# CHAPTER 65.

An Act to establish a Real Representative, and to amend the Land Transfer Act, 1875. [6th August 1897.]

38 & 39 Vict. c. 87.

WHEREAS it is expedient to establish a real representative, and to amend the Land Transfer Act, 1875, in this Act referred to as "the principal Act:"

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

## PART I.

### *Establishment of a Real Representative.*

Devolution of legal interest in real estate on death.

1.—(1.) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.

(2.) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3.) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4.) The expression "real estate," in this part of this Act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

(5.) This section applies only in cases of death after the commencement of this Act.

Provisions as to administration.

2.—(1.) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2.) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of

personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the court, to sell or transfer real estate.

(3.) In the administration of the assets of a person dying after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, as if it were personal estate; provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

(4.) Where a person dies possessed of real estate, the court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next-of-kin, shall be equally entitled to the grant with the next-of-kin, and provision shall be made by rules of court for adapting the procedure and practice in the grant of letters of administration to the case of real estate.

Provision for transfer to heir or devisee.

**3.**—(1.) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent or conveyance, subject to a charge for all moneys (if any) which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.

(2.) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.

(3.) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration.

(4.) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the registrar to register the person named in the assent as proprietor of the land.

Appropriation of land in satisfaction of legacy or share in estate.

**4.**—(1.) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the court, and such valuation and appropriation shall be conclusive save as otherwise directed by the court.

(2.) Where any property is so appropriated a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for a like purpose.

(3.) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorise the registrar to register the person to whom the property is appropriated as proprietor of the land.

Liability for duty.

**5.** Nothing in this part of this Act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof.

## PART II.

### *Amendments of the Land Transfer Act*, 1875.

Settled land.

**6.**—(1.) Settled land may (at the option of the tenant for life) be registered either in the name of the tenant for life, or, where there are trustees with powers of sale, in the names of those trustees, or, where there is an overriding power of appointment of the fee simple, in the names of the persons in whom that power is vested.

(2.) There shall also be entered on the register such restrictions or inhibitions as may be prescribed, or may be expedient, for the protection of the rights of the persons beneficially interested in the land.

(3.) Where land already registered is assured to the uses of a settlement, the instrument of transfer may be in a specially prescribed form, which shall operate as a conveyance to the uses of the settle-

ment, and it shall be the duty of the trustees of the settlement (if any) to concur in the instrument, and to apply for the entry on the register of the proper restrictions or inhibitions under this section. If there are no such trustees, the registrar shall inquire into the terms of the settlement, and shall enter on the register such restrictions or inhibitions as may be prescribed, or as appear to him to be in accordance with this section.

(4.) On the death of a tenant for life, registered as proprietor of settled land, it shall be the duty of the trustees of the settlement (if any) to apply for the registration of his successor or successors, with such restrictions or inhibitions (if any) as may be in accordance with this section. If the trustees neglect to apply or if there are no such trustees, the registrar shall proceed under the forty-first section of the principal Act in such manner as may be prescribed.

(5.) Where a settlement is created by the will of, or otherwise arises in consequence of the death of, a sole registered proprietor of land or of an undivided share in land, it shall be the duty of his personal representatives to apply for the registration of the person entitled to be registered as proprietor, and for the entry on the register of proper restrictions or inhibitions in accordance with this section.

(6.) The settlement, or an abstract or copy thereof, may be filed in the registry for reference in the prescribed manner, but such filing shall not affect a purchaser or mortgagee for value from the registered proprietor with notice of its provisions, or entitle him to call for production of the settlement, or for any information or evidence as to its contents.

(7.) The registered proprietor of settled land and all other necessary parties (if any) shall, on the request, and at the expense, of any person entitled to an estate, interest, or charge conveyed or created for securing money actually raised at the date of such request, charge the land in the prescribed manner with the payment of the money so raised.

(8.) Subject to the maintenance of the right of the registered proprietor to deal by registered disposition, or by way of mortgage by deposit, with any land whereof he is registered as proprietor, the estates, rights, and interests of the persons for the time being entitled under any settlement comprising the land shall be unaffected by the registration of that proprietor.

(9.) A person in a fiduciary position may apply for, or concur in, or assent to, any registration authorised by this section, and, if he is a registered proprietor, may execute an instrument of transfer or charge in the prescribed form in favour of any person whose registration is so authorised.

(10.) In this section the expressions "tenant for life," "settled land," "settlement," and "trustees of the settlement," have the same meaning as in the Settled Land Acts, 1882 to 1890.

Right to indemnity in certain cases.

**7.**—(1.) Where any error or omission is made in the register, or where any entry in the register is made or procured by or in pursuance of fraud or mistake, and the error, omission, or entry

38 & 39 Vict. c. 87.

is not capable of rectification under the principal Act, any person suffering loss thereby shall be entitled to be indemnified in the manner in this Act provided.

(2.) Provided that where a registered disposition would if unregistered be absolutely void, or where the effect of such error, omission, or entry, would be to deprive a person of land of which he is in possession, or in receipt of the rents and profits, the register shall be rectified and the person suffering loss by the rectification shall be entitled to the indemnity.

(3.) A person shall not be entitled to indemnity for any loss where he has caused or substantially contributed to the loss by his act, neglect, or default, and the omission to register a sufficient caution, notice, inhibition, or other restriction to protect a mortgage by deposit or other equitable interest, or any estate or interest created under section forty-nine of the principal Act, shall be deemed neglect within the meaning of this sub-section.

(4.) Where the register is rectified under the principal Act by reason of fraud or mistake which has occurred in a registered disposition for valuable consideration, and which the grantee was not aware of and could not by the exercise of reasonable care have discovered, the person suffering loss by the rectification shall likewise be entitled to indemnity under this section.

(5.) The registrar may, if the applicant desires it, and subject to an appeal to the court, determine whether a right to indemnity has arisen under this section, and, if so, award indemnity. In the event of an appeal to the court, the applicant shall not be required to pay any costs except his own, even if unsuccessful, unless the court shall consider that the appeal is unreasonable.

(6.) Where indemnity is paid for a loss, the registrar, on behalf of the Crown, shall be entitled to recover the amount paid from any person who has caused or substantially contributed to the loss by his act, neglect, or default.

21 Jac. 1. c. 16.

(7.) A claim for indemnity under this section shall be deemed a simple contract debt, and for the purposes of the Limitation Act, 1623, the cause of action shall be deemed to arise at the time when the claimant knows, or but for his own default might know, of the existence of his claim. This section shall apply to the Crown in like manner as it applies to a private person.

**Land certificates, office copies of registered leases, and certificates of charge.**

**8.**—(1.) So long as a land certificate, office copy of a registered lease, or certificate of charge, is outstanding, it shall be produced to the registrar on every entry in the register of a disposition by the registered proprietor of the land or charge to which it relates, and on every registered transmission or rectification of the register, and a note of every such entry, transmission, or rectification shall be officially endorsed on the certificate or office copy, and the registrar shall have the same powers of compelling the production of certificates and office copies as are conferred on him by sections one hundred and nine and one hundred and ten of the principal

Act as to the production of maps, surveys, books, and other documents.

(2.) Where a land certificate or office copy of a registered lease has been issued, the vendor shall deliver it to the purchaser on completion of the purchase, or, if only a part of the land comprised in the certificate or office copy is sold, he shall, at his own expense, produce, or procure the production of, the certificate or office copy in accordance with this section for the completion of the purchaser's registration. Where the certificate or office copy has been lost or destroyed, the vendor shall pay the costs of the proceedings required to enable the registrar to proceed without it.

(3.) A new land certificate, office copy of a registered lease or certificate of charge, shall not be granted by the registrar in place of a former certificate, or office copy, which has been lost or destroyed, unless the applicant has filed with the registrar a statutory declaration and such other evidence, if any, as the registrar may think necessary, stating the fact and circumstances of the loss or destruction of the former certificate or office copy, nor until at least one advertisement of the application in the London Gazette and three advertisements in a London daily morning newspaper shall have been published at intervals of not less than seven days, and three advertisements in a local newspaper circulating in the district in which the land is situate, and such indemnity (if any) given as the registrar shall think fit.

(4.) Where a transfer of land is made by the registered proprietor of a charge, in exercise of the power of sale conferred by the charge, it may be registered, and a new land certificate may be issued to the purchaser, without production of the former land certificate, but the certificate of charge (if any) must be produced or accounted for in accordance with this section. Subject to any stipulation to the contrary the proprietor of a registered charge shall not be entitled to have custody of the Land Certificate, or to require a Land Certificate to be applied for:—

(i.) On the first registration of freehold or leasehold land, and on the registration of a charge, a land certificate, office copy of the registered lease, or certificate of charge, as the case may be, shall be prepared, and shall either be delivered to the registered proprietor or deposited in the registry as the said proprietor may prefer;

(ii.) If so deposited in the registry it shall be officially endorsed from time to time, as in this section provided, with notes of all subsequent entries in the register affecting the land or charge to which it relates;

(iii.) The registered proprietor may at any time apply for the delivery of the certificate or office copy to himself or to such person as he may direct, and may at any time again deposit it in the land registry;

(iv.) The preparation, issue, endorsement, and deposit in the registry of the certificate or office copy shall be effected without cost to the proprietor.

The registered proprietor of any freehold or leasehold land or of a charge may, subject to any registered estates, charges, or rights, create a lien on the land or charge by deposit of the land certificate or office copy of registered lease, or certificate of charge; and such lien shall, subject as aforesaid, be equivalent to a lien created by the deposit of title deeds or of a mortgage deed of unregistered land by an owner entitled in fee simple or for the term or interest created by the lease for his own benefit, or by a mortgagee beneficially entitled to the mortgage.

Transfers and charges. 44 & 45 Vict. c. 41.

**9.**—(1.) The provisions of section eight of the Conveyancing and Law of Property Act, 1881, shall apply, so far as applicable thereto, to transfers of registered land as though such transfers were made by deed, and a transfer of land made by the proprietor of a registered charge with power of sale shall operate as a conveyance in professed exercise of the power of sale conferred by the said Act.

(2.) The provisions of sections nineteen, twenty, twenty-one (except sub-sections one and four), twenty-two, twenty-three, and twenty-four of the same Act, shall similarly apply to registered charges.

(3.) Every registered proprietor of land may in the prescribed manner charge it with an annuity or other periodical payment, and the provisions of the principal Act and this Act with regard to charges shall apply to any such charge. Every registered proprietor of land may charge it, in favour of a building society under the Building Societies Acts, by means of a mortgage made in pursuance of or consistent with the rules of that society, and the mortgage shall be deemed a charge made in the prescribed manner, and shall be registered accordingly.

(4.) Nothing contained in any charge shall (i) take away from the registered proprietor thereof the power of transferring it by registered disposition or of requiring the cessation thereof to be noted on the register, or (ii) affect any registered dealing with land or a charge in respect of which the charge is not expressly registered or protected, in accordance with the principal Act and this Act.

(5.) The registrar may, on the application, or with the consent, of the registered proprietor of the land, and of the proprietors of all registered charges (if any) of equal or inferior priority, alter the terms of a charge.

(6.) Where a person on whom the right to be registered as proprietor of land or of a charge has devolved by reason of the death or bankruptcy of the registered proprietor, or has been conferred by an instrument of transfer or charge, in accordance with the principal Act and this Act, desires to transfer or charge the land or to deal with the charge before he is himself registered as proprietor, he may do so in the prescribed manner, and subject to the prescribed conditions. Subject to the provisions of the principal Act with regard to registered dealings for valuable consideration, a transfer or charge so made shall have the same effect as if the person making it were registered as proprietor.

Penalty for unqualified persons drawing instruments.

**10.** Every person who (not being a barrister or a duly certificated solicitor, notary public, conveyancer, special pleader, or draftsman in equity) either directly or indirectly, for or in expectation of any fee, gain, or reward, draws or prepares any instrument of transfer or charge, or an application to register restrictive conditions, or to alter or discharge, or alter the priority of a registered charge, or any other prescribed instrument, shall incur a fine not exceeding fifty pounds, which shall be recoverable before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided that this section shall not extend to—

(*a*) any public officer drawing or preparing instruments and applications in the course of his duty; or

(*b*) any person employed merely to engross any instrument or application.

As to statute of 32 Hen. 8. c. 9.

**11.** Section two of the statute of the thirty-second year of the reign of Henry the Eighth, chapter nine, which prohibits sales and other dispositions of land of which the grantor or his predecessor in title has not been in possession for one whole year previously to the disposition being made, is hereby repealed.

As to title by possession.

**12.** A title to registered land adverse to or in derogation of the title of the registered proprietor shall not be acquired by any length of possession, and the registered proprietor may at any time make an entry or bring an action to recover possession of the land accordingly. Provided that where a person would, but for the provisions of the principal Act or of this section, have obtained a title by possession to registered land, he may apply for an order for rectification of the register under section ninety-five of the principal Act, and on such application the court may, subject to any estates or rights acquired by registration for valuable consideration in pursuance of the principal Act or this Act, order the register to be rectified accordingly. And provided also, that this section shall not prejudice, as against any person registered as first proprietor of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of such land at the time when the registration of such first proprietor took place.

As to succession and estate duty.

**13.**—(1.) On every application to register land with an absolute title, or to register a transmission of land, the registrar shall inquire as to Succession Duty and Estate Duty.

(2.) If, on such application, it appears that there is, or is capable of arising, any such liability to Succession Duty or Estate Duty as would affect the purchaser from the person to be registered as proprietor if the land were unregistered, the registrar shall enter notice of the liability on the register in the prescribed manner.

(3.) Succession Duty and Estate Duty shall not—

(*a*) unless so noted on the register; or

(*b*) unless in the case of a possessory title the liability to the duty was, at the date of the original registration of the land subsisting or capable of arising; or

(*c*) unless in the case of a qualified title the liability to the duty was included in the exceptions made on such original registration of the land;

affect a bonâ fide registered purchaser for full consideration in money or money's worth, although he may have received extraneous notice of the liability in respect thereof.

Repeal in part of 38 & 39 Vict. c. 87. s. 83.

**14.**—(1.) So much of section eighty-three of the principal Act as prohibits the registration of undivided shares, and limits the number of co-proprietors, and relates to the description, boundaries, and extent, and alteration of the description of registered land is repealed.

(2.) Registered land shall be described in the prescribed manner by means of the ordnance map, together with such further verbal particulars (if any) as the applicant for registration may desire, and the registrar, or the court, if the applicant prefers, may approve, regard being had to ready identification of parcels, correct description of boundaries, and, as far as may be, uniformity of practice.

Provisions as to land held by incumbents of benefices.

**15.**—(1.) Where the incumbent of a benefice and his successors are the registered proprietors of land—

(i.) No disposition thereof shall be registered unless a certificate in the prescribed form shall be obtained—

(*a*) in case of sales under the Parsonages Act, 1838, or the Church Building Act, 1839, or any Acts amending or extending the same respectively, from Queen Anne's Bounty; or

1 & 2 Vict. c. 23. 2 & 3 Vict. c. 49.

(*b*) in case of sales under the Glebe Lands Act, 1888, or any Acts amending or extending the same, from the Board of Agriculture; or

51 & 52 Vict. c. 20.

(*c*) in all other cases, from the Ecclesiastical Commissioners.

(ii.) No lien shall be created by deposit of the land certificate, and an inhibition shall be placed on the register and on the land certificate accordingly.

The production of a certificate from any of the above-mentioned bodies shall be a sufficient authority to the registrar to register the disposition in question, and it shall be the duty of the proper body to grant such certificate in all cases in which the facts admit thereof.

(2.) On the registration of the incumbent of a benefice and his successors as the proprietors of registered land, if it shall be certified by Queen Anne's Bounty, or shall otherwise appear, that such land was originally purchased by Queen Anne's Bounty or was otherwise appropriated or annexed by or with the consent or the concurrence of Queen Anne's Bounty to the benefice for the augmentation thereof, the registrar shall enter a note to that effect on the register.

(3.) Where the incumbent of a benefice is entitled to indemnity under the provisions of this Act, the money shall be paid to Queen Anne's Bounty and appropriated by them to the benefice.

(4.) The term "benefice" in this section shall comprehend all rectories with cure of souls, vicarages, perpetual curacies, donatives, endowed public chapels and parochial chapelries, and chapelries or districts belonging, or reputed to belong, or annexed, or reputed to be annexed, to any church or chapel.

Provisions as to vendor and purchaser on sales.

**16.**—(1.) A purchaser of registered land shall not require any evidence of title, except—

(i.) the evidence to be obtained from an inspection of the register or of a certified copy of, or extract from, the register;

(ii.) a statutory declaration as to the existence or otherwise of matters which are declared by section eighteen of the principal Act and by this Act not to be incumbrances; 38 & 39 Vict. c. 87.

(iii.) if the proprietor of the land is registered with an absolute title, and there are incumbrances entered on the register as subsisting at the first registration of the land, either evidence of the title to those incumbrances, or evidence of their discharge from the register;

(iv.) where the proprietor of the land is registered with a qualified title, the same evidence as above provided in the case of absolute title, and such evidence as to any estate, right, or interest excluded from the effect of the registration as a purchaser would be entitled to if the land were unregistered;

(v.) if the land is registered with a possessory title, such evidence of the title subsisting or capable of arising at the first registration of the land as the purchaser would be entitled to if the land were unregistered.

(2.) Where the vendor of registered land is not himself registered as proprietor of the land or of a charge giving a power of sale over the land, he shall, at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, either procure the registration of himself as proprietor of the land or of the charge, as the case may be, or procure a transfer from the registered proprietor to the purchaser.

(3.) In the absence of special stipulation, a vendor of land registered with an absolute title shall not be required to enter into any covenant for title, and a vendor of land registered with a possessory or qualified title shall only be required to covenant against estates and interests excluded from the effect of registration, and the implied covenants under section seven of the Conveyancing and Law of Property Act, 1881, shall be construed accordingly. 44 & 45 Vict. c. 41.

Power to remove land from the register.

**17.**—(1.) The registered proprietor of land not situated in a district where the registration of title is compulsory, may, with the consent of the other persons (if any) for the time being appearing by the register to be interested therein, and on delivering up the land certificate or office copy of the registered lease and certificates of charge (if any), remove the land from the register.

(2.) After land is removed from the register no further entries shall be made respecting it, and inspection of the register may be

made and office copies of the entries therein may be issued, subject to such regulations as may be prescribed.

(3.) If the land so removed from the register is situate within the jurisdiction of the Middlesex or Yorkshire registries named in section one hundred and twenty-seven of the principal Act, it shall again be subject to such jurisdiction as from the date of the removal.

38 & 39 Vict. c. 87.

Minor amendments in Schedule I.

**18.** The principal Act shall be further amended in regard to its minor details in the manner set forth in the First Schedule hereto.

Registration of small holdings. 55 & 56 Vict. c. 31.

**19.**—(1.) Where a county council apply in pursuance of section ten of the Small Holdings Act, 1892, for registration as proprietors of land, they may be registered as proprietors of that land, with any such title as is authorised by the principal Act.

(2.) Where a county council, after having been so registered, transfer any such land to a purchaser of a small holding, the purchaser shall be registered as proprietor of the land with an absolute title, subject only to such incumbrances as may be created under the Small Holdings Act, 1892, and in any such case the remedy of any person claiming by title paramount to the county council in respect either of title or incumbrances shall be in damages only, and such damages shall be recoverable against the county council.

## PART III.

### *Compulsory Registration and Insurance Fund.*

Power to require registration of title on sale.

**20.**—(1.) Her Majesty the Queen may, by Order in Council, declare, as respects any county or part of a county mentioned or defined in the Order, that, on and after a day specified in the Order, registration of title to land is to be compulsory on sale, and thereupon a person shall not, under any conveyance on sale executed on or after the day so specified, acquire the legal estate in any freehold land in that county, or part of a county, unless or until he is registered as proprietor of the land.

(2.) In this section the expression "conveyance on sale" means an instrument executed on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of land may be made under the principal Act.

38 & 39 Vict. c. 87.

(3.) The title with which a proprietor of freehold land is registered in pursuance of this section shall be not less than a possessory title; but nothing in this section shall prevent any person from being registered with any other title if the registrar is satisfied of his title.

(4.) It shall be lawful for Her Majesty in Council to revoke or vary any Order made under this section.

(5.) In the case of every Order proposed to be made under this section, notice shall, six months before the Order is made, be given to the council of the county to which such Order is proposed to be applied. A draft of the proposed Order, together with the name of

at least one place within or conveniently near to the county where a district registry office will be established, shall accompany the notice, and shall also be published in the Gazette.

(6.) If within three months after receipt of the draft the county council, at a meeting specially called for the purpose, at which two-thirds of the whole number of the members shall be present, resolve, and communicate to the Privy Council their resolution, that in their opinion compulsory registration of title would not be desirable in their county, the Order shall not be made.

(7.) The first Order made under this section shall not affect more than one county.

(8.) Except as to a county or part of a county which shall have signified through the county council of such county, pursuant to a resolution of such council passed at a meeting at which two-thirds of the whole number of the members shall be present, its desire that registration of title shall be compulsorily applied to it, no further Order shall be made under this section, and in any case no further Order shall be made under this section until the expiration of three years from the making of the first Order. Provided that in the case of an Order made under this sub-section the provisions of sub-section (6) shall not apply.

(9.) Every Order of Council made under this section shall, within thirty days from the date thereof, if Parliament be then sitting, or within twenty days from the commencement of the next session, if Parliament be not sitting, be laid on the table of both Houses of Parliament, and if within forty days of any order being so laid an Address in either House disapproving of such order be carried, such Order shall be void and of no effect.

(10.) Any Order made under this section shall be made with due regard to the utilisation (if practicable) of any land registry existing in the county to which compulsory registration is proposed to be applied or in any adjoining county.

(11.) For the purposes of this section the word county shall have the same meaning as in the Local Government Act, 1888, and shall include a county borough; and the word county council shall include the council of such borough. 51 & 52 Vict. c. 41.

(12.)—(i.) In the event of any portion of a county or part of a county as regards which an Order has been made under this section being included in another county or in a county borough as regards which no Order has been made under this section, such Order shall cease to be in force within such included portion of the county.

(ii.) In the event of any portion of a county or part of a county as regards which no Order has been made under this section being included in another county or in a county borough as regards which an Order has been made under this section, such Order shall apply to such included portion of the county.

Insurance fund for providing indemnity.

**21.**—(1.) For the purpose of providing indemnity payable under this Act, there shall be established an insurance fund to be raised by setting apart at the end of each financial year such

portion of the receipts from fees taken in the land registry as the Lord Chancellor and the Treasury shall by order determine.

(2.) The insurance fund shall be invested in such names and manner as the Treasury from time to time direct.

(3.) If the insurance fund is at any time insufficient to pay indemnity for any loss chargeable thereon, the deficiency shall be charged on and paid out of the Consolidated Fund of the United Kingdom, or the growing produce thereof; but any sum so paid out of the Consolidated Fund, or the growing produce thereof, shall be repaid out of the money subsequently standing to the credit of the insurance fund.

(4.) Accounts of the fund shall be kept, and be audited as public accounts, in accordance with such regulations as the Treasury from time to time make.

## PART IV

### *Miscellaneous.*

Rules and fee orders.

**22.**—(1.) Regulations may be made by the Lord Chancellor, under section one hundred and six of the principal Act, altering or adding to the official styles of the registrar and other officers of the registry, for the purposes of this Act.

(2.) General rules under section one hundred and eleven of the principal Act shall be made by the Lord Chancellor with the advice and assistance of the registrar, a judge of the Chancery Division of the High Court to be chosen by the judges of that division, and three other persons, one to be chosen by the General Council of the Bar, one by the Board of Agriculture, and one by the Council of the Incorporated Law Society.

(3.) Orders under section one hundred and twelve and one hundred and twenty-two of the principal Act shall be made by the Lord Chancellor with the advice and assistance of the same persons, and with the concurrence of the Treasury.

(4.) The fee orders relating and incidental to registration of title shall be arranged from time to time so as to produce an annual amount sufficient to discharge the salaries and other expenses (including the annual contribution to the insurance fund) incidental to the working of the principal Act, and this Act, and no more.

38 & 39 Vict. c. 87.

(5.) Subject to any alterations that may be made in accordance with sections one hundred and twelve and one hundred and twenty-two of the principal Act and this section, the fees to be charged in districts where registration of title is compulsory shall, as regards the matters mentioned in the Second Schedule hereto, be as therein set forth.

(6.) Provision may be made by general rules, under section one hundred and eleven of the principal Act, as amended by this Act, for carrying this Act into effect, and in particular for the following purposes :—

(*a.*) For carrying out the provisions of this Act with respect to compulsory registration;

(*b.*) For adapting to the registration of proprietors of leasehold land the provisions of the principal Act, as to absolute and possessory titles, and as to land certificates;

(*c.*) For adapting to sub-mortgages and to incumbrances prior to registration the provisions of the principal Act with regard to charges;

(*d.*) For the conduct of official searches against cautions, inhibitions, and such matters of a like nature as may be prescribed, and for enabling the registered proprietor to apply for such searches by telegraph, and for returning the replies in like manner to him or to such other person as he may direct;

(*e.*) For enabling cautions to be entered against the registration of possessory and qualified titles as qualified or absolute;

(*f.*) For enabling a mortgagee by deposit to give notice to the registrar by registered letter or otherwise of the deposit with him of the land certificate, office copy of the registered lease, or certificate of charge. Provided that the fee for the entry of any such notice shall not exceed one shilling;

(*g.*) For applying to the grant of leases and dealings with leasehold land the provisions of this Act with respect to compulsory registration;

(*h.*) For allowing the insertion, inserting in the register, and in land certificates, of the price paid or value declared on first registrations, transfers, and transmissions of land; and

(*i.*) For regulating any such matters as are authorised by this Act to be prescribed.

(7.) Provided that nothing in the rules under the said section shall extend to allow the inspection of any entry in the register, except by or under the authority of some person interested in the land or charge to which the entry refers.

(8.) Provision may be made by general orders under section one hundred and eighteen of the principal Act for modifying the provisions of that Act with respect to the formation and constitution of district registries, and for providing the mode in which district registrars are to be remunerated; but nothing in any such order shall affect the provisions as to qualification contained in section one hundred and nineteen of the principal Act.

Provision for the Yorkshire registries of deeds.

**23.**—(1.) At any time after the passing of this Act, and subject to the provisions of section twenty of this Act, the Lord Chancellor may enter into an agreement with the county council of any of the three ridings of Yorkshire for the transfer of the business of the local deed registry established in that riding to the office of land registry.

(2.) The agreement shall be drawn up in accordance with the principles of sections one, three, and four of the Land Registry (Middlesex Deeds) Act, 1891, which provided for the transfer of the Middlesex registry of deeds to the land registry, and shall, after approval by the Treasury, take effect accordingly.

54 & 55 Vict. c. 64.

(3.) The whole of the property, assets, and liabilities of the county council, in relation to the local registry, shall be included in the transfer, and shall be taken over by the State at a price to be specified in or ascertained under the terms of the agreement, but no sum shall be payable for compensation in respect of any future loss of fees consequent upon such transfer.

(4.) Unless and until an agreement as aforesaid is concluded the county council may from time to time, at intervals of five years, in the event of their suffering loss, owing to the business of the local registry being diminished by reason of the principal Act and this Act, apply to the Treasury for compensation, and the Treasury shall award such compensation accordingly.

(5.) The compensation shall be made by the payment of a capital sum to the county fund to be determined in case of dispute by arbitration in the usual way on the basis of the receipts and expenditure in respect of the local registry during the three years previous to the claim being made, and that the county fund shall not be placed in a worse financial position by the operation of the Act.

(6.) All payments under this section shall be made out of moneys to be provided by Parliament.

Interpretation.

**24.**—(1.) All hereditaments, corporeal and incorporeal, shall be deemed land within the meaning of the principal Act and this Act, except that nothing in this Act shall render compulsory the registration of the title to an incorporeal hereditament, or to mines or minerals apart from the surface, or to a lease having less than forty years to run or two lives yet to fall in, or to an undivided share in land, or to freeholds intermixed and indistinguishable from lands of other tenure, or to corporeal hereditaments parcel of a manor, and included in a sale of the manor as such.

(2.) In this Act the expression "personal representative" means an executor or administrator.

Commencement of Act.

**25.** This Act shall come into operation on the first day of January one thousand eight hundred and ninety-eight.

Short title and construction.

**26.** This Act may be cited as the Land Transfer Act, 1897, and shall be construed as one with the principal Act, and that Act and this Act may be cited together as the Land Transfer Acts, 1875 and 1897.

# SCHEDULES.

## THE FIRST SCHEDULE.

Section 18.

### MINOR AMENDMENTS OF THE PRINCIPAL ACT.

The sections of the principal Act mentioned in the first column of this Schedule are repealed or amended to the extent and in the manner set forth in the third column.

| 1. Section in Principal Act. | 2. Subject Matter. | 3. Extent of Repeal or Nature of Amendment. |
|---|---|---|
| 2 | Only land of freehold tenure to be registered. | If, at any time, land is found to have been registered with absolute or qualified title contrary to the provisions of this section, the registration shall not be annulled, but shall be deemed an error not capable of rectification under the principal Act, and any person suffering loss thereby shall be indemnified accordingly. |
| 11 | Registration of leasehold land. | A sub-lease shall, and a term created for mortgage purposes shall not, be deemed a lease within the meaning of this section. |
| 18 | Various rights and liabilities not to be incumbrances. | This section shall include estate duty, liability to repair the chancel of any church, liability in respect of embankments, sea and river walls, and drainage rights, customary rights, public rights, and profits à prendre, and, subject to the provisions of this Act, rights acquired or in course of being acquired under the limitation Acts. |
| 18 (4) (5) | Rights to and in respect of mines and minerals not to be incumbrances. | These sub-sections shall apply only to rights created previously to the registration of the land or the commencement of this Act. |
| 18, last paragraph. | Power for registrar to note on the register the existence of liabilities mentioned in the section. | The power conferred on the registrar shall be exercised in all cases where the abstract of title on first registration or on registration as qualified or absolute discloses the existence of any such liabilities as are mentioned in sub-sections (4) and (5).<br>Where an easement is registered as an incumbrance, the dominant and servient tenements shall be defined, if practicable and required by the parties.<br>Notice of a power of re-entry and of a right of reverter may be entered on the register under this paragraph. |

| 1. Section in Principal Act. | 2. Subject Matter. | 3. Extent of Repeal or Nature of Amendment. |
|---|---|---|
| 19 and 28, second paragraph. | Discharge of incumbrances created prior to the registration of the land, and of registered charges. | These sections shall apply to part discharges. |
| 21 | No acquisition of title by adverse possession. | Repealed. |
| 22 | Creation of charges - | Charges created under this section are subject to the provisions of the principal Act in respect of qualified or possessory titles. |
| 30–33 and 35–38 | Effect of transfers of freehold and leasehold land. | In the absence of anything to the contrary in the register, or in the transfer, or (in the case of leasehold land) in the lease, the word "land" in these sections includes the mines and minerals if parcel thereof. |
| 40 | Transfer of charges - | A registered transferee for value of a charge, and his successors in title, shall not be affected by any irregularity or invalidity in the original charge itself, of which the transferee was not aware when it was transferred to him. |
| 43 | Transmission on bankruptcy. | This section shall not apply until it is certified in the prescribed manner by the court having jurisdiction in bankruptcy that the land or charge is part of the property of the bankrupt divisible amongst his creditors. The official receiver shall be entitled to be registered pending the appointment of a trustee. |
| 44, 45, 83 (4) | As to married women | These sections shall not apply to the case of any woman married on or after 1st January 1883, or to any property to which a married woman is entitled for her separate use. |
| 49 | General powers of disposition over land. | This section includes power to sever the mines and minerals from the surface. |
| 50 | Notice of leases - - | The words "made subsequently to the "last transfer of the land on the "register" are repealed. |
| 58 | Registration of restrictions. | The words "for his own sake, or at "the request of some person "beneficially interested in such "land" are repealed, and the section shall apply to charges as well as to land. |

| 1. Section in Principal Act. | 2. Subject Matter. | 3. Extent of Repeal or Nature of Amendment. |
|---|---|---|
| 66 | Notices to the Board of Trade and others on registration of foreshore. | This section shall not apply to registration with a possessory title. |
| 72 | Title deeds to be marked with notice of registration. | In the case of registration with a possessory title, the registrar may act on such reasonable evidence as may be prescribed as to the sufficiency of the documents produced, and as to dispensing with their production in special circumstances. |
| 78 | Loss or destruction of land certificate. | Repealed. |
| 81 | Effect of deposit of land certificate. | Repealed. |
| 82, first paragraph. | Registration of advowsons and other incorporeal hereditaments. | The words "enjoyed in gross" are repealed. |
| 83 (1) | Notices of trusts | Repealed, and the following sub-section substituted:—Neither the registrar nor any person dealing with registered land or a charge shall be affected with notice of a trust, express, implied, or constructive; and references to trusts shall, as far as possible, be excluded from the register. |
| 83 (2) | Undivided shares and joint proprietors. | Repealed. |
| 83 (3) | Entry of no survivorship of joint proprietors. | The words "with their consent" are repealed, and the following words and further provision are added to this sub-section:—"or of the registrar, after inquiry into title, subject to an appeal to the court.<br>"Subject to general rules, wherever registered land or a charge is to be entered in the names of two or more joint proprietors, the registrar shall make such entry under this sub-section as may be prescribed, unless it is shown to his satisfaction that the joint proprietors are entitled for their own benefit." |
| 83 (5 and 6) | Description boundaries and extent of registered land. | Repealed. |
| | Annexation of conditions to land. | Conditions may be annexed to land at any time, and the section shall apply to any restrictive condition capable of affecting assigns by way of notice. |

| 1. Section in Principal Act. | 2. Subject Matter. | 3. Extent of Repeal or Nature of Amendment. |
|---|---|---|
| 126 | Transfer of titles from the 1862 register. | The words "nevertheless it shall not "be obligatory on any person "interested in an estate registered "under the said Land Registry Act, "1862, to cause such estate to be "registered under this Act" are repealed. |
| 127 | Registered land to be exempt from Middlesex and Yorkshire registries. | The section shall not apply to estates and interests excepted from the effect of registration under a possessory or qualified title, or to an unregistered reversion on a registered leasehold title, or to dealings with incumbrances created prior to the registration of the land. |

Section 22.

## THE SECOND SCHEDULE.

The following fees shall be paid in districts where registration of title is compulsory, and shall include all necessary surveying, mapping, and scrivenery, and the preparation, issue, endorsement, or deposit, as the case may be, of a land certificate, office copy, registered lease, or certificate of charge; discharges of incumbrances, the registration of any necessary cautions, inhibitions or restrictions, the filing of auxiliary documents (if any), and all other necessary costs of and incidental to the completion of each registration or transaction, whether under one or under several titles.

For possessory registration, and for transfers, charges, and transfers of charges for valuable consideration :—

| Value. | Fees. |
|---|---|
| Not exceeding 1,000*l.* | 1*s.* 6*d.* for every 25*l.* or part of 25*l.* |
| Exceeding 1,000*l.* and not exceeding 3,000*l.* | 3*l.* for the first 1,000*l.*, and 1*s.* for every 25*l.* or part of 25*l.* over 1,000*l.* |
| Exceeding 3,000*l.* and not exceeding 10,000*l.* | 7*l.* for the first 3,000*l.*, and 1*s.* for every 50*l.* or part of 50*l.* over 3,000*l.* |
| Exceeding 10,000*l.* | 14*l.* for the first 10,000*l.*, and 1*s.* for every 100*l.* or part of 100*l.*, up to a maximum of 25*l.* for 32,000*l.* |

For transmissions and transfers not for value, notices of leases, and rectification of the register, and land :—

One quarter of the above fees, according to the capital value of the interest dealt with, with a minimum of 1*s.* and a maximum of 5*l.*

No fees to be charged for inspection of the register.

# CHAPTER 66.

An Act to amend the Judicature (Ireland) Acts, 1877 to 1888; and to provide for the union and consolidation of the Court of Bankruptcy in Ireland with the Supreme Court; and for other purposes connected therewith.

[6th August 1897.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Amalgamation of Exchequer Division with Queen's Bench Division.

**1.**—(1.) The Exchequer Division shall be fused and amalgamated with the Queen's Bench Division of the High Court, and the Lord Chief Baron of the Exchequer shall take rank in the Queen's Bench Division next after the Lord Chief Justice, and in all other respects shall have and enjoy the same title, rank, precedence, patronage, rights, salary, and emoluments as he had and enjoyed immediately before the passing of this Act; and shall have the same rights in relation to appointments to the offices held by the existing officers of the Exchequer Division (save the office of master) and in relation to any office which may be created in substitution for any such existing office, as if such new office were in the Exchequer Division.

(2.) Any order which may be made, during the continuance in office of the Lord Chief Baron, for consolidating or reducing the number of the existing offices in the Queen's Bench and Exchequer Divisions shall state which of the new or continuing offices shall, for the purposes of this section, be deemed to have been created in substitution for an existing office in the Exchequer Division.

(3.) All causes and matters pending in the Exchequer Division, and all causes and matters which would have been assigned to that Division, if this Act had not passed, shall be assigned to the Queen's Bench Division.

As to Judgeships in Queen's Bench Division.

**2.**—(1.) One of the existing vacancies in the office of puisne judge of the Queen's Bench Division of the High Court shall not be filled until the occurrence of the vacancy next ensuing after the passing of this Act in the office of judge of the Probate and Matrimonial Division.