ANNO VICESIMO OCTAVO ET VICESIMO NONO

VICTORIÆ REGINÆ.

****

No. V.

An Act to Amend "The Land Registry Act, 1860." [8th April, 1865.

WHEREAS, it is necessary to amend "The Land Registry Act, 1860": be it therefore enacted by the Governor of the Colony of Vancouver Island and its Dependencies, by and with the Advice and Consent of the Legislative Council and Assembly thereof, as follows:

Appointment of Deputy Registrar.

I. It shall be lawful for the Governor to appoint, from Time to Time as occasion shall require, during the Absence or other Incapacity to act of the Registrar General, a fit and proper Person to perform the Duties of Deputy Registrar; and all the Acts of such Deputy Registrar shall have the like Force and Effect as if done by the Registrar General, and the Deputy Registrar shall have such Remuneration as the Governor shall think fit.

Registration of Charge.

II. Every Person claiming any other or less Estate than the Absolute Fee, or any Equitable Interest whatever in Real Estate, (other than a Leasehold Interest in possession for a Term not exceeding One Year,) whereof the Title to the Absolute Fee has not been registered, may on Proof of a *prima facie* Title thereto, register a Charge in like Manner as is prescribed in Section Ten of the said Act.

Equitable Mortgages not to be registered

III. No Equitable Mortgage or Lien created simply by a Deposit of Title Deeds shall be deemed to entitle the Person interested to registration under this Act.

Pre-empted Land.

IV. Whenever any Person shall have paid in full for Land pre-empted under any Land Proclamation or Act now or hereafter in force, he may, on receiving a Certificate of such Payment from the Surveyor General, apply to have the Same registered

registered as an Absolute Fee in like Manner as prescribed in Section Eight of "The Land Registry Act, 1860."

Certificate of Surveyor General.

V. The Surveyor General may give a Certificate of Payment of all or any of the Instalments due on Land, as mentioned in Sections Sixteen and Seventeen of "The Land Registry Act, 1860," and in Section Four of this Act, in the Form marked "U" in the Schedule to this Act.

Form of Certificate of Title, and provision in case of loss thereof.

VI. Section Eighteen in "The Land Registry Act, 1860," is hereby repealed, and in lieu thereof be it enacted that the Registrar shall, upon the Registration of any Absolute Fee, issue a Certificate of Title to the Person who shall have effected Registration in the Form marked "G" in the First Schedule to this Act, and shall fill up a Memorandum thereof and retain the Same in his Office: and if any Certificate of Title shall be lost or destroyed, the Registrar General may, upon being satisfied by Affidavit of the Applicant or of some other Person of the Truth thereof, 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. In every case, so far as practicable, where a Transfer is registered of a Portion of the Land comprised in or referred to in the Certificate of Title, an Endorsement of such Transfer shall be made thereon.

Certificate of Title to be evidence.

VII. Every such Certificate of Title shall be received as Evidence in all Courts of Justice of the Particulars therein set forth.

Certificate of Indefeasible Title.

VIII. Upon the Expiration of Five Years from the Time when registration of an Absolute Fee was First effected, the Registered Owner shall be entitled to receive a Certificate of Title in the Form marked "S" in the said First Schedule, a Duplicate of which shall be retained by the Registrar, and such Certificate of Title shall be conclusive Evidence in all Courts of Justice that the Owner therein named is the Absolute Owner of an Indefeasible Fee Simple in the Real Estate therein referred to, and such Real Estate may be transferred by an Endorsement on such Certificate in the Form marked "T" in the said Schedule or similar thereto, and the Registrar, upon the Receipt of the Former Certificate of Title, may grant Registration of the Absolute Fee to such Transferee in the Form marked "B" in the said Schedule, and issue a New Certificate to such Transferee, and when necessary a New Certificate or Certificates to the Transferor or Transferors in Manner aforesaid. And upon such Registration the Transfer shall confer upon the Person to whom the same is made an Absolute and Indefeasible Title in Fee Simple in the Land transferred, subject however to the Rights existing against any such Estate by virtue of any Charge or Issue appearing on the Register at the Time of such Transfer, and also to any unregistered Leasehold Interest in possession for a Term not exceeding One Year as aforesaid.

IX.

IX. The Time at which the Application for Registration shall be deemed to have been made shall be the Time when the Application Paper is filled up and signed by the Applicant, and the Title Deeds handed in to the Registrar.

Time of Application.

X. Whenever any Deed or Instrument is produced for the proving the Title of any Applicant for Registration, the Registrar is hereby required, so far as may be possible, to endorse on such Deed or Instrument a Memorandum of the Interest of the said Applicant in the Land comprised in such Deed or Instrument.

Memorandum of Registration to be endorsed on Title Deeds

XI. Within One Week after any Issue has been filed under the Provisions of "The Land Registry Act, 1860," the Registrar shall give Notice in Writing to the Registered Owner of the Property in respect of which the Same has been so filed.

Notice of Issue

XII. In every Case of cancellation of a Charge, Notice of Contest or Issue under the Provisions of "The Land Registry Act, 1860," the Interest against which such Charge, Notice of Contest or Issue shall have been registered or filed shall be deemed to be discharged from the Date of the Satisfaction or Discharge of the Same, and not from the Date of Entry thereof as provided in Section Forty-one of the last mentioned Act.

Date of Cancellation of Charge.

XIII. Before any Instrument executed after the Expiration of Six Months from the Passing of this Act, other than a Decree, Judgment or Order of a Court of Civil Jurisdiction, is registered, and to entitle the Same to be registered, the Execution thereof shall First have been acknowledged or proved in the Manner hereinafter provided, and such Fact of Acknowledgment or Proof shall appear by a Certificate under the Hand and Seal of the proper Officer or other Person authorized to take such Acknowledgments endorsed upon or attached to such Conveyance deed or other Instrument.

All Deeds to be Acknowledged.

XIV. The Acknowledgment or Proof of execution of all Instruments hereby authorized to be registered, if acknowledged or proved within the Colony, may be made to the Registrar or Deputy Registrar or any Person commissioned in that behalf by the Chief Justice of the Supreme Court of Civil Justice of Vancouver Island as hereinafter mentioned, and if acknowledged or proved without the Colony and within the British Dominions, may be made to any Judge of a Court or Clerk or Registrar of any Court having a Seal, or to any Notary Public, or to any Magistrate of any Town or District within the said Dominions having a Seal of Office, and if acknowledged or proved without the British Dominions may be made to any British Ambassador, Charge d'Affaires or Minister, Consul or Consular Agent appointed to reside in the Country where such Acknowledgment or Proof is made, or to any Judge of any Court of Record having a Seal, or to any Notary Public practising in such Country duly certified to be a Notary Public by some British Ambassador, Charge d'Affaires, Minister, Consul or Consular Agent. And every such Acknowledgment of Instruments executed without this Colony shall be suffi-

Before whom Instruments are to be Acknowledged.

sufficient

cient to entitle the Same to be registered, notwithstanding anything in this Act contained to the contrary, and particularly to the Provisoes in Section Seventeen hereinafter following.

Chief Justice may appoint persons to take Acknowledgments.

XV. The Chief Justice aforesaid, with the Approval of the Governor for the Time being, may appoint by Commission such and as many competent Persons other than the Persons before mentioned, as may be necessary for the Accommodation of the Public, to take the Acknowledgment and Proof of the Execution of all Instruments in Writing within the Colony which may by Law be registered.

Persons making Acknowledgments shall appear before the Officer taking the same.

XVI. No Acknowledgment of the Execution of any Instrument affecting any Real Estate within this Colony shall be taken, unless the Party offering to make such Acknowledgment shall appear before the Officer taking the Same, and unless such Party shall either be personally known to the Officer or his identity be proven by the Oath or Affirmation of a Competent Witness, and such Certificate of Acknowledgment shall recite in Substance and Legal Effect the Facts required by this Section.

By whom Acknowledgment may be made.

XVII. Acknowledgments and Proofs of the Execution of Instruments entitled to be registered may, for the Purposes of this Act, be made by,

1. The Party executing in Person such Instrument.

2. The Attorney in fact, when such Instrument is executed by an Attorney in fact.

3. The Secretary of any Corporation, when such Instrument is executed by such Secretary.

4. A Subscribing Witness to such Instrument.

Recitals in Acknowledgments.

Provided always that no Acknowledgment of any Party executing in Person such Conveyance, Deed or other Instrument, shall be taken, unless in addition to what is required by Section Sixteen of this Act, such Party acknowledge that he is the Person mentioned in such Instrument, as the Maker thereof, and whose Name is subscribed thereto as a Party, that he knows the Contents thereof, and that he executed the Same voluntarily ; and such Certificate of Acknowledgment shall, in addition to what is required by Section Sixteen to be recited, recite in Substance and Legal Effect the Facts required by this Proviso. And provided also that no Acknowledgment by an Attorney in fact shall be taken, unless in addition to what is required by Section Sixteen of this Act, such Attorney in fact shall acknowledge that he is the Person who subscribed the Name of (naming the Maker) to the Instrument, that said (naming the Maker) is the Person mentioned in the Instrument as the Maker thereof, that (naming the Attorney in fact) knows the Contents of the Instrument, and subscribed the name of (naming the Maker) thereto voluntarily as the free Act and Deed of the said (naming the Maker) ; and such Certificate of Acknowledgment

Acknowledgment shall, in addition to what is required by Section Sixteen to be recited, recite in Substance and Legal Effect the Facts required by this Proviso. And provided also that no Acknowledgment by the Secretary of any Corporation shall be taken, unless in addition to what is required by Section Sixteen of this Act such Secretary acknowledge that he is the Person who subscribed his Name and affixed the Seal of such Corporation as the Secretary, to such Instrument, and that he was First duly authorized to subscribe and to affix the said Seal to the Same; and such Certificate of Acknowledgment shall, in addition to what is required by Section Sixteen to be recited, recite in substance and Legal Effect the Facts required by this Proviso. And provided also that no Acknowledgment by a Married Woman shall be taken, unless in addition to what is required by Section Sixteen, such Married Woman shall be First made acquainted with the Contents of the Instrument, and the Nature and Effect thereof, and shall acknowledge on Examination apart from and out of hearing of her Husband, that she knows the Contents of the Instrument and understands the Nature and Effect thereof, that she executed the Same voluntarily, without fear or compulsion or undue Influence of her Husband, that she is of Full Age and competent Understanding, and does not wish to retract the Execution of the Same; and every such Certificate of Acknowledgment shall, in addition to what is required by Section Sixteen to be recited, recite in Substance and Legal Effect the Facts required by this Proviso. And provided that no Acknowledgment or Proof by a Subscribing Witness shall be taken, unless in addition to what is required by Section Sixteen of this Act, such Subscribing Witness shall acknowledge that he is the Person whose Name is subscribed to the Instrument as a Witness, and shall prove that (naming the Maker) whose Name is subscribed thereto as the Maker, did execute the Same; and such Certificate of Acknowledgment or Proof shall, in addition to what is required by Section Sixteen to be recited, recite in Substance and Legal Effect the Facts required in this Proviso. Provided also that the Acknowledgment or Proof of Instruments required to be made or done as hereinbefore mentioned, may be in the Forms in the Third Schedule hereto.

Instruments acknowledged may be read in evidence.

XVIII. Every Instrument which shall be Acknowledged or Proved and Certified as in this Act prescribed may, together with the Certificate of Acknowledgment or Proof, be read in Evidence in all Courts of Law and Equity, without further Proof of Execution.

Registrar may require Maps to be deposited or appended to Deeds.

XIX. When any Person applies for Registration of a Portion of an entire Lot or Section of Land, he shall, if so required by the Registrar, deposit a Map thereof properly authenticated, or append the Same to the Instrument conveying the said Land, and reference to such Map shall be made by the Registrar and entered by him in the Parcels Books, and such Map shall be drawn on a Scale in the Case of Land situated in any District of not less than Four Inches to a Mile, and in the

Case

Case of Land situated in any Town, on a Scale of not less than One Chain to an Inch, or on such Scale respectively as the Registrar shall require, in order that the Land may be clearly and conveniently shown.

Surveyor General to deposit copies of official Maps

XX. The Surveyor General of the Colony shall, as soon as conveniently may be, and from Time to Time deposit in the Land Registry Office when requested so to do by the Registrar, Copies of all Official Maps in his custody duly authenticated by his Signature.

Acknowledgments, &c. to be made before Registrar.

XXI. All Acknowledgments, Affidavits, Oaths and Declarations necessary for this Act and "The Land Registry Act, 1860," may be taken by and made before the Registrar.

Power to Registrar to refer cases to the Court.

XXII. Whenever in the Opinion of the Registrar, from any special Circumstances in the Case it is desirable that an Application for Registration shall be decided by the Court, or that a Declaration of Title in the First Instance should be made under any Act which may be passed in the present Session, it shall be lawful for him to refer such Matter to the Court, and to decline the Registration thereof until an Order for such Registration or a Declaration of Title has been obtained, as the case may require.

Application for Registration may be made by Agents.

XXIII. Applications for Registration may be made by the Agent of any Person entitled to be placed on the Register, provided that the Registrar be satisfied that such Agent is duly authorized to make such Application.

Caveat, &c.

XXIV. The Court may, upon the Application by Petition of any Person interested in Real Estate, although the Same be not registered, issue an Order or Caveat inhibiting any dealing with or Registration of such Real Estate, and annex thereto any Terms and Conditions it may think fit, and generally to make such Order as the Justice of the Case may require.

May be Registered as Charges.

XXV. All Orders made under the Fifty-ninth Section of "The Land Registry Act, 1860," may be registered as Charges, and all Orders made under the Twenty-fourth Section of this Act may be registered as Supplemental Charges.

List of Land registered to be kept.

XXVI. The Registrar shall keep a List, arranged under appropriate Headings, as to Towns and Districts, of all Lands registered.

Percentage on value of Land.

XXVII. The Per Centage to be paid on the Registration of an Absolute Fee shall be according to the Market Value of the Property at the Time of Application for Registration; and in case of doubt the Market Value shall be held to be the Value as stated in the last completed Government Assessment Roll.

Forms to be used.

XXVIII. The Forms in "The Land Registry Act, 1860," marked A, B, C, D, E, F, G, I, K, L, and M, respectively, shall, as soon as conveniently may be, be discontinued, and those marked A, B, C, D, E, F, G, I, K, L, and M, respectively, in the First Schedule to this Act annexed, may be used in lieu thereof.

XXIX.

XXIX. In lieu of the Fees as mentioned in the Second Schedule to "The Land Registry Act, 1860," the Fees mentioned in the Second Schedule hereto shall be charged and paid. **Fees.**

XXX. If the Deeds constituting a Title have been registered, and they are allowed to remain in the Office for One Month thereafter or upwards, the Same shall be charged as if they had been deposited. **Registered Deeds allowed to remain in the office one month charged as if deposited.**

XXXI. It shall be the Duty of the Registrar, when requested and upon Payment of the proper Fees, to record in a Book or Books to be kept for that Purpose and to be called respectively "The Absolute Fees Record," "The Charges Record," and "The Supplemental Charges Record," all Instruments in any manner affecting the Title to Real Estate or to any Interest thereunder which has or may have been already duly registered by correctly transcribing or copying the Same, together with any Endorsement thereon or Certificate attached thereto, Word for Word, Letter for Letter, Figure for Figure, Sign for Sign, and Erasure for Erasure. **Documents may be copied in the office, and official copies made.**

XXXII. References to such Record shall be made in the Register Books of the Title to which such Instruments relate. **References to be made to such copies.**

XXXIII. The record of any such Instrument as aforesaid, or any Copy of the Same duly certified by the Registrar, may, in the absence of the Original, and if produced by a Party not having the Control of the Original, be read in Evidence in all Courts of Law and Equity without further Proof, but the Production of such Copy shall not preclude the Registrar from requiring the Production of the Original Document in those Cases when such Production may be deemed necessary for the Purpose of registering any Title thereunder. **Official copies may be received in evidence.**

XXXIV. This Act may be cited as "The Land Registry Amendment Act, 1865." **Short Title.**

FIRST SCHEDULE.

FORM "A."

No.

I, A. B., declare that I am the Legal Owner in my own Right, in Fee, Simple in possession of the Real Estate hereunder described, and I claim to be registered accordingly.

Description

DESCRIPTION OF REAL ESTATE.

Town or District.	Lot or Section.	Admeasurement or Acreage.

LIST OF INSTRUMENTS.

Date.	Parties.	Character of Deed.

And I, declare that to the best of my Knowledge the Value of the said Real Estate is Dollars.

(A. B.)

Form

FORM "B."

No.	Name of Applicant.	Parcels, Short Description,	Absolute Fees, Parcels Books.	Date of Application.	Date of Registration.	List of Instruments.	Charge, Issue etc., if any.

FORM "C."

No.	Folio of Absolute Fees Book.	Town or District.	Section or Lot.	Admeasurement or Acreage.	Further Description.

Form

FORM "D."

No.

I, A. B., declare that I am entitled to a the Real Estate hereunder described, and I claim Registration of a Charge accordingly.

DESCRIPTION OF REAL ESTATE.

(The Absolute Fee is registered at Folio vol. of the Absolute Fees Book, in the Name of .)

Lot or Section.	Town or District.	Admeasurement or Acreage.

LIST OF INSTRUMENTS.

Date.	Parties.	Character of Deed.

And I, A. B., declare that to the best of my Knowledge, the Value of my said Interest is Dollars.

(A. B.)

Form

FORM "E."

No.	Folio of Absolute Fees Book.	Owner of Charge.	Parcels, Short Descriptions.	Charge, Parcels Book.	Date of Application.	Date of Registration.	Nature of	List of Instruments.	Charge, Issue, Contest, etc., if any.

FORM "F."

No.	Folio of Charge (or supplemental Charge) Book.	Town or District.	Lot or Section.	Admeasurement or Acreage.	Further Description.

Form

FORM "G."

CERTIFICATE OF TITLE.

No. 186

Certificate of Title..... No..... Name.... .... Absolute Fees Book..... Property..... ..... (A. B.) Registrar General.	Name of Owner.	Absolute Fees Book.	Date of Registration.	Parcels, Short Description

LIST OF INSTRUMENTS.

(A. B.)
Registrar General.

FORM "I."

I, A. B., take issue on the Registration effected by
of the Land known as in the Absolute Fee Book,
Vol. Folio

(A. B.)

Form

FORM "K."

No.

Registered the day of 186 , in Book , Vol. , Folio .

(A. B.)
Registrar General.

FORM "L."

I, A. B., File this Notice of Contest against an Issue (or Charge registered or) filed by C. B., in respect of that piece of Land registered in the Book, Vol. , Folio .

(A. B.)

FORM "M."

I, A. B., having filed a Notice of Contest on the Day of 18 , against an Issue (or Charge registered or) filed by C. D., in respect of that piece of Land registered in the Book, Vol. , Folio , crave that the Charge (or Issue) may be cancelled (or taken off the File.)

FORM "S."

CERTIFICATE OF INDEFEASIBLE TITLE.

This is to certify that A. B. is absolutely and indefeasibly entitled in Fee Simple to that Piece of Land known as
and more particularly described in Absolute Fees Parcels Book, Vol.
Folio , subject however to
In witness whereof, I have hereunto set my Hand and Seal of Office, this day of 186 .

(C. D.)
Registrar General.

Form

FORM "T."

I, A. B., of do hereby, in consideration of Dollars, paid to me, transfer and convey the Land in this Certificate referred to, to C. D., his Heirs and Assigns, for ever.

Executed in presence of
D. E.
E. F. } (A. B.)

FORM "U."

I hereby certify that Instalment due in respect of Section , has been paid, and that there remains a Balance of unpaid.

(A. B.)
Surveyor General.

SECOND SCHEDULE.

FEES.

Inspection of any Title on the Register	$ 50
Application for Registration	50
Registration of any Absolute Fee	1 00
And One-fifth of One Per Cent. on the Value of the Real Estate, where such Value amounts to or is under Five Thousand Dollars, and One-tenth of One Per Cent. on the additional Value where such Value exceeds Five Thousand Dollars.	
Registration of any Charge	1 00
And One-tenth of One Per Cent. on the Value of the Interest covered by the Charge	
Every Certificate of Title or Search	50
Filing any Issue	2 00
Filing any Contest	50

Sealing

Sealing any Document.....	$ 25
Cancellation of any Charge, &c.....	1 00
Filing any Document other than an Issue.....	50
Every Notice.....	50
Every Deposit of Map or Title Deed.....	5 00
For every transcript or Record of any Deed or Instrument, as provided for in Section thirty one of this Act, per folio of One Hundred Words....	25
For making certified Copies of any Deed or Instrument of Record, per folio of One Hundred Words.....	25
For taking the Acknowledgment or Proof of Execution of any Instrument including the Certificate thereof. For every Acknowledgment or Proof	1 00
For administering an Oath.....	50

THIRD SCHEDULE.

FOR MAKER OF A DEED.

I hereby certify that personally known to me, appeared before me, and acknowledged to me that the Person mentioned in the annexed Instrument as the Maker thereof, and whose name subscribed thereto as part that knows the contents thereof, and that executed the same voluntarily.

In testimony whereof I have hereto set my Hand and Seal of Office at this day of in the year of our Lord One Thousand Eight Hundred and Sixty-

FOR MARRIED WOMAN.

I hereby certify that A. B., personally known to me to be the wife of C. D., appeared before me, and being first made acquainted with the contents of the annexed Instrument, and the Nature and Effect thereof, acknowledged on Examination, and apart from and out of hearing of her said Husband, that she is the Person mentioned in such Instrument as the Maker thereof and whose Name is subscribed thereto as Party, that she knows the Contents and understands the Nature and Effect thereof, that she executed the same voluntarily without fear or compulsion or undue

undue influence of her said Husband, that she is of full age and competent understanding, and does not wish to retract the execution of the said Instrument.

In testimony whereof I have hereto set my Hand and Seal of office, at this day of in the Year of our Lord One Thousand Eight Hundred and

E. F.

FOR ATTORNEY.

I hereby certify that personally known to me, appeared before me and acknowledged to me that he is the Person who subscribed the name of to the annexed Instrument as the Maker thereof is the same Person mentioned in the said Instrument as the Maker thereof, that he knows the contents of the said Instrument, and that he subscribed the name of thereto voluntarily as the free Act and Deed of the said

In testimony whereof I have hereto set my Hand and Seal of Office, at this day of in the year of our Lord One Thousand Eight Hundred and Sixty-

FOR WITNESS.

I hereby certify that personally known to me appeared before me, and acknowledged to me that the Person whose Name subscribed to the annexed Instruments as Witness, and having been duly sworn by me, did prove to me that did execute the same in presence voluntarily.

In testimony whereof I have hereto set my Hand and Seal of office, at this day of in the Year of our Lord One Thousand Eight Hundred and Sixty-

Passed

Land Registry Amendment Act.

Passed the Legislative Assembly the 28th day of November, 1864.

R. W. TORRENS,
CLERK OF THE LEGISLATIVE ASSEMBLY.

Passed the Legislative Council the 13th day of March, 1865.

E. J. NESBITT,
CLERK OF THE LEGISLATIVE COUNCIL.

I assent to this Act in the Name and on Behalf of Her Majesty, this 8th day of April, 1865.

A. E. KENNEDY,
GOVERNOR.

VICTORIA, VANCOUVER ISLAND:
PRINTED BY AUTHORITY OF THE GOVERNMENT BY HARRIES AND COMPANY.
1865.