

## No. XXI.

An Act to amend the Act for the Registration of  
Deeds and to provide for the establishment  
of a separate Registry for Sydney and Port  
Phillip respectively. [3rd January, 1842.]

DEEDS  
REGISTRATION.

WHEREAS by an Act of the Governor and Council of New Preamble.  
South Wales passed in the sixth year of the reign of King  
George the Fourth intituled “*An Act for registering Deeds and 6 Geo. IV. No. 22.  
Conveyances in New South Wales and for other purposes*” all memorials  
of deeds and other instruments relating to real property in New  
South Wales are required to be verified and all acknowledgments of  
married women and other persons to be made and taken before one  
of the Judges of the Supreme Court of New South Wales or before  
the

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Memorials may be  
verified and acknowledgments made  
before a Judge or the  
Registrar or any  
Commissioner of the  
Supreme Court.

Original instrument  
to be produced  
course to be taken  
if any marksman  
thereto.

Fees to be paid on  
registration &c.

the Registrar thereof or a Commissioner specially appointed for that purpose and whereas the said provisions have by reason of the present wide extent of the Colony of New South Wales been found inconvenient and the said Act requires amendment in certain other respects and in particular it is expedient to provide for the establishment of a separate Registry Office for Sydney and for the District of Port Phillip respectively Be it therefore enacted by His Excellency the Governor of New South Wales with the advice of the Legislative Council thereof That from and after the passing and publication of this Act every memorial which by the said recited Act or by this present Act is required to be verified and every acknowledgment by a married woman or other person which by the said recited Act is directed in certain cases to be made may be verified and made respectively before either a Judge of the said Supreme Court or before the Registrar of the same or within the District of Port Phillip before the Deputy Registrar or other person who may be appointed to discharge the duties of Registrar there or before any Commissioner of the said Supreme Court appointed in any part of the Colony under this Act for those purposes (such Commissioner not being a party to the instrument nor having been employed to prepare the same) and every memorial so verified and acknowledgment so made such acknowledgment being certified under the hand and seal of the Judge or other person taking the same in the form or to the effect of the form set forth in the Schedule to this Act annexed marked A shall be as valid and effectual as if the same had been verified or made and certified respectively in manner required by the said recited Act.

2. Provided always and be it enacted That the original instrument to which any such memorial or acknowledgment relates shall be produced to the Judge or Registrar or other person before whom the same shall be verified or made as aforesaid and in case such instrument shall appear to have been executed by any party unable to write then such Judge Registrar or other person shall refuse to complete such memorial or acknowledgment by certifying the same unless the execution by such party shall be attested by some Justice of the Peace or Barrister or Attorney or Notary Public whose attestation shall contain a certificate that the contents of such instrument were previously explained to the party so unable to write and that the nature and effect thereof were at the time of such attestation to the best of the belief of such Justice or Barrister or Attorney or Notary Public understood by such party.

3. And be it enacted That there shall be paid in respect of the several matters mentioned in this Act and in the Schedule hereto annexed marked B and also for and upon the enrolment of every grant from the Crown hereafter made and issued the sums of fees respectively set forth in such last mentioned Schedule which respective sums or fees shall be demanded and taken by the Registrar of the said Supreme Court or within the District of Port Phillip by the Deputy Registrar or other person who may be appointed to discharge the duties of Registrar there upon the receipt by him of any such memorial or grant from the Crown for the purpose of registration or enrolment as the case may be and such sums or fees shall severally be accounted for and paid as by the said Act is directed with respect to the fees thereby made payable and from and after the publication of this Act the fees so by the said recited Act made payable and mentioned in the Schedule annexed thereto marked B shall cease and determine Provided always that the sums or fees hereby made payable on the enrolment of any grant from the Crown shall not be paid to such Registrar Deputy Registrar or other person as aforesaid but to the Colonial Treasurer in Sydney or Sub-Treasurer in

Melbourne

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Melbourne or to such other officer as may be appointed by His Excellency the Governor to deliver such grants upon the delivery of the same to such grantee or to his representatives or assigns and all such fees or sums so paid shall be accounted for and applied in the same manner as other public monies coming into the hands of the said Colonial Treasurer are required to be accounted for and applied.

4. And be it enacted That in addition to the fees made payable by the said Schedule marked B it shall be lawful for every Commissioner appointed under this Act except at Sydney and Melbourne to demand and have for his own use for the taking and certifying by him as aforesaid of every acknowledgment under this Act the sum of five shillings and for the taking of every such verification to a memorial as aforesaid the sum of two shillings and sixpence.

5. And be it enacted That from and after the passing of this Act all Crown grants and all instruments except leases for a period less than three years affecting any lands or hereditaments situate within the District of Port Phillip whether already or hereafter to be executed shall be enrolled or registered as the case may require in the office of the Deputy Registrar of the said Supreme Court at Melbourne in the said district and for all purposes of and connected with such enrolment and registration and of and connected with the registering of all wills affecting or intending to affect lands in the said district the Deputy Registrar or other person who may be appointed to discharge the duties of Registrar of such Court in the said district shall have and be subject to all such and the same powers liabilities and duties in every respect as the Registrar of the Supreme Court of the said Colony at Sydney has or would have and is or would be subject to in respect of the like grants and instruments enrolled or registered or which of right ought to be enrolled or registered in the office of such Registrar at Sydney.

6. And be it enacted That the limits of the District of Port Phillip shall for the purposes of this Act comprise all such parts of the Territory of New South Wales as now are or shall at any time hereafter be comprised in the limits within which the Resident Judge of the said district now hath or may hereafter have jurisdiction.

7. And be it enacted That the Registrar of the said Supreme Court at Sydney shall as soon as conveniently may be after the passing of this Act except in the cases hereinafter otherwise provided for make out and transmit to the Deputy Registrar or other person discharging the duties of Registrar of the said Supreme Court at Melbourne in the District of Port Phillip a transcript certified under his hand of all memorials of instruments affecting land within the said district which are now registered or which have been deposited for registration in the office of such Registrar of the Supreme Court at Sydney and all such transcripts shall be received by the Deputy Registrar or other person discharging the duties of Registrar of the said Supreme Court at Melbourne in the District of Port Phillip and be by him entered and preserved and shall be of the same force and effect to all intents and purposes as the original memorials at Sydney.

8. And be it enacted That after the passing of this Act the receipt which by the said recited Act is directed to be given on the delivery of any memorial into the office of the Registrar of the said Supreme Court of New South Wales for registration shall in every case where such memorial relates to any instrument not being a will be endorsed on such instrument and the Registrar or Deputy Registrar or other proper officer in that behalf shall then attach his signature thereto and every such receipt so endorsed and signed shall on proof of such signature be taken and allowed as evidence of the registration of such instrument and of the time when such registration was made.

Receipt of memorial  
and date of such  
receipt to be endorsed  
on the instrument to  
which it relates.

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When two instruments are used for perfecting the same conveyance.

No judgments recovered to bind lands unless execution thereon lodged with the Sheriff.

Deeds to take effect according to priority of registration.

Representative of party if dead or agent of an absent party may sign memorial in his name.

False oaths made punishable.

Term instrument.

Registrar to cause proper indexes to be made.

9. And be it enacted That where more than one instrument shall have been used or shall be used for perfecting the same conveyance or security relating to the same lands or hereditaments one memorial only shall be necessary nor shall more than one memorial be deemed to have been necessary in any such case under the said recited Act at any time heretofore and in any such memorial it shall be sufficient if the lands and hereditaments be particularised once only.

10. And be it enacted and declared That no judgment in any action at law already recovered or to be recovered shall bind or affect or be deemed to have bound or affected any lands or hereditaments in the said Colony Provided always that every writ of execution on any such judgment against the lands or hereditaments of the person against whom such judgment shall be obtained when delivered to the Sheriff of the said Colony or the Sheriff of any district thereof as the case may be shall affect and be deemed to have bound such lands from the time of such delivery thereof in like manner as any writ of *fieri facias* now binds goods and chattels.

11. And be it enacted That after the passing of this Act so much of the said recited Act as enacts that no deed conveyance or other instrument in writing conveying or affecting any lands tenements or hereditaments shall be subject to lose any priority to which the same might otherwise be legally entitled if the same be registered in conformity with that Act within the times therein for that purpose limited shall be and the same is hereby repealed and that all deeds and other instruments affecting any lands or hereditaments in New South Wales or its Dependencies which shall be executed or made after the passing of this Act and which shall be duly registered under the provisions of this Act shall have and take priority not according to their respective dates but according to the priority of registration thereof only Provided always that this section shall not extend to or affect any deed which shall be executed at any place in Europe within twelve months or at any other place elsewhere out of New South Wales within six months after the passing of this Act.

12. And be it enacted That where the party on whose behalf any instrument required to be registered shall be dead or absent from the said Colony at the time when the registration thereof shall be required to be made it shall and may be competent for the lawful representative or attorney of such party upon application to one of the Judges of the said Supreme Court at Sydney or to the Resident Judge of the said Court at Port Phillip and upon proof to the satisfaction of such Judge of the fact of the death or absence of such party and upon the order of such Judge to sign the memorial thereof in the name and on the behalf of the original party to such instrument and such signing shall be as valid and effectual to all intents and purposes as if such memorial had been signed by the original party or parties thereto.

13. And be it enacted That if any person shall at any time wilfully forswear himself or state any thing contrary to the truth in any oath taken under the authority of this or the said recited Act he shall be deemed guilty of perjury and shall suffer such punishments as are or may be provided by law for that crime.

14. And be it enacted That the term instrument hereinbefore used shall for the several purposes of this Act be construed to include not only conveyances and other deeds but also all instruments in writing whatsoever whereby real estate shall be affected or shall be intended so to be.

15. And be it enacted That it shall be the duty of the Registrar of the said Supreme Court at Sydney and of the Deputy Registrar of the said Court at Port Phillip with respect to all instruments proper to

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to be there respectively registered from time to time to make and prescribe the form and size of memorials so as to facilitate references to them and render their preservation secure and to make proper indexes to all registrations in such a manner that (as far as may be) information may readily be obtained by parties interested therein as to all incumbrances and liens or instruments affecting or intended to affect real estate in the Colony and that reference may be had to all such registrations according to the counties in which the lands are situate to which they respectively apply.

16. And be it enacted That in all cases where under the said As to official seal. recited Act an acknowledgment is required to be certified under an official seal the seal actually affixed to any such acknowledgment or to any certificate thereof shall for the purposes of the said Act be taken to be the official seal of the officer taking or certifying the same and no evidence to prove the contrary shall be admissible in any case either at law or in equity.

17. And be it enacted That in all cases where after the passing Deposit of examined copy of any instrument. of this Act in addition to a memorial of the instrument intended to be registered there shall also be therewith deposited in the office of the Registrar of the said Supreme Court at Sydney or the Deputy Registrar of the said Court at Port Phillip as the case may be an examined copy of such instrument at full length certified by the oath of two credible persons such oath having been taken before a Judge or any Commissioner appointed under this Act or before such Registrar or Deputy Registrar to be a true copy of the original to which the same relates and by the oath in like manner of the attesting witness or witnesses to such original instrument that it was duly executed by the several parties thereto or by such of them as shall appear to have executed the same every such original instrument and also in all cases where secondary evidence thereof would be receivable every such examined copy thereof shall or lawfully may be received and given in evidence in any suit or proceeding whatsoever without proof of its execution by the parties or any of them whose execution shall have been so attested and certified and as if such execution by the said parties had been proved in the ordinary manner.

18. Provided always and be it enacted That in every such case Proviso as to time of deposit &c. as last aforesaid such examined copy shall have been referred to in the memorial as accompanying or intended to accompany the same and that it shall have been deposited as aforesaid within two months or if executed out of the said Colony within twelve months after the date of the instrument to which it relates or if executed before the passing of this Act within six months after the passing hereof and the day and hour of such deposit shall immediately after receipt of every such examined copy be endorsed thereon and also on the original instrument of which it purports to be a copy which endorsements respectively being signed by the said Registrar or Deputy Registrar making the same shall on proof of such signature be received as conclusive evidence of the fact or facts therein stated and every such examined copy being consecutively numbered according to the order of its receipt and also marked with the number of the memorial to which it relates shall thenceforth be carefully retained by such Registrar or Deputy Registrar and preserved for future reference and no such copy shall be received with any interlineation or erasure therein unless the same shall be noticed in the margin opposite thereto by the signatures of the persons certifying on oath to such copy.

19. And be it enacted That in every case where the production Facilitating production of examined copy in evidence. of any such examined copy as aforesaid or of any memorial shall be required for the purposes of evidence under this Act the same shall or may be produced respectively either by the said Registrar or Deputy

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Registrar or any clerk in the office of such Registrar or Deputy Registrar appointed by him for that purpose or by leave of a Judge by any other person upon security given to the satisfaction of such Judge for the safe keeping thereof and for the return of the same uninjured within a reasonable time to be limited for that purpose.

Effect of registration  
in the last mentioned  
cases as to deeds of  
feoffment.

20. And be it enacted That with respect to every deed of feoffment hereafter executed of which any such examined copy certified as aforesaid shall be duly deposited in the office of the said Registrar or Deputy Registrar in manner aforesaid the registration of the memorial referring to such copy shall operate as and be for all purposes equivalent to livery of seizin as to the lands and hereditaments comprised in and intended to be conveyed by such deed of feoffment the same in all respects as if there had been livery of seizin actually made and given of the same lands and hereditaments in the most valid and effectual form and manner.

Recital of lease  
evidence of its  
execution.

21. And be it enacted That every deed or instrument of release executed after the passing of this Act shall be as effectual as if the releasing parties who shall have executed the same had also executed a lease for a year for giving effect to such release although no such lease shall be executed and that the recital or mention of a lease in a release executed before the passing of this Act shall be conclusive evidence of the execution of such lease.

Proviso as to  
memorials relating  
to lands in Port  
Phillip.

22. Provided always and be it enacted That all memorials solely relating to land within the District of Port Phillip may be transmitted by the Registrar of the Supreme Court at any time after the passing of this Act to the Deputy Registrar at Port Phillip or officer discharging the duty of Registrar of Deeds there and in case of such last mentioned transmission no transcript of any such memorial shall be necessary but the like proceedings shall be had with respect to all such last mentioned memorials as if they had been in fact registered or left for registration in the Registry Office at Port Phillip in the first instance.

## SCHEDULES REFERRED TO.

## A.

THIS is to certify that A. B. the wife of the within named W. B. came before me C. D. Esq. a Commissioner appointed by the Supreme Court of New South Wales for taking acknowledgments under and by virtue of an Act of the Governor and Council passed in the fifth year of the reign of Her Majesty Queen Victoria intituled "*An Act to amend the Act for the Registration of Deeds and to provide for the establishment of a separate Registry for Sydney and Port Phillip respectively*" and not being the person employed to prepare the within deed nor being a party thereto and she being by me examined apart from her said husband acknowledged that the within written instrument was executed by her and that she was acquainted with and understood the nature and effect thereof and she declared that she had so executed the same freely and voluntarily without menace force or coercion either on the part of her husband or any other person.

Witness my hand at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ 1844  
C. D.  
Commissioner.

N.B.—Where the acknowledgment is not by a married woman it will extend only to the fact of execution and that the party knew the nature and effect of the instrument and the above form must be altered accordingly and where the acknowledgment is taken before a Judge or before the Registrar the above form must be adapted to such alteration.

B.

*Catarrh in Sheep.***B.***Table of Fees to be taken under this Act.*

		s. d.
1. For receiving every memorial before whomsoever made including verifying the same	... ... ... ... ... ...	2 6
2. For every acknowledgment before whomsoever taken and whether already made or to be thereafter made	... ... ... ... ...	10 0
3. For the receipt on every deed or on the memorial of any will	... ...	2 6
4. For registration of each memorial not exceeding three folios of 90 words	... ...	7 6
5. For ditto if memorial exceeds that number of folios—per folio of 90 words	... ...	0 8
6. For the enrolment of every grant of land hereafter issued under the Seal of this Colony—where the quantity granted shall not exceed 50 acres	... ...	10 0
7. For ditto—where the quantity shall be over 50 but under 300 acres	... ...	15 0
8. For ditto—where the quantity shall exceed 300 acres	... ...	20 0
9. For every search for memorial of any deed or will of one property	... ...	2 6
10. For every examined copy of a memorial	... ...	5 0
11. For the registration of every deed writing will or conveyance or attested copy thereof at length—per folio of 90 words	... ... ... ...	0 8
12. For receiving and endorsing every examined copy of an instrument	... ...	7 6
13. For every oath certifying the same or to execution of the original each witness	... ...	1 0