

WESTERN AUSTRALIA

ANNO NONODECIMO

VICTORIÆ REGINÆ

No. 14

An Ordinance to consolidate and amend the Laws relating to the Registration of Deeds, Wills, Judgments and Conveyances affecting Real Property.

[Assented to 14th June, 1856.]

WHEREAS it is expedient to consolidate and amend the laws Preamble
relating to the registration of wills, deeds and other instruments affecting real property in the Colony of Western Australia, and

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for that purpose to repeal the existing Ordinances on that subject: Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof:—

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| Repeal of existing Ordinances for consolidation | 1. | That the following Registration Ordinances, namely, No. 6 of 1832, No. 10 of 1843, and No. 8 of 1855, be and the same are hereby respectively repealed, save and except as to any act, matter or thing already done or commenced under any of the said Ordinances. |
| Office | 2. | That there shall be maintained as heretofore at Perth in this Colony a Public Office for the Registration of Deeds, Conveyances and other Instruments, Wills and Judgments in manner hereinafter appointed, in which shall be kept for safe custody and reference all books, records, documents and papers relating to any such instruments, wills and judgments registered before the passing of this Ordinance; and that the person holding the appointment of Registrar of Deeds and Transfers at the time of the passing of this Ordinance shall continue to be Registrar of the aforesaid office under this Ordinance, and that in every vacancy of or in such registrarship, some fit and proper person shall be appointed to be such Registrar by the Governor by warrant under his hand and the public seal of the said Colony; and that all conveyances, deeds, wills, devises and other instruments in writing, now or hereafter to be made or executed, and all judgments now or hereafter to be obtained (by which conveyances, deeds, wills or other instruments in writing, and judgments, any lands, tenements or hereditaments in Western Australia or its Dependencies now are or shall or may be affected) may, if not registered under any previous Ordinance, be entered and registered in the said office in the manner hereinafter directed. |
| Registrar | | |
| Provision for vacancy | | |
| Deeds, wills, and judgments to be registered | | |
| Priority according to date of registration | 3. | That all such judgments, deeds, conveyances or instruments in writing, registered in pursuance of this Ordinance, shall have priority one over the other according to the priority of their respective dates of registration; and that all such judgments, deeds, conveyances, devises or instruments in writing not registered in pursuance of this or some former Ordinance, shall (as against any subsequent <i>bonâ fide</i> purchaser or mortgagee of the same lands, tenements or hereditaments for valuable consideration) be absolutely null and void to all intents and purposes: Provided that nothing herein contained shall extend to <i>bonâ fide</i> leases at rack rent for any term not exceeding fourteen years. |
| Unregistered instrument null | | |
| Leases exempt | | |
| Wills here, two months; elsewhere, eight months | 4. | That all judgments, deeds, wills, conveyances or instruments in writing which shall be duly registered within the respective times next mentioned, that is to say, all deeds, conveyances, and other instruments in writing, except wills, which, if executed in Western Australia or its Dependencies, shall be registered within two months, or which, if executed in any other place, shall be registered within eight months after the time of execution thereof respectively, and all wills which, if the devisor die in Western Australia or its Dependencies, shall be registered within two months, or which, if the devisor die in any other place, shall be registered within twelve months after the decease of every devisor respectively, and all future judgments, which shall be registered within two months after the entry or recording thereof, shall severally be in like manner entitled to priority, and shall take effect |
| Judgments here, one month | | |

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respectively by relation to the date thereof only in the same manner as if this Ordinance had never been made.

5. That in case of any concealment or suppression of any will no purchaser or incumbrancer for valuable consideration shall be defeated or disturbed in his purchase or of his debt by any title made or devised by such will, unless such will be actually registered within three years after the death of the devisor.

Purchaser not disturbed by suppressed will if unregistered

6. That the registration intended by this Ordinance shall be made by delivering into the said Registrar's office a memorial containing the particulars hereinafter specified, and signed in the presence of the said Registrar either by some attorney or solicitor or licensed practitioner of the Civil Court of the said Colony or by any other person requiring the registration thereof, the residence and calling of the person so signing being added to his signature.

Memorial may be signed by the person requiring registration

7. That any person claiming by affidavit to be sworn before any Justice of the Peace any estate or interest under any deed or other instrument, will or judgment affecting real property in the said Colony, may lawfully require the same to be registered, and his or her signature to the memorial thereof annexing such affidavit to such memorial shall be sufficient to authorise such registration.

Claimant's signature to affidavit authorises registration

8. That every memorial of any judgment shall contain the following particulars, that is to say, the names (and when known the additions) of the plaintiffs and defendants respectively, the sums thereby recovered or secured, the time of entry or recording of the same and the sum of money *bonâ fide* due thereon, and every memorial of any deed or conveyance, will or other instrument, shall contain and set forth the date of such deed, conveyance, will or other instrument and the particular nature and object thereof, the names (and when known the additions) of all the parties to such deed, conveyance and instrument and of the devisor and devisee or devisees of such will, and the names (and when known the additions) of all the witnesses thereto, and shall especially particularise and express the lands, tenements and hereditaments affected or intended to be affected by such deed, conveyance, will or instrument, and the proper and ordinary and accustomed names of the districts, towns or places where the same shall be situated and (except in case of wills) the pecuniary or other consideration for the same: Provided always that when there shall be more writings than one for perfecting the same conveyance, devise or security affecting the same lands, tenements or hereditaments, all such writings shall be stated in one and the same memorial, in which it shall be sufficient to particularise such lands, tenements and hereditaments only once.

Memorial to contain the names, &c., of all the parties, and the pecuniary consideration

Lands especially

One memorial, though many writings

9. That on delivery of any such memorial as aforesaid, the said Registrar shall number the same according to the order of time in which it shall have been so delivered, and shall give a receipt for the same, in which receipt shall be specified the certain day and time of day when such memorial shall have been so delivered, and the proper number thereof in the said Registry Office; and he shall also in like manner immediately endorse on the back of such memorial a certificate containing the day and time of day when the same was so delivered, and the name and place of abode of the person delivering the same; and

Order of time

Day and hour

Indorse certificate

Name, &c., of person delivering

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shall sign the said certificate when so indorsed; and such certificate shall be taken and allowed as evidence of the registration, and the time of registration of every such judgment, deed, will, devise, conveyance or other instrument whereof such memorial shall be so made.

Memorials to be registered in succession, as numbered in a book kept by Registrar, who shall also keep an index of places and of names of parties to deed, and of plaintiff and defendant in judgments

10. That every such memorial shall as soon after the receipt thereof as practicable be carefully registered by the Registrar in regular succession as received, according to its proper number, in a particular book to be kept by him for that purpose, and shall afterwards be by him deposited in some secure place in his office, and there kept for future reference when required; and he shall also keep an alphabetical index of the districts, towns and places mentioned in every such memorial, and also a like index or indexes of the names of the several parties to conveyances and other deeds or instruments, and of devisors and devisees in wills, and of the plaintiff and defendant in case of judgments, with accurate references in all such indexes respectively to the number and page of registry of the memorial to which any entry in such index or indexes shall relate, which said Book of Registry and index or indexes shall, as well as all other books of registry and indexes relating to registrations made before the passing of this Ordinance, be open at convenient times in the said office to the inspection of persons desirous of searching the same.

Such Registry Book to be open

Mortgages and judgments

11. That in case of mortgages and judgments registered in pursuance of this Ordinance, if at any time afterwards such verified certificate as is hereinafter next mentioned, shall be brought to the said Registrar, signed respectively by the mortgagee or any of the mortgagees, or by the plaintiff or any of the plaintiffs, or in case of the death or absence from the Colony of all such parties respectively, then by any personal representative or specially authorised agent of all or any of the said parties, and attested by at least two credible witnesses, whereby it shall appear that the whole of the moneys due on any such mortgage or judgment have been fully paid, or that such mortgage or judgment is otherwise satisfied, then the said Registrar shall make a short entry or memorandum thereof on the memorial, and on the margin of the registry of such mortgage or judgment, and shall afterwards carefully register the same certificate in one of the Register Books of his office; and the said Registrar shall also make an entry thereof in his alphabetical index or indexes, referring accurately to the page of registry of such certificate.

Satisfaction may be entered by personal representative or authorised agent

Contents of certificate

In judgments, names of plaintiff and defendant, sums recovered, and dates of payment

In mortgages, names of parties, date and sum secured, and time of satisfaction

Oath in verification by any competent person before Justice of the Peace

12. That every such certificate shall contain the following particulars, that is to say—in case of judgments, the names (and when known the additions) of the plaintiffs and defendants, the time of entering up and recording the same, the sum or sums thereby recovered, the date or dates of payment or other satisfaction of the amount *bonâ fide* due thereon; and in case of mortgages, the names (and when known the additions) of the original parties, the date of the instrument, the sum thereby secured, and the time or times of payment or other satisfaction thereof; and every such certificate shall be verified by the oath of some competent person that the same contains a just and true account of the several particulars therein set forth, which oath may be taken before any Justice of the Peace in this Colony or in the British dominions, or before any Judge of any Court of law in any foreign dominion, who are hereby authorised to administer the same; and on the back of such

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verified certificate the Registrar shall immediately endorse the date when the same was received by him, and the name and place of abode of the person verifying the same; and the said certificate shall, after being so endorsed and entered as aforesaid, be safely kept in his office for future reference when required.

Such verified certificate to be endorsed by Registrar, and dated, to be kept for future reference

13. That any person or persons may deposit in the said Registrar's office for safe custody any conveyance, deeds, power-of-attorney or instrument in writing whatsoever, or his or her last will and testament; of which deed, will, conveyance or other instrument the said Registrar shall (first giving a receipt for the same) immediately make an entry or entries in a book to be kept for that purpose, to which book he shall keep an accurate alphabetical index, having reference therein as well to the name of the testator or parties to each deed or instrument as to the person or persons depositing the same; and the said Registrar shall carefully and securely keep all such deeds, wills or other instruments in his said office until required by the party or parties depositing the same to deliver them back again: Provided that every such will or testament shall be enclosed within a cover or envelope, sealed with the seal of the testator or testatrix, whose name shall be endorsed by the Registrar on such envelope or cover; and every such will shall remain in the said office until the decease of the testator or testatrix, unless he or she shall previously require the same to be delivered back; and upon the death of the testator or testatrix the said Registrar shall, after examining such will, deliver the same to the executor first named therein, or such other person as the Civil Court shall, upon petition, order.

Anyone may deposit for safe custody, any deed or will

Receipt for same

Sealed envelope endorsed by Registrar

Registrar to give will to executor after death of testator

14. That the Registrar shall also carefully enrol in a particular book, to be kept by him for that purpose, any instrument affecting lands, tenements or hereditaments in this Colony, which shall be delivered to him for the purpose of enrolment; and he shall also keep an alphabetical index of the names of the parties to such instruments, and of the district, letter and number by which such lands are therein particularised, with accurate references in such index to the number and page of enrolment to which any entry in such index shall relate.

Enrolment

Index

15. That on production of an affidavit, to be sworn before any Justice of the Peace, setting forth that the original of any such enrolled instrument has been lost, or cannot be found after due and diligent search and inquiry, or has been wholly or partially effaced or destroyed, and that the party by whom or on whose behalf such affidavit is tendered claims interest under such instrument, the Registrar shall issue to the party delivering such affidavit a full copy, certified by him to be correct, of the instrument referred to by such affidavit; and every copy so certified shall be received in any Court of Justice within the said Colony as conclusive evidence of the contents of the instrument so lost, effaced or destroyed, proof having been first made to the satisfaction of such Court that such instrument is lost and cannot be found, and of the signature of the Registrar to such certificate.

Lost instrument

Certified copy thereof to be evidence of contents

16. That registration of any instrument or judgment under the provisions of this or any former Ordinance, relative to the registration of instruments affecting real property, whether such registration shall have been made before or after the passing of this Ordinance, and,

Prior registrations, even if informal, evidence of facts and circumstances

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whether strictly in accordance with such provisions or not, shall be deemed to be notice of all facts, circumstances and particulars referred to in the memorial of such registration of any instrument or judgment as aforesaid, with reference to all contracts entered into after the passing of this Ordinance.

Penalty on Registrar's fraudulent conduct

17. That if the said Registrar, or any other person employed in his office, shall wilfully neglect or omit to number, register or enter in manner hereinbefore directed any memorial or certificate delivered into the said office, or any instrument deposited or enrolled therein, he shall for every such offence forfeit and be liable to pay to Her Majesty, her heirs and successors, the penalty or sum of one hundred pounds, and be further liable in damages to the party injured to the extent of the loss or injury sustained; and if the said Registrar, or any clerk or person whatsoever, shall wilfully destroy, embezzle, secrete, forge, counterfeit, raze, deface or alter any memorial or certificate or instrument deposited or enrolled, or any part thereof, or any endorsement made thereon, or any entry or registry thereof in any book in the said office, or any enrolment in any such book, with intent to defraud or injure any person or persons, such Registrar, clerk or person so offending shall be guilty of felony, and being thereof duly convicted, shall be liable to penal servitude for any term not exceeding ten years.

Ten years' penal servitude

False memorial or certificate, felony

18. That if any person shall wilfully and fraudulently or maliciously deliver, or cause to be delivered, into the said Registrar's office for registration or entry therein, any memorial purporting to be a memorial of any judgment, deed, will or instrument in writing, or any certificate purporting to be a certificate of satisfaction of a mortgage or judgment, knowing such memorial or certificate to be untrue in any material particular, or to refer to a fictitious instrument or transaction, every such person shall be guilty of felony, and being thereof convicted, shall be punishable with penal servitude for any term not exceeding eight years.

Court may cancel a false or fraudulent registration

19. That it shall be lawful for the said Civil Court to receive a petition from any person praying relief against any registration affecting any interest of such petitioner in any lands or hereditaments, and alleged by him to be false or fraudulent; and if the said Court shall by any means be fully satisfied of the truth of such allegation, it shall be lawful for the said Court to order summarily that such registration be cancelled; and the said Registrar, on being personally served with such order, shall make such cancellation accordingly, and shall safely keep such order, making due reference thereto in his books of registry and indexes.

Mistake or omission, if not wilful, may be rectified by Court

20. That in case it shall be made to appear to the satisfaction of the said Civil Court that any registration purporting or intended to be made in conformity with the provisions of this Ordinance is imperfect by reason of any mistake or omission on the part of the said Registrar or any person in his employ, or of any person concerned in effecting such registration, and that such mistake or omission was not wilful or fraudulent, and that the same may be rectified without wrong or injury to any person lawfully claiming an interest in the subject matter of such registration, then and in such case it shall be lawful for the said Court, on such terms and conditions (if any) as to it shall seem

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meet, to order that such mistake or omission be duly rectified; and if any person whose act or signature would, in strict conformity with law, have been requisite to the original sufficiency of registration, shall be dead or absent from this Colony, or under any incapacity, the said Court may further order that any other person named in such order shall sign or act in lieu of the person so deceased, absent or incapacitated; and the said Registrar, on being served with any such order, shall forthwith obey the same, and make all necessary or convenient references to such order in his books of registry and indexes; and every registration when so amended shall, from the date of such amendment, be as valid and effectual to all intents and purposes as if the same had been originally complete and regular.

21. That in case the Registrar of Deeds and Transfers aforesaid shall, by illness or accident, be temporarily disabled from the personal discharge of his duties, it shall be lawful for the Governor by any writing under his hand, to appoint some other person to act as such Registrar during his disability or absence on leave; and all the lawful acts of such substitute in and about the discharge of such duties shall be valid and effectual, as if done by the Registrar in person. Deputy

22. That the several fees or sums of money next hereunder mentioned (and no higher or other fees) shall be demanded by and paid to the said Registrar for and in respect of the several things to be by him performed and done under this Ordinance (that is to say):— Table of fees

	£	s.	d.
For every search, each name	0	2	6
For registering every memorial	0	10	0
For producing a memorial for examination ...	0	1	0
For registering and recording every certificate of satisfaction	0	10	0
For enrolling any instrument, for every folio of seventy-two words	0	1	0
For receiving any instrument deposited ...	0	10	0
For giving out the same	0	10	0
For every office copy or certified extract, for every folio of seventy-two words ...	0	1	0
For cancelling or amending a registration by order of the Court	0	2	6

23. That all fines and penalties and fees imposed and received under this Ordinance shall be paid over to the Colonial Treasurer, to the use of Her Majesty, her heirs and successors for the public uses of this Colony, and in support of the Government thereof. Appropriation

24. That any person who shall wilfully and corruptly make any affidavit in pursuance or purporting to be in pursuance of this Ordinance, which shall be false in any material particular, shall be deemed guilty of a misdemeanour. Perjury

A. E. KENNEDY,
GOVERNOR AND COMMANDER-IN-CHIEF.