

No. XVIII.

An Act to further amend the “Real Property Act.” [9th May, 1878.]

REAL PROPERTY ACT
FURTHER
AMENDMENT.

WHEREAS it is expedient to extend the operation of the Real Property Act to simplify references to the Supreme Court on doubtful questions of title in certain cases—and in other respects to amend the said Act Be it therefore enacted by the Queen’s Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

1. This Act shall take effect from the passing thereof and may be cited as the “Real Property Act further Amendment Act of 1877” and shall be read with the Real Property Act twenty-sixth Victoria number nine hereinafter termed the principal Act as amended by the Act thirty-sixth Victoria number seven.

2. In addition to the persons entitled under the thirteenth section of the principal Act to apply to bring land as defined by the said section under the provisions of that Act applications for that purpose shall subject to the provisions of the said Act be received by the Registrar General from—

(1.) Persons who have the power of appointing or disposing of the fee simple absolutely Provided that the consent of the husband of a married woman to an application by her shall not be requisite where the land the subject of the application stands settled or limited to her separate use for an estate in fee or where such land is subject to her general power of appointment by deed for such an estate and in the event of the said land being brought under the said Act such application shall be deemed both at law and in equity to be an exercise of such power.

(2.) The attorney of any corporation having the power to hold or dispose of land in fee simple constituted as such under the common seal of the corporation and authorizing such attorney to apply Provided that the application shall be made for and on behalf of the corporation of which he is the attorney and that the requisite declaration be made by him to the best of his knowledge information and belief and that the application be subscribed in his own name as such attorney and provided also that every certificate on such application shall be issued in the name of such corporation.

(3.) The attorney of any person who would be entitled to apply in his own name if resident in the Colony if such attorney shall be or have been constituted such by an instrument under seal authorizing him at his absolute discretion to sell and convey land for an absolute estate in fee simple and to give effectual discharges to purchasers Provided that in all cases the requisite evidence of non-revocation of the power by the grantor’s death or otherwise shall be furnished.

3. In the case of land contracted to be purchased the vendor shall consent to or join in the application of the purchaser except in cases where the whole of the purchase money has been paid to the vendor or his authorized attorney or agent.

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To amend ss. 21 and
23 of principal Act.

4. Where any caveat against an application to bring land under the principal Act shall have been lodged in pursuance of the twenty-first section by any person (hereinafter called the caveator) claiming such land or a portion thereof or an interest therein adversely to the applicant it shall not be necessary for such caveator to take proceedings in any Court to establish such claim but the applicant may state a case for the opinion and direction of the Supreme Court upon the matter and the caveator may apply to the said Court for an order on the Registrar General as provided by the twenty-third section to restrain him from proceeding until the further order of the Court. And the Court may make such an order and may in its discretion direct the caveator to lodge in the Court on or before a certain day a case on his own behalf stating whether he claims in his own right or under another person together with such other particulars if any as the Court shall think fit to order and the Court shall thereupon direct an issue or issues to be tried by a jury as to any fact or facts or should no fact be in contest may decide the matter upon the case stated and for the purposes aforesaid may make all such orders as the Court shall think fit and the decision of the Court finally upon the matter shall be conclusive on the parties and on the Registrar General and Commissioners. And the costs of every proceeding under this section shall be borne by the party finally unsuccessful.

Judge may order
production of deeds
&c.

5. Any Judge of the Supreme Court may on the application of any person seeking to bring land under the principal Act make an order requiring any specified person having in his possession or under his control any deeds instruments or evidences of title relating to or affecting the land to produce the same at the Land Titles Office on a day to be named in such order there to be left for the perusal of the Examiners of Titles upon such terms and subject to such conditions as to costs and otherwise as to the Judge may seem fit.

Applications to be
registered by trans-
mission.

6. In addition to the persons empowered by the seventy-ninth section of the principal Act to apply to be registered as proprietors by transmission on the death of a deceased registered proprietor it shall be lawful for any person having a power of disposition over the fee simple of any land belonging to a deceased registered proprietor to make the application. And every such application shall be proceeded with in the manner indicated by the said seventy-ninth and the eightieth sections of the said Act. Provided that in any application to be registered proprietor by transmission whether under this section or the said seventy-ninth section the Commissioners of Titles may if so advised by the Examiners of Titles dispense with the publication of all or any of the notices directed to be published by the said eightieth section and the Registrar General shall unless he shall have received a caveat forbidding him so to do register the applicant as proprietor at the expiration of such time not being more than one month as the said Commissioners shall direct and the said Commissioners may direct any caveat to be entered by the Registrar General for the protection of the interests of such other persons (if any) as may appear to the Examiners to be interested in such land.

Dispensation of
certificates of death
in certain cases in
transmission appli-
cations and of state-
ment of certain
estates and interests.

7. In any application to be registered as proprietor under the provisions of the seventy-ninth section of the principal Act it shall be competent for though not compulsory on the Commissioners if so advised by the Examiners of Titles to dispense with a certificate of the death of the deceased registered proprietor on production of such other evidence of his death as the Examiners of Titles shall think sufficient and in any such application it shall be unnecessary for the applicant to state the nature of or set forth any estate or interest held by any other person or persons at law or in equity arising or supposed to arise out of matters anterior to the date of the instrument in
respect

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respect of which he applies to be registered unless such estate or interest shall have been disclosed by or referred to in some instrument or declaration of trust deposited under the said Act or shall have been protected by caveat entered pursuant to the provisions of the said Act and the Registrar General Examiners and Commissioners shall not except in the cases before mentioned be concerned in or take notice of any such anterior estates or interests as aforesaid and such application may be made and verified either by and on the oath of the applicant or in case of his absence from the Colony of New South Wales by his agent duly constituted by a general power of attorney.

8. Upon the registration of any person claiming any estate of freehold in the land of a deceased proprietor under sections seventy-nine and eighty of the principal Act it shall not be necessary for such first-mentioned person to take out a certificate of title in his own name where the transmission is of the whole of the land comprised in the grant or certificate of title surrendered and for the whole of the estate of the deceased registered proprietor but he may receive the grant or certificate of such registered proprietor with a memorial of the transmission endorsed thereon provided that the Registrar General whenever in his opinion any grant or certificate of title shall be incapable of containing with convenience any further endorsements may compel the last proprietor applying for registration to receive a certificate of title in his own name.

Registration on transmission by endorsement.

9. Where any caveat shall hereafter be lodged forbidding the bringing of any land under the provisions of the principal Act and notice of proceedings having been taken by the Caveator under the twenty-third section of the said Act shall have been given to the Registrar General as therein directed if such proceedings shall not within six months after the date of writ or commencement of such proceedings have been continued to such a stage as to have resulted in a decision judgment or order by the Court it shall be lawful for the Registrar General by direction of the Commissioners on giving one calendar month's notice to the caveator or to the solicitor whose name appears on the caveat of his intention to proceed or if neither of such courses be practicable then on posting or exhibiting on the said land such notice for a period of thirty days to proceed with the application notwithstanding the provisions of the twenty-second section of the said Act and to bring the land the subject thereof and of the said caveat under the said Act unless in the meantime an order or injunction restraining the Registrar General from further proceeding with the said application shall have been served on him.

As to caveats.

10. If any objection to the title of land sought to be brought under the provisions of the Principal Act is made by the Examiners which the applicant shall deem to be not well founded he may state a case for the decision of the Supreme Court which decision shall be binding upon the Examiners and Commissioners but shall not affect the claim of any person against the assurance fund under the Principal Act or the right of the applicant to proceed under the one hundred and seventh section of that Act Provided always that to every such case there shall be annexed such observations as the Examiners may think proper to make Provided also that the costs of obtaining such decision shall in each case be borne by the applicant.

Special case.

11. No title to land adverse to or in derogation of the title of the registered proprietor shall be acquired by any length of possession by virtue of any statute of limitations relating to real estate nor shall the title of any such registered proprietor be extinguished by the operation of any such statute And the enactment contained in this section shall be deemed to be declaratory of the principal Act but shall not affect any proceeding had or commenced before the commencement of this Act.

Statutes of limitations not to affect land under Act.

Diseases in Sheep Acts Amendment.

Provision for caveats
or declarations of
trust.

12. Where any declaration of trust in relation to land under the provisions of the principal Act shall be lodged under the sixty-sixth section of the said Act it shall be the duty of the Registrar General forthwith to enter a caveat forbidding the registration of any instrument not in accordance with the trusts and provisions therein declared and contained so far as concerns the land affected by such declaration and thereupon the words "Caveat Number " (the proper number being filled in) shall be stamped or written upon the folium of the register comprising the land referred to in such declaration of trust Provided that such caveat may be removed by the Court or Judge on application of the same persons and in the same manner as provided by the eighty-second section of the said principal Act.

As to writs of *Fi. fa.*

13. No writ of execution issued after the passing of this Act shall bind any land under the provisions of the principal Act nor shall any transfer on a sale of such land under such writ of execution be registered unless a true copy of such writ shall be served on the Registrar General within six months from the teste date of such writ or date of any renewal thereof for the purpose of making the entries described in the ninety-second section of the said Act.

Grants to be
registered although
trusts declared.

14. Nothing in the sixty-sixth or any other section of the principal Act shall be deemed to prevent or to have prevented the registration of any Crown grant issued or to be issued at any time from and after the first day of January one thousand eight hundred and sixty-three by reason of the fact that a trust or trusts may have been or may be declared in such grant.
