

No. 190.

2nd Session, 7th Parliament, 26 Victoria, 1863.

BILL.

An Act respecting Registrars, Registry Offices and the Registration of Instruments relating to Lands in Upper Canada.

Received and read, first time, Tuesday,
17th March, 1863.

Second reading, Friday, 20th March, 1863.

Hon. Mr. Atty. Genl. MACDONALD.

QUEBEC :

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An Act respecting Registrars, Registry Offices, and the Registration of Instruments relating to Lands in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. In the construction of this Act the word "Instrument" shall include every deed, conveyance, mortgage, assurance, lease, bond, re-
 5 lease, discharge, letter of attorney, letter of administration, municipal road by-law, certificate of proceedings, decree of foreclosure, and all other certificates or decrees affecting any interest of title in land, of the Court of Chancery or of any other Court on its equity side, for the payment of money, costs and charges, also Sheriff's deeds for lands sold
 10 by virtue of his office, and all contracts,—and all Commissions and proceedings whereby lands or real estate in Upper Canada may be transferred, disposed of, or affected; the word "Land" shall include lands, tenements, hereditaments, appurtenances, and real estate; the word
 15 "Will" shall include probate of will and exemplification, or notarial copies of probate of will and exemplification, or notarial copies of letters of administration, and any devise whereby lands are disposed of or affected; the word "County" shall include a City, Junior County and Riding, or any part of a County or Counties set apart for Judicial purposes; the word "Treasurer" shall include Chamberlain of any Muni-
 20 cipal Council.

Interpreta-
tion clause.
"Instrument"

"Land."

"Will."

"County."

"Treasurer."

2. Chapter eighty-nine of the Consolidated Statutes for Upper Canada, intituled: *An Act respecting the registration of Deeds, Wills, Judgments, Decrees in Chancery, and other Instruments*, and an Act
 25 passed in the twenty-fourth year of Her Majesty's reign, chapter forty-one, intituled: *An Act to repeal the laws relating to the Registration of Judgments in Upper Canada*, and an Act chaptered forty-two passed in the twenty-fourth year of Her Majesty's reign, intituled: *An Act to amend chapter eighty-nine of the Consolidated Statutes for Upper Canada, respecting the Registration of Deeds and other Instruments*, and
 30 An Act passed in the twenty-fifth year of Her Majesty's reign, chapter twenty-one, intituled: *An Act relating to Mortgages in Upper Canada*, and so much of section five of chapter seventy-two of the Consolidated Statutes for Upper Canada as makes the Registrar's fee one dollar for
 35 filing the list of marriages in that section mentioned, are hereby repealed, and all Acts and parts of Acts repealed by any of the above Acts shall remain repealed.

Acts repealed
Con. Stat. U.
C. c. 89.
24 V. cc. 41,
42.

25 V. c. 21.

Part of s. 5 of
c. 72, Con.
Stat. U. O.

3. As much of all other Statutes, parts and clauses of Statutes as relates to the mode of Registration of Instruments and the filing of
 40 plans in the County Registry Offices for Upper Canada, is hereby repealed.

Repeal of all
provisions
respecting
Registration.

Act to be in amendment of repealed Acts and provisions.

4. This Act shall be held to be as well in amendment and substitution of the Acts hereby repealed, as in amendment and substitution of so much of all other Statutes, parts and clauses of Statutes as relate to the mode of Registration of Instruments and the filing of plans in the County Registry Offices for Upper Canada, also hereby repealed.

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REGISTRY OFFICES.

A Registry Office to be kept in each County, &c., in which a separate office is now established.

5. There shall be a separate Registry Office in every County, union of Counties and City in Upper Canada, wherein at present a separate Registry Office is established; and whenever any County is separated for Judicial purposes from a union of Counties, or a new County is formed and set apart for Judicial purposes, there shall be a separate Registry Office established therein, by the Governor, which Office shall be kept in the County Town in like manner as in other County Towns.

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Governor may by proclamation establish a Registry Office in any City, Junior County or Riding;

6. In case the Governor deems the circumstances of any City, or of any Junior County, of union of Counties, or Riding of a County or Counties not set apart for Judicial purposes, such as to call for or render expedient and advisable the establishment therein of a separate Registry Office, he may from time to time, by an Order in Council, cause to be issued a Proclamation under the Great Seal of this Province, and thereby establish such separate Registry Office, for such City or Junior County, or Riding of a County or Counties, and in the case of a Junior County or Riding of a County or Counties, may appoint a convenient place therein where such Registry Office shall be held until the dissolution of such union of Counties, or until the erection of such Riding into a separate County, and the fixing of a County Town therein, when such Registry Office shall be removed to and kept in such County Town.

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And appoint the place thereof in a Junior County or Riding until it has a County Town

Act to apply to Registry Offices so established.

7. Upon the issuing of any such Proclamation the provisions of this Act in reference to the establishment of Registry Offices, or in connection therewith, and in reference to the Registration of Deeds or other Instruments affecting real estate, shall, except in so far as the same may be inconsistent with the provisions of the last preceding section of this Act, apply to Registry Offices so set apart and established; and the duties imposed upon Municipal Councils shall in the case of such Junior County or Riding be discharged by the Municipal Council of the Counties of which such Junior County or Riding forms part, and in the case of a City by the Municipal Council of a City.

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Site of office to be changed only by proclamation.

8. When the place of and for the Registry Office is duly fixed, it shall continue at such place until it is otherwise duly ordered by the Governor, by Proclamation according to this Act.

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May be changed by Proclamation.

9. Whenever in any County or union of Counties or Riding, the Registry Office appears to the Governor to be inconveniently situated, he may by Proclamation order the same to be removed to any other place in the County or Riding.

Registration in present offices.

10. Until the establishment of additional Registry Offices, all Registrations shall be made in the present Offices, and with the same effect as at present.

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Fire-proof offices and vaults to be provided, subject to approval.

11. For the safe keeping of all books, memorials, duplicates and other instruments of whatever description, and plans, belonging to the office of Registrar, the Council in each and every County or union of Counties, where, when this Act takes effect or at any time thereafter, there are

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no safe and proper detached fire-proof offices and vaults, and where thereafter any Registry Office may be established, shall provide, furnish and keep in repair a fire-proof Registry Office, fire-proof vaulted upon a plan to be approved of by the "Inspectors of Public Asylums, Hospitals, the Provincial Penitentiary of Canada, and of all Common Gaols and other Prisons," and shall thereafter keep the same furnished and in good repair on the order and by the direction of such Inspectors.

12. Every Registry Office shall be kept by a Registrar as in this Act Registrars mentioned.

REGISTRAR.

10 13. The Governor shall, as occasion may require from time to time, by Commission under the Great Seal of the Province, appoint a fit person to the Office of Registrar, and shall in like manner fill up any vacancy occurring by the death, resignation, removal or forfeiture of office by any Registrar,—and such Registrar shall hold office during pleasure. Governor to appoint Registrars,—during pleasure.

15 14. Every Registrar in Office when this Act takes effect, is hereby continued therein, subject to the provisions and requirements of this Act. Present Registrars continued.

15 15. Before any Registrar is sworn into office, such Registrar and two or more sufficient sureties shall enter into a recognizance in writing, under their hands and seals, to Her Majesty in the penal sum of four thousand dollars, which sureties shall be approved of by two or more Justices of the Peace for the County, and such recognizance shall be taken by the same Justices, and shall be conditioned for the true and faithful performance, by the said Registrar or his Deputy, of his duty in the execution of all things directed and required of him by this Act, and shall by the said Justices, within six months after the date thereof, be transmitted with the oath required by the next following section, thereto attached, to the Court of Queen's Bench, to remain amongst the records of the said Court. Registrars to give security before being sworn. Where the recognizance shall be kept.

30 16. Every Registrar before he enters upon the execution of his office shall, before two or more Justices of the Peace for the County, take the oath given in the form marked A, in the Appendix hereto. Oath of office.

35 17. The Registrar may, in writing under his hand, nominate a Deputy or Deputies in his Office, who may perform all the duties required under this Act, in the same manner and to the like effect as if done by the Registrar, and any Registrar may remove his Deputy and appoint another in his place whenever he may think it necessary; and in case of the death, resignation, removal or forfeiture of Office of the Registrar, the Deputy Registrar, or, in case of their being more than one, the Senior Deputy Registrar shall do and perform all and every act, matter and thing necessary for the due execution of the said office, until a new appointment of Registrar is made by the Governor. Registrars may appoint Deputies. Deputy to act in case of vacancy.

45 18. Every Deputy Registrar before he enters on the execution of his office shall, before two or more Justices of the Peace for the County, take the oath or an oath to the like effect appointed to be taken by the Registrar. Deputies to be sworn.

DUTIES OF REGISTRARS.

19. Every Registrar shall reside in the County and locality of which he is Registrar, and shall keep his office at the place named in his commission or otherwise appointed by the Governor or by law. Registrars to reside in their counties, &c.

Registrar not performing his duties may be removed and removed. **20.** If any Registrar does not keep his office in the place appointed in his commission or by proclamation, or not having a fire-proof office and vaults, neglects or refuses to remove to the office provided for him by the County Council or otherwise at the time fixed by the Governor, or if the Registrar ceases to reside within the limits of the county or other locality of which he is Registrar, or becomes by sickness or otherwise, wholly incapable of discharging the duties of his office, and if the Grand Jury at any Court of General Quarter Sessions of the County, on the evidence on oath of one or more competent witnesses, make a presentment of any of such facts respectively, of which presentment the Clerk of the Peace shall forthwith forward a copy to the Governor, or if the Registrar in any other manner neglects to perform his duty in every respect as required of him by this Act, or commits or suffers to be committed any undue or fraudulent practice in the execution thereof, and is legally convicted thereof, then such Registrar may, at the discretion of the Governor, be removed, and he shall moreover be liable to pay treble damages, with full costs of suit, to any person injured thereby, to be recovered by action of debt or information in any of Her Majesty's Courts of Record; and any deputy executing the office of Registrar during any vacancy by death, resignation or forfeiture of the Registrar, shall be for the same cause and in like manner liable.

Presentment by Grand Jury.

And liable in damages to any person injured. Liability of Deputy executing the office.

Limitation of actions against Registrars for damages.

Or against a Deputy.

Days and hours of attendance at office.

Registrar to make searches and give certificates, on payment of fees.

And allow others to searches, &c.

21. All suits instituted against any Registrar and his sureties or against any of them or his or their representatives, for the recovery of any sum of money in name of damages sustained through the neglect or non-performance by such Registrar of the duties required under this or any former Act, must be instituted within two years after such damage is sustained, through such misconduct, neglect or non-performance, or within two years after the discovery by the party injured of such misconduct, neglect or non-performance.

22. The two immediately preceding sections shall in every respect apply to any Deputy executing the office of Registrar, during any vacancy occasioned by death, resignation or forfeiture of the Registrar.

23. The Registrar or his sufficient Deputy shall for the dispatch of all duties belonging to the said office, attend at his office from the hour of ten in the forenoon until three in the afternoon, every day in the year, except Sunday, New Year's day, Ash Wednesday, Good Friday, Easter Monday, the Queen's Birthday, Christmas Day, and every day by proclamation of the Governor appointed to be held as a general Fast Day or Holiday in Upper Canada.

24. The Registrar shall, when required, and upon being tendered the legal fees for so doing, make searches and furnish extracts concerning all Memorials, Duplicates or other Instruments registered, mentioning any lot of land as described in the Patent thereof from the Crown, or any lot described by number or letter on any registered map or plan subsequent to the registration of such map or plan, and concerning all Wills, Deeds, Orders or Instruments recorded; and shall give certificate of such extracts under his hand, if required by any person, and concerning the parties to any of such documents, or of the witnesses to the same, or of any other particulars which may be required; and he shall allow all persons to examine the original books, and to make the necessary searches and extracts from the same for themselves, and to see any and every original Instrument in his office, in the presence of the Registrar or his Deputy, but not otherwise, including information as to names and particulars appearing on the Alphabetical Index.

25. The Registrar or his Deputy shall also, at least twice in every day, and at such times as nearly as may be when the principal mails are delivered, attend at the Post Office at the place where the Registry Office is kept, or at the nearest delivery Post Office to such place, and receive all prepaid letters and parcels addressed to the Registrar or Deputy, and in case there is contained therein any Instrument for registration, he shall forthwith endorse on such letter or parcel the precise minute when he received the same, and he shall then without unnecessary delay proceed direct to his office (if within office hours) and shall forthwith endorse thereon, in case a sufficient sum to cover the fees of Registration or other fees has also been remitted or paid, the year, month, day, hour and minute, when he so reached his office with the same, which shall be taken to be the time of the actual delivery to him for Registration, or if such letters or parcels are received out of office 15 hours or too late for office hours, he shall proceed in like manner as before at the next proper office hours.

Duty of Registrar as to instruments transmitted to him by Post for registration and prepaid.

If the fees are paid.

Minute to be made.

26. The Registrar or his Deputy shall act in like manner as nearly as may be in the next preceding section mentioned, in all other cases of prepaid letters or parcels to him, and when the proper fees or charges are paid as aforesaid, wherein proper inquiries or information are made or is desired of him.

And so when inquiries are made by Post.

27. In case of letters or parcels as aforesaid prepaid to the Registrar or his Deputy, and when the proper fees or charges are not paid or transmitted, the Registrar or his Deputy shall note as aforesaid the time of the receipt of the letter or parcel, and he shall forthwith (if in office hours) or at the first opening of the office afterwards in case the Registrar or Deputy refuse to register the Instrument so sent or to make the search, or to grant the information, copy, abstract or otherwise, because of the non-payment of the proper fees or charges, write by Mail, a letter to the person or party from whom the letter or parcel came, informing him of the receipt of the letter or parcel, but that he the Registrar or Deputy refuses to register the document (or otherwise as the case may be) because the proper fees and charges have not been paid or transmitted, and he shall also inform the person or party what the fees and charges will amount to, and that until the payment of such fees or charges, the document sent for Registration, or the copy or information required (or as the case may be) cannot be registered or granted, but that in the meantime the instrument so sent remains at the Register Office, subject to his order, and that it will be returned to him in two weeks thereafter, unless the fees and charges are in the meantime paid.

His duty if the letters, &c., are prepaid, but the fees are not paid and he declines to perform the service required.

28. In case the letters or parcels are not prepaid, if the Registrar or his Deputy takes the same from the Post Office and opens the same, and the money sufficient to cover the postage and fees is not paid or transmitted, the Registrar or his Deputy shall be bound forthwith to return the letter and enclosure or enclosures (if any) to the party sending the same, and to inform such party by the same letter or mail, that the same is returned for want of the necessary fees or postage, and he shall state what such fees and postages amount to, or he may retain the same subject to the party's order, in which case he shall write to the like effect as in the next preceding section mentioned when the postage or the letter has been prepaid.

If the letters or parcels are not prepaid.

29. In all cases when any Instrument is transmitted by post or by letter or parcel to the Registrar or his Deputy, or when any inquiry or proper request or information is made by letter as aforesaid upon, or of

Application by letter to be deemed application in person.

or from the Registrar or his Deputy, the same shall be considered to have been delivered or made or asked or demanded by the party transmitting or writing the letter in person.

Registrars' duty in such case.

To return instruments sent for registration when registered, &c.

And furnish copies, &c.,—demanded by letter.

Any overplus of money to be returned, &c.

Registrar not writing in answer to be deemed to have elected to register the instrument, &c., although fees or postage are not paid.

Registrar to have a Seal of office; and furnish exemplifications of documents in his office, which shall be received as evidence.

As to production of originals.

Treasurer of County or City to furnish a Register Book for each Township, City, Town or Village.

30. The Registrar or his Deputy shall give due attention to all such matters when made or conducted by letter or by parcel as aforesaid, as if the same had been made or conducted by the party in person; and he shall be bound if requested so to do by any such letter or parcel, to return any document sent for Registration when it has been registered, and if it ought to be returned to the person who sent or transmitted the same to him, by a closed letter or parcel or envelope duly addressed to such person, and which shall be mailed and delivered into the post office as soon as he conveniently can do so. 5

31. The Registrar or his Deputy shall also in like manner furnish all copies of documents or of extracts or abstracts or other information properly demandable under this Act, when requested so to do by letter as aforesaid; and shall transmit the same by mail as in the next preceding section mentioned. 15

32. In case more money has been sent to the Registrar than he is entitled to, he shall retain the balance to the party who sent it.

33. In case any Registrar or his Deputy does not, within twenty four hours after receiving or opening any letter or parcel so sent to him as aforesaid, which has not been prepaid, or when the fees and charges for Registration or otherwise, as the case may be, have not been paid or transmitted, either return the letter or parcel and enclosures as in the case before provided, or mail or post a letter to the person so writing or sending the letter or parcel, informing him that the fees have not been paid, and otherwise to the effect aforesaid, such Registrar or his Deputy shall be deemed to have elected to register the instrument or to perform other the duty or business required of him without such postage or fees being paid in advance. 25 30 35

34. Every Registrar under this Act shall have a Seal of Office, and on request of any person or persons, body corporate or otherwise, shall furnish an exemplification or certified copy under his hand and Seal of Office, of any paper, memorial, duplicate, original, or otherwise, deposited, registered or filed, and kept in his office as such Registrar, which exemplification or certified copy shall be received as *prima facie* evidence in every Court of Law in Upper Canada, in the same manner and with the same effect as if the original thereof, in his office, was produced; and no Registrar or Deputy Registrar shall be required to produce any paper in his custody as such Registrar or Deputy Registrar, unless ordered by a Judge of some one of the Courts of Upper Canada. 40 45 50

BOOKS OF OFFICE.

35. The Treasurer of the County or City shall provide a fit and proper Register Book for each Township, reputed Township, City, Town, and Incorporated Village, the limits whereof are defined by law, and all Index and other books required for the business of the said office; and all such Register Books shall be as nearly as may be of the like size and description as those heretofore furnished, and shall continue to be of one uniform size or nearly so; and from the time such books are so provided and received at the Registry Office, the person who holds and executes the office of Registrar shall keep and cause to be used for that purpose a separate Register Book for and of each Township, re- 50 55

- puted Township, City, Town, and Incorporated Village, the limits whereof are defined by law, within the county, junior county, riding or city for which he holds office; and whenever any Registrar requires a new Register Book, or any other book for the use of his office, the same shall, on his application therefor, be furnished to him by the Treasurer or Chamberlain, and all such books so furnished shall be paid for by the Treasurer out of the County or City funds as the case may be; and all such books so furnished, used and kept, shall be deemed to be the property of Her Majesty for the use and benefit of the public.
- 36.** If the Treasurer or Chamberlain refuses or neglects to furnish such books within thirty days after the application of the Registrar therefor, he may provide the same and recover the costs thereof from the Municipality of the County or City so in default.
- 37.** The Judge of the County Court or Warden of the County shall give a certificate respecting each Registry or other Book so furnished or provided, in the form B, or to the like effect, in the Appendix hereto.
- 38.** When any County forming a union of Counties for Registration purposes, City, Town, incorporated Village, Township, reputed Township or place, making part of a County wherein a separate Registry Office is or has been kept, is detached from such union or County and set apart for Registration purposes or attached to or made part of another County, for which a separate Registry Office is also kept, or when a separate Registry Office is established in any County or junior County, according to the provisions of this Act, the Registrar of the County from which such localities are so detached, shall deliver to the Registrar of the County set apart, or of the County whereunto the same is newly formed or attached, the Registry Book or Books and all other Books which have been kept according to the statute exclusively for such County, City, Town, Incorporated Village, Township or reputed Township or place, the original memorials and original duplicates of all deeds, conveyances and wills of, or relating exclusively to any lands within the same, and all maps of Towns or Villages within the same, lodged according to law in his office, also a statement of all titles to lands within such detached localities, registered before separate Registry Books were kept for each Township or place, which statement shall be an exact copy of all memorials and other registered documents affecting such lands, and such statement shall also contain the same particulars with regard to wills, and shall be accompanied by an index of names, and an index of lots, which shall be considered as a part of the said statement; such Registrar shall also furnish therewith a statement and copy of any wills registered in any general Registry Book of Wills; such Registrar shall carefully compare such statement with the original entries in the Register Books in his office, and indorse a certificate to that effect on the statement when furnishing the same; the Registrar receiving such books, and his successors, shall keep the same among the Registry Books of his office, and deal with them, in all respects, in like manner as those originally supplied to and kept therein.
- 39.** Any Registrar who refuses to deliver such books, plans, duplicates or memorials, as aforesaid, within three months after demand in writing therefor, made upon him by the Registrar entitled to receive the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof, before any Court of Oyer and Terminer and General Gaol Delivery, shall forfeit his office and be liable to a fine, in the discretion of such Court, not exceeding *four hundred dollars*.
- New Books.**
- Costs.**
- If the Treasurer neglect so to do.**
- County Judge or Warden to certify as to each Book.**
- When any place becomes another or part of another Registration division, the books relating to it shall be transmitted to the proper office.**
- As to instruments registered before separate books were kept for each township, &c.**
- Wills.**
- Books, &c., to be kept in the new office.**
- Refusal so to transmit such Books, &c., to be misdemeanor.**

Registrar removed or resigning to hand over all books, &c., of his office to his successor.

40. In case any Registrar has been removed from or resigns his office, he shall forthwith deliver up all books, plans, instruments and memorials in his possession, to the person who is appointed Registrar in his stead, or to any other person who may be specially appointed in writing by Her Majesty's Attorney General for Upper Canada to receive the same, and if he refuses to do so, he shall be liable to a fine, in the discretion of the Court, not exceeding *two thousand dollars*, and to such term of imprisonment, if the Court think fit to impose it in addition to the fine, not exceeding one year.

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Registrars who have received memorials, &c., from former offices, to make complete copies in books as soon as funds are furnished.

41. The statement of titles to lands heretofore furnished under sub-section three of section seventy-two, chapter eighty-nine, of the Consolidated Statutes for Upper Canada, having been found defective and imperfect in facilitating searches for titles to lands, and on that account continued reference being made to the original memorials, thereby from frequent handling causing the rapid destruction of the said memorials,— all Registrars who have received from an adjoining County original memorials and statement of title therewith, are hereby required, so soon as the County or City Council has passed a By-law and provided funds for this purpose, to make full and complete copies of all such memorials in proper books, and in the same order and relation in which they were originally registered, inserting in the margin of the Registry Book, opposite to each memorial or instrument, the number thereof and the particular time at which such memorial or instrument was originally recorded, as indorsed on the back thereof by the Registrar or his Deputy, at the time of the original registration thereof.

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Books becoming incapable of being used, from age, &c., to be copied by order of a Judge.

42. Whenever, in any Registry Office, any book or books therein, from age or use, is or are becoming obliterated or incapable of being longer used, the Registrar shall, before the Judge of the County Court of the County in which the Registry Office is situate, make oath in the form marked C in the Appendix hereto, and, on such oath being made, the said Judge shall, in the form marked D, in the Appendix hereto, order such book or books to be re-copied in books of a like description as those required under the *thirty-fifth* Section hereof, so far as the same can be deciphered, and by reference also to the original memorials thereof, and which book having the order of such Judge for the copying thereof, under the hand of the Judge and the seal of the Court, inserted at the beginning of the book, shall be to all intents and purposes accepted and received as the original book, and as *prima facie* evidence that such copy is the true original book.

Effect of such copies.

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After 1st August, 1863, each registration respecting any separate parcel of land as originally surveyed, &c., to be journalized under a separate head in a proper Book.

43. The Registrar, after the first day of August, one thousand eight hundred and sixty-three, shall enter under a separate and distinct head in a Journal of Lots Book, each separate parcel or lot of land as originally surveyed or as originally patented by the Crown, or after the subdivision of any such parcel or lot into smaller sections or lots by an original proprietor, and a plan thereof placed in the Registry Office, and every instrument recorded after the said first day of August, one thousand eight hundred and sixty-three, mentioning any such parcel or lot of land or other subdivision as aforesaid, shall, by the Registrar, over and above all entries now required, be journalized in regular order and rotation under the proper heading of each such separate parcel or lot of land mentioned in such instrument, and the journal book or books to be so kept by each Registrar for the purpose of making said entries, shall be in the form or nearly so of Schedule E, in the Appendix hereto.

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Form E.

44. In order to make the system of journalizing complete, it shall be the duty of each Registrar to journalize all the registries mentioning lands which may have been recorded before the passing of this Act, or which may be recorded before the first day of August, one thousand five hundred and sixty-three, in the same manner and in the like books as provided in the last preceding section.

Former entries mentioning lands, to be journalized.

INSTRUMENTS THAT MAY BE REGISTERED.

- 45.** The following instruments and proceedings may be registered at the election of the party concerned, namely :
1. Deeds, Conveyances, Assurances and all other instruments of or in anywise affecting in law or in equity lands in Upper Canada.
 2. Powers of Attorney under which any such Deed, Conveyance, Assurance, Discharge of Mortgage or other Instrument, has been or may be executed.
 3. Wills and Devises of or affecting any such lands, the Testator being dead.
 4. Decrees of Foreclosure and all other decrees affecting any title or interest in Lands.
 5. The filing or dismissal of any Bill, or the taking of any proceedings in Chancery or in a County Court on its equity side, whereby any title or interest in land may be brought in question.
 6. Satisfaction of Mortgages.

What instruments, &c., may be registered.
Deeds.
Powers.
Wills.
Decrees.
Bills in chancery.
Satisfaction.

HOW REGISTERED.

46. Deeds, Conveyances, Commissions and proceedings in Lunacy, Bankruptcy and Insolvency, and all Proceedings and Instruments of Partition of Real Estate under the Statute in that behalf, Assurances, Contracts, Powers of Attorney and Wills, shall be registered through Memorials thereof, or by a duplicate of the original instruments, or by the deposit of the original itself with the necessary affidavits; and Sheriff's deeds of land sold for taxes, Decrees and Proceedings in Chancery or in a County Court on its equity side, through certificates thereof; and lists of Marriages received by the Registrar under the seventy-second chapter of the Consolidated Statutes for Upper Canada, by filing the same among the records of his office, and recording the same in a Book to be kept by him for the purpose.

Registration by Memorials, duplicates or originals.
By Certificates.
Lists of Marriages under Con. Stat. U. C. c. 72.

REQUISITES OF A MEMORIAL.

- 47.** Every Memorial shall be in writing or may be partly printed and partly written.
1. It shall contain the date of the Instrument or Will, the names and additions of all the parties to the Instrument, or of the Devisor, Testator or Testatrix of the Will as set forth in the Instrument or Will.
 2. The names and addition or occupation of all the Witnesses to the Instrument or Will and their places of abode respectively.
 3. It shall state, as shall also every Deed, Assurance, Contract or other Instrument granting or professing to grant, convey or contract for the sale, disposition or assignment of any land or of any interest in the same, to be registered under this Act, whether the grantor or grantors or person or persons purporting to grant, convey, dispose or sell as aforesaid, is or are married or unmarried, unless the same otherwise clearly appear on the face of such Instrument.
 4. It shall mention the lands contained in the Instrument or Will, and the City, Town, Village, Township or place in the County or riding where the lands are situated, in the manner in which the same are described in the Instrument or Will or to the same effect.

May be in writing or print.
Dates, names, &c.
Witnesses.
Whether the grantor is married or unmarried.
Description of lands.

Deeds by married women. 5. In the case of Deeds or Conveyances executed by married women as grantors of lands which they own in their own right, the fact of a certificate of such married women having voluntarily parted with their Real Estate according to the Statute in that behalf, shall also be mentioned in the Memorial, with the date of the certificate and the name or names and designation of the person or persons by and before whom the woman appeared; and in case the married woman execute such Memorial with her husband, the fact of her having duly parted with her Real Estate according to the Statute, shall be presumed, unless and until the contrary be expressly shown and proved. 5 10

Memorials to be under hand of Grantor or Grantee, &c., how attested. 48. The Memorial of an Instrument other than a Power of Attorney shall be under the hand and seal of the Grantor or of one or more of the Grantors, or of the Grantee or of one or more of the Grantees, his or their heirs, executors or administrators, assigns, guardians or trustees, and shall be attested by two Witnesses, one of whom shall be also a Witness to the execution or to the acknowledgment of the execution of the Instrument. 15

Memorials of powers of attorney. 49. The Memorial of a Power of Attorney shall be under the hand and seal of one or more of the Constituents or of the Constituttees, and shall be attested by two Witnesses, one of whom shall be also a witness to the Power of Attorney. 20

Memorials of Wills. 50. The Memorial of a Will shall be under the hand and seal of a Devisee or of one or more of the Devisees, his or their heirs, executors, Administrators or assigns or guardians or trustees, or an Executor named in the Will, and shall be attested by two Witnesses, one of whom in the case of Wills made and published out of Upper Canada, shall be also a witness to the Will. 25

Effect of statement that grantor is not married. 51. The Statement, in any such instrument as aforesaid, that any grantor is unmarried, shall be deemed a covenant to that effect. 30

AMENDMENT OF MEMORIALS.

Memorials may be amended by order of Court on application. 52. In case a Memorial is defective in any of the above particulars, or in case of any defect in the affidavit of execution, or in any other affidavit, certificate or memorandum of proof, neither the memorial nor the entry of registration which has been made of it, or of the deed or other instrument of which it is or purports to be a memorial, shall be invalid; but the same may be amended on application to either of the Superior Courts of Common Law or to the Court of Chancery in Upper Canada, or to any County Court of the county in which the lands lie, or to any of the Judges of any of the said courts, upon a summary application to be made by any person interested in maintaining the validity of the memorial or the entry or registration thereof, or of the deed or other instrument of which it is or purports to be a memorial. 35 40

How the application shall be made. 53. When any such application is made, the applicant shall produce to the Court or Judge, an abstract of title to the land, certified by the Registrar to be a true and full abstract, and shall also produce to the Court or Judge a true copy of the memorial, affidavit or other proceeding alleged to be defective, certified by the Registrar to be a true copy of the original memorial or of other such document, and sworn to by some literate person to be such true copy; and the Court or Judge may either amend or refuse to amend such copy forthwith, or may direct that any particular person or persons be required by Rule or Summons, to appear at a time or place to be named in the Rule or Order, to 45 50

Power of Court or Judge.

show cause why the amendment applied for should not be made, and upon the return of the Rule or Summons, and upon proof of due service having been made on the parties required to appear, and upon hearing the parties [in case they appear], the Court or Judge shall make or refuse such amendment as may be reasonable, and upon such terms and conditions, and with or without costs, as may be reasonable and just. Terms.

54. In case the amendment is ordered to be made, the same shall be done by a certificate to be endorsed upon or annexed to the certified copy of memorial to the following effect : Certificate or order for amendment.

10 “ On the day of , at , Form.
upon the application of , a person interested in this behalf, the memorial [or affidavit, or as the case may be] of which the annexed document is alleged to be a certified and sworn copy, is hereby amended in the following respect and particulars
15 [stating the same] and it is ordered [or I order, as the case may be] that the original memorial [or affidavit, or as the case may be] and every entry, registration and certificate of the same, shall be read according to the amendment hereby made or ordered to be made, and as if the same had originally been and was actually contained in the original memorial [or affidavit, or as the case may be] and in every entry and registration, according to the Statute in such case made and provided.”

55. The certificate shall be signed by the proper hand of the Chief Justice, Chancellor or Presiding Judge of the Court, when the application is to the Court, and by the proper hand of the Judge, when the application is to a Judge. Certificate to be signed.

56. The certificate of the Court or Judge, together with the certified copy of memorial [or affidavit, or as the case may be] upon which the certificate of the Court or Judge is endorsed or annexed, shall be thenceforth delivered to the Registrar of the county from which the certified copy of memorial [or affidavit, or as the case may be] came, who shall file the same with the original memorial or document registered, and such Registrar shall write upon the original memorial [or affidavit, or as the case may be]: “ This memorial [or affidavit, or as the case may be] has been ordered to be amended in the following particulars Registrars indorsement on original.
35 “[stating the same shortly] by Rule [or Order, as the case may be,] of “ the Court [or Judge, as the case may be] of Queen’s Bench [or as the “ case may be,] dated the day of ,” to which entry the Registrar shall sign his name.

57. The like entry of amendment shall be made in the Registry Book containing the entry or registration of the memorial or document registered, and such note or entry shall have relation back to the original entry or registration of the memorial or other document registered, unless the Court or Judge shall otherwise expressly order; and opposite the names in the alphabetical index shall be written the word Entry in Registry Book.
45 “ amended ” and some short reference to the amendment so made. Effect thereof.

PROOF FOR REGISTRATION.

58. In case of an Instrument other than a Will, one of the Witnesses to such Instrument shall swear to the execution thereof, and of the Memorial thereof or of the duplicate original, and such witness shall also swear to the place of execution, and that he knew the parties to such Instrument; if such be the fact, or that he knew such one or more of them according to the fact, but if he do not know them or do not One of the witnesses to make affidavit and of what particulars.

know the whole of them, he shall state the fact, and as to such of them as he does not know, he shall state such circumstances which lead him to believe that the party or parties whom he does not know and whose signature or signatures he attests, is or are in truth the party or parties named in the Instrument, Duplicate, or Memorial, such as—that the party declared himself to be the person in question, and he the witness had no reason to doubt the truth of the same, or that the party whom the witness does not know was identified to him by such person (naming and describing him) who is a person well known to the witness, and whose statement the witness believes to be true,—which affidavit shall be made on or attached to the Duplicate Original or Memorial, and which Duplicate, Original or Memorial shall be copied at full length in the Register Book.

Identification of parties.

59. When any Instrument is executed by one or more Grantors but not by all of them, in presence of the same witness or witnesses, and by one or more of the other parties thereto in presence of another witness or other witnesses, then and in such case the witness or one of the witnesses, when so different, to each separate and distinct execution of the Instrument, shall make an affidavit in accordance with the next preceding section.

Memorial of a Will.

60. In the case of a Will, one of the witnesses to the Memorial of such Will or of the Probate thereof, or if the Will be made or published out of Upper Canada, then one of the witnesses to the Will or Memorial, shall make an affidavit wherein he shall swear to the execution of the Memorial of such Will or Probate, or to the execution of the Will and Memorial, (as the case may be).

Before whom the affidavit may be made.

61. When the Instrument or Will has been executed or made and published within Upper Canada, the affidavit may be sworn before the Registrar or Deputy Registrar of the County in which the lands lie, or before a Judge of any of the Superior Courts of Law or Equity or of any Judge of a County Court within his County in Upper Canada, or before a Commissioner authorized by any of such Superior Courts to take affidavits, or in case the person who is to make the affidavit or declaration and who ought to make it, is at any time when it is so required to be made without Upper Canada, such affidavit or declaration may be made in like manner and before the like persons as if the Instrument or Will had been executed or published without Upper Canada as hereinafter provided; and when the Instrument or Will has been executed or made and published without Upper Canada, the affidavit may be sworn or the declaration may be made before any of the persons aforesaid, or before the Mayor or Chief Magistrate of any City, Borough, or Town Corporate in Great Britain or Ireland, where the person taking the oath or making the declaration may be, and such affidavit or declaration shall be certified under the common Seal of such City, Borough, or Town corporate, or before a Judge of the Superior Court or Circuit Court in Lower Canada, or before a Commissioner authorized by any of the Superior Court of Common Law for Upper Canada to take affidavits in Lower Canada, or before a Judge of the Supreme Court or other chief legal officer of any Colony belonging to the Crown of Great Britain, or before the Mayor of any City, Borough or Town corporate in any foreign Country, or any Consul or Vice Consul of Her Majesty resident therein.

When the execution was out of Upper Canada.

When proof is made out of U. C.

62. When the proof is made without Upper Canada, it may be either by affidavit or by declaration, whereby the law of the country where such proof is made, a declaration may be substituted for an affidavit.

- 63.** But no Memorial or Duplicate original of any Instrument or Memorial of a Will or Probate thereof, made and executed or published out of Upper Canada, shall be registered, unless the Instrument or the Will or the Probate thereof be identified as that referred to in the affidavit or declaration, by a certificate endorsed on the Instrument or Will or Probate thereof, under the hand of the person before whom the affidavit or declaration is made, in form marked F, in the Appendix hereto.
- 64.** But none of the persons authorized to take affidavits by this Act shall take any affidavit of the execution of any Instrument or Memorial, should he be a party or witness to such Instrument or Memorial, nor shall any such affidavit be taken from any witness unless such witness has subscribed his name in his own handwriting as such witness.
- 65.** When the Witnesses to any Deed, Instrument or Will have died, or are permanently resident out of this Province, the Grantor or Grantee, or the Heirs, Executors, or Administrators, of either of them, or the Assignees of the Grantee, or the Guardian or Trustee of any Heir or Grantee, may make proof before the Judge of any County Court for Upper Canada of the execution of such Deed, Instrument or Will, and upon certificate (according to form G in the appendix hereto) endorsed on such Deed, Instrument or Will, and on the Memorial or Duplicate thereof, signed by such Judge, and witnessed by the Clerk of the Court, that the said Judge of such County Court is satisfied by the proof adduced of the due execution of said Deed, Instrument or Will, the Registrar shall record such Deed, Instrument or Will, and Certificate, and shall certify the same.
- 66.** The Seal of any Corporation affixed to any Deed, Memorial, Duplicate or Instrument in writing shall of itself be sufficient evidence of the due execution of such Deed, Memorial, Duplicate or Instrument in writing by such Corporation, for all purposes respecting the registration thereof, and no further evidence or verification of such execution shall be required for the purpose of registry.
- 67.** Any letter or Power of Attorney from any party Grantor or Grantee, under which an Instrument has been or may be executed, may be registered upon the same proof in the same manner as a Deed or Instrument may be registered.
- 68.** A Power of Attorney, and every substitution of such Power may also be registered by depositing the original Power, and also, every affidavit, declaration certificate of memorandum connected therewith or relating to the same, in some Registry Office where the same may be properly registered under this Act, and such Registrar shall duly register the same power with all affidavits, declarations, certificates and memoranda at full length.
- 69.** When a Power of Attorney or any substitution thereof is so registered as last aforesaid, the Registrar shall deliver out a certified copy of such Power or substitution, and of all the documents aforesaid connected with or relating to the same, under his signature and Seal of Office, in which Certificate he shall declare the time, place and other particulars of Registration as in other cases under this Act, and shall also declare that the copy which he so delivers out is a true copy of the Power or Substitution, and of all the other documents connected with or relating to the same of which they respectively purport to be a copy, and that the originals have been duly deposited in his office according to the Statute in this behalf.

Instrument,
Will or Pro-
bate must be
identified

Parties or
witnesses not
to receive af-
fidavits, &c.

When wit-
nesses are
dead or out of
Canada, Judge
may certify
proof to his
satisfaction.

Seal of Cor-
poration to be
proof of ex-
ecution by it.

Proof of
Power of
Attorney

Power or sub-
stitution un-
der it may be
registered by
depositing
original, &c.

In such case
Registrar to
deliver a cer-
tified copy;
what the cer-
tificate must
contain.

Such certified copy may be registered in any other office. **70.** Such certified copy or any other copy so certified by the said Registrar where the original Power or Substitution is deposited as aforesaid, may be registered in any other Register Office by deposit thereof, without production of the original Power or Substitution, and without proof of any kind, other than the production of the copy so certified as aforesaid. 5

It shall be *prima facie* evidence. **71.** Every such certified copy of Power of Attorney or Substitution, shall be received in all cases in place of the original Power as *prima facie* evidence of the original Power itself or Substitution, and of its due execution. 10

Notarial copies of documents executed in Lower Canada to be dealt with as originals in U.C. **72.** Every Notarial copy of any Deed, Will and other document executed in Lower Canada, the original of which is filed in any Notarial Office according to the Law of Lower Canada, and which cannot therefore be produced in Upper Canada, shall be received in lieu of and as *prima facie* evidence of the original Instrument in every Court in Upper Canada, and the same may be registered and treated under this Act, for all purposes, as if it were in fact the original instrument. 15

MANNER OF REGISTERING.

Form and particulars of Registration. **73.** The Registrar or Deputy Registrar of the County in which the lands are situate shall, upon production to him of the Instrument and Memorial or duplicate original thereof, or Will or Probate thereof and of the Memorial of such Will or Probate and affidavit or declaration of execution, enter the Duplicate Original or Memorial in the Register Book, and shall file the Duplicate Original or Memorial and affidavit or declaration of execution, and immediately after such entry shall endorse a certificate on every such Deed, Instrument or Will or Probate thereof, and shall therein mention the certain year, month, day, hour and minute in which such Duplicate Original or Memorial is entered and registered, expressing also in what Book, page and number the same has been entered,—and said Registrar or his Deputy shall sign the said Certificate when so endorsed, which certificate shall be taken and allowed as evidence of such respective registries in all Courts of Record and in all other Courts in Upper Canada, and the Registered Duplicate Original of all Instruments shall be taken and allowed as evidence in all such Courts in the same manner as if the Original Instrument was produced. 20 25 30 35

Indorsation on Instrument.

Registrars' certificate to be evidence of registration.

Registered Duplicates.

Pages, duplicates, memorials, &c., to be numbered, and time of registration noted on them. **74.** Every page of the Registry Book and every Duplicate Original or Memorial entered therein shall be numbered, and the certain year, month, day, hour and minute when registered shall be entered in the margin of the said Register Books and of the Duplicate Original or Memorial, and such entry shall be signed by the Registrar or his Deputy. 40

Indexes to be kept by Registrar. **75.** The Registrar shall keep a separate alphabetical index for each and every City, Town, incorporated Village and Township respectively, within his locality or jurisdiction as such Registrar, of the names of each party to all instruments, stating shortly the nature of such respective instruments as "Grant," "Will," "Lease," "Power of Attorney," the Memorials, Duplicates or Originals of which are registered in accordance with this Act in his office; which index shall show opposite the names of the parties, the number of the Memorials or Duplicates to which such names respectively relate or have reference, and the day, month and year in which the Instrument is registered and bears date, —and the number of the original lot as patented or number and plan of 45 50

What they must shew.

Number of lot, &c.

any sub-division of the same, or other short description of the land mentioned in the Memorial.

76. When any Deed, Will or other Instrument, embraces different lots or parcels of land situate in different localities in the same County, it shall only be necessary to furnish one Duplicate Original or Memorial of such Deed, Will or other Instrument; and such Duplicate Original or Memorial shall be copied into each Book pertaining to any City, Town, incorporated Village or Township or place where any lands therein mentioned are situate, and the Registrar shall make the necessary entries and certificates accordingly; and the Registrar shall enter the same in the order in which they respectively came to his hands.

Case of different lots in the same county in one deed: how dealt with.

77. A Sheriff's Deed made under authority of Law, of land sold for taxes before the first day of January, 1851, may be registered upon the certificate of the Sheriff, under his hand and seal of office, stating the name of the purchaser, the sum paid, the number of acres sold, the lot or tract of which they form a part, and the date of the Sheriff's Deed, and such certificate may comprise a Schedule of any number of such Deeds, and the Registrar shall receive such certificate from the Sheriff in place of a Memorial, and shall on production of the Sheriff's Deed, enter on record a transcript thereof, which shall be deemed sufficient register.

Sheriff's deeds of lands sold for taxes, before 1851.

78. A Sheriff's Deed of land sold for taxes after the last above mentioned day, may be registered upon the like certificate given by the Sheriff to the purchaser, signed and sealed by the Sheriff as above provided, and containing the above mentioned particulars, which certificate shall be deemed a Memorial, and the Registrar upon the production of such certificate and the Deed, shall register the same and grant a certificate of the registry of such Deed.

Lands so sold: in 1851 or after.

79. Every decree of foreclosure, and every other decree in the Court of Chancery or in any County Court, affecting any title or interest in land may, at the instance of any person, be registered in the Registry Office of the County where the land is situate, on a duplicate or on a certificate given by the Registrar or Clerk of the Court, stating the substance and effect of such decree and the particular lands affected thereby.

Decrees of foreclosure or other decrees affecting lands.

80. The filing of any bill, or the taking of any proceedings in the Court of Chancery in Upper Canada, or County Court on its equity side, in which bill on proceeding any title or interest in lands is brought into question, shall not be deemed notice of such bill or proceeding to any person not being a party to such bill or proceeding, unless and until a certificate given by the Registrar, Deputy Registrar or Clerk of the Court, to some person demanding the same, in the form mentioned in this section, has been registered in the Registry Office of the County in which are situate the lands of which the title or interest is questioned in such bill or proceeding.

Filing of bill in chancery not notice of bill unless registered.

FORM.

I certify that in a suit or proceeding in Chancery, (or in the County Court of _____ on its equity side, *as the case may be*) between _____ A—B— of _____ and C— of _____ some title or interest is called in question in the following lands (*stating them*).
Dated at (*stating place and date*).

- Exception, as to foreclosure. But no such Certificate shall be required to be requisite in any suit or proceeding for foreclosure of a registered mortgage.
- Certificate of payment of mortgage money, made in L. C. **81.** An affidavit of the due execution of any certificate of payment of mortgage money, executed, published or made in Lower Canada, may be sworn before any Judge or Commissioner mentioned in the sixty-first Section of this Act. 5
- Registration and effect of a certificate of discharge of mortgage. **82.** When any registered mortgage has been satisfied, the Registrar or his Deputy, on receiving a certificate executed by the mortgagee, or if the mortgage has been assigned, then executed by such assignee, or by such other person as may be entitled by law to receive the money and to discharge such mortgage, to be in the form II, in the Appendix hereto, executed in the presence of two witnesses and duly proven by the oath of a subscribing witness, in the same manner as herein provided for the proof of deeds and other instruments affecting lands, shall be registered by writing, entering and registering it at full length in its proper order, in the Registry Book, and numbering it in like manner as other Instruments are required to be entered, registered and numbered, and also by writing in the margin of the register wherein the said mortgage has been registered, "—————see certificate purporting to be a discharge signed by—————," (*naming the person who has executed the same,*) and see Registry number—————of such certificate—Book and page (*stating the same according to the fact,*)," and to which marginal entry the Registrar shall affix his name, and the same shall be deemed a discharge thereof, so far as such person signing the certificate has power to discharge the same, and such certificate so registered shall be as valid and effectual in law as a release of such mortgage, and as a conveyance to the mortgagor, his heirs, executors, administrators or assigns, of the original estate of the mortgagor, and the same shall also operate as a covenant, that the person so executing the certificate has done no act to charge or encumber the said land or the title thereto, or to affect or prejudice his right or title to receive the money. 10 15 20 25 30
- Discharge of part of the lands mortgaged. **83.** In case the mortgagee or any assignee of the mortgagee desires to release or discharge part only of the lands contained in such mortgage, he may do so by a certificate to be made, executed, proven and registered in the same manner as in cases when the whole lands and mortgage are wholly released and discharged. 35
- Certificate to be valid whenever given. **84.** Every certificate of payment or discharge of the mortgage, or of the conditions therein, or of the lands or of any part of the same, by the mortgagee, his heirs, executors, administrators or assigns, at whatsoever time given, and whether before or after the time limited by the mortgage for payment or performance, shall be valid, if in conformity with this Act, to all intents and purposes whatsoever, as herein mentioned. 40
- Registration of By-laws under which a road is to be opened on private property. **85.** All By-laws hereafter to be passed by any Municipal Council, under the authority of which any street, road or highway is to be opened upon any private property, shall, before the same becomes effectual in law, be duly registered in the Registrar's Office of the county where the land is situate, and for the purpose of registration, a duplicate original of such By-law shall be made out under the hand and seal of the proper officer of such municipality, and shall be registered without any further proof than the seal of such municipality; and all By-laws heretofore passed and all orders and resolutions of the Quarter Sessions heretofore passed, under the authority of which any street, road or highway has 45 50

already been opened upon any private property, may, at the election of any party interested and at the cost and charges of such party or municipality, be also duly registered, upon the production to the Registrar of a duly certified copy of such By-law under the hand of the municipal clerk, and seal of such municipality, or by a duly certified copy of such order or resolution of such Quarter Sessions, given under the hand of the Clerk of the Peace, as the case may be.

Such By-laws heretofore passed may be registered.

EFFECT OF REGISTERING OR OMITTING TO REGISTER.

86. After any duplicate original or memorial or instrument has been registered as in this Act provided, every deed and conveyance made and executed of the lands, tenements or hereditaments, or any part thereof, comprised or contained in such duplicate, original or memorial, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a Duplicate Original or Memorial of the Deed or Conveyance be registered in the manner herein directed before the registering of a Duplicate Original or Memorial of the Deed or Conveyance under which such subsequent purchaser or mortgagee may claim; and every devise by will of the lands, tenements or hereditaments, or of any part thereof contained in any Memorial registered as aforesaid, made and published after the registering of such memorial, shall be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such Will be registered in the manner herein directed; and a memorial or duplicate original of any further mortgage, whether legal or equitable, to a first mortgagee, shall, in like manner, be registered before it can prevail against a second mortgagee of the whole or any part of the lands, tenements, hereditaments and premises comprised in the first mortgage.

After the first registration as to any land, all subsequent deeds, &c., not registered, to be void as against subsequent purchasers, &c., whose deeds were previously registered.

And so of a further mortgage to a first mortgagee.

87. This Act shall not extend to any lease for a term not exceeding twenty-one years, where the actual possession goeth along with the lease.

Act not to apply to certain classes.

88. All Wills or the probates thereof recorded within the space of twelve months next after the death of the Devisor, Testator or Testatrix, shall be as valid and effectual against subsequent purchasers and mortgagees as if the same had been recorded immediately after such death; and in case the devisee, or person interested in the lands, tenements, hereditaments, devised in any such Will as aforesaid, be disabled from recording the same within the said time by reason of the contesting of such Will, or by any other inevitable difficulty without his or her wilful neglect or default, then the recording the same within the space of twelve months next after his or her attainment of such Will or Probate thereof, or the removal of the impediment aforesaid, shall be a sufficient recording within the meaning of this Act.

Wills may be registered with effect within twelve months after death of testator.

Further time allowed in case of lawful impediment.

89. The registry of any instrument, will, decree, rule or order affecting any lands or tenements registered under this Act, or any former Act, shall, in equity, constitute notice of such instrument, will, decree, rule or order, to all persons claiming any interest in such lands or tenements subsequent to such registry.

Registry to be notice.

90. After any grant from the Crown of lands in Upper Canada, and Letters Patent thereof issued, every deed, devise, or other conveyance executed after the first day of January, one thousand eight hundred and fifty-one, whereby the said lands, tenements or hereditaments may be in anywise affected, in law or equity, shall be adjudged fraudulent

All deeds, devises, &c., after 1st January, 1851, must be registered.

lent and void, not only against any subsequent purchaser or mortgagee for valuable consideration, but also against a subsequent judgment, creditor or creditor by decree, or order in Chancery who has registered a certificate of his judgment, decree or order, unless a memorial or duplicate of such deed, devise, conveyance or certificate of judgment, decree or order, be registered under this Act before the registering of the memorial of the deed, devise, conveyance or certificate, decree or order, under which such subsequent purchaser, mortgagee or judgment creditor or creditor by decree or order claims, subject nevertheless, as to devisees, to the provisions contained in the eighty-eighth Section of this Act: but nothing herein contained shall affect the rights of equitable mortgagees as now recognized in the Court of Chancery in Upper Canada.

Saving as to equitable mortgagees

Abolition of tacking. Deeds to take priority according to priority of registration or in default of registration, of date.

91. The doctrine of tacking having been found productive of injustice, therefore every instrument executed subsequent to the first day of January, one thousand eight hundred and fifty-one, a memorial of which, under any former Act, may have been, or a duplicate or memorial under this Act may be registered, shall be deemed effectual, both at law and in equity, according to the priority of the time of the registration of such memorial or duplicate, and when no memorial or duplicate of such deed has been duly registered, then such deeds shall be deemed effectual, both at law and in equity, according to the priority of time of execution.

FEEs OF REGISTRARS.

92. Every Registrar shall be allowed the following fees, and no more :

Recording memorials or duplicates.

1. For recording every memorial or original or duplicate of deed, conveyance, will, power of attorney, agreement, instrument, certificate of suit or proceeding in equity, certificate of decree, certificate of payment of mortgage money or judgment, *one dollar*; but in case the same with the necessary entries and certificate exceed six hundred words, then at the rate of *twenty cents* for each additional one hundred words or the fractional part thereof; and if the memorial or duplicate, original or other instrument embraces different lots or parcels of lands situate in different localities in the same county, the registration and copying of such, including all necessary entries and certificates thereof into the different registry books, shall be considered separate and distinct registrations of such instruments, and to be charged for as such :

If the instruments include lots in different localities.

Searching records, as to any original lot or lot shown on any registered plan of subdivision.

2. For searching records relating to the title of any lot or parcel of land from the Crown, as originally surveyed or as originally patented, or as afterwards subdivided into smaller lots, as shewn by any registered map or plan thereof, not exceeding four references, *twenty-five cents*, and *twenty-five cents* for every additional four distinct references or any fractional part thereof; but in no case shall a general search into the title to any particular lot, piece or parcel of land exceed the sum of *two dollars*;

Searching index of grantors and grantees.

3. For searching the alphabetical index of names as to the lands wherein the name searched for appears as a grantee or as a grantor; for such searches in the books of one township, or other legally defined municipality in the county, *fifty cents*, when no other search is made; and when another search is made then only *twenty-five cents*; such payment to cover all such searches for any number of names in respect of any one lot or parcel of land as originally patented;

Extracts or copies furnished.

4. For every extract or copy furnished by the Registrar of and from every separate and distinct register and instrument; *twenty-five cents*; and when either of the said separate extracts or copies so furnished, ex-

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- ceed one hundred words, *fifteen cents* for every additional one hundred words contained in such separate extract of copy ;
- 5 For each certificate furnished by the Registrar, except those made under sub-section one of this section, *twenty-five cents* ;
- 6 For filing and recording any plan of town or village lot, including all necessary entries connected therewith, *two dollars* ;
- 7 For furnishing the statement and copies required under the thirty-eighth, forty-first and forty-second sections of this Act, to be paid by the County Treasurer or City Chamberlain to which any town, town-ship or place may belong or be attached, the sum of *ten cents* for every folio of one hundred words contained in such statement so furnished or copy so made ;
- 8 For journalizing under section forty-three of this Act the registrations made before the passing of this Act, and up to the first day of August, one thousand eight hundred and sixty-three, the sum of *ten cents* for the several entries and reference of each instrument so journalized to be paid for in the same manner as provided for in the next preceding section ;
- 9 For filing and registering each list of marriages delivered to him, under chapter seventy-two of the Consolidated Statutes for Upper Canada, when the number does not exceed twelve marriages, *one dollar* ; when over twelve and under fifty, *two dollars* ; when over fifty and under one hundred, *three dollars* ; when over one hundred and under one hundred and fifty, *four dollars* ; and when over one hundred and fifty, *five dollars*.
33. Should any County Treasurer or City Chamberlain in which a separate Registry Office is established, on the request of the Registrar for the duties performed according to this Act, refuse to pay the fees and allowances for any services required by this Act to be paid by them
- 30 under sections *thirty-eight, forty-one and forty-two*, such Registrar may prove the same and recover the same and the costs thereof from such County Treasurer or City Chamberlain in any Court of Record in Upper Canada.
34. The Registrar or his Deputy shall not be compelled to register any deed, conveyance, will, instrument or certificate unless the fees authorized by this Act are paid thereon.
35. Every Registrar shall keep a book in which he shall enter all fees and emoluments received by him by virtue of his office, shewing separately the sums received for registering memorials, duplicates, certificates and other instruments, and for searches, and for extracts or copies, and shall make a return for any period of such fees and emoluments so received to the Legislature annually.

Certificates.

Filing and recording plans.

Statements, &c., under sections 33, 41 and 42.

To be paid by county or city.

Journalizing (under sect. 43) former entries.

To be paid by county or city.

Registering lists of marriages.

Recovering in case of refusal to pay fees for services under ss. 33, 41, 42.

Registration may be refused until fees are paid.

Registrars to keep accounts of fees and make returns.

MISCELLANEOUS PROVISIONS.

- 41 96. Whenever any land or original town or township lot has been surveyed or subdivided into town or village lots or other lots so differing from the manner in which such land or lot was surveyed or granted by the Crown, that the same cannot or is not, by the description given of it, easily and plainly to be identified, the person, corporation or company making such survey or subdivision, their heirs, executors, administrators or assignees, agents, attorneys or successors, shall, within three months from the date of every such survey or subdivision, lodge with the Registrar a plan or map of the same, shewing the numbers and streets, measurements and magnetic bearings of such lots on a scale of not less than one inch to every four chains, which plan or map shall

Parties subdividing land into lots to file a plan in the Registry Office within three months.



Penalty for neglect.

contain all the requisites mentioned and required in section thirty-nine, chapter ninety-three of the Consolidated Statutes for Upper Canada, and thenceforth the Registrar shall keep an index of the lands described and designated by any number or letter on such map or plan, by the name by which such person, corporation or company designates the same in manner provided by this Act; and in the case of refusal by such person, corporation or company, his or their executors, agents or attorneys, or successors, for two months after demand in writing for that purpose, to lodge the said plan or map when required by any person interested therein so to do, he or they shall incur a penalty of *twenty dollars* for each and every calendar month the said map or plan remains unregistered, which penalty may be recovered by any persons complaining at any Division Court in the county in which such lands are situated, in like manner as a common debt; and this section shall apply as well to lands already surveyed or subdivided as to those which may hereafter be surveyed or subdivided, subject to the next succeeding section.

To apply to lands heretofore so divided.

In case of sales or subdivisions made before this Act, original plan, or a new one to be filed within a certain time.

37. In sales of lands upon surveys or subdivisions made before the passing of this Act, when such surveys or subdivisions so differ from the manner in which such land or lot was surveyed or granted by the Crown that the parcel so sold cannot be easily and plainly identified, the plan or survey shall be registered within six months after the passing of this Act, if the plan or survey is still in existence and procurable for Registration and filing under the next preceding section, and if it is not, such new survey or plan shall be made by and at the joint expense of the persons who have made such surveys or subdivisions, and of all others interested therein by some competent duly authorized Provincial Land Surveyor as nearly as may be according to the proper original survey or subdivision, and the same when so made shall be filed as under the next preceding section of this Act.

Plans filed may be altered until sales are made, and afterwards by permission of a Court or Judge.

38. In no case shall any plan or survey, although filed and registered, be binding on the person so filing or registering the same, or upon any other person, unless a sale has been made according to such plan or survey, and in all cases amendments or alterations of any such plan or survey may be ordered to be made, at the instance of the person filing or registering the same, by the Courts of Queen's Bench or Common Pleas, or by the Court of Chancery, or by any Judge of any of the said Courts, if on application for the purpose duly made, and upon hearing all parties concerned, it shall be thought fit and just so to order, and upon such terms and conditions as to costs and otherwise as may be deemed expedient.

Where a town or village comprises several subdivisions not in one survey, municipality to cause a plan to be made and registered.

39. In each and every case in Upper Canada where any incorporated town or village, or village not incorporated, comprises different parcels of land owned at the original division thereof by different persons, and the same was not jointly surveyed and one entire plan of such survey made and filed in accordance with the immediately preceding section, the municipality of the township within which such village is situated, or the municipality of such incorporated town or village, shall upon the written request of any person interested, addressed to the Clerk of such municipality, immediately cause a plan of such town or village to be made upon the scale provided for under this Act, and to be registered in the Registrar's Office of the County within which such village lies, which map or plan shall have endorsed therein the certificates of the Clerk and head of the municipality and surveyor, that the same is prepared according to the directions of such municipality, and in accordance with this Act, and to which map or plan the corporate

Certificate of correctness, &c.

scal of the municipality shall be attached; and the expense attending the getting up and depositing such map or plan shall be paid out of the general funds of the municipality, and in case of the refusal of such municipality to comply with all the requirements of this section within six months next after being required in manner aforesaid so to do, such municipality shall incur the same penalty, and the same shall be recoverable in the same manner as provided in the next preceding section.

Costs, how payable.
Penalty for default.

100. The officer or person performing the duties formerly assigned to the Surveyor General of the Province shall from time to time within twelve months after any Registrar has in writing made application to the same officer or person for the same, furnish each such Registrar with the list of the names of all persons to whom patents have issued from the Crown for grants of land within the County, and also copies of all plans or maps of towns and townships within the same.

Commissioner of Crown Lands to furnish Registrars with certain information.

101. Any person forswearing himself before any Registrar or his Deputy, or before any Judge, Commissioner, or other person duly authorized to administer an oath in any of the cases aforesaid, and fully convicted, shall incur and be liable to the same penalties as if the oath had been taken in any Court of Record in Upper Canada.

Punishment under this Act.

102. Any person who forges or counterfeits any certificate by this Act authorized or directed or any affidavit of the execution of any duplicate, original or memorial, or any such duplicate, original, or any such memorial, is guilty of felony, and shall be imprisoned at hard labor in the Penitentiary for any time not less than four years nor more than ten years.

And of forgery.

INSPECTOR OF REGISTRY OFFICES.

103. The Governor may from time to time appoint an Inspector or Inspectors of Registry Offices, whose duty shall be to make a personal inspection of the building in which the office is kept, and of all the books, deeds, memorials and other Instruments in the Registry Office, to see that the proper books have been and are provided, that they are in good order and condition, that the proper entries and registrations are made therein in a proper manner and in due and proper form and order, that the indices are properly kept, and that all the memorials and other instruments are duly endorsed and certified, and preserved, to ascertain that the office is kept duly open at and for the proper times, and that it is at all times duly attended to by the Registrar and his Deputy, and whether there are any and what complaints against the Registrar or his Deputy in matters relating to his office or which affect his competency or integrity as such public officer, and he shall inform the Registrar how and in what manner he shall do any particular act or amend or correct whatever he may find amiss, and he shall also ascertain the sufficiency or insufficiency of the sureties for the Registrar, and whether they are living or dead, and he shall report upon all such matters as expeditiously as may be to the Governor for his information and decision.

Appointment and duties of Inspector.
Report.

104. This Act may be recited as the "Registration of Titles (Upper Canada) Act," it shall be deemed a public Act, and the "Interpretation Act" shall apply thereto.

Short title.

105. The following is the Appendix, and contains the forms referred to in the foregoing sections of this Act.

Appendix.

FORM A.

Referred to in the 16th section of this Act.

CANADA.

County of } I, (*name and describe deponent,*)
 To wit: } having been appointed by the Governor to the office of
 Registrar, in and for the (*name registration county, &c.,*)
 do swear that I will well and truly and faithfully perform
 and execute all duties required of me, under the laws of
 this Province, pertaining to the said office, so long as I con-
 tinue therein, and that I have not given directly or indi-
 rectly, nor authorized any person to give any money, gra-
 tuitly or reward whatsoever for procuring the said office for
 me.

Sworn before us at }
 the } A. B.
 day of A. D. 18 }

A. B. J. P. }
 C. D. J. P. } in and for the said County.

FORM B.

Referred to in the 37th Section of this Act.

This Register contains _____ pages exclusive of index, and is to be
 used in and for the City, (Town, Incorporated Village, Township) of
 _____ in the County of _____ for the caregistration of
 memorials, duplicates and other instruments, under the provisions of
 the Acts respecting the Registration of Deeds, Wills and Judgments,
 and Decrees in Chancery, and is provided in pursuance of the require-
 ments of the said Statutes.

Dated this _____ day _____ in the year of Our Lord one thousand
 eight hundred and _____

A. B.
 Judge of the County Court of the County of
 or,

A. B.
 Warden of the County of _____

FORM C.

Required by the 42nd Section of this Act.

CANADA.

County of } I, _____ Registrar of the
 To wit: } make oath and say that Register Liber
 for the } _____ of
 _____ from age and use, is becoming
 so defaced and obliterated, as to be in-

FORM H.

Referred to in the 82nd Section.

To the registrar of the County of

I, _____ of _____ do certify that _____ hath satisfied all money due on, or to grow due on a certain mortgage made by _____ of _____ to _____ which mortgage bears date the _____ day of _____ A. D. 18 _____ and a Memorial (or Duplicate) whereof was registered in the Registry Office for the County of _____ on _____ day of _____ A. D. 18 _____ at _____ minutes past _____ o'clock _____ noon, in Liber _____ for _____ as No. _____ (*here mention the day and date of registration of all assignments thereof, and the names of the parties,—or mention that such mortgage has not been assigned, as the fact may be,*) and that I am the person entitled, by Law, to receive the money, and that such mortgage is therefore discharged.

Witness my hand this _____ day of _____ A. D. 18 _____

A. B.

Two Witnesses

A. B.

of

and

C.

D.

of

} *Stating residence and occupation.*

SCHEDULE E.

(Referred to in Section 48 of this Act.)

Township of Yarmouth, Lot No. , in the 1st Concession.

No. of Instrument	Instrument.	Its Date.	Date of Registry.	Grantor.	Grantees.	Remarks.
54.....	Patent.	21st February, 1820.....	Crown.....	John Jones.....	All of said lot.
72.....	B. & S.	10th January, 1835.....	11th January, 1835.....	David Brown and wife.....	George Smith.....	N. ½.
460.....	B. & S.	30th May, 1830.....	15th May, 1838.....	John Jones and wife.....	David Brown.....	N. ½.
461.....	B. & S.	23rd June, 1840.....	23rd June, 1840.....	George Smith.....	Charles Gates.....	N. ½.
490.....	M.	do do.....	do do.....	Charles Gates and wife.....	George Smith.....	N. ½ Con. \$500.
1009.....	B. & S.	15th October, 1841.....	20th October, 1841.....	John Jones and wife.....	Charles Gates.....	S. ½.
2560.....	D. M.	23rd June, 1842.....	1st July, 1842.....	George Smith.....	Charles Gates.....	N. ½.
2875.....	B. & S.	25th April, 1855.....	1st May, 1856.....	Charles Gates and wife.....	Alexander Erie.....	All.
	B. & S.	1st May, 1860.....	1st May, 1860.....	Alexander Erie.....	John McIntosh.....	E. ½ of the N. ½ or N. E. ¼.