

WESTERN AUSTRALIA

ANNO SEPTIMO

VICTORIÆ REGINÆ

No. 9

An Act for the Quieting of Titles to Lands in this Colony
by declaring valid certain Instruments and Trans-
actions affecting the same.

[Assented to 17th August, 1843.]

Preamble

WHEREAS in the second year of the reign of His late Majesty King William the Fourth an Act was passed intituled 'An Act to facilitate and simplify the Transfer of Real Property,' in which Act certain simple and concise forms were given as guides to persons desirous of transferring by way of sale or mortgaging any real property in this Colony; and whereas, either through ignorance or inadvertence in the absence of professional aid, many instruments intended to serve as instruments of sale and transfer, or to operate by way of mortgages, have been framed not in accordance with the wording of those forms, and in some instances those forms have been used in cases where they were not strictly applicable; and whereas doubts have been suggested as to the validity of such instruments; and whereas for the quieting of titles it is expedient to remove such doubts: 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, that any instrument in writing which has been executed or which shall be executed on or before the first day of January next* by any party, for the purpose (clearly apparent on the face of such instrument) of transferring by way of sale an estate of inheritance in fee simple of such party in any lands, tenements, or hereditaments, situated in this Colony, shall be deemed and taken to be valid and effectual to pass and transfer such estate both at law and in equity, although such instrument shall not be according to the form of transfer given in the aforesaid Act, nor according to any form of transfer recognised by the practice of conveyancing in England.

Any instrument of sale executed on or before the 1st January next to be valid

* See 24 Vic., No. 3, s. 2

Any instrument of mortgage executed on or before the 1st January next, although not accompanied by deposit of title deeds, to be valid

* See 24 Vic., No. 3, s. 2

2. And be it enacted that any instrument in writing purporting to be a mortgage by deposit of title deeds with a power of sale of any lands, tenements, or hereditaments situate in this Colony which has been executed, or which shall be executed on or before the first day of January next,* although the same shall not have been accompanied by a deposit of title deeds, shall be deemed and taken to be valid and effectual as a mortgage of such lands, tenements, or hereditaments, as

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if such instrument had been according to the form of mortgage given in the aforesaid Act, and had been accompanied by a deposit of title deeds.

3. And be it enacted that every instrument deriving its validity from this Act shall be deemed to take effect from the date of its registration, and that nothing in this Act contained shall be construed to affect the rights or priorities of instruments under the Registration Act of Council, 2 William IV., No. 6.

Instrument to take effect from the date of its registration only

4. And be it enacted that in every case in which the principal money secured by any instrument of mortgage, together with all moneys due thereon, has been repaid and satisfied or shall at any future time be repaid and satisfied, and a verified certificate of such payment has been or shall be delivered into the Registry Office of the said Colony, then and in such case every such instrument of mortgage shall be deemed to be and to have been null and void from the time of the delivery of such certificate and the estate and interest of the mortgagor, his heirs or assigns, in the lands, tenements, or hereditaments thereby charged, shall be deemed to be and to have been from the time of such delivery the same as if no such instrument had been made, notwithstanding any default which may have occurred in payment of the principal or interest thereby secured on the days and at the times appointed in the said instrument for payment of the same respectively.

Delivery of a certificate of satisfaction to have the effect of cancelling the mortgage and restoring the estate of the mortgagor as if no mortgage had been executed

5. And be it enacted that any instrument in writing by which any married woman of the age of twenty-one years at the time of the execution of such instrument, has expressed or shall express her intention to pass and transfer or release her title to dower in or to any lands, tenements or hereditaments within the said Colony, and which has been executed or which shall be executed on or before the first day of January next in the presence of the Commissioner of the Civil Court or before some Justice of the Peace of the said Colony, and on which instrument there is or shall be endorsed or to which there is or shall be appended or subjoined a certificate under the hand of such Commissioner or Justice of the Peace as required by the said first mentioned Act, shall be deemed valid and effectual to pass and transfer or release the title to dower of such married woman as if such instrument had been a deed jointly executed by her with her husband, as required by the said Act.

Any instrument executed by a married woman on or before the first day of January to release her dower in presence of the Commissioner of the Civil Court or any Justice of the Peace of the Colony, with a certificate as required by the Act 2 Will. IV., No. 7, shall be valid to release her dower

6. And be it enacted that no purchase made before the passing of this Act of any lands, tenements, or hereditaments by any mortgagee thereof at a sale thereof by public auction (such sale being in pursuance of a power contained in the instrument of mortgage) shall be impeached or impeachable on the sole ground that such mortgagee was by reason of such power of sale a trustee for his or her mortgagor: Provided that at least the full amount due for principal and interest shall have been bid and paid for the same.

Purchase by a mortgagee before the passing of this Act not to be impeached solely on the ground of his being a trustee, provided the full amount of principal and interest has been paid for the same

7. And be it enacted that this Act may be amended or repealed by any Act to be passed during this present session.

Act may be amended

JOHN HUTT,
GOVERNOR.