

Deeds Registration.

No. XXII.

DEEDS REGISTRATION

An Act for registering Deeds and Conveyances
in New South Wales and for other purposes.
[16th November, 1825.]

Preamble.

Proclamation of the
Governor bearing
date 18th Jan. 1817
making Regulations
for the registering
of Deeds and Con-
veyances recited.

WHEREAS nothing tends more to increase the Value of Real Property than the prevention of secret and fraudulent Conveyances And whereas by a certain Proclamation of the Governor of New South Wales bearing date the eighteenth day of January one thousand eight hundred and seventeen certain Regulations were made for the registering of Deeds and Conveyances whereby any houses lands or hereditaments in the said Colony might be affected and the Office of the Judge Advocate was appointed for the registering of such Deeds and Conveyances And whereas it is expedient to confirm the said Proclamation to a certain extent and to make more effectual provision for the future Registration of Deeds Conveyances and other Instruments in Writing affecting any lands tenements or hereditaments situated in New South Wales Be it therefore enacted and ordained by His Excellency Sir Thomas Brisbane the Governor of New South Wales with the advice of the Council—

All Deeds Convey-
ances and other
Instruments (except
Leases for less than
three years) to be
registered in the
Supreme Court as
herein directed

And to have priority
according to the
date of registration.

Exceptions as to
Deeds Conveyances
and Instruments
already made or
which shall be here-
after made and shall
be registered within
certain periods.

1. That from and after the passing of this Act or Ordinance all Deeds Conveyances and other Instruments in Writing (except Leases for less than three years) of and relating to or in any manner affecting any lands tenements or other hereditaments situated lying and being in New South Wales may be entered and registered in the Office of the Supreme Court of New South Wales in the manner hereinafter directed And further that all such Deeds Conveyances and other Instruments in Writing as aforesaid made and executed *bonâ fide* and for a valuable consideration and registered in pursuance of the said Proclamation or in conformity with the provisions of this Act or Ordinance shall have and be allowed priority over every other Deed Conveyance or other Instrument in Writing that is to say the Deed Conveyance or other Instrument in Writing first registered in the Office of the Judge Advocate (if the same shall have been registered under the said Proclamation) or first registered in the Office of the Supreme Court (if the same shall be registered in conformity with this Act or Ordinance) shall have priority in respect of all lands tenements or other hereditaments conveyed or affected by such Deed Conveyance or other Instrument in Writing over every other Deed Conveyance or other Instrument in Writing whatsoever and howsoever conveying charging or affecting the same lands tenements or other hereditaments And the Deed Conveyance or other Instrument in Writing next registered as aforesaid *mutatis mutandis* shall have priority over every other Deed Conveyance or Instrument in Writing as aforesaid and so on according to the priority of the time of registering such Deed Conveyance or Instrument in Writing as aforesaid.

2. Provided always and be it further enacted and ordained That no Deed Conveyance or other Instrument in Writing conveying or affecting any lands tenements or hereditaments in New South Wales as aforesaid shall be subject by force of this Act or Ordinance to lose any priority to which the same might otherwise be legally entitled if the same shall be registered in conformity with this Act within the respective times herein next limited and appointed that is to say any Deed Conveyance or other Instrument in Writing which shall have been *already made* and executed in New South Wales which shall be registered within one calendar month or in Van Diemen's Land within three calendar months or in any other parts of the world within

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within eighteen calendar months from the passing of this Act or Ordinance and any Deed Conveyance or other Instrument in Writing which shall be *hereafter made* and executed in New South Wales which shall be registered within one calendar month or in Van Diemen's Land within two calendar months or in other parts of the world within twelve calendar months from the making and executing of the said Deeds Conveyances and other Instruments in Writing respectively shall have and retain such and the same priority and advantages to which such Deed or Instrument respectively would have been by law entitled if this Act or Ordinance had not been passed But if such Deed Conveyance or other Instrument in Writing shall be registered after the respective times limited and appointed as last aforesaid then such Deed Conveyance or Instrument in Writing as aforesaid shall come under the foregoing clause of this Act and shall have and be entitled to priority only from the time of the registration thereof as aforesaid.

3. And be it further enacted and ordained That the Office of the Supreme Court of New South Wales shall be an Office for the registration of all Deeds Conveyances and other Instruments in Writing conveying or affecting lands tenements or other hereditaments in New South Wales and shall be open for such purpose at the usual hours for conducting the ordinary business of the said office and shall have so many officers or clerks for carrying into effect the provisions of this Act or Ordinance as shall from time to time be required and such officers or clerks shall be appointed paid and subject to the same regulations as other officers or clerks of the said Court.

Office of Supreme Court to be the Office of registration.

To be open at the usual hours.

4. And be it further enacted and ordained That the registration of all Deeds Conveyances and other Instruments in Writing of or relating to any lands tenements or hereditaments in New South Wales shall be made in the following manner that is to say a Memorial shall be written on parchment or paper setting forth the date of such Deed or other Instrument intended to be registered and the nature thereof the names of all the parties and all the witnesses thereto the lands tenements or hereditaments intended to be conveyed the pecuniary or other consideration paid in the form or to the effect mentioned in the Schedule hereto annexed marked A or with such alterations therein as the nature and circumstance of any particular case may require and the said Memorial shall be signed by some or one of the parties to the original Deed or Instrument and shall be delivered into the Office of the Supreme Court of New South Wales and verified upon the oath of some competent person that such Memorial contains a just and true account of the several particulars therein set forth which oath shall be made before one of the Judges or the Registrar of the said Court and upon the delivery and verification of any such Memorial as aforesaid the proper officer or clerk appointed for such purpose shall give a receipt for the same in which shall be specified the certain day hour and time on which the same shall have been delivered into the said office and the number of such Memorial according as the same shall be numbered in the said office.

Registration of Deeds Conveyances and Instruments how to be made.

A Memorial with certain particulars to be written.

Reference to Schedule A.

Memorial to be verified on oath.

Officer or clerk appointed shall give a receipt for the same specifying the day hour and time of its delivery.

5. And be it further enacted and ordained That the proper officer or clerk shall immediately after the delivery of any such Memorial into the said office indorse on the back thereof the number thereof and the certain time when the same shall have been received and the name and place of abode of the witness attesting or verifying the same and the time so indorsed shall be held deemed and taken to be the time of the registration of every such Deed Conveyance or Instrument in Writing whereof such Memorial shall be made as aforesaid and every such Memorial so delivered in shall be numbered successively according to the order of time in which the same shall have

And shall immediately indorse on the back of such Memorial the number and the time of its delivery into the office with other particulars.

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have been delivered and shall immediately be entered according to such number and order of time in some particular book which shall be provided and kept for such purpose in the said office and every such book shall be open at all convenient times to the inspection of all such persons as may be desirous of searching the same.

Clerk or officer to forfeit £5 for neglect omission or erroneous entry.

And shall be liable in damages to the party injured.

To embezzle erase alter forge or counterfeit such Memorial or indorsement how punishable on conviction.

Wills under envelope and seal may be deposited in the Supreme Court until the death of the testator.

Recital of Proclamation of the Governor bearing date 6th March 1819 for barring the right and title of married women to dower and other estates of freehold.

Every Deed Conveyance or other Instrument concerning lands and tenements made and executed by any feme covert or married woman under the said Proclamation to be held valid.

Deeds made and executed in due form of law

6. And be it further enacted and ordained That if any officer or clerk in the Office of the said Supreme Court shall neglect or omit to number and enter in manner and form herein directed any such Memorial so delivered into the said office as aforesaid or shall make an erroneous entry thereof he shall for every such neglect omission or erroneous entry forfeit the sum of Five Pounds to His Majesty His Heirs and Successors and shall be further liable in damages to the party according to the extent of the injury thereby sustained and if any such officer clerk or other person shall wilfully embezzle raze alter forge or counterfeit any such Memorial or indorsement made thereon as aforesaid with intent to injure or defraud any other person or persons such officer clerk or other person shall be deemed guilty of felony and being duly convicted thereof shall incur and suffer such and the like pains and penalties in the law as persons convicted of forging or counterfeiting any Deed or Will are now subject to by any Act of Parliament.

7. And be it further enacted and ordained That it shall be lawful for any person residing in New South Wales to deposit in the Office of the said Supreme Court his or her last Will and Testament under an envelope or cover sealed with the seal of such person and the same shall be indorsed with such person's name and shall remain in the said office in the custody of the Registrar of the said Court until the decease of the testator (unless previously required to be given up by such testator and upon the death of such person the Registrar shall examine the same and deliver it to the executor first named therein or other person lawfully entitled thereto or in case of doubt to such person or persons as the Chief Justice of the said Court shall upon summary petition order and direct.

8. And whereas fines with Proclamations cannot be conveniently levied nor common recoveries suffered in this Colony And whereas by a certain other Proclamation of the Governor of New South Wales bearing date the sixth day of March in the year of our Lord one thousand eight hundred and nineteen certain regulations were made for barring the right and title of married women to dower and other estates of freehold And whereas it is expedient that the said last mentioned Proclamation so far as respects the alienation of any such right or title *bonâ fide* made in conformity therewith should be confirmed and that the want of fines and recoveries should be effectually supplied by making other Conveyances attended with the particular forms hereinafter mentioned equivalent thereto Be it therefore further enacted and ordained that every Deed Conveyance or other Instrument in Writing made and executed by any feme covert or married woman of and concerning any lands tenements or hereditaments situated in New South Wales and acknowledged in the form and manner appointed and directed by the said last mentioned Proclamation of the Governor shall be and be taken to have been valid and effectual to pass and convey all the right title and interest of such feme covert or married woman to and in all such lands tenements or hereditaments intended to be alienated and conveyed by such Deed or other Instrument And further that any Deed or Deeds in due form of law made and executed by any party or parties from whom any estate right title or interest in any lands tenements or hereditaments situated in New South Wales is or may be intended to pass and acknowledged by such party or parties in the manner hereinafter mentioned that is to say if such Deed or Deeds shall be made and executed in New South Wales and shall be acknowledged

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acknowledged before one of the Judges of the Supreme Court of New South Wales or some person duly authorised for such purpose as hereinafter provided or if made and executed in Van Diemen's Land shall be acknowledged before of the Judges of the Supreme Court of Van Diemen's Land or if made and executed in Great Britain or Ireland shall be acknowledged before any Mayor or other Chief Magistrate of the city borough or town corporate where or near to which the person or persons making such acknowledgment shall reside such Deed or Deeds so acknowledged shall be as valid and effectual in the law to pass all the estate right title interest and claim of the respective parties to such Deed or Deeds in or to all and every such lands tenements or hereditaments as aforesaid in such Deed or Deeds mentioned and intended to be conveyed and to transfer and convey the same to the grantee or grantees bargainee or bargainees or other person or persons in such Deed or Deeds mentioned their heirs and assigns for ever according to the several estates and interests in and by such Deed or Deeds conveyed and limited as if a fine or fines with Proclamations had been levied or a common recovery or recoveries had been suffered of such lands tenements or hereditaments or as if such lands tenements or hereditaments intended to be conveyed had been conveyed by the firmest and most regular deeds conveyances and assurances in the law Provided always and be it further enacted and ordained that in case any married woman may be party to any such Deed or Deeds as last aforesaid such married woman shall be at the time of the execution thereof of the full age of twenty-one years and shall be examined privately and apart from her husband by the Judge or other person before whom such acknowledgment shall be made as aforesaid and shall confess that she did execute the same freely voluntarily and without the fear menace or coercion of her husband Provided also that every such acknowledgment and confession as aforesaid shall be certified under the common seal of such city borough or town corporate or seal of office of the Judge or other person before whom the same shall be made as aforesaid and such certificate shall be indorsed or affixed to such Deed or Deeds as last aforesaid and shall be deemed and taken as sufficient proof of every such acknowledgment or confession as aforesaid.

Acknowledged before one of the Judges of the Supreme Court of New South Wales or Van Diemen's Land or if made in Great Britain or Ireland before a Mayor or Chief Magistrate

Shall be valid.

Course to be pursued as to married women who may be parties to such Deeds.

9. Provided always and be it further enacted and ordained That in case it shall be made to appear to the satisfaction of one of the Judges of the Supreme Court of New South Wales that any one or more of the parties to any such Deed or Deeds as last aforesaid residing in New South Wales shall be desirous of acknowledging the same but shall not be able by reason of distance or bodily infirmity to attend such Judge in person it shall be lawful for such Judge and he is hereby required by a commission under his hand and seal to authorise and empower some fit and proper person to take and receive the acknowledgment of such party or parties or the confession of any married woman as to her voluntary execution thereof in manner as aforesaid and the same shall be certified under the hand and seal of such person and indorsed or affixed to such Deed or Deeds as hereinbefore directed and shall be of the like force and effect as if such acknowledgment or confession had been made before any Judge of the said Court.

Judges of the Supreme Court may commission a proper person to receive such acknowledgments in certain cases.

10. Provided always and be it further enacted and ordained That a Memorial of every such Deed or Deeds as last aforesaid shall be made and registered in the office of the Supreme Court in the manner and form hereinbefore directed and pointed out.

Memorials of such Deeds to be registered in the office of the Supreme Court.

11. And be it further enacted That the fees appointed in the Schedule hereto annexed marked B shall be paid for and in respect of the several matters and things to be performed and done under this

Fees to be taken under this Act according to Schedule B.

Act

Postage.

How to be accounted
for.

Act and no other or higher fees and that a true and regular account of all such fees shall be kept in the said office of the Supreme Court and shall be paid over by the Registrar to the public Treasury and accounted for and applied in like manner as all the fees received in the said office now are or hereafter may be.

The Chief Justice
of the Supreme
Court to make rules
and orders for faci-
litating the Registra-
tion of Instruments
under this Act and
the means of
reference thereto.

12. And be it further enacted and ordained That the Chief Justice of the Supreme Court for the time-being shall and he is hereby authorised and required to make such rules and orders for facilitating the Registration of any Instrument under this Act and the means of reference thereto as may from time to time become necessary and to cause as soon as conveniently may be after the passing of this Act or Ordinance regular Indexes to be made to all Deeds Memorials Wills and Judgments already registered recorded or remaining in the said office and also of all such Wills Judgments Recognizances or other Instruments as may hereafter be registered or recorded whereby any houses lands or other hereditaments in New South Wales may be charged affected or incumbered in any manner howsoever.

SCHEDULE A.

Form of Schedule A.

Date of Instrument.	Nature of Instrument.	Names of the Parties.	Names of the Witnesses.	Description of the Lands or Property con- veyed.	Consideration and how paid.	Any other Particulars that the Case may require.

SCHEDULE B.

Form of Schedule B.

	£	s.	d.
For receiving and verifying and giving receipt for a Memorial of any Deed ...	0	2	6
For entering the same and making reference thereto	0	2	6
For receiving and noting every Will	0	5	0
For every searching for any Memorial	0	2	6
For Commission under hand and seal of Judge to take an acknowledgment or confession of parties to Deeds	0	5	0
For every copy of Memorial or other particulars relating thereto	0	1	0
