



Anno Vicesimo-Quinto

VICTORIÆ REGINÆ.

CAP. VIII.

An ACT to Amend and Consolidate the Law now in force
providing for the Registration of Deeds in this Colony.

[Passed 27th March, 1862]

WHEREAS it is expedient to Amend and Consolidate the Law now in force in this Colony for the Registration of Deeds : Preamble.

Be it therefore enacted, by the Governor, Legislative Council, and Assembly, in Legislative Session convened, as follows:

I.—That from and after the passing of this Act, the 27th, 28th, 29th, 30th, 31st, 32d and 33d Sections of an Act passed in the Parliament of Great Britain, in the Fifth Year of the Reign of His Majesty King George the Fourth, intituled “An Act for the better Administration of Justice in Newfoundland and for other purposes” ; also an Act passed in the First Year of the Reign of Her Majesty Queen Victoria, intituled “An Act to Repeal part of an Act passed in the Fifth Year of the Reign of His Majesty King George the Fourth, intituled ‘An Act for the better Administration of Justice in Newfoundland and for other purposes,’ and to make further provision for the Registration of Deeds in this Colony” ; also an Act passed in the Seventh Year of the Reign of Her Majesty Queen Victoria, intituled “An Act to amend the Law now in force for the Registration of Deeds in this Colony” ; also an Act passed in the Tenth Year of the Reign of Her Majesty Queen Victoria, intituled “An Certain Acts Repealed.

Nothing herein to affect Registry prior to this Act.

Act to make further provision for the Registration of Deeds'' ; and also the 41st Rule of the General Rules and Orders of the Supreme Court of Newfoundland, promulgated on the Second Day of January A. D. 1826, shall be and the same are hereby repealed : Provided that nothing in this Act shall affect the Registration of Deeds registered under any of the said Acts, and that the Registration of Deeds or other Assurances executed before the passing of this Act shall be valid as against subsequent Purchasers or Mortgagees, if made according to the provisions of the said Acts.

Appointment of Registrars.

II.—Be it further enacted, that the Chief Clerk of the Supreme Court of Newfoundland shall be the Registrar of Deeds for the Central Judicial District of the said Island, and that the Chief Clerks of the Northern and Southern Circuit Courts, respectively, shall be the Registrars of Deeds for the Northern and Southern Judicial Districts of the said Island ; and that in each of the said Districts a Registration Office shall be kept by such Registrars, respectively, at such Places as the Governor in Council may appoint, provided with Fire-proof Safes for the safe custody and preservation of all Records, Books and Papers of Registry, and all Deeds and Writings deposited for Registration ; and if either of such Registrars shall be guilty of any neglect or fraudulent practice in the performance of the Duties of his Office, he shall be liable for all Damage to the Party injured, to be recovered, with Costs of Suit, in any Court of Record.

Fire-proof Safes, &c.

Liability of Registrars.

Deeds, &c., to be registered in District where Lands, &c., are situated.

III.—That all Deeds, Wills, Decrees, Judgments, Conveyances, and other Assurances whatsoever, whereby any Lands or Tenements in this Colony or its Dependencies shall be hereafter granted, conveyed, devised, mortgaged, charged, or otherwise affected in any manner whatsoever, having been proved in manner hereinafter provided, shall be registered at the Registration Office for the District in which such Lands or Tenements are situated, in suitable Books of Registry; and that a double Index to such Books of Registry shall be kept by each of such Registrars, to contain, in case of Deeds and Writings other than Decrees and Judgments, the Names of the Parties thereto, the situation of the Property, the character of Deed, and the date and consideration ; and, in cases of Decrees and Judgments, the Dates thereof, the Names of the Plaintiffs and Defendants, the Situation of Property, and the Court in which such Decrees or Judgments were made.

Double Index.

Registrar in receiving Fees required to register, &c.

IV.—That when any such Deeds, Wills, Decrees, Judgments, Conveyances, and other Assurances, shall be duly proved in manner hereinafter provided, and deposited in the Registration Office for the District wherein the Lands or Tenements affected shall lie, such Registrar shall, upon receiving the Fees payable to him by virtue of this Act, and is hereby required to copy a Memorial of the same into the Books of Registry, and also to enter therein Copies of all Plans and Schedules by the Parties depositing the same ; and every such Memorial shall contain a Statement of the Year and Day of the Month in which such Deed, Will, Decree,

Memorial, &c.

Judgment, Conveyance, or other Assurance, shall bear date, the Names and Additions of all and every the Parties, as well as the Names and Additions (if any) of the subscribing Witnesses thereto, the Signatures of the Parties executing the same, the Description at length of the Lands or Tenements conveyed or charged, or intended to be conveyed, charged or affected by such Deed, Will, Decree, Judgment, Conveyance, or other Assurance, as the same are therein described, the Consideration of every such Deed, Conveyance, or other Assurance, and the condition for Defeazance, if any; and in cases of Decrees, Wills and Judgments, the Certificate under the Seal of the Court wherein such Decree or Judgment was passed, or such Will proved: all which particulars shall be entered and recorded in the said Book of Registry, with all convenient despatch, in the order of time in which the same may have been so proved and deposited.

V.—That all such Deeds, Conveyances, and other Assurances, aforesaid, executed within this Colony, shall be proved by the Affidavit of a Subscribing Witness or any Party executing the same, or upon the personal acknowledgment of a Party from whom an Interest shall pass; such Affidavit or Acknowledgment to be made before either of such Registrars, a Judge or Commissioner of Affidavits of the Supreme Court, or a Justice of the Peace, who shall sign a Certificate on such Deed, Conveyance, or other Assurance, or on a Paper annexed thereto, declaring such Attestation or Acknowledgment, and the date thereof; and such Certificate and Affidavit shall be registered.

Proof of Deeds within Colony.

VI.—That all such Deeds, Conveyances, and other Assurances, aforesaid, executed out of this Colony, shall be proved in the manner prescribed in the preceding Section before a Judge of a Court of Record, the Mayor or Chief Magistrate of any City or Town, a Justice of the Peace, a British Ambassador, Consul, Vice-Consul, or Consular Agent, residing respectively at or near the Place where the Witness or Party acknowledging may reside, and the Attestation or Acknowledgment, with the date thereof, shall be certified under the Seal of such Court, City, or Town, or under the Hand and Seal of a Notary Public; and such Attestation, Certificate, and Affidavit, shall also be registered.

Proof of Deeds abroad

VII.—That all such Decrees and Judgments aforesaid shall be proved by a Copy under the Seal of the Court wherein the same shall be decreed or pronounced, and certified by the Chief Clerk of such Court.

Proof of Decrees, &c.

VIII.—That when all the subscribing Witnesses to the execution of any such Deed, Conveyance, or other Assurance, aforesaid, and all the Parties thereto, shall be dead; or when the Deed, Conveyance, or other Assurance, having been executed in this Colony, the Witnesses to the same and Parties thereto shall be absent therefrom, the Registrar shall register such Deed, Conveyance, or other Assurance, upon sufficient Proof upon Oath of such Death or Absence, the hand-writing of any of the subscribing Witnesses thereto; and if the Party or Parties executing the same from

Proof when Witnesses dead, &c.

whom some Interest shall pass, such Proof to be made before either of such Registrars or a Judge of the Supreme Court, and a Certificate of such Proof shall be endorsed on such Deed, Conveyance, or other Assurance, or annexed thereto and registered therewith.

Power of Attorney
may be registered.

IX.—That when any such Deed, Conveyance, or other Assurance, shall be executed under a Power of Attorney, the Power may be registered upon being duly proved in manner herein provided for the proof of Deeds; and no Registry of a Deed so executed shall be valid unless such Power be registered, within Six Months after the registry of such Deed, or unless a Deed duly proved in manner aforesaid subsequently confirming the execution of the first Deed, Conveyance, or other Assurance, be registered within that period in the Registration Office of the District wherein the Lands or Tenements affected are situate.

Endorsement upon
Deeds, &c.

X.—That the Registrar shall endorse and sign, upon every such Deed, Will, Decree, Judgment, Conveyance, or other Assurance, a Certificate, in which shall be expressed the Day and Time when the same was actually proved and deposited for Registration, and the Volume and Page in which the registry thereof is entered; and every such Certificate so endorsed and signed shall be taken and allowed as Evidence of the time when the same was so proved and deposited, and of the registry thereof.

Deeds not proved and
registered, fraudulent
and void in certain
cases

XI.—That all such Deeds, Conveyances, or other Assurances, affecting any Lands or Tenements in this Colony, made after the passing of this Act, and not duly proved and registered, and every Mortgage by deposit of Deeds without writing, shall be judged fraudulent and void both at Law and in Equity, against any subsequent Purchaser or Mortgagee, for valuable consideration, who shall first register his Deed, Conveyance or Mortgage, of such Lands or Tenements, or against any Trustee under subsequent Insolvency, or against any Creditor who shall have actually seized or levied under Attachment or execution: Provided that such Attachment, with a description of the Property attached, to be entered by the Sheriff in his Office Books immediately after such Attachment, shall be executed and duly returned with the Writ.

A Tacked Mortgage
no priority.

XII.—That no Mortgage affecting any such Lands or Tenements shall have any priority by reason of being held by or vested in the same Person with another Mortgage of prior date and registry.

Registry of Release.

XIII.—That the Registrar shall not be compelled to copy in full the Release, Transfer, or Mortgage, of any such Lands or Tenements, but he shall register a Memorial of such Release or Transfer, to contain the Names of the Parties and the subscribing Witnesses thereto, the Date thereof, and the Consideration therefor, and also shall enter a Reference to the Volume and Page of the Registry of such Mortgage, and on such Page shall make a marginal Note of such Release or Transfer.

XIV.—The Process of Subpœna may be issued out of the Supreme or Circuit Courts of this Island, as in ordinary cases, with the necessary variation in form, to compel the attendance of any Witnesses or Parties to any such Deed, Conveyance, or other Assurance, aforesaid, or the production thereof, for proof that, the same may be registered; and such Court or a Judge thereof shall have the power to punish any disobedience to such Subpœna by process of Contempt; but no Witness or Party shall be compelled to produce, under such Subpœna, any Deed, Will, Conveyance, or other Assurance, which he would not be compelled to produce on a Trial in a Court of Law or Equity; and every such Witness or Party shall be entitled to be paid the customary allowance to Witnesses.

Process of Subpœna.

XV.—That when any such Deed, Conveyance, or other Assurance, shall be executed out of this Colony, and duly proved in manner hereinbefore provided, it shall be lawful for the Registrar of the District wherein the Lands or Tenements affected thereby are situate, and he is hereby required, to register such Deed, Conveyance, or other Assurance, and the Certificate of Proof, upon the production to him of a copy thereof, authenticated by a Certificate under the Hand and Seal of a Judge of a Court of Record, Chief Magistrate, Mayor of any City or Town, British Ambassador, Consul or Vice-Consul, at or near the place where the Parties executing the same, or a subscribing Witness thereto, may reside; and the Registrar shall also register such last Certificate, and such Registration shall be as valid, to all intents and purposes, as if the original Deed, Conveyance, or other Assurance, had been produced to such Registrar.

Registry from certified copy.

XVI.—That it shall and may be lawful for any Person or Persons who shall hold any Deed, Will, Conveyance or other Assurance, affecting any Lands or Tenements in this Colony, executed before the Fire in St. John's on the Ninth day of June A. D. 1846, (whereby the several Volumes of the Registry of Deeds of the Central District were destroyed,) and which had been duly registered in any of the Volumes so destroyed, to present such Deed, Will, Conveyance, or other Assurance, to the Registrar of Deeds for the said Central District, who is hereby required to register a Memorial thereof free of charge.

Deeds registered prior to 9th June, 1846. to be again registered free.

XVII.—That nothing in this Act contained shall extend to Leases at a Rack Rent.

Not to extend to Leases.

XVIII.—That where any Will is proved and filed with the Registrar of Probates, a certified Copy thereof under his Hand and the Seal of the Probate Court may be registered in the Registration Office for the District wherein the Lands or Tenements affected by such Will lie, without further proof.

Registry of Wills.

XIX.—That all Bills of Sale, Conveyances, and Mortgages, of personal Chattels, in this Colony, being Deeds of Gift, or wherein the bona fide consideration therefor shall exceed the Sum or value of Fifty Pounds, and where the actual possession of such Chattels shall continue

Deeds of Sale of personal Chattels to be registered.

in the Grantor or Mortgagor, shall be registered in the Registration Office for the District in which such Grantor or Mortgagor shall reside ; and the Registrar for such District is hereby required to register such Bills of Sale, Conveyances and Mortgages, upon the same being proved, in manner herein provided for the proof of Deeds, and deposited with him for Registration ; and all such Bills of Sale, Conveyances, or Mortgages, not registered, shall be adjudged fraudulent and void as against a subsequent Purchaser or Mortgagee for valuable consideration, who shall first register his Bill of Sale, Conveyance, or Mortgage ; and also as against any subsequent and actual Attachment or levy under process of any of the Courts of this Island, upon such personal Chattels, and also as against a Trustee under subsequent Insolvency.

Time of Registry.

XX.—Every Deed, Will, Conveyance, and other Assurance, aforesaid, shall be held to be duly registered from the time it shall have been duly deposited and proved in manner aforesaid.

Registry Fees.

XXI.—That the Registrar of Deeds for the Central District shall be entitled to receive the following Fees from Parties depositing Deeds for Registration :—

For Registering all Deeds, Wills, Decrees, Judgments, Bills of Sale, Conveyances, Mortgages, and the Certificates thereto required to be registered, where the actual value of the Property passing thereby shall not exceed One Hundred Pounds..... Ten Shillings.

Where such value shall exceed One Hundred Pounds and under Five Hundred Pounds, Ten Shillings for the first One Hundred Pounds, and Five Shillings for every additional One Hundred Pounds ; and where the value shall exceed Five Hundred Pounds, the Sum of Two Shillings and Six Pence for every One Hundred Pounds over that amount.

For Swearing any Affidavit..... One Shilling.

For Registering any Release or Transfer of Mortgage..... Five Shillings.

For every Search..... One Shilling.

For every Certificate granted..... Two Shillings and Six Pence.

For Registering any Power of Attorney.... Ten Shillings.

Registrar of Central District to account.

XXII.—That the Registrar of Deeds for the Central District shall render to the Governor in Council, half-yearly, for the use of the Legislature, Accounts of all Registration Fees received by him, the said Fees to be paid in half-yearly to the Receiver General, save and except the Fees payable by virtue of the Nineteenth Section of this Act.

Northern and Southern Districts.

XXIII.—That the present Registrars for the Northern and Southern Districts shall be entitled to receive the following Fees from Parties depositing Deeds for Registration :

For the Verification, Indorsement and Registry of a Deed or Will, under One Hundred Pounds..... Ten Shillings.

Fees.

And when the value exceeds One Hundred Pounds, a per centage of One per cent. for the first One Hundred Pounds, and Five Shillings in the One Hundred Pounds for all above that amount; and for other matters not herein specified, the Fees provided therefor by the Twenty-first Section of this Act.

XXIV.—That upon a Vacancy occurring in the Office of Registrar for the Central District, it shall and may be lawful for the Governor in Council, should he deem it expedient, to sever and separate the Office of Chief Clerk of the Supreme Court and Chief Clerk of the Central Circuit Court from the Office of Registrar of Deeds for the Central District; and the Registrar of Deeds for the Central District to be hereafter appointed is hereby required, in registering Deeds, Wills, Decrees, Judgments, Conveyances, and other Assurances, to copy the same in the Book of Registry in full and at length, instead of a Memorial thereof as now required by the Fourth Section of this Act.

Provisions in the event of vacancies.

XXV.—That upon a Vacancy or Vacancies occurring in the respective Offices of Registrars of Deeds in the Northern and Southern Districts, the Registrars to be hereafter appointed are hereby required, in registering Deeds, Wills, Decrees, Judgments, Conveyances, and other Assurances, to copy the same in the Book of Registry in full and at length, instead of a Memorial thereof as now required by the Fourth Section of this Act; and such Registrars of Deeds to be hereafter appointed for the said Northern and Southern Districts shall be entitled to receive from Parties depositing Deeds and other Assurances for Registration, the Fees according to the Scale annexed to the Twenty-first Section of this Act, instead of the Fees now allowed by the Twenty-third Section of this Act.

The same.