jointly petition

III. Any two or more persons claiming to have together such estate or interest in land as would have enabled any one person to petition as aforesaid, may join in such a petition and such proceedings shall be had thereupon as in the case of a single petitioner.

Court may require Registrar General to be served with the petition.

IV. It shall be lawful for the court by general order, or otherwise if it shall think fit, to require that the Registrar General appointed under the Land Registry Act 1860, shall be served with notice of such petition, and the Registrar General shall thereupon be made a party to and attend the proceedings on such petition, and the costs thereby properly incurred shall be paid by the petitioner.

V. The court on the hearing of any such petition, on being satisfied that the petitioner has proved such a possession and has stated such a title as if established would entitle him to a Declaration under this Act, shall make an order for the investigation of the title in the same way as if the petitioner had obtained as vendor a decree for a specific performance of an agreement for sale of the land in question for the estate claimed in his petition.

VI. If the court on such investigation shall not be satisfied that the petitioner has shown such a title as it would have compelled an unwilling purchaser to accept them it shall dismiss the petition.

VII. In case the court is satisfied after such an investigation that the petitioner has shown such a title as it would have compelled an unwilling purchaser to accept, it shall on the conditions hereinafter mentioned being complied with, make an order that on some day not less than three months from the date of the order a Declaration shall be made establishing the petitioner's title, unless in the meantime cause is shown to the contrary, and the court may enlarge the time for so showing as often as it may deem proper.

Petitioner to give security for costs.

VIII. No such order shall be made until the petitioner shall have given security to the satisfaction of the court for payment of all costs, if any, which may be awarded to any person who may oppose the petitioner's right to the Declaration prayed for.

Petitioner to file affidavit that all documents have been produced.

IX. No such order shall be made until the petitioner and his solicitor and any other person whom the court may require shall have made and filed an affidavit that to the best of their respective knowledge, information and belief all deeds and documents, maps, plans and papers relating to the title to the land in question have been produced to the court, or the cause of their non-production has

been fully and fairly explained, and that all facts material to the title have been fully and fairly disclosed to the court, provided always that the court may dispense with such affidavit either from the petitioner or his solicitor when it shall think it reasonable so to do or may permit the same to be modified as circumstances may seem to require.

Notice of order to be advertised.

X. The petitioner after obtaining such order shall give notice of the same by advertisement in such newspapers and at such times as the court may direct. and in any other manner which the court may deem expedient for the purpose of informing all persons interested thereof as may be directed by any general or special order in that behalf.

Any person may petition against the order.

XI. Any person may at any time before the proposed Declaration of Title has been made. petition the court in a summary way to be heard against the making thereof and the court shall thereupon fix a time for the hearing of such petition, and shall if necessary enlarge the time for making the Declaration until such petition shall have been disposed of.

Court may qualify or refuse Declaration of Title or reserve rights.

XII. On the hearing of such petition the court may introduce such restrictions or qualifications in the title sought to be declared as the justice of the case requires, or may reserve the rights of any person or class of persons or may refuse to make any declaration of title, and if it shall appear to the court that all or any of the title deeds relating to the land in question have been lost or destroyed the court may if it shall think fit also reserve the rights of all persons under any such lost or destroyed deeds.

Where no reason for refusal Declaration of Title to be made.

XIII. If no petition has been presented against the proposed Declaration of Title within the time in that behalf limited or if having been presented the court shall be of opinion that no sufficient ground has been shown for refusing to make a Declaration of Title then the court shall after the expiration of the time limited for showing cause, upon being satisfied that the required notices have been duly given, and that all other requisitions have been duly complied with, make a Declaration that the original petitioner has such title to the land in question as he sought to establish by his petition or such title, subject to any restrictions, reservations or qualifications which it may deem necessary or proper to introduce.

Declaration of Title not to be set aside for informality.

XIV. The Declaration of Title shall not be set aside or called in question by reason of any irregularity or informality in the proceedings previous to the making thereof.

May be registered.

XV. Every Declaration of Title made under this Act may be registered under "The Land Registry Act, 1860."

Certificate of Court.

XVI. Any person who has obtained in manner aforesaid a Declaration of Title shall be entitled to receive from the court on payment of the proper fees, and on production of his Title Deeds for the purpose next hereinafter mentioned, a certificate under the seal of the court setting forth the title so declared and such certificate shall be conclusive evidence of the facts therein stated.

Production of Deeds before sealing the Certificate.

XVII. Before any such certificate shall be sealed the petitioner shall produce to the court such of his deeds and miniments of title as the court shall require, and the same shall be stamped or marked by the officer issuing the certificate in such manner as the court shall by general order direct, for the purpose of showing that a declaration of title has been made as to the land therein comprised or to such part thereof as is comprised in the Declaration.

Declaration of Title deemed to have correctly declared land therein referred to.

XVIII. Such Declaration of Title shall in favour of any person thereafter deriving title as a purchaser for valuable consideration of the land therein referred to, or of any part thereof, or of any estate, right or interest therein, by, from, through or under the person whose title has been so declared, be deemed and taken to have correctly declared the same but save as aforesaid such Declaration shall have no force or effect whatever as to the title of the land comprised therein.

XIX. Instead of a single Declaration of title or a single certificate, the court, may on the application of the petitioner make separate Declarations or give separate certificates as to the title of separate parts of the land referred to in the petition.

Court may make separate Declaration or Certificate of Title.

XX. If for the purpose of a sale or other disposition of the land comprised in any certificate of title or of any part thereof the holder of any such certificate shall be desirous of having separate certificates of title relating to separate portions of the land, it shall be lawful for the court on petition by such holders to order his certificate to be cancelled, and in lieu thereof to give him separate certificates for separate parts of the land comprised in the certificate so cancelled and every such separate certificate shall refer to and state the date of the cancelled certificate and shall have the same effect as to the land therein comprised as if it had been given at the time of such date but no such substitution of certificates shall in anyway prejudice or effect the title of any person who shall previously thereto have become entitled to any part of the land comprised in the original certificate or any interest in the same.

Substitution of Certificates.

XXI. Whenever any such substitution of certificate shall take place the land mentioned in every such separate certificate may be registered under "The Land Registry Act, 1860," and in that case any transactions relating thereto shall subject to any regulations to the contrary that may be made by general order, thenceforth form a separate record in the register, distinguished by a separate number or in such other manner as the Registrar General may determine.

May be registered.

XXII. If any certificate of title shall be lost or destroyed, the court may issue a fresh certificate in lieu of that so lost or destroyed expressing on the face thereof that it is a duplicate but no such fresh certificate shall be of any avail against any person who may have already derived title under the original certificate.

If Certificate be lost a duplicate may be issued.

XXIII. The Declaration of Title shall not affect any tax or rent payable to the Government or any right of way or water, or other easement or any lease or agreement for lease for any term not exceeding one year.

Declaration of Title not to affect certain claims.

XXIV. If at any time (save as is hereinafter excepted) after any such Declaration of Title as aforesaid has been made any person shall consider himself to be aggrieved thereby, it shall be lawful for him to present a petition praying that the same may be recalled or varied in such manner as may be just, and the court shall thereupon proceed in the hearing of such petition in the same manner as if the same had been presented before the Declaration of Title had been made, and the court may on the hearing of the said petition annul the Declaration and order the certificate or certificates to be given up to be cancelled or may make such variations therein as it may deem just, and may if it shall think fit also direct the Registry thereof if made, to be cancelled but no proceeding on any such petition shall prejudice or affect the title of any person who before any such annulling or variation shall have acquired a title under the said Declaration as a purchaser for valuable consideration of the said land or of any estate or interest therein. Provided always that no such petition shall be allowed to be presented after the expiration of five years from the date of the Declaration of Title.

Court may hear petition for recall or variation of Declaration of Title.

XXV. The court may on the hearing of any such last mentioned petition, make any order which it may deem just, restraining the person who has obtained the Declaration, and all persons claiming by, through, from or under him otherwise than as a purchaser for valuable consideration from in any manner dealing with the said land until such petition shall have been disposed of.

Court may restrain dealing with land.

XXVI. The court shall have power to order costs either as between party and party or as between solicitor and client, to be paid by and to any person party to any proceeding under this Act, and to give directions as to the fund out of which such costs shall be paid.

Power of court to order costs.

Persons alienating to invest trust money in land.

XXVII. And whereas it may happen that at the time of making such Declaration of Title as aforesaid there may be estates, rights or interests in the land which may not be saved by the Declaration, and the persons entitled to such estates, rights or interests may be demnified by the subsequent alienation of the land for valuable consideration. Be it therefore enacted, that all money received by the person so alienating shall be deemed to have been received by him in trust to invest the same in the purchase of lands to be settled to the uses and on the trusts to and on which the lands so alienated stood limited at the time of such alienation. Provided always that this clause shall not be deemed to impose any liability on any person who may have received any money on such alienation as a trustee, so far as relates to money which he may have duly applied in execution of the trusts reposed in him.

Provisions as to married women.

XXVIII. Where any married woman is desirous of making any application giving any consent or doing any act or becoming party to any proceedings under this Act, her husband's concurrence shall be required, and she shall be examined apart from her husband touching her knowledge of the nature and effect of the application or other act, and it shall be ascertained that she is acting freely and voluntarily, and such examination may be taken by the court or such persons as are authorized to take acknowledgements of deeds by married women under an Act passed in the session of the Parliament of the United Kingdom of Great Britian and Ireland holden in the third and fourth years of the reign of his late Majesty King William the Fourth, chapter seventy-four, "for the abolition of fines and recoveries and for the substitution of more simple modes of assurance," and the form and manner in which such examination shall be certified to the court shall be determined by the General Rules and Orders to be made under this Act. Provided always that a married woman entitled to her separate use and not restrained from anticipation, shall for the purpose of this Act be deemed a feme sole.

Provision for other persons under disability.

XXIX. Where any person who (if not under disability) might have made any application, given any consent, done any act, or been party to any proceeding under this Act, is a minor, idiot or lunatic, the guardian or committee of the estate respectively of such person may make such applications, give such consents, do such acts, and be party to such proceedings, as such person respectively if free from disability might have made, given, done, or been party to, and shall otherwise represent such person for the purposes of this Act provided always that where there is no guardian or committee of the estate of any such person as aforesaid being infant, idiot or lunatic, or where any person the committee of whose estate if he were idiot or lunatic would be authorized to act for and represent such person under this Act, is of unsound mind or incapable of managing his affairs but has not been found idiot or lunatic under an inquisition, it shall be lawful for the court to appoint a guardian of such person for the purpose of any proceedings under this Act, and from time to time to change such guardian.

Proceedings not to abate by death, &c.

XXX. Proceedings under this Act shall not abate or be suspended by any death or transmission or change of interest, but in any such case of death or transmission or change of interest, it shall be lawful for the court where it sees fit to require notices to be given to persons becoming interested, or to make any order for discontinuing, suspending or carrying on the proceedings or otherwise in relation thereto which to the court may appear just.

Power to Chief Justice to make rules and orders.

XXXI. The Chief Justice or other the Judge or Judges of the Supreme Court shall from time to time make such general rules and orders as he or they may see fit for carrying the purposes of this Act into effect and for regulating the times and forms and mode of procedure and of giving notices and generally the practice of the court in respect of the matters to which this Act relates, and such rules and orders may from time to time be rescinded or altered by the like authority or authorities respectively and all such rules and orders shall take effect as general orders of the court in the same manner and subject to the same conditions and subject to the appro-

val of the Governor and Her Majesty's principal Secretaries of State in like manner as rules and orders made in pursuance of the order in council of the 4th April, 1856, in matters relating to procedure in the said Supreme Court.

XXXII. Until any general rules and orders shall be framed under the last preceeding section the rules and orders set forth in the schedule hereto annexed shall be taken to be rules and orders of the said Supreme Court but the same shall be liable to be rescinded or altered as if they had been made by the Chief Justice or other the Judge or Judges of the Supreme Court as in the last preceeding section is mentioned.

Penalty on making false statements, &c

XXXIII. If in the course of any proceeding before the Court under this Act, any person acting either as principal or agent shall knowingly and with intent to deceive, make or assist or join in or be privy to the making of any material false statement or representation, or suppress, conceal or assist or join in or be privy to the suppressing, withholding or concealing from the court any material document, fact or matter of information, every person so acting shall be deemed guilty of a misdemeanor, and on conviction shall be liable to be imprisoned for a term not exceeding three years and either with or without hard labour or to be fined such sum as the court by which he is convicted shall award; the order or Declaration of Title obtained by means of such fraud or falsehood shall be null and void for or against all persons other than a purchaser for valuable consideration without notice.

Penalty on fraudulent alterations.

XXXIV. If in the course of any proceeding before the court any person shall fraudulently forge or alter or assist in forging or altering any certificate or other document relating to such land or to the title thereof or shall fraudulently offer, utter, dispose of or put off any such certificate or other document knowing the same to be forged or altered, such person shall be guilty of felony and upon conviction shall be liable at the discretion of the court by which he is convicted to be imprisoned for life or for any term and with or without hard labour and with or without solitary confinement.

Conviction not to affect civil remedy.

XXXV. No proceeding or conviction for any act hereby declared to be a misdemeanor 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 commiteed such act.

Penalty not to exclude obligation to make discovery.

XXXVI. 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 in the court of bankruptcy, but no answer to any such bill, question or interrogatory shall be admissable in evidence against such person in any criminal proceeding.

Construction of terms.

XXXVII. In the construction of this Act (except where the context or other provisions of the Act require a different construction,) the word "person" shall include a body politic or corporate, the word "possession" shall include receipt of the rents and profits, the word "land" shall not include any incorporeal hereditaments but shall include all corporeal tenements and hereditaments not expressly excepted, and the words "Supreme Court or Court" shall mean the Supreme Court of Civil Justice of Vancouver Island having jurisdiction in Chancery.

Short title, &c.

XXXVIII. This Act shall come into operation on the first day of May, one thousand eight hundred and sixty-five, and may be cited as "The Declaration of Title Act, 1865."

SCHEDULE.

1. Every petition for a Declaration of Title shall contain an exact description in their actual state of the lands as to which the Declaration is sought, stating particularly the boundaries thereof and the lands on which the same and every part thereof abut, and so far as conveniently may be the names and description of the owners and occupiers of such last mentioned lands.

2. On the investigation of the title to the lands as to which the Declaration is sought, the identity of the lands described in the petition with the parcels as described in the title deeds shall be established by affidavit or otherwise as the court may deem just.

3. The court may if it shall deem it necessary or proper, require the petitioner to lodge in court a map or plan of the lands in question.

4. The petitioner after obtaining the order for a Declaration of Title shall cause a copy thereof, together with the description of the lands in question, with any engrossed or lithographed plan thereof, if any exist, to be served on every adjoining occupier and owner, or on such of them and on such other persons (if any) as the court may direct to be so served.

5. He shall also cause a copy or copies thereof to be deposited in some office or place to be appointed by the court on or near to the lands in question, to be accessible at all reasonable times to all persons desirous of examining the same, and notice of every such deposit shall be affixed in some public place or places on or near the lands in question.

6. Every such copy served on any adjoining occupier or owner or deposited as aforesaid shall state that any person willing to show cause against the making of the proposed Declaration may do so by presenting a petition in a summary way to the court at any time before the day appointed for making the proposed Declaration.

7. The petitioner after such deposit shall have been made shall cause advertisements to be inserted three times at least in such newspapers on such days as the court shall direct stating the said order and where any copy has been so deposited for inspection.

8. Unless the last of such advertisements is made within four weeks next after the date of the order the time thereby fixed for showing cause against the same shall be enlarged for one calendar month or such further time as the court shall direct.