

ALTA.  
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S. C.  
—  
SETTER  
v.  
THE  
REGISTRAR.  
—  
HAILEY, C.J.

ance. In the statute then in question the words were "in any case in which the remedy by action for recovery of damages, as hereinbefore provided, is barred."

By a previous section it was provided that the registrar or any one acting under him should not be liable to an action in respect of any act *bonâ fide* done under the statute. The learned Judge, in that case, treated the words "as hereinbefore provided" as an adverbial phrase modifying the verb "is barred" and being of opinion that, but for the section mentioned "bar-ring it" there would be an action against the registrar, he held that that constituted the condition giving rise to a right of access to the Assurance Fund.

This generous construction was, of course, in accord with what Hogg states to be one of the principles of the system and would have had the effect of allowing a right against the Assurance Fund in practically all cases of loss or damage through mistake in the Land Titles office.

Unfortunately for the application of that construction for future purposes, the Act was, even at the time that the decision was given, altered by the provisions of the Land Titles Act, 1894, which, on January 1, 1895, superseded the Territories Real Property Act. From that Act the little word "as" in the expression "as hereinbefore provided" was eliminated and the wording appeared as it is now. The section indemnifying the registrar and his officers was at the same time changed in location from the early part of the Act to the later part, so that its provisions were then "hereinafter" and not "hereinbefore." In both of these respects the Alberta Act now under consideration follows the Act of 1894.

It is apparent therefore that no assistance can now be had from that case and the words "hereinbefore provided" must be treated as an adjectival expression qualifying "remedy by action for recovery of damages."

Sec. 105 appears to be the only prior section which provides a remedy by action for recovery of damages to which this could apply, but it does provide such a remedy and that remedy is