

Land Registration.

No. IX.

LAND REGISTRATION. AN ORDINANCE to provide for the Registration of Deeds and Instruments affecting Real Property.

[28th December, 1841.]

Preamble.

FOR the purpose of rendering titles to real property more secure and facilitating the transfer of the same:

BE IT ENACTED by His Excellency the Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

I.—ESTABLISHMENT OF REGISTER OFFICES.

Register Office.

1. There shall be established in every county or district as the case may be within the Colony an office which shall be called "The Register Office," for registering in manner hereinafter directed the deeds wills and memorials hereby authorized to be registered.

Registrar.

2. It shall be lawful for His Excellency the Governor from time to time to appoint for each Register Office a fit person to be Registrar thereof, who shall hold his office so long as he shall well behave himself therein.

Clerks &c.

3. It shall be lawful for the Registrar, with the approval of the Governor, from time to time to appoint so many clerks and subordinate officers as may be necessary for the performance of the business of the office, who shall be removable at the discretion of the Registrar.

Security.

4. Every Registrar shall before entering upon the duties of his office give security for the due execution thereof in such manner and to such amount as to His Excellency the Governor shall seem meet.

Seal.

5. There shall be kept in every Register Office a Seal, of the impression whereof judicial notice shall be taken in all Courts without any evidence of such Seal having been impressed or any other evidence relating thereto.

II.—WHAT MAY BE REGISTERED.

Crown Grants &c.

6. Every grant by the Crown of land within the Colony, and every deed or contract except as hereinafter mentioned, and every will whereby such land may be affected subsequently to the date of such grant, may be registered by causing a copy thereof to be recorded and entry thereof to be made in manner hereinafter provided in the Register Office of the county or district wherein such land shall be situated: Provided that no lease or agreement for a lease for any time not exceeding seven years from the date thereof nor any assignment thereof shall be registered: Provided also that no instrument shall be registered which shall relate to the transfer of any share in any Corporation or Joint Stock Company in any case where an entry of such transfer shall be made in the books of the Corporation or Company.

Judgments &c.

7. Every judgment of the Supreme Court, every suit pending therein, any acceptance of office whereby the person accepting the same shall become an accountant to the Crown, or inquisition by which any debt shall be found due to Her Majesty, every bankruptcy and insolvency and private Ordinance affecting any land within the Colony, may be registered by causing a memorial thereof to be deposited and entry thereof to be made in manner hereinafter provided in the Register Office of the county or district wherein such land shall be situated.

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- 8.** The memorial of every judgment whereby the title to any land shall be affected shall express the date thereof, the title of the cause, and so much of the decree or judgment as shall relate to the land affected thereby, and shall be certified by the Registrar of the Supreme Court. Memorial of judgment.
- 9.** The memorial of every Suit Pending shall express the date of the commencement thereof, the title of the cause, the nature and object of the proceeding, and shall be certified by the signature of the officer before whom such proceedings have been commenced. Of suit pending.
- 10.** The memorial of every judgment for the recovery of any sum of money shall express the names of the plaintiff and defendant and the sum thereby recovered, and the time of signing the same, and shall be certified by the officer who shall have signed the judgment, his deputy or successor. Of judgment of debt.
- 11.** The memorial of every acceptance of such office as aforesaid shall express the name of the officer, and of his office, and the time of his accepting the same, and shall be certified by the Colonial Secretary. Of acceptance of office.
- 12.** The memorial of every such inquisition as aforesaid shall express the name of the defendant, and the sum thereby found to be due, and the date of the same, and shall be certified by the Colonial Secretary. Of inquisition.
- 13.** The memorial of every bankruptcy shall express the name residence and condition or calling of the bankrupt and the date of the fiat, and shall be certified by the signature of the officer out of whose office such fiat shall issue. Of bankruptcy.
- 14.** The memorial of every insolvency shall express the name residence and condition or calling of the insolvent, and the date of the order by which the insolvent shall have been divested of his property, and shall be certified by the signature of the officer in whose office such order shall be enrolled. Of insolvency.
- 15.** The memorial of every private Ordinance shall express the title date and number thereof. Of private Ordinance.
- 16.** Every memorial shall also describe the property to which the same shall relate, by reference to the marks and numbers by which such property shall be designated in any map or plan deposited in the Register Office as hereinafter provided. Description of property affected.

III.—EFFECT OF REGISTRATION.

- 17.** Every deed or contract which is hereby authorized to be registered as aforesaid shall (so far as regards any land to be affected thereby) be void as against any person claiming for valuable consideration under any subsequent deed or contract duly registered, unless the prior deed or contract shall have been registered in the manner directed by this Ordinance before the registration of the subsequent deed or contract. Deeds &c. not registered, void as against subsequent deeds &c. registered.
- 18.** Every lease or agreement for a lease hereinbefore forbidden to be registered shall be void as against any person so claiming, so long as actual possession shall not go along with such lease or agreement. Lease, &c.
- 19.** Every will shall (so far as regards land to be affected thereby) be void as against any person claiming for valuable consideration under any deed or contract duly registered made after the death of the testator by his heir-at-law or by any person claiming as his devisee or executor under a former will, or as his administrator either with a former will annexed or otherwise, or by any other person by whom such subsequent deed or contract might have been made, if such will as first aforesaid had not been executed, unless such will as first aforesaid

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aforesaid shall have been registered in manner directed by this Ordinance before the registration of the subsequent deed or contract : Provided always that every will which shall be registered within the space of two years after the death of any testator shall be as valid and effectual as if the same had been registered immediately after the death of such testator.

Judgment &c.

20. Every judgment suit acceptance of office inquisition bankruptcy insolvency or private Ordinance shall (so far as regards any land to be affected thereby) be void and of no effect as against any person claiming for valuable consideration under any subsequent deed or contract duly registered, unless a memorial thereof shall have been registered in manner directed by this Ordinance before the registration of the subsequent deed or contract.

Notice.

21. The priority given by the provisions hereinbefore contained to any person claiming for valuable consideration shall not be taken away either at law or in equity in consequence of such person having been affected with notice either actual or constructive.

Voluntary conveyances.

22. Every person who shall claim without valuable consideration under any other person who shall have claimed for valuable consideration, shall be entitled to the same protection as the person who shall have claimed for valuable consideration.

Voluntary conveyance.

23. A voluntary conveyance being duly registered shall not be defeated by any subsequent conveyance for valuable consideration, whether such latter conveyance shall be registered or not.

Deed or contract when void.

24. Every deed or contract, although duly registered, whereby any title shall be derived or agreed to be derived from any person claiming under an unregistered deed, shall be void as against any person claiming for valuable consideration under any subsequent deed or contract duly registered, whereby title shall be derived or agreed to be derived from any person claiming under a deed or contract duly registered.

IV.—MODE OF REGISTRATION.

Maps to be kept.

25. There shall be deposited in the Register Office of every county or district maps of all the lands which shall from time to time be surveyed within the limits thereof, which maps shall be signed by the Surveyor-General of the Colony and by the Registrar.

And distinguished.

26. Every such map shall be distinguished by a letter or other mark, and the allotments in every map shall be numbered consecutively from No. 1 upwards.

Books.

27. For every such map there shall be opened and kept a book or books to be called "The Index Book," and marked with the letter or mark of such map.

Instruments to contain delineation of land.

28. Every instrument presented for registration shall, for the purpose of more easily identifying the land to which it shall relate, contain or shall have indorsed thereon a delineation of the land to which the same shall relate, showing the extent boundaries and relative position thereof.

Memorandum on instruments by Registrar.

29. Immediately upon the presentation of any instrument for registration, the Registrar shall in the presence of the party presenting such instrument number the same and make a note thereon of the day and hour of the receipt thereof, and shall stamp the same at the end of such note with the Seal of the Register Office. He shall also forthwith in the same presence cause an entry under the proper head or title to be made specifying such day and hour and the nature of the instrument and referring to the book in which a copy thereof shall be made, which entry shall be according to the form of the Schedule A hereunto annexed,

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annexed, and shall be signed by the person presenting such instrument as aforesaid.

30. The Registrar shall thereupon cause such instrument to be copied at full length in one of the books to be kept for that purpose. Instrument to be copied.

31. Such entry as last mentioned shall be made in one of the books which shall be appropriated to the map within which the land to which such instrument shall relate shall be comprised. Book in which entry shall be made.

32. Every such entry shall be made under a head or title, which shall consist of letters and numbers indicating the allotment or allotments or part or parts thereof of which the land to which such entry shall refer shall consist. Entry how made.

33. All such entries shall be made in the order in which the instrument to which such entries refer shall have been presented for registration. Order of entries.

34. So long as the land in respect of which any entry was originally made shall remain undivided, all entries relating thereto shall be placed under the head or title originally appropriated thereto. Whenever any portion thereof shall be absolutely alienated, a new head or title shall be appropriated to such portion. Head of entry.

35. Whenever any such new head or title shall be formed, the first entry thereunder shall contain a reference to the original head or title. Under such original head or title there shall also be made a reference to such new head. New entry.

36. Where any mistake shall have been made in any entry, the Registrar shall rectify the same by a new entry in such form as may be convenient, specifying the day and hour of each correction. The erroneous entry shall not be erased or obliterated. Mistake in entries.

V.—MISCELLANEOUS REGULATIONS.

37. Every person by whom any instrument shall be brought or sent to the Register Office for the purpose of registration may require a receipt for the same, which receipt shall be stamped with the Seal of the office, and shall specify the nature and number of the instrument and the day and hour of the receipt thereof. Receipt for instruments.

38. Before any instrument which shall have been registered shall be returned to the person who presented the same for registration, such person shall compare the same with the copy thereof in the books of the office, and shall sign his name at the foot of such copy as an attestation of the correctness thereof. Instrument to be compared with copy.

39. The Registrar shall supply copies of or extracts from any index to be kept, or copies of any instruments which shall have been recorded, or any memorial which shall have been deposited under the provisions of this Ordinance, to any person entitled to the same, which person shall have liberty to examine such index or recorded copy or deposited memorial for the purpose of satisfying himself of the correctness of the copy or extract so supplied. Copies to be supplied.

40. Before the Registrar shall supply any such copy or extract, the person applying for the same shall sign a declaration that such a copy or extract is required in respect of land in which he has, or claims, or has contracted for, some estate or interest, or that he is a barrister or solicitor employed by some other person, to be named and described and so interested as aforesaid, or that he is the authorized clerk of a barrister or solicitor, to be named and described, employed as aforesaid. To whom.

41. If any person shall in any such declaration wilfully state anything that shall be untrue he shall forfeit and pay a penalty of not less than five pounds nor more than twenty pounds, to be recovered in a summary way before any Police Magistrate acting for the county or district within which such offence shall be committed. False declaration.

42. Every

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Copy to be certified.

42. Every copy or extract so supplied as aforesaid shall have written or endorsed thereon a certificate stating that such copy or extract is an examined copy of or extract from such index or recorded copy or deposited memorial as aforesaid, and specifying the book and page from which the same is taken, which certificate shall be verified by the Seal of the office. Every copy or extract so verified shall be admissible as secondary evidence of the contents of the instrument of which it purports to be a copy or extract.

Registration when compulsory.

43. Any person having an interest in land under any instrument hereby authorized to be registered may require any person in possession thereof to cause the same to be registered, and in case the person in whose possession the same shall be shall refuse so to do, it shall be lawful for any Judge of the Supreme Court, upon a summary application, to make such order respecting the registration of such instrument as shall seem meet.

Fees.

44. Every Registrar shall be entitled to receive the fees specified in Schedule B hereto annexed, or such fees as shall be from time to time payable in lieu thereof, by virtue of any order to be made by the Judges of the Supreme Court, who are hereby authorized to regulate the same. All fees shall be paid in advance.

Scale.

45. A table of such fees shall be hung up in some conspicuous place in every Register Office.

Fee fund.

46. All fees received under the authority hereof shall be accounted for quarterly to the Colonial Treasurer or to the Treasurer of the county or district in which the Register Office shall be situated. The fees so received shall form a fund which shall be chargeable with the salaries of the Registrar and other officers and with the current or incidental expenses of the office.

Rules.

47. It shall be lawful for every Registrar from time to time to make rules for regulating the practice of his office: Provided that the rules so to be made shall be approved by the Chief Justice of the Supreme Court and shall not be repugnant to any of the provisions hereinbefore contained.

Interpretation.

48. In the construction of this Ordinance the word "Land" shall extend to any estate or interest whatever in real property, and the word "Will" shall extend to a codicil, and the word "Instrument" shall extend to any Crown Grant, deed, contract, will, codicil, or any memorial hereby authorized to be registered.

Commencement.

49. This Ordinance shall come into operation within any county or district at such time as His Excellency the Governor, with the advice of the Executive Council, shall by Proclamation appoint.

SCHEDULES.

SCHEDULE A.

GENERAL INDEX, VOL. I., A., p. 100.

Map A, Section 5, Number 15.

Receipt of Instrument.	Nature of Instrument.	Date of Instrument.	Where Recorded.	Reference.	Signature.
11 a.m., June 1, 1842.	Conveyance.	May 31, 1842.	4 D. 71.	2 A. 19.	James Brandreth. Edward Willan. Peter Thomson. Thomas Jones. John Brown.
3 p.m., June 10, 1842.	Conveyance.	June 9, 1842.	4 D. 100.		
2 p.m., July 3, 1842.	Mortgage.	July 2, 1842.	4 D. 150.		
10 a.m., January 1, 1845.	Memorial.	December 29, 1844.	2 M. 30.		
10 a.m., August 25, 1846.	Will.	August 1, 1846.	1 W. 350.		

Conveyancing.

GENERAL INDEX, VOL. II., A., p. 19.

Map A, Section 5, Number 15A.

Receipt of Instrument.	Nature of Instrument.	Date of Instrument.	Where Recorded.	Reference.	Signature.
3 p.m., June 10, 1842.	Conveyance.	June 9, 1842.	4 D. 100.	1 A. 100.	Edward Willan.

SCHEDULE B.

SCALE OF FEES.

	s.	d.
For the registration of any instrument	10	0
For the recording thereof, for every folio of seventy-two words	0	4
For a copy of or extract from any recorded instrument or deposited memorial, for every folio of seventy-two words	0	3
For every copy of or extract from the general index, for every line	0	6
For every search or inspection of indices or recorded instruments or deposited memorials	1	0
For comparing if required any instrument with the record thereof by reading over the same with the party registering, for every folio of seventy-two words	0	1
For comparing if required any copy or extract supplied by the Register Office by reading over the same with the party requiring such copy or extract, for every folio of seventy-two words	0	1

No. X.

AN ORDINANCE to facilitate the Transfer of Real Property
and to simplify the Law relating thereto.

CONVEYANCING.

[18th January, 1842.]

WHEREAS by the law of England there are various forms of assurance for the transfer of property and divers rules relating thereto which by lapse of time have become inconvenient and are altogether unsuitable to the circumstances of this Colony; for the simplifying and amending thereof—

Preamble.

BE IT ENACTED by the Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

I.—WHAT ESSENTIAL TO A DEED.

1. Every deed shall be signed by the conveying parties and shall also be attested by two witnesses; the place of abode of the witnesses, their calling or business, shall be stated, but no particular form of words shall be requisite for the attestation.

Signature and attestation.

2. Sealing shall not be necessary except when a deed is made by a Corporation.

Sealing.

3. Delivery and indenting shall not be necessary in any case.

Delivery &c.

4. An acknowledgment of the receipt of the consideration money contained in the body of a deed shall be as valid and effectual in all respects as if the same had also been indorsed thereon.

Receipt.

5. Every deed executed as by this Ordinance is required shall be a valid execution of a power of appointment by deed or writing

Execution of powers.