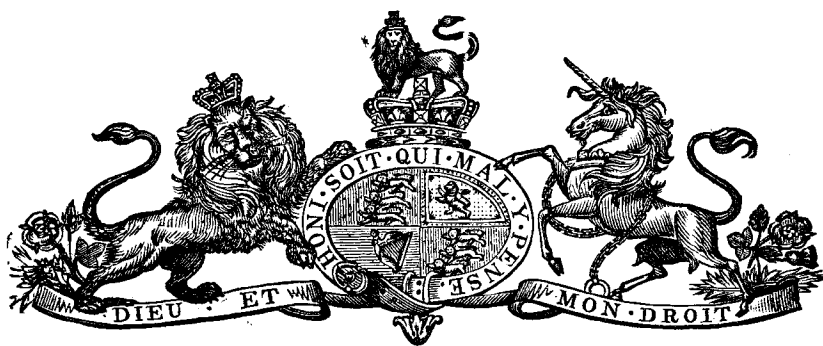


T A S M A N I A



1893.

ANNO QUINQUAGESIMO-SEPTIMO

VICTORIÆ REGINÆ,

No. 5.



AN ACT to further amend *The Real Property Act* A.D. 1893.
[29 September, 1893.]

WHEREAS it is expedient to further amend *The Real Property Act*: PREAMBLE. 25 Vict. No. 16.

Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as “The Real Property Act, No. 7.” Short title.

2 In this Act, unless the context otherwise determines,— Interpretation.
“The Principal Act” means *The Real Property Act*, and includes every Act amending the same:
“Under the Act” means under the provisions of the Principal Act:
“Commissioners” mean “The Lands Titles Commissioners” appointed under the Principal Act.

Applications.

3 Where the title to any land is claimed by possession, then on any application to bring such land under the Act, or on any application for a Grant from the Crown for such land under the Act, the applicant shall post on the land the subject of the application, or at such place as the Commissioners shall direct, a notice similar to that published in Person claiming title by possession to post notice of application on land.

Real Property.

A.D. 1893.

The Hobart Gazette and the newspapers, and shall keep the same posted in such manner as the Commissioners may require for not less than One month prior to the issuing of a Certificate of Title or Grant on such application; and the Recorder of Titles may refuse to issue a Certificate of Title or Grant until it has been proved to his satisfaction that the requirements of this Section have been complied with.

Title to land brought under the Act subject to mortgage to be held good in favour of mortgagee or purchaser after foreclosure or sale.

4 Where any land has been brought under or shall be brought under the Act, or any Grant from the Crown has been or shall be issued under the Act, subject to any mortgage, and the mortgagee, or any person claiming under him, has foreclosed or sold such land under the powers vested in him by such mortgage, and shall apply to the Recorder of Titles for a Certificate of Title to the land foreclosed or purchased, the mortgage shall be deemed to have conferred upon the mortgagee or the purchaser under the power of sale contained in the mortgage the right to be registered as proprietor at law as well as in equity of the same estate in the land as that for which the mortgagor was registered, and the only inquiry into title shall be as to the validity of the foreclosure or sale and of any subsequent transfers or transmissions of title to the applicant, and no caveat which might have been or which was lodged against the original application shall be lodged or renewed in respect of the same estate or interest against the application of the mortgagee or any person claiming under him; and the Recorder of Titles, if he shall be satisfied as to the validity of such foreclosure or sale and transfers or transmissions as aforesaid, shall, with the consent of the other Commissioners, issue the Certificate of Title applied for forthwith.

Caveats.

Caveat by beneficiary under Will or settlement need not be removed to admit registration of dealing authorised thereunder.

5 Where a Caveat has been lodged by or on behalf of a beneficiary claiming under a will or settlement, and a change in the proprietorship of or a transfer or other dealing with or affecting the land estate or interest in respect of which the Caveat was lodged is presented for registration, the same may, notwithstanding Section Eighty-four of *The Real Property Act*, be registered without the Caveat being withdrawn and without determining the operation of the Caveat: Provided the Recorder of Titles is of opinion that such change of proprietorship or such transfer or other dealing is authorised by the will or settlement and the caveator either consents to the registration or does not lodge a written protest against such registration within Fourteen days after being served with notice of such intended registration.

Substitution for Section 85 of 25 Vict. No. 16.

6 Section Eighty-five of *The Real Property Act* is hereby repealed, and in lieu thereof the following shall be and be deemed to be and may be cited as Section Eighty-five of the said Act; that is to say:—

Compensation for lodging caveat without reasonable cause.

“Any person lodging any Caveat with the Recorder of Titles without reasonable cause shall be liable to make to any person who may have sustained damage thereby such compensation as a Judge of the Supreme Court, on a summons in Chambers, shall deem just, and the costs of such summons and all proceedings in connection therewith shall be in the discretion of such Judge, and execution may issue for the amount of compensation (if any) and of costs ordered by him to be paid in such and the like manner as if the amount of the same had been recovered by a judgment on an action in the said Court.”

*Real Property.**Assurance Fund.*

A.D. 1893.

7 Any person sustaining loss or damage in any case in which, under the Principal Act, he is entitled to bring an action to recover damages against the Recorder of Titles as nominal defendant, may, before commencing proceedings, make application in writing to him for compensation, and such application shall be supported by affidavit or declaration. If the Recorder admit the claim or any part thereof and certify accordingly to the Attorney-General, thereupon the Governor may, if he shall think fit, issue a Warrant to the Treasurer for the amount so certified out of the Assurance Fund.

Person claiming compensation may before action apply to Recorder in writing.

Certificate of Title, Leases, and Sub-Leases.

8—(1.) The words “not being a lease for a life or lives” in the Second and Third lines of the Thirty-second Section of *The Real Property Act*, are hereby repealed.

Amendments in Section 32 of 25 Vict. No. 16 and Section 12 of 50 Vict. No. 8.

(2.) The words “or of any lease under which there shall be a term of not less than Twenty-one years unexpired” are inserted after the word “possession” at the end of the First line of the said Section.

(3.) The words “or of any lease under which there shall be a term of not less than Twenty-one years unexpired” are inserted after the word “freehold” in the Second line of the Twelfth Section of “*The Real Property Act, No. 5.*”

(4.) The words “in Form D of the Schedule to the Principal Act” in the said Second line of the said last-mentioned Section, are hereby repealed.

9 “*The Real Property Act, No. 6,*” is hereby repealed. The words “reservations, exceptions, conditions, and powers contained in the Crown Grant of the land, or the interest of any tenant therein, or of any public or other” are inserted before the words “right of way” in the Thirteenth line of the Fortieth Section of *The Real Property Act*.

Repeal of 54 Vict. No. 27 and Amendment of Section 40 of 25 Vict. No. 16.

10 A Certificate of Title under a lease or transfer thereof shall refer to the lessor’s Certificate of Title or Grant and to the lease or transfer, and shall state the date of the commencement and the length of the term created by the lease, but need not refer to the original grant of the land if the lessor is not the original grantee, and shall in all other respects be in the Form C. in the Schedule to *The Real Property Act*, and shall be subject to the provisions of the lease and of the Principal Act affecting leases, lessors, and lessees, and sub-leases, sub-lessors, and sub-lessees.

Lessees’ Certificate of Title to refer to lease, &c. and be cancelled on expiration of lease.

Where any lease has been registered prior to the date of this Act, such Certificate of Title shall be issued by the Recorder of Titles upon the registration, next after the date of this Act, of any dealing with the lease (not being a recovery of possession, surrender, or forfeiture thereof) if under such lease there shall be at the date of such registration a term of not less than Twenty-one years unexpired.

Upon the expiration or other sooner determination of the lease, the Certificate of Title thereto shall be cancelled by the Recorder of Titles in the usual manner.

11 No memorial or entry required by the Principal Act to be made in the Register Book with respect to leases, or any dealing or matter affecting the same after the registration of the lease, shall, after a

Memorial of dealings with lease not to be entered

Real Property.

A.D. 1893.

on lessor's title
excepting as to
surrenders, &c.

Certificate of Title has been issued in respect thereof, be entered upon the folium in the Register Book of the Lessor's Certificate of Title or Grant excepting memorials or entries of recovery of possession or of surrender or forfeiture, whether by operation of law or otherwise, as provided for in the Principal Act.

Provisions of Act
as to leases to
apply, with
necessary modifi-
cations, to sub-
leases.

12 The provisions of the Principal Act and this Act affecting Leases, Lessors, and Lessees shall apply to sub-leases, sub-lessors, and sub-lessees, with such modifications and exceptions as the difference between a lease and sub-lease shall require.

If the lease be determined by forfeiture or operation of law, or by surrender under any Act relating to insolvents or bankrupts and their estates, such determination or surrender shall determine the sub-lease, and the Assurance Fund shall not in any such case be liable for compensation for any loss, damage, or deprivation occasioned by such determination.

Amendment of
Section 50 of
25 Vict. No. 16.

13 The word "Six" in the Second and Fifth lines of Sub-section (2.) of Section Fifty of *The Real Property Act* is hereby repealed, and the word "Three" is inserted in lieu thereof in each of such lines as aforesaid.

Vesting Orders.

Recorder to make
vesting order
where purchase
completed and
transfer cannot be
obtained.

14—(1.) If it be proved to the satisfaction of the Recorder of Titles that any estate or interest in land under the Act has been sold by the registered proprietor and the whole of the purchase-money paid, and that the purchaser or those claiming under him have entered and taken possession under such purchase, and such entry and possession have been acquiesced in by the vendor or his representatives, but that no transfer has ever been signed by the vendor, and cannot be obtained by reason that the vendor is dead or residing out of *Tasmania*, or cannot be found, the Recorder of Titles may, with the consent of the other Commissioners, issue to such purchaser or those claiming under him a Vesting Order in the premises.

(2.) Upon such Order so issuing under the hand and seal of the Recorder of Titles he shall make the entries directed to be made by Section One hundred and twelve of *The Real Property Act* in the case of the Orders therein mentioned; and the making or the omission to make such entries shall be attended by the same results as declared by the said Section in respect of the Orders therein mentioned.

(3.) The Recorder of Titles shall in all cases give at least One month's notice of his intention to issue such Order in *The Hobart Gazette* and in at least one newspaper published in the Cities of *Hobart* and *Launceston*.

(4.) The provisions of the Principal Act in respect to contribution to the Assurance Fund shall apply to all applications under this Section, and such contribution shall be paid by the applicant to the Recorder of Titles before the issue of any such Vesting Order.

Amendment
of Sect. 112,
25 Vict. No. 16.

15 The words "the Trustee Acts" in the third line of Section One hundred and twelve of *The Real Property Act* are hereby repealed, and the words "any Act now or hereafter to be in force relating to Trusts and Trustees" are inserted in lieu thereof.

*Real Property.**Executions and Orders for Sale.*

A.D. 1893.

16 Section Ninety-four of *The Real Property Act* and Section One of "The Real Property Act, No. 2," so far as the same relates to the said Section Ninety-four, are hereby repealed, and in lieu thereof the following shall be and be deemed to be and may be cited as Section Ninety-four of *The Real Property Act*; that is to say—

Substitution for Section 94 of 25 Vict. No. 16.

"No execution after the commencement of this Act shall bind or affect any estate or interest in land under the Act; but the Recorder of Titles, on being served with a certified copy of any writ of *Fieri Facias* issued out of the Supreme Court, or of any direction, decree, or order of such Court, or of any warrant of execution issued under "The Small Debts Act, 1887," or of any direction or order of any Court of competent jurisdiction, directing or authorising the sale of any estate or interest in land held under the Act, accompanied by a statement signed by any party interested, or his Attorney, Solicitor, or Agent, specifying the land sought to be affected thereby, shall, after marking upon such copy the time of such service, enter the same in the Register Book.

Sale under Writ of *Fi. Fa.* or decree or order of Supreme Court or Warrant of Execution. 51 Vict. No. 23.

After any such estate or interest in land so specified shall have been sold under any such writ, direction, decree, or order, or warrant of execution, the Recorder of Titles shall on receiving a transfer thereof in such form as the case requires under the Principal Act (which transfer shall have the same effect as if made by the registered proprietor), enter such transfer in the Register Book, and on such entry being made the purchaser shall become the transferee, and be deemed the registered proprietor of such land.

Unless and until such service as aforesaid no sale or transfer under any such writ, direction, decree, or order, or warrant of execution shall be valid as against a purchaser or mortgagee, notwithstanding the same was actually lodged for execution at the time of the purchase or mortgage, and notwithstanding the purchaser or mortgagee had actual or constructive notice of the lodgment of such writ, direction, decree, or order, or warrant of execution.

Upon production to the Recorder of Titles of sufficient evidence of the satisfaction of any writ, direction, decree, or order, or warrant of execution, a copy whereof shall have been served as aforesaid, he shall cause an entry to be made in the Register Book of a memorandum to that effect, and on such entry being signed by him such writ, direction, decree, or order, or warrant of execution shall be deemed to be satisfied, and the same shall cease to bind, charge, or affect any such estate or interest in such land as aforesaid, unless a transfer upon a sale thereunder shall be produced for registration within Three months from the day on which the copy was served.

17 On such transfer as is mentioned in the last preceding Section being presented for registration it shall not be registered, nor deemed produced for registration, within the meaning of Section Thirty-five of the Principal Act, unless previously and within Three months preceding the transfer being so presented a copy of the writ of *Fieri Facias*, direction, decree, or order or warrant of execution in pursuance of which such transfer purports to have been made, shall have been duly served upon the Recorder of Titles for entry by him in the Register Book in accordance with the said last preceding Section of this Act.

Copy of *Fi. Fa.* must be registered before transfer from Sheriff produced for registration.

Real Property.

A.D. 1893.

Production of Title.

Judge may issue summons to compel production of instruments required by Recorder.

18 If a judgment debtor, mortgagor or mortgagee, or proprietor of any estate or interest in land under the Act comprised in any instrument or any duplicate or triplicate thereof, or the person having the possession, custody, or control thereof shall refuse or neglect to comply with any summons or requisition issued or made by the Recorder of Titles pursuant to his powers in that behalf to bring the same into the Lands Titles' Office within a period named in such summons or requisition not less than Seven days from the date thereof to be inspected, endorsed, cancelled, rectified, or otherwise dealt with, as the case may require under the Act, the Recorder of Titles, or any person interested, may apply to a Judge of the Supreme Court to issue a summons for such person to appear before the said Court or a Judge thereof and show cause why the instrument mentioned in such summons or requisition as previously mentioned should not be delivered up or produced for the purpose mentioned therein.

Upon appearance before the Court or a Judge of any person so summoned, it shall be lawful for the Court or Judge to examine such person upon oath and to receive other evidence, or, if he do not appear after being duly served with such summons, or shall have absconded so that the same cannot be served upon him, then to receive evidence in his absence, and (in case the same shall seem proper) to order such person to deliver up such instrument upon such terms or conditions, having due regard to the rights of such person by way of charge, lien, or otherwise to retain the same, as to such Court or Judge may seem fit, and this notwithstanding that such person claims such right under the written agreement of the person who deposited such instrument with him; and the costs of such summons and proceedings shall be in the discretion of the Court or Judge :

Provided always, that the production of any such instrument under this Section or pursuant to such summons as aforesaid by the Recorder of Titles shall not prejudice or forfeit any right, claim, charge, or lien which such person could have otherwise enforced at law or in equity against any estate or interest in the land affected by such instrument.

Person refusing to comply with order of Court or Judge may be committed to gaol.

19 If such person shall refuse or neglect to deliver up such instrument pursuant to such order it shall be lawful for the Court or Judge to deal with such person as for contempt of Court; and in such case, or in case such person shall have absconded so that the order cannot be served upon him, the Recorder of Titles shall make such entries in the Register Book, and issue such Certificate of Title or other instrument, and do all such matters and things as the case may require in such and the like manner as he is empowered to do when he dispenses with the production of an instrument under Section Ninety-three of the Principal Act.

Miscellaneous.

Notice to be given by registered letter unless otherwise directed.

20 Where under the Act notice is required to be given to or served on any person, and no special provision is made as to the mode of giving or serving such notice, it shall be sufficient if the same is posted in a registered letter, directed to such person at his usual or last known place of abode in *Tasmania*, or at his address as appearing in the Register Book, or as given in any application or caveat, and such notice shall be deemed to have been served at the time when the same

Real Property.

would in the ordinary course of the post be delivered or reach the post town or office to which or nearest to which such notice is directed :
 Provided that the Recorder of Titles may, in any special case, cause or authorise such notice to be given by advertisement in *The Hobart Gazette* and in such newspapers as he shall think fit, in addition to giving such notice by registered letter as aforesaid.

A.D. 1893.

21 The power given under Section One hundred and ten of *The Real Property Act* to any proprietor to require the Recorder of Titles to set forth in writing the ground of his refusal, and to summon the Recorder to appear before the Supreme Court, is hereby declared to apply to every refusal of the Recorder of Titles to do or perform any act or duty under the Principal Act or this Act, notwithstanding that the Recorder has a discretionary power given to him in the exercise of his authority.

Right of appeal declared to extend to all decisions of Recorder.

22 The repeals made by this Act shall not affect any rights acquired or liabilities incurred under the Principal Act before the commencement of this Act.

Repeals not to affect rights, &c. accrued.

23 *The Real Property Act*, and every Act altering or amending the same, save so far as the same may be altered or amended by this Act, and this Act, shall be read and construed together as one Act.

Acts to be read together.