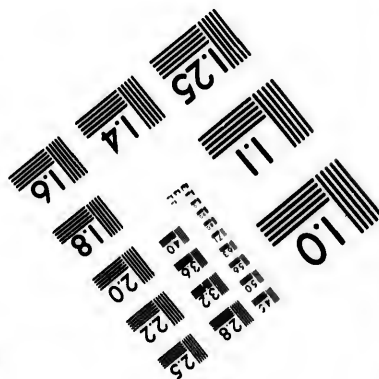
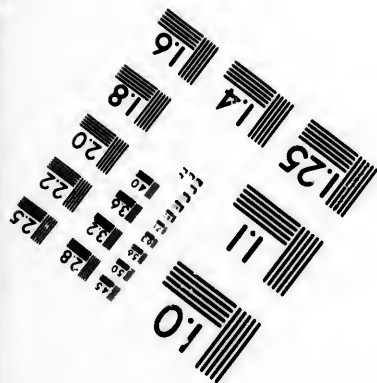
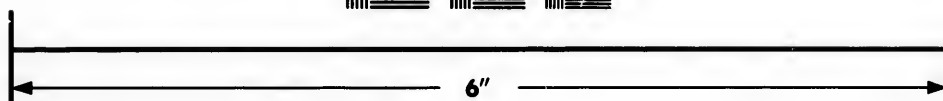
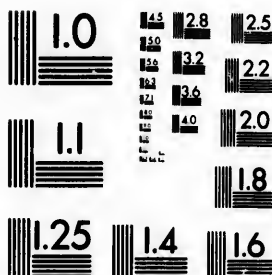


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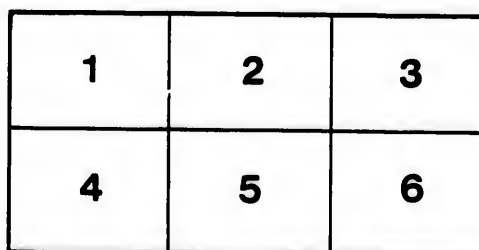
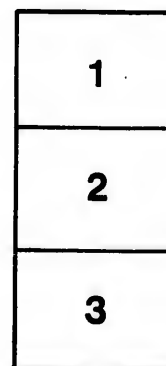
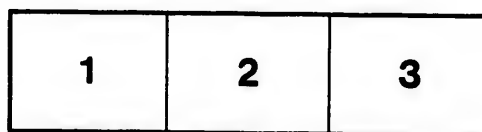
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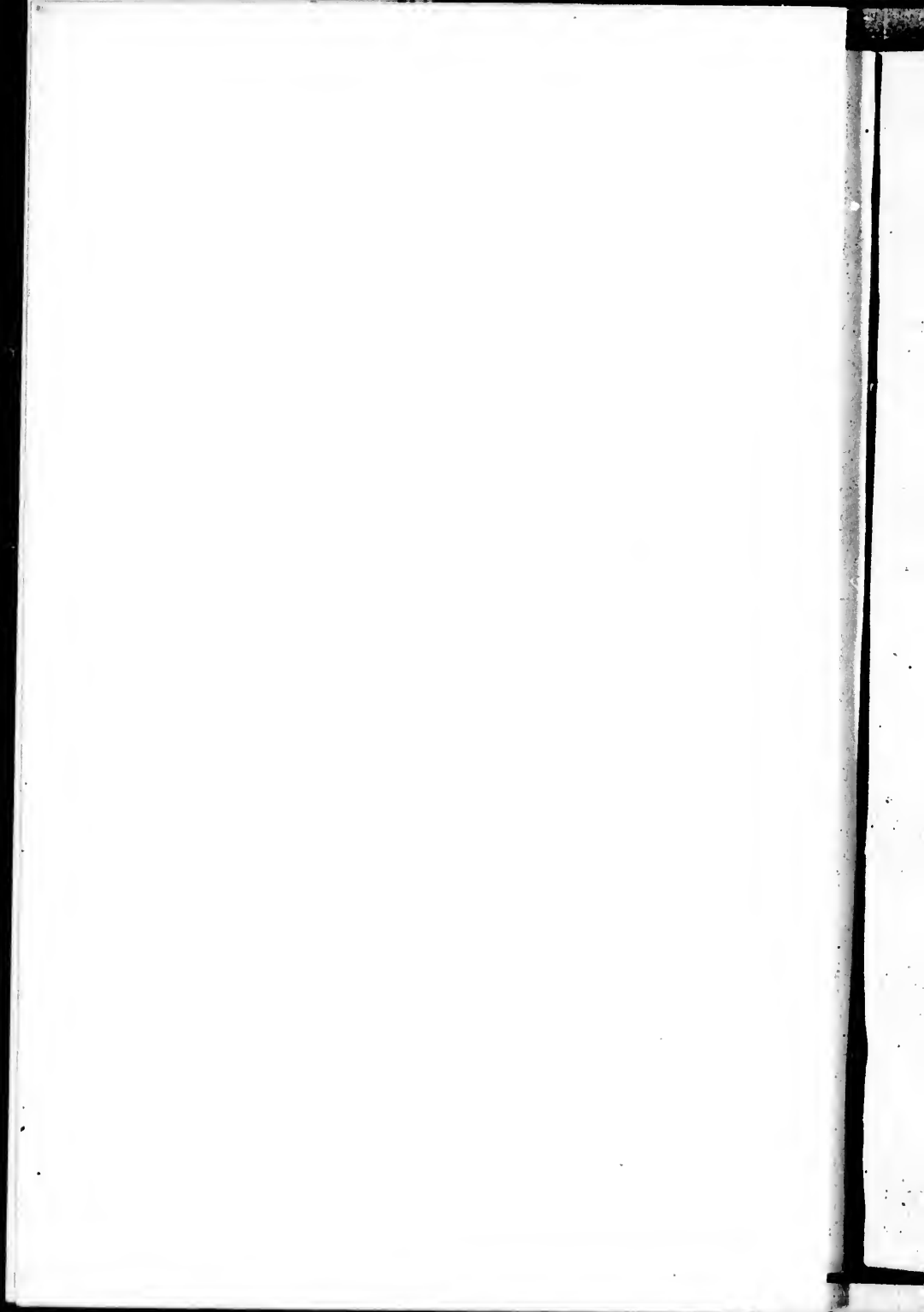
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THE REGISTRY ACT OF 1865.

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"REGISTRATION OF TITLES (UPPER CANADA) ACT,"

29 VIC., CHAP. XXIV.;

WITH NOTES OF THE DECISIONS OF THE COURTS OF UPPER CANADA;

AND A

SELECTION OF THOSE IN THE ENGLISH AND IRISH COURTS,
ON THE LAW OF THE REGISTRATION OF DEEDS;

AND

In Appendix,

CONTAINING A COMPLETE LIST OF ALL DEEDS AND INSTRUMENTS CAPABLE OF OR
REQUIRING REGISTRATION;

A TABLE OF ALL THE STATUTORY ENACTMENTS NOW IN FORCE RELATING TO
COUNTY REGISTRARS;

A TABLE OF REGISTRARS FEES UNDER THE NEW TARIFF, &c. &c. &c.

With a Copious Index:

INTENDED AS A MANUAL OF THE REGISTRY LAWS OF UPPER CANADA.

BY SAMUEL GEORGE WOOD, LL.B.,

OF OSBORNE HALL, BARRISTER-AT-LAW.

TORONTO:

W. C. CHEWETT & CO., KING STREET EAST.

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TO THE

HONOURABLE OLIVER MOWAT,

ONE OF THE VICE CHANCELLORS OF UPPER CANADA,

This Attempt

TO ILLUSTRATE AN IMPORTANT STATUTE

IN

WITH HIS LORDSHIP'S KIND PERMISSION

RESPECTFULLY INSCRIBED.

PREFACE.

(Comprising a Sketch of the History of the Registry Laws of Upper Canada—and some Remarks upon the operation of the new Act.)

The introduction of a new Act of Parliament relating to the Registration of deeds, providing as it does for important changes in that branch of the law of real property, seems to invite an attempt to elucidate by reference to decided cases the provisions of a statute which will materially affect the property and rights of a large and continually increasing body in the community, and the operation of which will of course be a matter of interest and importance to the legal profession.

In view of the Act coming into operation, the Editor had been for some few weeks engaged in collecting for his own use memoranda of all the decisions of the courts of Upper Canada on the law of registration; and having incidentally learned that the publishers were about to issue from their press an edition of the text of the statute, it occurred to him that a few notes gathered from or referring to these authorities might prove an adjunct to the work of some use to the legal profession and the county registrars of Upper Canada, and perhaps not entirely unacceptable to other classes in the community whose interests or occupations are in one way or other affected by the new Enactment. The suggestion to which this idea led having been favourably received, the compilation of this manual is the result.

It may not be out of place here to present a brief sketch of the history of the law of registration in Upper Canada.

Legislative provision for the registration of deeds was made at an early period in this portion of the Province. In view of the lands holden therein under the authority of the Crown being then shortly to be confirmed by grant from his Majesty, the first Registry Act, 35 George III. chap. v, was passed in August, 1795, within three years after the Constitutional Act. Its provisions seem to have been adopted in great measure from those of the group of English Acts passed in the reign of Queen Anne, whereby registration was introduced in the East and West Ridings of Yorkshire and in Middlesex. The recitals in two of the English Acts in effect state the reasons which led to these enactments to have been that the lands to be affected were chiefly freehold, and the principal portion of the community fre-

holders, who being engaged in trade, had frequent occasion to borrow money upon their estate for the purposes of their trade, but for the want of a register found it difficult to give satisfactory security. Similar considerations doubtless suggested the necessity, or at any rate the expediency, of a system of registration in Canada, and led to the adoption of that system under legislative authority; but it is noticeable that while the Statutes of Queen Anne, and that of 8 George II. (relating to Yorks. N. R.) remain yet in force, and have not even been added to or amended in any important particular, the Statute book of Upper Canada has been prolific in amending, explaining, consolidating and repealing enactments relating to this branch of law.

Under the Act of Upper Canada 35 Geo. III. chap. 5, registration was optional with the parties concerned, and no priority was obtained by the registry of a deed unless one memorial had been previously recorded, or in other words, unless the title had already become a registered title. The wording of the act was clear as to this, and in the case of *Doe d. Hennessy v. Myers* (a) and many subsequent cases (b) involving the point, the decisions of the courts recognized and gave full effect to this provision. This state of the law was however found to produce hardship and open the door to fraud, and was eventually altered by stat. 13 & 14 Vict. chap. 63, which provided that after any Patent for land had been issued by the Crown, every conveyance affecting that land, executed after 1st Jan., 1851, should be adjudged fraudulent and void against a subsequent registered purchaser for value, unless such conveyance had been placed on record before that under which the subsequent purchaser claimed. There can be no doubt that such an amendment was necessary in order that the country should enjoy the full benefit of a registry act. Prior to the introduction of that amendment however, not only had two statutory additions to the original act been passed, (c) besides enactments for the relief or benefit of particular persons or localities, (d) but that act had been repealed, and stat. 9 Vict. chap. 34—which consolidated the previous enactments, and provided for the registry of judgments—been substituted for it. This was followed by the statute of 13 & 14 Vict., which made registration after the granting of the Crown Patent necessary to preserve priority, not only against subsequent registered purchasers but against subsequent registered judgment creditors, saving however the rights of equitable mortgagees as recognized by the Court of Chancery. The

(a) 2 U. C. R. (O. S.) 424.

(b) See *Doe d. Adkins v. Atkinson*, 4 U. C. R. (O. S.) 140; *Nelson v. Eastwood*, 4 U. C. Q. R. 271; *Doe d. Ellis v. McGill*, 5 U. C. Q. R. 224; *Doe d. Shilley v. Waldron*, 2 U. C. C. P. 109; *Scott v. McLeod*, 14 U. C. Q. R. 574.

(c) 35 Geo. III. c. 5; 4 WIL. IV. c. 14.

(d) 30 Geo. III. c. 4; 35 Geo. III. c. 18; 10 Geo. IV. c. 8; 3 WIL. IV. c. 14.

same statute abolished tacking as between several registered incumbrancers, and declared that the registry of any deed affecting land should in equity constitute notice of such deed to all persons claiming any interest in the land subsequent to its registry. The statutes 16 Vict. chap. 187 and 18 Vict. chap. 127 provided for additional facilities in regard to the proving of instruments, for the registration of Powers of Attorney and of certificates of *Lis Pendens*.

Chapter eighty-nine of the Consolidated Statutes of Upper Canada comprised a consolidation of the several acts affecting registration from 9 Vict. chap. 24 to 18 Vict. chap. 127 inclusive, and also certain clauses of 20 Vict. chapters 56 and 57 relating to the registration of decrees for the payment of money and of judgments. The sweeping enactment of 24 Vict. chap. 41 abolished the registration of the last mentioned instruments, and nearly abolished that of releases of mortgage, a slip which was remedied by a statute of the next session of Parliament. (c)

The Act contained in the following pages repeals the consolidated and following Statutes, and introduces radical changes in the mode and as to the effect of registration, in that it declares that no equitable lien shall be deemed valid as against a registered instrument executed by the same party or those claiming under him,—whereas the rights of equitable mortgagees had been expressly saved by preceding acts,—and compels the registration of instruments at full length, and their being deposited in the Registry office, making the County Registrar the general custodian of title deeds.

Heretofore, the object and effect of registration has been simply to afford notice to intending purchasers and mortgagees of the existence of prior conveyances and incumbrances, and they were left to obtain further information as best they might. Those who have been called upon to satisfy cautious or unwilling purchasers by the production of title deeds and the exhibition of a marketable title, know the difficulties which, in the majority of cases, have hitherto surrounded such an undertaking. Under the system which is to prevail hereafter, registration will convey not merely notice, but complete knowledge of the condition of a title, so far at least as it is affected by dealings subsequent to the Act; while the Act for quieting titles provides an easy method of setting at rest any previous difficulties, and the provision for the deposit of all instruments in the Registry will remove any objection which might otherwise arise from the non-production of title deeds. These in fact may hereafter be multiplied *ad infinitum*.

That title deeds should be taken out of the owner's keeping and placed in the custody of a public officer, and that the dispositions made in wills and settlements should be disclosed to the world—for such is the effect of the new mode of

registration—are provisions which on various grounds will be objectionable in the eyes of many persons; and in not a few instances, will no doubt occasion expense and inconvenience which will appear to work a hardship upon the parties concerned. This is a case however in which the greatest good of the greatest number must be taken into account, and when regard is had to the large number of landholders in Canada in proportion to the general population, to the comparative smallness of the properties held by individuals, to the frequent changes in the ownership of lands, to the carelessness which prevails as to the preservation of deeds, not to mention the fragility of the material upon which they are usually prepared, it will probably be considered that the changes introduced by this Act will prove, on the whole, advantageous to the community. At the same time, it may not unreasonably be thought a matter for regret that some provision has not been made for the guarding of instruments relating merely to private or family interests from investigation prompted by mere idle curiosity, or perchance some motive even more unworthy. This is a point which perhaps may hereafter be usefully brought under the consideration of the Legislature in order to the provision of a suitable remedy. The Editor has in a note to section 80 alluded to the possibility of declaring trusts by a separate unregistered instrument. This however he here ventures to suggest is a course which might be sometimes desirable rather than advisable. Under the Act, as it now stands, it is probably the intention of the Legislature that nothing shall be kept back from registry, (f) and he would therefore recommend that until some judicial decision or statutory enactment is made declaring the contrary, all provisions and trusts intended to take effect as against subsequent purchasers should be set out and registered in full. (g)

In the course of the following pages reference in one or two instances will be found to matters not strictly pertaining to registration, but yet perhaps sufficiently connected therewith to be deemed not entirely out of place. It is believed that all the cases of our own courts bearing on the law of registration are referred to in this manual, except perhaps one or two turning upon questions now probably obsolete. (h) Additional references to English and Irish cases might

(f) See remarks of Tindal, C. J., in *Warburton v. Loveland* mentioned in 10 Grant p. 453.

(g) On this point the professional reader is also referred to Imperial stat. 13 & 14 Vict. c. 72 sec. 30, amending the registry laws of Ireland, from which many of the provisions of the present act seem to have been adopted in a condensed form.

(h) e. g. *Doe d. Adlyns v. Altman*, 4 U. C. R. (O. S.) 140; *Rogers v. Barnum*, 5 U. C. R. (O. S.) 252; *Doe d. Loucks v. Fisher*, 2 U. C. Q. R. 470. By stat. 37 (Geo. III. c. 5 (Upper Canada) it was declared that deeds of bargain and sale which, under 27 Hen. VIII. c. 16, required enrolment in one of the Courts of Westminster in order to their validity, should be valid conveyances in this Province if registered in the proper County Registry. By stat. 4 Wm. IV. c. 1 sect. 47 it was enacted that a deed of bargain and sale should not require enrolment or registration for the mere purpose of rendering it a valid conveyance of land. This Act was held in *Rogers v. Barnum* and *Doe d. Loucks v. Fisher* to have a retrospective operation. See 9 Vict. c. 24 sect. 14, and compare 13 & 14 Vict. c. 63 sect. 6, and C. R. U. C. chap. 90 sect. 14.

have been made, but it being considered desirable that the volume should be limited to moderate dimensions, and be issued with as little delay as might be, the Editor has been compelled to restrict himself to those contained in the following pages. For additional authorities, the professional reader is referred to Sugden V. & P. (13th and 14th editions) chap. 22, section 4; to the valuable list of cases contained in 4 Chitty's Statutes, 3rd ed. (1865) pp. 76 et seq.; those comprised in Brunker's Digest of Irish Common Law Cases, pp. 718 et seq.; and those cited in argument in the case of *Read v. Whitehead* (i), to which leading decision of our own courts several references will be found in the following notes.

In conclusion the Editor must express his best acknowledgments to his friends F. W. Kingstone, M.A., B.C.L., and J. F. Smith, jun., LL.B., Barristers-at-Law. To the former, he is particularly indebted for access to his library, to the latter, for kind assistance in revising the Tables contained in the Appendix, and to both, not only for many valuable suggestions made during the progress of the book, but also for obliging aid in its passage through the press, and specially in revising and arranging the Index. This portion of the work will, it is believed, be found copious and accurate.

Toronto, January, 1866.

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CONTENTS.

Index of Cases	12
Index of Statutes	15
Table of English and Irish Registry Acts	16
Registration of Titles (Upper Canada) Act, with Notes.....	17
Forms of affidavits of execution of Instruments	31, 32, 39
Appendix to Act	55
Appendix to Notes, Table I. (1) Instruments requiring Registration, with reference to Statutes.....	61
i. Deeds and Bonds	61
ii. Certificates, Orders, &c.	62
iii. Marriage Lists	62
iv. By-laws	62
v. Town and Village Maps	62
vi. Railway Maps and Deeds	63
vii. Contracts and Declarations relating to Ship Building, to Joint Stock Banks, and Com- panies.....	63
viii. Deeds by Attorneys of Corporate Bodies....	64
(2) Documents of which the Registration is optional .	65
1. Certificate of Naturalization	
2. By-laws; Orders, &c., of Quarter Sessions	
3. Surveyors' Notes	
4. Assignment of claims under Public Lands Act	
5. Assignments of right to Crown Patent	
Table II. Miscellaneous Statutes relating to Registrars, &c.	66
i. Registrars, &c.	
ii. Transmission of certain Lists to Registrars	
Tariff of Registrar's Fees under this Act.....	67
Postscript as to number of Witnesses, Affidavits, Registrars' fees, &c.....	69
General Index	71

.....	12
.....	15
.....	16
.....	17
.. 31, 32, 39	
.....	55
reference	
.....	61
.....	61
.....	62
.....	62
.....	62
.....	62
.....	62
.....	63
y to Ship	
and Com-	
.....	63
odies....	64
optional .	65
ensions	
ands Act	
nt	
rara, &c.	66
istrars	
.....	67
.....	69
.....	71

INDEX OF CASES CITED.

	PAGE		PAGE
Ansley v. Bree	23	Gamble v. McKay	23
Arnold v. Robertson	28	Gough v. McBride	28
		Greenlade v. Dart	43
Babcock v. Mun. Coun. Tp. Bedford	34		
Baby qui tam. Watson	41	Hubergham v. Vincent	28
Baldwin v. Duignan	41, 43	Haggart v. Kernahan	50
Bank of Montreal v. Baker	42, 43	Hallock v. Wilson	41
Bank of Toronto v. Eccles	28	Hamilton v. Lyons	22
Bethune v. Caulcutt	42	Hammond & McLay, In re	26
Boucher v. Smith	43, 52	Harrison v. Armour	44
Bruyere v. Knox (s)	41	Harrison v. Brega	20
Burnham v. Daly	38	Hollywood v. Waters	43
		Hope v. Ferguson	23, 46
Carleton, In re Registrar	23, 48	Hunter v. Farr	39
Casey v. Jordan	40	Hyman v. Roots	44
Clarke v. Armstrong	42, 44		
Crawford v. Curragh	31	Jack dem. Armstrong	32, 33, 42
		Jamieson v. McCollum	49
Doe d. Brennan v. O'Neill	29, 41		
" d. Cronk v. Smith	41	Kennedy v. Green	43
" d. Crookshank v. Humberstone	29, 39	Kitchen v. Murray	70
" d. Ellis v. McGill	41		
" d. England v. Crysdale	23	Leech v. Leech	41
" d. Kingston B. S. v. Rainafor	43, 44	Lount In re	45, 48
" d. Loscombe v. Clifford	24	Lynch v. Wilson	42
" d. Lowry v. Grant	42		
" d. Maclem v. Turnbull	23	Mackechnie v. Mackechnie	44
" d. Maclean v. Manahan	28, 39	Malcolm v. Charlesworth	41, 43
" d. Major v. Reynolds	41	Mandeville v. Nichol (s)	42
" d. Matlock v. Disher	41	McCollum v. Wilson	49
" d. Nellia v. Matlock	41	McDonald v. Bell	46
" d. Pell v. Mitchener	41	McDonald v. Rodger	52
" d. Prince v. Girty	29, 41	McKenny v. Arner (s)	41
" d. Spafford v. Breakenridge & McN.	41	McLay, John, In re	26, 48
" d. Spafford v. Brown	42	McLeod v. Truax	42
Durand v. City of Kingston	25	McMaster v. Phipps	42
		Mill v. Hill	42
Ellis v. Grubb	41	Miller v. McGill	41, 70
Elsev v. Lutyens	43	Moffatt v. Grover	41
Essex v. Baugh	33, 43	Montgomery v. Gore Dia. Mut. In. Co.	41
Evans v. Thomas	44	Moyer v. Davidson	32
		Muir v. Dunnott	33, 43
Ferguson v. Hill	41	Murray v. Van Breuklin	34
Ferrass v. McDonald	41, 43		
Ford v. White	42, 43	Neeson v. Eastwood	41
Fraser v. Gladstone	23	Neve v. Pennell	37, 44
Fraser v. Sutherland	41		
Fury v. Smith	41, 42, 45	Patalo v. Boyington	31, 42

	PAGE		PAGE
Read v. Municipal Council Co. Kent	24	Russell v. Frazer	24
Read v. Whitehead 33, 35, 42, 43, 50, 52	52	Rutledge v. McLean	23
Reed v. Banks	23		
Reg. v. Corp. U.C. Northumb. & Durham	19	Smith v. Mun. Council U. C. Prescott	19
Reg. v. O'Meara	34	& Russell	19
Registrar Co. Carleton, In re	23, 48	Smith v. Nevilles	24
Registrar City of London v. Registrar		Smith v. Ridout	29, 46, 48
Co. Middlesex	26	Soden v. Stevens	43
Reid v. Whitehead 33, 35, 42, 43, 50, 52	52	Street v. Commercial Bank	43
Rice v. O'Connor	43		
Ridout, Reg. In re	39	Warburton v. Loveland	42
Robinson v. Byers	39	Ward v. U. C. Northumb. & Durham	19
Robson v. Carpenter	42	Waters v. Shade	41
Robson v. Waddell	33, 39, 52, 70	Webster & Registrar Co. Brant, In re	23
Ross v. Harvey	41	Wilkinson v. Conklin	41
Ross v. Strathy	42	Woodhill v. Sullivan	35
Rossin v. Walker	49		

249

70
48
85
62

68

68
86
66
65
68
63
68
68
68
68
68
68
J8
49
51
65
28
62

22

62
62
62
66
37
64
64
64
41
40, 62
41
30
18, 38
61
61
64
41
61
30, 62
62
40, 61
65
31

PAGE

61
61
39
18
38
70
69
35
26
22
49
68
18
49
51
65
20
66

61
29
70
22
43
61
65
66
63
64
63
64
63
64
62
18
18
63
18
69
64
24
66
64
63
63
64
63
64
43

	PAGE		PAGE
29 Vic. c. 22, s. 1, 4, 6, 7	64	29 Vic. c. 24, s. 67	61
29 Vic. c. 24, s. 8	63	29 Vic. c. 24, s. 73	62
29 Vic. c. 24, s. 80, 81	70	29 Vic. c. 24, s. 74	62
29 Vic. c. 24, s. 89, 46, 68	69	29 Vic. c. 24, s. 76	63
29 Vic. c. 24, s. 89, 40, 68	70	29 Vic. c. 24, s. 78	70
29 Vic. c. 24, s. 68	70	29 Vic. c. 24, s. 79	66
29 Vic. c. 24, s. 55	62	29 Vic. c. 25, s. 4, 28	63
29 Vic. c. 24, s. 56	61	29 Vic. c. 26, s. 4	64
29 Vic. c. 24, s. 67	61	29 Vic. c. 91, s. 13, 14	64
29 Vic. c. 24, s. 61	62, 65		

REGISTRY ACTS IN ENGLAND AND IRELAND.

YORK, West Riding, extended by East Riding and Kingston upon Hull, North Riding, MIDDLESEX,	2 & 3 Anne, cap. 4, A.D. 1703.	
	5 & 6 Anne, cap. 19, A.D. 1706.	
	6 Anne, cap. 35, A.D. 1707.	
	8 Geo. II., cap. 6, A.D. 1735.	
	7 Anne, cap. 20, A.D. 1708.	
IRELAND,	6 Anne, cap. 2.	Irish Stat.
	8 Anne, cap. 10.	"
	8 Geo. I., cap. 15.	"
	25 Geo. III., cap. 47.	"
	13, 14 Vic., cap. 72.	Imp. Stat.
	27, 28 Vic., cap. 76.	"

ADDENDA ET CORRIGENDA.

- Page 41, in 14th line from the top, after 10 U. C. C. P. 211, insert *McKenny v. Arner*, 8 U. C. C. P. 46.
- Page 41, in 16th line from the foot, after 2 Grant, 457, insert, see also *Brugere v. Knox*, 8 U. C. C. P. 520.
- Page 42, in 14th line from the top, for 2 Dowl. & Clarke, read 2 Dow & Clark.
- Page 42, in first note to section 63, after 5 U. C. B. (O. S.) 455, insert *Mandeville v. Nichol*, 16 U. C. Q. B. 609.

AN ACT

RESPECTING REGISTRARS, REGISTRY OFFICES, AND THE REGISTRATION OF INSTRUMENTS RELATING TO LANDS IN UPPER CANADA.

29 VICTORIA, CHAPTER XXIV.

[Assented to 18th September, 1865.]

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, assignment of mortgage, certificate of discharge of mortgage, assurance, lease, bond, release, discharge, letter of attorney, will, probate of will, grant of administration with the will annexed, municipal road by-law, certificate of proceedings, decree of foreclosure, and every other certificate or decree of the Court of Chancery, or of any other Court on its equity side, affecting any interest in or title to land; also, every sheriff's deed of lands sold by virtue of his office, and every contract in writing,—and every commission and proceeding in lunacy, bankruptcy and insolvency,—and every other instrument whereby lands or real estate in Upper Canada may be transferred, disposed of, charged, encumbered, or affected; the word "Land" shall include lands, tenements, hereditaments, appurtenances, and real estate; the word "Will" shall include probate of will and exemplification, or notarial copies of probate of will and letters of administration with the will annexed, and any devise whereby lands are disposed of or affected; the word "County" shall include a union of counties, a city, junior county, and any part of a county or counties set apart for judicial or registration purposes, the word "Treasurer" shall include chamberlain of any municipal council.

Interpre-
tation clause.
"Instru-
ment."

"Land."

"Will."

"County."

"Treasurer."

Besides the instruments mentioned in this section, there are numerous documents under various statutes, which may be, or require to be registered. These are included in the table which will be found on pages 61-65.

Acts repealed.

Con. Stat. U. C. c. 89.

24 V. c. 41.

4 V.

25 V. c. 21.

From and after 31st Dec, 1866.

Saving clause as to things done.

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 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 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," are hereby repealed, from and after the thirty-first day of December next, and all Acts and parts of Acts repealed by any of the above Acts shall remain repealed; Provided, always, that all registrations, official acts, records, matters and things, done in pursuance of any or either of the said repealed Acts, shall, where they are valid and effectual at the time of the passing of this Act, remain and continue to be valid and effectual to all intents and purposes.

Parts of other Acts relative to Registration, repealed from same date.

3. So much of all other statutes, parts and clauses of statutes, as relates to the proof required for, and the mode of, registration of instruments and the filing of plans in the County Registry Offices for Upper Canada, is hereby repealed from and after the said thirty-first day of December next.

See Con. Stat. U. C., cap. 55, secs. 151, 152; Con. Stat. U. C., cap. 92, secs. 42, 44, 48. See also Table I. in Appendix, pp. 61-65.

REGISTRY OFFICES.

In and for what places there shall be Registry Offices.

New counties or separation of counties.

4. There shall be a separate Registry Office in every riding, 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 in Council, which office shall be kept in the county town in like manner as in other county towns.

The following Cities have registry offices separate from the counties in which they are situate: Toronto, Kingston, Ottawa, London.

The following Counties are divided into separate Ridings, for registration purposes:

DURHAM; East Riding, comprising the townships of Cavan, Manvers, Hope, and town of Port Hope. Office at Port Hope.

West Riding, comprising townships of Clarke, Darlington and Cartwright. Office at Bowmanville.

LANARK; North Riding, townships of Sherbrooke North, Dalhousie, Lanark, Ramsay, Lavant, Darling, and Pakenham. Office at Almonte.
South Riding, townships of Montague, Elmsley North, Burgess North, Sherbrooke South, Beckwith, Drummond, Bathurst, and the town of Perth. Office at Perth.

NORTHUMBERLAND; East Riding, townships of Cramahe, Brighton, Murray, Seymour, and Percy. Office at Colborne.

West Riding, townships of Haldimand, Hamilton, Alawick, South Monaghan, and the town of Cobourg. Office at Cobourg.

YORK; townships of Vaughan, Markham, Etobicoke, York, and Scarborough. Office in Toronto.

North Riding, townships of King, Whitechurch, Georgina, East Gwillimbury, and North Gwillimbury. Office at Newmarket.

5. Whenever in any county or riding, the Registry Office appears to the Governor in Council to be inconveniently situated, he may, by proclamation, order the same to be removed to any other place in the county or riding.

Place of Registry Office may be removed.

6. 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 of each and every county where, when this Act takes effect, or at any time thereafter, there are no safe and proper fire-proof offices and vaults provided by such council, or where thereafter any Registry Office may be established, shall provide, furnish and maintain a fire-proof registry office, fire-proof vaulted, upon a plan and on a site to be approved of by the Governor in Council, and shall thereafter keep the same furnished and in good repair.

County Councils to provide fire-proof offices and vaults.

A mandamus will be granted against a County Council, commanding them to provide offices, vaults, &c., for the registry office of a new Riding. Their duty in this respect does not depend upon the approval by the Council of there being a new registry office, or of the place selected for it. (*Regina v. Corporation U. C. Northumberland and Durham*, 10 U. C. C. P. 526.)

A Registrar is not justified in providing requisite offices and charging the County Council with the rental; his remedy being to compel the Council by the aid of the Court to furnish such offices. (*Ward v. U. C. Northumberland and Durham*, 12 U. C. C. P. 84.)

The expense of erecting a registry office for one of two counties previously united must be borne by both counties, if it be built before the separation has actually taken place. (*Smith v. Municipal Council of Prescott and Russell*, 10 U. C. Q. B. 282.)

7. Every Registry Office shall be kept by an officer to be called the Registrar.

REGISTRAR.

8. 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.

Registrar, how appointed, &c.

Prevent
Registrars,
bonds, &c.,
to continue.

9. Every Registrar in office when this Act takes effect is hereby continued therein, subject to the laws in force respecting public officers, and to the provisions and requirements of this Act, and all recognizances by Registrars and their sureties in force at the passing of this Act, shall continue in force under this Act.

Where an action was brought against a Registrar for omitting to mention a registered instrument in a certificate furnished by him, it was held that he was not entitled to notice of action under Con. Stata. U. C. cap. 126, and that the six months' limitation clause did not apply; for though a public officer within the meaning of that act, the error was not an act committed, but a negligent omission. (*Harrison v. Brags*, 20 U. C. Q. B. 324.)

Security to
be given by
Registrars.

10. Before any Registrar is sworn into office, such Registrar and two or more sufficient sureties shall enter into a joint and several recognizance in writing under their hands and seals, to Her Majesty, in a penal sum to be fixed at not less than four thousand nor more than ten thousand dollars, which recognizance shall be approved of by the Governor in Council, and the same shall be taken by any two justices of the peace for the county, 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 such Registrar shall also execute and enter into a joint a several covenant in duplicate with the same or other sureties, which duplicate covenant may be in form appended to this Act, marked A, or to the like effect, to which recognizance and to each of which covenants shall be attached an affidavit in the form appended to this Act marked B, or to the like effect, made by each of the obligors and covenanters therein mentioned, and such recognizance and one of such duplicate covenants with the affidavits appended shall be forthwith transmitted to the Provincial Secretary, to be by him retained, and the other duplicate covenant, with the affidavits aforesaid, shall be by such Registrar forthwith filed in the office of the clerk of the peace for the county or union of counties, where the same shall remain of record.

Form.

An affidavit.

Where
recognizance
shall be
kept.

New recog-
nizance may
be required
by Inspector.

A. The Registrar, whether appointed before or after the passing of this Act, may at any time be required by the inspector to execute a new recognizance and covenants in the form and to the effect hereinbefore provided, and to furnish other sureties as may be deemed expedient;

Copies may
be obtained
by any
person.

B. Any person may examine and obtain a copy of the Registrar's covenant and affidavits on payment to the clerk of the peace of a

fee for such copy and search, of one dollar, or for such search, of twenty-five cents;

C. The said Registrar and his sureties shall be jointly and severally liable on their covenant to any aggrieved person or persons to indemnify him or them against any damage or loss sustained by him or them, by or through the neglect or wilful misconduct of the Registrar or his Deputy in the performance of the duties of his office.

Liability of Registrar and their sureties.

See notes on sec. 71, page 42.

11. 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 C in the Appendix hereto, which shall be transmitted to the Provincial Secretary, together with the recognizance and covenant aforesaid.

Registrar's oath of office.

12. The Registrar may 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; such nomination to be in writing, under the hand of 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 there 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.

Appointment of deputy.

Removal.

Power of deputy in case of death or removal of Registrar.

13. 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, which shall be filed in the like manner.

Deputy's oath of office.

14. No Registrar or Deputy Registrar shall, directly or indirectly, act as the Agent of any Corporation, Society, Company, Person or Persons investing money and taking securities on real estate within his County, nor shall such Registrar or Deputy Registrar advise, for fee or other reward, upon titles of land, within his County, upon pain of forfeiture of office; and every Registrar, Deputy or Clerk in such office employed to prepare any instrument affecting land for gain or reward, shall be subject to the same liabilities as Attorneys and Solicitors for neglect or unskilfulness.

Registrar or Deputies not to Act as Agents, or advise as to titles, &c., in their connection.

Liability if they prepare instruments.

DUTIES OF REGISTRARS.

15. Every Registrar shall reside within ten miles of his office, and shall keep his office at the place named in his commission or otherwise as appointed by the Governor in Council, or by any Act in force respecting the same.

16. If the Registrar in any manner misconducts himself in his office or 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, then such Registrar may, at the discretion of the Governor in Council, be dismissed, and he shall, moreover, together with his sureties, so far as their covenant extends, be liable to pay all damages, with full costs of suit, to any person injured thereby, to be recovered by action in any of Her Majesty's Superior 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.

It will be observed that this section modifies the provisions of the corresponding section (77) of the late act. (See *Hamilton v. Lyons*, 5 U.C.R. (O.S.) 502.)

17. The Registrar or his Deputy shall, for the despatch 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, and no Instrument shall be registered by him on any such days.

18. The Registrar shall, when required, and upon being tendered the legal fees for so doing, make searches and furnish copies and abstracts of or concerning all Memorials, 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, or any part of a lot when the same is clearly described and can be identified in connection with the chain of title, or has been ascertained by actual survey by the party and of and concerning all Wills, Deeds, Orders or other Instruments recorded, as may be requested of him in writing, if a writing be demanded by the Registrar, and shall exhibit the original registered Instrument, and

also the books of the office relating thereto when the party desires to make a personal inspection of such books, and shall give certificates of all copies and extracts under his hand and concerning the parties to any of such documents, or of the witnesses to the same, or any other particulars which may be required.

To certify
copies, &c.

The Registrar, on furnishing an abstract, must certify that it contains all the registrations on record in his office upon the lot. If an insufficient certificate is given, the court will grant a mandamus to compel the delivery of a proper one. (*In re Reg. Co. Carleton*, 12 U. C. C. P. 225.)

The production of a Registrar's abstract shewing the granting of a patent by the Crown is not sufficient evidence of title to maintain an action of dower, without producing an exemplification of the patent. Such an abstract is not receivable in evidence at a trial, if objected to. (*Reed v. Ranks*, 10 U.C.C.P. 202.)

A certificate purporting to shew the registered conveyances of land, from the County Registrar's office, under the hand of the Deputy Registrar, is not admissible evidence of title under 13 & 14 Vic. cap. 19, sec. 4; (Con. Stats. Canada, cap. 80, sec. 5.) *Gamble v. McKay*, 7 U. C. C. P. 319.

Where a township lot has been originally granted by the Crown in halves, and the title to each has continued separate, the Registrar must, on application, furnish an abstract to either half, and cannot insist upon furnishing and charging for abstracts of the conveyances relating to the other part. (*Hope v. Ferguson*, 17 U. C. Q. B. 219.)

Under the former Registry Act, it was held that a Registrar was not compellable to permit inspection of the registry books. (*In re Webster and the Registrar Co. Brant*, 18 U. C. Q. B. 87.)

As to the fees payable on abstracts furnished, see sec. 68, page 46.

19. Every Registrar under this Act shall have a Seal of Office, to be approved of by the Inspector, 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 instrument or memorial 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 and Equity 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, which order shall be produced to the officer issuing the subpoena requiring such production, and shall be by him noted in the margin of such subpoena, and signed by such officer.

Registrar to
have a seal of
office and for
what purposes.

Not bound
to produce
papers, except on order
of judge.

In case of a lost deed, a memorial is good secondary evidence of such parts of the deed as are transcribed in it, without calling the subscribing witness. (*Doe d. England v. Crysdale*, 6 U. C. R. (O.S.) 254; see also *Doe d. Macdon v. Turnbull*, 5 U. C. Q. B. 129.)

A memorial executed by the grantee only is not good secondary evidence of the original conveyance. (*Gough v. McBride*, 10 U. C. C. P. 166; *Anslley v. Breo*, 14 U. C. C. P. 371.) But as to special circumstances, when it will be evidence, see *Ruddle v. McLean*, 13 U. C. Q. B. 208.

A memorial signed by the grantor is not sufficient evidence of a deed against a person not claiming under him, without first accounting for the original. (*Smith v. Nevilles*, 18 U. C. Q. B. 473; *Doe d. Loscombe v. Clifford*, 2 Car. & K. 448; but see *Russell v. Fraser*, 15 U. C. C. P. 375.)

BOOKS OF OFFICE.

County
Treasurer to
provide proper
books,
one for each
locality in
the county.

20. 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 Indices 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, reputed Township, City, Town and Incorporated Village, the limits whereof are defined by law, within the county, for which he holds office; and he shall also keep and cause to be used for that purpose a general Register book for the whole county, in which shall be recorded all wills and instruments in which there is a general devise, conveyance or power affecting lands without local description, and in which book an alphabetical index of the names of all the parties mentioned by name in such instrument shall also be kept; 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, 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.

General Registry book
for the whole
county, and
for what
purposes.

New books
to be furnished
when
required.

If the Treasurer
neglects
to provide
books.

21. If the Treasurer refuses or neglects to furnish such books within thirty days after such application therefor, the Registrar may provide the same and recover the costs thereof from the Municipality of the County or City so in default.

The County Council will not be liable for the price of books supplied to the Registrar, unless previous application has been made under the foregoing section to the Treasurer. (*Reid v. Municipal Council of Kent*, 13 U. C. Q. B. 372.)

County
Judge or
warden to
certify books.

22. The Judge of the County Court or Warden of the County shall give a certificate respecting each Registry or other Book so

To certify
copies, &c.

Registrar to
have a seal of
office and for
what purposes.

Not bound
to produce
papers, except
on order
of judge.

furnished or provided, in the form D, or to the like effect, in the Appendix hereto.

23. When any County, 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 or has been detached from some 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 attached, the Registry Book or Books and all other Books and Indices 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 other instruments, and all maps of Cities, 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 contain a schedule of all memorials and other registered instruments which are so delivered, and also an exact copy of all memorials and other registered documents affecting such lands which, by reason of their relating to two or more localities cannot be delivered, and such statement shall also contain the same particulars with regard to wills, and shall be accompanied by indices 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 all wills and other instruments registered in any general Registry Book, and 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.

Provision when any place is separated from a county, or detached from one county and attached to another.

Certain books, &c., to be transferred.

Statement to be furnished from general registry book.

Duty of Registrar receiving the same.

The words "and set apart for registration purposes" are new, and provide for the *casus omnis* referred to in *Durand v. The City of Kingston*, 14 U. C. C. P. 439.

The provision that the books only which have been kept exclusively for the detached county, &c., shall be delivered, is an improvement upon that of the

late act, which directed (section 72) that the part of the registry books which had been kept for the detached city, &c., should be delivered up.

The provision for the delivery of copies of memorials, &c., affecting lands in two localities, is also a convenient amendment of the former act.

Where, however, registrations have been improperly entered in books which should be delivered under this section, such improper entry is no excuse for the non-delivery of the books. (*Reg. of London v. Reg. of Middlesex*, 17 U. C. Q. B. 882.)

Penalty on Registrar refusing to make such transfer, &c.

24. Any Registrar who refuses to deliver such books, plans, duplicates, indices or memorials, as aforesaid, within six 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.

Registrar removed or resigning to deliver up books, &c.

Proceedings in case of refusal.

25. In case any Registrar shall have been removed from or shall resign his office, he shall forthwith deliver up all books, plans, instruments, memorials and indices in his possession, as such Registrar, 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 or Solicitor General for Upper Canada to receive the same, and if such Registrar refuse to do so, the Attorney General or Solicitor General may direct the Sheriff of the county to seize and take immediate possession of the same wheresoever found, and the Registrar so offending shall be liable to a fine, in the discretion of the Court, not exceeding two thousand dollars, and to any term of imprisonment, if the Court think fit to impose it in addition to the fine, not exceeding one year.

This is a new and important provision, probably intended to obviate the difficulties which occasioned the applications *In re John McLay et al.*, 24 U.C. Q. B. 54, and *In re Hammond and McLay*, 24 U. C. Q. B. 56.

In the former case, where certain registry books had been obtained from one who had been duly appointed Registrar by a person holding a commission of a later date, the court refused an order to restore possession of the books, although they had been obtained by an abuse of the process of the court. In the latter case, a *quo warranto* information was refused to try the right to the office of registrar, and the applicant left to his action for the fees against the alleged intruder.

Duty of Registrars receiving original memorials, &c., from another county.

26. All Registrars who have received or shall receive from another County original memorials and statements of title therewith, shall, so soon as practicable, after the passing of this Act, 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 Books, 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.

27. Whenever, in any Registry Office, any book from age or use, is becoming obliterated or unfit for future use, the Inspector shall, by directions in writing under his hand, order such book to be re-copied in a book of like description as that required under the twenty-sixth Section of this Act, so far as the same can be deciphered, by examination thereof and of the original memorials relating thereto, which book having the order of such Inspector for the copying thereof, under the hand of the Inspector, inserted at the beginning of the book, and having the affidavit or declaration of the Registrar or his Deputy, at the end of such book, to the effect that such book, so copied, is a true copy of the original book of which it purports to be a copy, shall be to all intents and purposes accepted and received as the original book, and as *prima facie* evidence that such copy is a true copy of the original book; every such original book shall, nevertheless, be carefully preserved, notwithstanding a copy thereof shall have been made, and every such Registrar or his Deputy, shall be obliged to make his affidavit or declaration in this section mentioned.

Provision when any book becomes unfit for further use; copy to be made.

Original to be preserved.

In regard to the subject of this section, it may not be out of place to remark that it would conduce exceedingly to the convenience of persons examining registered titles, if all entries and copies made in registry books, and abstracts therefrom, were made in clear and legible handwriting; and to the preservation of the records, if the best quality of ink were used. These are matters which will properly come under the notice of any inspector who may be appointed under the act.

28. The Registrar, on and after the first day of January one thousand eight hundred and sixty-six, shall, in a new book to be opened for the purpose, and to be called the "Abstract Index," enter under a separate and distinct head each separate lot or part of a lot of land as originally patented by the Crown, or as defined on any plan of the subdivision of any such land into smaller sections or lots after such plan shall have been filed in the Registry Office, and every instrument registered on and after the said first day of January, one thousand eight hundred and sixty-six, mentioning any such parcel or lot of land or other subdivision, and the names of all persons to each instrument, and the nature of it, (such as a "Will," "Grant," "Lease," "Power of Attorney"), the numbers of registration of all such instruments, and the day, month and year, of their

After 1st Jan. 1866, each Registrar to make an abstract index, to let what it shall contain.

registry, shall by the Registrar, in addition to all entries now required, be entered in regular order and rotation under the proper heading of each such separate parcel or lot of land mentioned in such instrument, and the book or books, to be so kept by each Registrar for the purpose of making the said entries, shall be in the form or nearly so of Schedule E, in the Appendix hereto.

To be in form E.

The form given in Schedule E. might be adopted with convenience in furnishing certificates or extracts of title. It seems desirable that a more uniform style of certificate should be used by all the County Registrars of Upper Canada than has hitherto prevailed.

Also an index of names for each locality.

29. Every Registrar shall also, for each township, city, town, and incorporated village, keep an Alphabetical Index of names exhibiting in columns the number of each memorial, the names of the different grantors, and the names of the grantees, according to the form of Schedule F of this Act.

After said day, all registrations to be at full length and how.

30. All instruments that may be registered under this Act shall, on and after the first day of January next, be registered at full length, including every certificate and affidavit, excepting certificates by the Registrar accompanying the same, upon and by the delivery to the Registrar of the original instrument where but one is executed, or when such instrument is in two or more original parts, upon and by delivery of one of such parts.

This section and sec. 35 create a complete change in the mode of registration, in that they compel registration in full, and the deposit of the original instrument in the registry office.

In the cases of settlements and other trust deeds, it will often be considered undesirable that the provisions and trusts should be disclosed to the world by registration of the deed in full. It is suggested that this difficulty may, perhaps, be obviated by the use of two deeds, one of which shall be an absolute conveyance for the purpose of registration, and be expressed to be made upon the trusts declared by the other, which other shall not be put on record.

(See *The Bank of Toronto v. Eccles*, 10 U. C. C. P. 282.) Affirmed on appeal, (2 Err. & App. Rep. 53.)

It is to be observed, however, that this mode has been held invalid in the case of bills of sale and assignments of chattels requiring registration in the County Court. (*Arnold v. Robertson*, 8 U. C. C. P. 147; *Fraser v. Gladstone*, 11 Id. 125.) As to wills framed in this way, see *Haberyham v. Vincent*, 2 Ves. Jun. 204; 8 C., 4 Bro. C. C. 353; 1 Jarm. Wills, 3rd Ed. 15.

Instruments in two or more parts.

31. In case two or more original parts is registered, the Registrar shall endorse upon each of such original parts a certificate of such registration, and such original, so certified, shall be received as *prima facie* evidence of the registration and of the due execution of the same.

As to such certificates being only *prima facie*, and not conclusive evidence, see *Doe d. McLean v. Manahan*, 1 U. C. R. 491, and cases there cited, page 496.

Provision when any book becomes unfit for further use; copy to be made.

Original to be preserved.

After 1st Jan. 1866, each Registrar to make an abstract index, to show what it shall contain.

In *Doe d. Prince v. Girty*, 9 U. C. Q. B. 41, it was held that the production of the Registrar's book was good evidence of registration, and Robinson, C. J., considered that the production by the Registrar of an examined copy taken from his book would be equally admissible. (See also *Doe d. Brunnen v. O'Neill*, 4 U. C. R. 8; *Doe Crookshank v. Hurderstone*, 6 U.C.R. (O.S.) 108.)

As to production of papers by a Registrar, see sec. 19.

32. When any instrument shall include different lots or parcels of land situated in different municipalities in the same county, it shall only be necessary to furnish one duplicate original of such instrument, and such duplicate original shall be copied into the Registry Book pertaining to any city, town, incorporated village, township, or place wherein any lands therein mentioned are situate, and the Registrar shall make the necessary entries and certificates accordingly.

Instruments relating to several lots in different localities.

It would seem from a comparison of this section with sec. 33 of the late act, that it will be necessary hereafter to copy the instrument in full into each registry book, although it should include lands not properly pertaining to such book. See, however, the judgment of Robinson, C. J., in *Smith v. Ridout*, 5 U. C. R. 617. If that decision, which was made in regard to the statute 9 Vic. cap. 34, is applicable to this act, then in copying the instrument into each book, those parcels should be omitted which are not within the township for which the book is kept.

33. In order to make every index required by this Act complete, it shall be the duty of each Registrar in all cases when the abstract or alphabetical indices have not been heretofore kept substantially as herein provided, to enter all the registrations affecting lands, which may have been recorded before the first day of January, one thousand eight hundred and sixty-six, in the same manner and in the like books as provided in the twenty-eighth and twenty-ninth sections.

Indices to be completed as to Registrations before the 1st Jan., 1866.

INSTRUMENTS THAT MAY BE REGISTERED.

34. The following instruments and proceedings may be registered, namely:

What may be reg.

1. Grants from the Crown, deeds, conveyances, assurances, bonds, and agreements for the sale or purchase of land, and all other instruments, including sheriffs' deeds of land sold by virtue of their offices of or in any wise affecting, in law or in equity, lands in Upper Canada.

Grants, &c.

2. Powers of Attorney under which any such Deed, Conveyance, Assurance, Discharge of Mortgage or other Instrument, has been or may be executed;

Powers of attorney.

3. Wills and Devises of or affecting any such lands;

Wills.

Decrees. 4. Certificates of decrees of foreclosure and all other decrees or proceedings affecting any title or interest in lands;

Certificates of proceedings in Chancery. 5. Certificates of 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 to or interest in land may be brought in question;

Of satisfaction. 6. Certificates of Satisfaction of Mortgages;

Of payment of taxes. 7. Certificates of payment of taxes, granted under the corporate seal of the County municipality by the treasurer;

Others in section 1. 8. And all other Instruments in the first section of this Act mentioned.

Con. Stata. U. C., cap. 55, sec. 148, provides for the giving a receipt by the County Treasurer to a party paying redemption money on land sold for taxes, but nothing is there said as to such receipt being under the seal of the county.

For a list of other documents, for the filing or deposit of which with the County Registrar, provision is made by other statutes, see pages 61-65.

HOW REGISTERED.

Crown Grants. 35. Grants from the Crown shall be registered by the production thereof to the Registrar, with a true copy sworn to by any person who may have compared the same with the original, such copy to be filed with the Registrar, and all other instruments, excepting wills, shall be registered by the deposit of the original instrument, or by the deposit of a duplicate or other original part thereof with all the necessary affidavits; lists of Marriages received by the Registrar under the seventy-second chapter of the Consolidated Statutes for Upper Canada, shall be registered 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.

Wills. 36. Every Will shall be registered at full length by the production of the original will and the deposit of a copy thereof, with an affidavit sworn to by one of the witnesses to the Will, proving the due execution thereof by the testator, or by the production of probate or letters of administration with the will annexed, under the seal of any court in this Province, or in Great Britain and Ireland, or in any British Province, Colony or possession having jurisdiction therein, and by the deposit of a copy of such probate or letters of administration, with an affidavit verifying such copy.

In making the affidavit of execution of a will, it will be advisable to state distinctly that the witnesses subscribed their names in the presence of each

other, or in the presence of the testator, or both, (as the case may be.) The following form may serve as a guide:

County of _____, } I, James Ingram Allen, of the _____ in the county of
to wit: } _____ land agent (or as the case may be), do make oath
and say:

1. That I and another subscribing witness thereto were present and did see the will, of which the within paper writing is a true copy, duly executed, signed, published and declared, as and for his last will and testament, by Richard Coffee Benson, late of the _____ of _____ in the county of _____ yeoman (or as the case may be), deceased.

2. That I and the said other witness subscribed our names to the said will, in our own handwritings respectively, as such witnesses, in the presence of the said testator, and in the presence of each other.

Sworn before me, at _____ }
in the county of _____ this }
_____ day of _____ 18 ____ }

A Commissioner, &c., in and for
the county of _____

It will be observed that if a copy of probate or letters of administration are registered, no affidavit of execution is necessary, proof having been made in the Surrogate Court.

A will subscribed by two witnesses in the presence of the testator, though not in the presence of each other, is well executed, so as to pass real estate. (*Crawford v. Curragh*, 15 U.C. C. P. 55.) See Con. Stat. U.C., cap. 62, sec. 13.

It will be remarked, that under this act there must be an affidavit of the execution by the testator in all cases. Heretofore, this was not required, except in the cases of will made out of Upper Canada.

The registration of an office copy of a will devising lands in Upper Canada, but made in Lower Canada and enrolled in the Court of King's Bench there was held valid; such office copy, duly certified, being considered equivalent to letters probate in Upper Canada. (*Patulo v. Boyington*, 4 U. C. C. P. 125.)

See further notes as to registration of wills, page 42.

37. The Registration of Instruments in full which is provided for by this Act, shall take effect on and after the first day of January next, and until such time, the Registration of all instruments which may be registered under the laws now in force, shall be made in like manner through memorials or by certificates or otherwise as heretofore provided; and all the Acts and parts of Acts relating thereto, and which are intended to be repealed when this Act shall come into force, shall continue and remain in full force until the said first day of January next.

Registration
under pre-
sent laws
until 1st
Jan., 1866.

38. The proof that would have been sufficient for the registration of any Instrument before the passing of this Act, shall be deemed sufficient for the registration hereafter of any such Instrument that may have been executed prior to the first day of January next; but in any such case the Instrument shall be registered at length, and the memorial and affidavit shall be deposited and filed in lieu of an original or duplicate.

Proof for
registration
of instru-
ments ex-
ecuted before
1st Jan.,
1866, &c.

PROOF FOR REGISTRATION.

Facts to be
proved;
affidavit.

39. In the case of an Instrument other than a Will, one of the Witnesses to such Instrument shall swear to the following facts:

1. Setting forth his name, place of residence and occupation or calling in full;
2. To the execution of the original and duplicate if any there be;
3. To the place of execution;
4. That he knew the parties to such Instrument, if such be the fact;
5. That he knew such one or more of them, according to the fact;

The following is suggested as a form of the affidavit under this section:—

County (or city) of } I, (John Thomas Smith,) of the city (or town or
to wit: } township, *as the case may be*) of ———, in the County
of ———, gentleman, a clerk in the office of Messrs.
————— (*as the case may be*), do make oath and say:

1. That my name, place of residence and occupation (or calling, *as the case may be*) are above truly set forth in full.
2. That I was present and did see the within deed (or other instrument, *as the case may be*) (and also a duplicate thereof) duly executed, signed, sealed and delivered by A. B., C. D. and E. F., the parties thereto of the first, second and third parts respectively (*or as the case may be*), and I am a subscribing witness to the execution thereof by them.
3. That the said deed and duplicate thereof were executed as aforesaid, at the ——— of ———, in the County of ———.
4. That I know the said parties, (or that I know A. B. and C. D., two of the said parties, *as the case may be*). Sworn, &c.

It may perhaps be inferred from the terms of the section, that more than one witness will, in future, be necessary for registered instruments. Lest any question should arise on this point, it will be a proper precaution to have two witnesses in analogy to the former practice as to memorials. It is probably the intention of the Legislature that the witness shall be able to state that he knew one or more of the parties, and it will probably be deemed important that he should know one or more of the grantors. (See *Jack dem. Rennie v. Armstrong*, 1 Hud. & Brooke, 727.)

Affidavit to
be registered.

40. The said affidavit shall be made on the said Instrument, and such Instrument and affidavit shall be copied at full length in the Register Book.

An affidavit sworn under a statute need not conform to the technicalities prescribed by a Rule of Court. (*Moyer v. Davidson*, 7 U. C. C. P. 521.)

When different
witnesses
see different
grantors
execute.

41. 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, whether the same be so executed in the same

or in different places, shall make an affidavit in accordance with the thirty-ninth section as to each separate and distinct execution of the Instrument.

Some useful and important remarks on the requirements of the late Registry Act as to the names, &c., of witnesses, are contained in the judgment delivered in *Reid v. Whitehead*, 10 Grant 446; in Appeal, 2 Err. & App. Rep. 580. See also *Robson v. Waddell*, 24 U. C. Q. B. 574.

The execution of a deed by the grantee, and the subscribing of the name of the witness after registration, does not invalidate such registration. (*Muir v. Dunnet*, 11 Grant 85.)

Where a deed was registered upon a memorial executed by the grantee, it was held to be necessary in order to valid registration that one of the witnesses to the memorial should also be one of the witnesses to the execution of the deed by the grantor. (*Jack d. Rennick v. Armstrong*, 1 Hud. & Brooke, 727; see also *Essex v. Baugh*, 1 Y. & C. C. C. 620.)

42. Every affidavit made under the authority of this Act shall be made before any of the following persons : Before whom
to be sworn.

1. If made in Upper Canada, it shall be made before—

In U. C.

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, before any Judge of a County Court within his County,

Or, before a Commissioner authorized by any of the Superior Courts to take affidavits.

2. If made in Lower Canada, it shall be made before—

In L. C.

A Judge or Prothonotary of the Superior Court or Clerk of the Circuit Court.

Or, before a Commissioner authorized by any of the Superior Courts of Common Law for Upper Canada to take affidavits in Lower Canada.

3. If made in Great Britain or Ireland, it shall be made before—

In United Kingdom.

A Judge of any of the Superior Courts of Law or Equity therein,

Or, before a Judge of any of the County Courts within his County,

Or, before the Mayor or Chief Magistrate of any City, Borough or Town corporate therein, and certified under the Common Seal of such City, Borough, or Town corporate,

Or, before a Commissioner for taking affidavits in and for the Canadian Courts.

In a British 4. If made in any British Colony or possession, it shall be made before—

A Judge of a Court of Record,
Or, before the Mayor of any City, Borough or Town corporate,
and certified under the Common Seal of such City, Borough
or Town,
Or, before any Notary Public, certified under his official seal,
Or, if made in the British Possessions in India, before any
Magistrate or Collector, certified to have been such under
the hand of the Governor of such possession.

5. If made in any Foreign Country, it shall be made before—

The Mayor of any City, Borough or Town corporate of such
Country, and certified under the Common seal of such
City, Borough or Town corporate,
Or, before any Consul or Vice Consul of Her Majesty resident
therein:

Or before a judge of a court of record or a notary public, certified
under his official seal.

Deeds executed in England for the purpose of conveying land in Canada,
do not require to be stamped under the provisions of the English Stamp
Laws, in order to their validity in this province. (*Murray v. VanBrocklin*,
Chan. Cham. Rep. 800, per Mowat, V. C.)

In addition to the persons specified above, by Statute 26 Vic., cap. 41, secs.
3, 8, affidavits for the purpose of registration may be made before a Commis-
sioner authorized by the Lord Chancellor to administer oaths in Chancery
in England, or before a Notary Public in England, certified under his hand
and official seal.

It is necessary that the addition of "a commissioner," or other designation
of the person before whom the affidavit is taken, should be added to his
signature. (*Babcock v. Municipal Council of Bedford*, 8 U. C. C. P. 527.)

Witnesses com-
pellable to
make
affidavit.

43. Every witness shall be compellable, when necessary, by order
of a Judge of any of the Superior Courts or County Courts, to make
affidavit or proof of the execution of any Instrument for the purpose
of Registration under this Act; and to do all other acts necessary for
the same purpose, upon being paid or duly tendered his reasonable
expenses therefor.

Independently of this provision, it would seem that a mandamus would
lie to compel a witness to prove the execution of a deed and memorial for
registry. (*Reg. v. O'Meara*, 15 U. C. Q. B. 201.)

Affirmation
or declara-
tion in cer-
tain cases.

44. The proof may be either by affidavit or by affirmation or
declaration, when by the law of the Country where such proof is
made, an affirmation or declaration may be substituted for an affidavit,
and the Registrar shall receive such Instruments so proved without
any other or further proof of their due execution.

See Imp. Stat. 5 & 6 Will. IV., cap. 62, sec. 16.

The certificate of identity prescribed in the case of instruments executed out of Upper Canada, by sec. 26 of the late Registry Act, is not required by this statute, the affidavit being indorsed on the instrument itself.

45. None of the persons authorized to take affidavits by this Act shall take any affidavit of the execution of any Instrument, in case he is a party to such Instrument, nor shall any such affidavit of the proof of any Instrument executed after the first day of January next, be taken from any witness, unless such witness has subscribed his name in his own handwriting as such witness.

Parties not to receive affidavits.

Witnesses must have signed as such

In *Reid v. Whitehead*, 10 Grant 446, it was objected that an affidavit by one of the witnesses as to the execution of a memorial, was sworn before the other subscribing witness, but Esten, V. C., considered the objection unimportant.

The latter clause of the section probably means that an affidavit by a witness who is a marksman, shall not be received.

46. When the Witnesses to any Instrument are dead or are out of this Province, any person who is or claims to be interested in the Registration of the Instrument, may make proof before the Judge of any County Court in Upper Canada, of the execution of such Instrument, and upon a certificate (according to the form G in the appendix hereto) endorsed on such Instrument and signed by such Judge, that the Judge is satisfied by the proof adduced of the due execution of the Instrument, the Registrar shall record such Instrument and Certificate.

When witnesses are dead or out of the Province.

This section provides a more simple and expeditious mode of proof than that before the Quarter Sessions under the former act.

47. The Seal of any court of record or of any Corporation affixed to any Instrument in writing shall, of itself, be sufficient evidence of the due execution of the same by such Corporation, or by the Judge, Registrar, Clerk or officer of the Court, signing the same, for all purposes respecting the registration thereof, and no further evidence or verification of such execution shall be required for the purpose of registry.

Seal of Court or corporation to suffice for registration.

The seal of a corporation having been proved by satisfactory legal evidence, the production of a document within the scope of the powers of the corporation is sufficient *prima facie* evidence of the proper execution of the document. (*Woodhill v. Sullivan*, 14 U. C. C. P. 265.)

48. When a power of Attorney or any substitution thereof is registered, the Registrar shall deliver a certified copy or copies of such power or substitution as may be required of him, and of all the documents aforesaid connected with or relating to the same, under

Registrar to deliver certified copy of power of attorney registered.

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 he shall also declare that the copy, which he so delivers, is a true copy of the Power of Substitution, and of all the other documents connected with or relating to the same of which they respectively purport to be copies, and that the originals have been duly deposited in his office according to the Statute in this behalf.

The and effect of this certified copy.

49. Every such certified copy where the original Power or Substitution is deposited as aforesaid, may be registered in any other Registry Office, by deposit thereof, without production of the original Power of Substitution, and without proof of any kind, other than the production of the copy so certified as aforesaid.

To be prima facie evidence.

50. Every such certified copy of a Power of Attorney or Substitution, shall be received in all cases in place of the original as *prima facie* evidence of the original power or substitution, and of its due execution.

Notarial copies of instrument executed in L. C. may be registered, &c.

51. Every Notarial copy of any Instrument 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 and may be registered and treated under this Act, for all purposes, as if it were in fact the original instrument, and such Notarial copy shall be registered without any other or further proof of the execution of the same of the original thereof.

Certified copies of registered instruments may be used instead of originals, after notice.

52. In any action at law, or suit in equity, where but for this Act it would be necessary to produce and prove any original instrument in order to establish such instrument and the contents thereof, the party intending to prove any such original instrument may give notice to the opposite party ten days at least before the trial, or other proceeding in which the said proof is intended to be adduced, that he intends at the said trial or other proceeding to give, in evidence as proof of such original instrument, a copy thereof certified by the Registrar under his seal of office, and in every such case the copy so certified shall be sufficient evidence of the original instrument, and of its validity and contents, unless the party receiving such notice does, within four days after such receipt, give notice that he disputes the validity of such original instrument, in which case the costs of producing and proving such original may be ordered

Exception.

Costs in such case.

by the court or Judge to be paid by any or either of the parties as shall be deemed right.

This useful provision is adopted from the mode provided by Con. State. U. C., cap. 32, sec. 9, for proving wills of real estate.

MANNER OF THE REGISTERING.

53. The Registrar or Deputy Registrar of the County in which the lands are situate shall, upon production to him of the original Instrument, duplicate or other original part thereof, together with an affidavit of execution, enter the said Instrument in the Register Book, in the order in which it is received, and he shall file the same with such affidavit of execution, and he shall endorse a certificate on every such Instrument, and shall therein mention the certain year, month, day, hour, and minute in which such Instrument is entered and registered, expressing also in what book the same has been entered, and the number of registration,—and the 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.

Copying into
Registrar
Book.

Filing away
Instrument
and affidavit.

Certificate
and its effect

See note to sec. 31.

Where two mortgages of different dates appeared by the certificate endorsed to have been registered on the same day and at the same hour, but one was numbered 764 and the other 768, it was held that the instrument numbered 764 must be regarded as having been registered first. (*New v. Pennell*, 33 L. J. Chan. 19.)

54. Every page of the Registry Book and every Instrument entered therein shall be numbered, and the certain year, month, day, hour and minute of registration shall be entered in the margin of the Register Books and shall be endorsed upon the Instrument, and such entry shall be signed by the Registrar or his Deputy.

Pages, and
instruments
to be num-
bered.

55. 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 or proceeding, any title or interest in lands shall be brought into question, shall not be deemed notice of such bill or proceeding to any person not being a party thereto, 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 the schedule to this Act annexed marked H, shall have been registered in the Registry Office of the County in which such lands are situate; but no such certificate shall be required in any suit or proceeding for foreclosure or sale of a registered mortgage.

Filing of Bill,
&c., not to be
notice, until
registered.

Exception.

Registry of
sales for
taxes.

Other sales
under pro-
cess of Court.

56. Every deed made by a Sheriff or other Officer for arrears of taxes shall be registered within eighteen months after the sale by such Sheriff or other Officer; and all deeds of lands sold under process issued from any of the Courts of Law or Equity in Upper Canada, shall be registered within six months after the sale of such lands, otherwise the parties respectively claiming under any of such sales shall not be deemed to have preserved their priority as against a purchaser in good faith who may have registered his deed prior to the registration of such deed from the Sheriff or other Officer.

Heretofore, a sheriff's deed, though unregistered, could not be defeated by any subsequent conveyance by the party whose lands the sheriff had sold. (*Burnham v. Daly*, 11 U. C. Q. B. 211.)

Before this act, sheriffs' deeds of land sold for taxes were registered by certificates. (C. S. U. C., cap. 55, sec. 152; cap. 89, sec. 18.) Under this act they must be registered in the same manner as other deeds, *ecce*. 34, 35.

Sales for
taxes before
this Act.

57. All deeds for lands sold for taxes or under process of Law, before the passing of this Act, shall be registered within one year after the passing of this Act, otherwise the parties respectively claiming under any such sales shall not be deemed to have preserved their priority as against a purchaser in good faith who may have acquired priority of registration.

Satisfaction
of mortgage,
how regis-
tered.

58. When any registered mortgage shall have been satisfied, the Registrar, on receiving a certificate executed by the mortgagee, or if the mortgage has been assigned, and such assignment registered, 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, in the form I, in the Appendix hereto, or to the like effect, 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 other instruments affecting lands, shall register the same and every affidavit attached thereto or endorsed thereon, at full length in its proper order, in the Registry Book, and numbering it in like manner as other Instruments are required to be registered and numbered, and also by writing in the margin of the register wherein the said mortgage has been registered, words to the following effect: "——— 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 (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 of such mortgage, and such certificate so registered shall be as valid and effectual in law as a release of such mortgage, and as

Entry in
margin of
register.

Effect of such
registration.

a conveyance to the mortgagor, his heirs, executors, administrators or assigns of the original estate of the mortgagor.

Under Con. Stats. U. C., cap. 87, sec. 5, an executor or administrator of a deceased mortgagee can discharge a mortgage debt, and reconvey the mortgage premises. That statute, however, does not enable him to *sell or assign* the legal estate in the land (*Robinson v. Byrre*, 9 Grant. 572). Therefore it would seem that a discharge, which an assignee of a mortgage claiming only under a transfer from the executor of the mortgagee, might affect to give, would be inoperative to reconvey the real estate. (See also *Hunter v. Ferr*, 23 U. C. Q. B. 324.)

The following form of affidavit of discharge of mortgage may be used:

County of _____ } I, Alexander Erie Gates, of the _____ of _____ in the
to wit: } county of _____, storekeeper, do make oath and say:

1. That my name, place of residence, and occupation (or calling, *as the case may be*), are above truly set forth in full.

2. That I and another subscribing witness thereto were present and did see the foregoing (or within) certificate of discharge of mortgage duly signed, executed and delivered, by the therein named Charles Thomas Jones.

3. That the said certificate was executed at the _____ of _____ in the county of _____.

4. That I know the said Charles Thomas Jones.

Sworn before me, at _____ }
in the county of _____ this }
_____ day of _____ 18 ____ }

A Commissioner, &c., in and for
the county of _____

In *Doe Crookshank v. Humberstone*, 6 U. C. R. (O. S.) 103; *Robinson, C. J.*, considered that a certificate of a Registrar of the discharge of a mortgage endorsed on the mortgage deed, was sufficient evidence of a re-conveyance, without proof of the execution of the discharge. But see *Doe v. Manahan*, 1 U. C. R. 491; *Robson v. Waddell*, 24 U. C. Q. B. 574.

59. In case the mortgagee or any assignee of the mortgagee desires to release or discharge part only of the lands contained in such mortgage, or to release or discharge only part of the money specified in the mortgage, he may do so by deed or 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; and such deed or certificate shall contain as precise a description of the portion of lands so released or discharged as would be necessary to be contained in an instrument of conveyance for Registry under this Act, and also a precise statement of the amount or particular sum or sums so released or discharged.

As to release
of part only
of lands
mortgaged.

Portion re-
leased to be
described.

This section gives the weight of Legislative authority to the decision of the Court of Common Pleas, in *Re Ridout*, 2 U. C. C. P. 477, and removes the difficulty which was then felt as to the mode in which such a discharge should be registered.

60. Every certificate of payment or discharge of the mortgage, or of the conditions therein, or of the lands or of any part of the

Certificate of payment &c., to be valid, at whatever time given.

same, or of any part of the money, by the mortgagee, or his assignee, his heirs, executors, administrators or assigns, or any one of them, 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.

By-laws hereafter made affecting real estate to be registered, and how.

As to By-laws, &c., heretofore made.

61. All By-laws hereafter to be passed by any Municipal Council, under the authority of which any street, road or highway shall be opened upon any private property, shall before the same becomes effectual in law, be duly registered in the Registry 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 certified under the hand of the clerk and the seal of the Municipality, and shall be registered without any further proof; and all By-laws heretofore passed, under the authority of which any street, road or highway has already been opened upon and 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.

The power to Municipal Councils to pass such by-laws is given by Con. Stats. U. C., cap. 54, sec. 331, 242.

EFFECT OF REGISTERING OR OMITTING TO REGISTER.

Unregistered instrument, after Crown Grant, to be void against subsequent registered purchaser, &c.

62. After any grant from the Crown of Lands in Upper Canada and Letters Patent issued therefor, every Instrument affecting the lands or any part thereof comprised in such grant shall be adjudged fraudulent and void against any subsequent purchaser or Mortgagee for valuable consideration, unless such instrument is registered in the manner herein directed before the registering of the instrument under which such subsequent purchaser or mortgagee may claim.

Where a locatee of land executed a bond to convey, and after the issuing of the patent, sold and conveyed the land to a third party, who again sold and executed a conveyance to a purchaser, but before either had paid his purchase money, the holder of the bond filed a bill for specific performance; the relief was granted on the ground that the Registry Act does not apply to instruments executed previously to a grant from the Crown. (*Casey v. Jordan*, 5 Grant 467.)

By C. S. U. C., cap. 80, sec. 24, a mortgage made before the issuing of Letters Patent, may be registered, and shall have the same effect as if the

Letters Patent had, before the execution of such instrument, been issued in favor of the grantor.

A deed must be considered fraudulent and void against a conveyance subsequently executed, where the former is not registered and the latter is, notwithstanding that the first deed has been obtained by artifice and fraud, and so the registry prevented. (*Doe d. Nellis v. Mallock*, 2 U. C. R. (O. S.) 487.) See also *Doe d. Fell v. Muckener*, Dra. Rep. 484 (R. & H. Dig. 153); *Baby q. t. Watson*, 13 U. C. Q. B. 531; *Ferrass v. McDonald*, 5 Grant 310; *Baldwin v. Duignan*, 6 Grant 595.

As to the necessity of a valuable consideration to give priority to the subsequent conveyance, see *Doe d. Major v. Reynolds*, 2 U. C. R. 311; *Doe d. Cronk v. Smith*, 7 U. C. R. 376; *Doe d. Ellis v. McGill*, 8 U. C. R. 224; *Doe d. Prince v. Girty*, 9 U. C. R. 41; *Leach v. Leach*, 24 U. C. Q. B. 321; *Wilkinson v. Conklin*, 10 U. C. C. P. 211.

But if the owner of land has given a valuable consideration to his vendor, the fact that such vendor had given no value to the person from whom he purchased, will not defeat the operation of the Registry Act in favor of the owner's registered title as against the prior unregistered title of a previous owner. (*Doe d. Mallock v. Disher*, 4 U. C. R. 14.)

It has been held that Trustees for the benefit of creditors are not purchasers for valuable consideration, so as to be protected against prior unregistered conveyances. (*Neeson v. Eastwood*, 4 U. C. R. 271.)

In the case of *Fraser v. Sutherland*, 2 Grant. 442, Blake, C., expressed an opinion to the effect that a mortgage made to creditors by a third person (a friend of the debtor) imports a sufficiently valuable consideration to give it, as a prior registered conveyance, precedence over a conveyance previously executed, but registered subsequently.

The registration of a deed from a person having no title, or a fraudulent title, will not give priority over a deed from a person having a good title. (*Doe d. Spafford v. Breakenridge et al.* 1 U. C. C. P. 493; *Moffatt v. Grover*, 4 U. C. C. P. 402, per McLean, J.; *Miller v. McGill*, 24 U. C. Q. B. 597.)

Although the prior registration of a deed without consideration confers no title upon the grantee, as against a bona fide purchaser for value, yet, as the fact of such a deed being upon record will have the effect of creating a cloud upon the title, the Court will decree its removal. (*Ross v. Harvey*, 3 Grant. 649.)

Growing timber is real estate within the Registry Act. (*Ellis v. Grubb*, 3 U. C. R. (O. S.) 611; *Ferguson v. Hill*, 11 U. C. R. 530.)

Registration in the County Registry Office in Upper Canada is sufficient to make a deed valid under the Statutes of Mortgages, without enrolment in Chancery. (*Hallock v. Wilson*, 7 U. C. C. P. 28.)

The prior registration of a Sheriff's deed gives the Sheriff's vendee priority over an antecedent but unregistered deed made by the execution debtor, just as the prior registration of a deed from the party himself would do. (*Doe d. Brennan v. O'Neill*, 4 U. C. R. 8; *Waters v. Shade*, 2 Grant. 457.) See contra *Fury v. Smith*, 1 Hed. & Brooke, 735.

The judgments of Esten and Spragge, V. C.C., in *Waters v. Shade*, will be found to contain some interesting and instructive remarks on the operation of the registry laws.

In the following instances, the estate in or lien upon land cannot be defeated by want of registration: Burial ground sites sold by Cemetery Companies, C. S. U.C. cap. 67, sec. 14; Taxes accrued on land, C. S. U.C. cap. 65, sec. 107; the lien of Mutual Insurance Companies on property insured, C. S. U. C. cap. 52, sec. 67. See *Montgomery v. The Gore District Mutual Insurance Co.*, 10 Grant. 501.

An assignment of a legacy charged upon land is an assignment of money only, and does not affect the land within the meaning of the registry acts. The registration of such an assignment therefore does not postpone a prior unregistered assignment of the same legacy. (*Malcolm v. Charleworth*, 1 Keen, 63.)

The registry of a deed relates back to the time when the conveyance was made, so as to give the purchaser a good title from that period. (*Doe d. Spafford v. Brown*, 3 U. C. R. (O.S.) 92.)

As to the effect of the registry laws upon equitable interests, see *Bethune v. Caulcutt*, 1 Grant. 81; *McMaster v. Phipps*, 5 Grant. 253; *Bank of Montreal v. Baker*, 9 Grant. 298; *Ford v. White*, 16 Beav. 120.

It has been held that if A. grant to B. who does not register, and then to C. who does not register, and then C. grants to D. who does register, B.'s prior deed, though unregistered, shall prevail against the subsequent grant to D. though registered; because A. after the grant to B. had nothing left to grant, except by a registered deed executed by himself, and registration of the deed from C. to D. is not registration of the deed from A. to C. (*Jack v. Armstrong*, 1 Hud. & Brooke, 727; *Fury v. Smith*, 1 Hud. & Brooke, 735; *Mull v. Hill*, 3 H. L. Cas. 828; *Warburton v. Loveland*, 2 Dowl. & Clarke, 480).

Wills not registered within a certain time to be void as against, &c.

63. All Wills or the probates thereof registered 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 devised in any such Will, is 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 registration of 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.

Infancy is not an inevitable difficulty, so as to preclude the necessity of an infant devisee registering his testator's will within the time prescribed by the statute, in order to avoid a conveyance by the heir-at-law. (*McLeod v. Truax*, 5 U. C. R. (O.S.) 455.)

The fact that the registration of a will can afford no information on its face as to what lands are affected by it, is no objection to a particular lot passing under that will. (*Doe d. Lowry v. Grant*, 7 U. C. R. 125.)

In case of a will not containing any specific description of the property devised, it will be a proper precaution on the part of the person registering it to inform the Registrar of the locality and lot or lots in the books relating to which it should be entered. In *Robson v. Carpenter*, 11 Grant. 293, Spragge, V. C., held that the transferee of real estate, transferred in general terms, must at his peril, register the instrument under which he claims in the city, town, township, or place in which the lands lie (see page 300).

Under the circumstances mentioned in *Patulo v. Boyington*, 4 U. C. C. P. 125; and in *Reid v. Whitehead*, 2 Error & Appeal Rep. 580, (per Hagarty, J.) it was considered that it was competent to set out in a memorial a more definite description of the property and the *locus in quo* than that contained in the original instrument.

In the case of *Lynch v. Wilson*, 22 U. C. Q. B. 226, the question of the liability of attorneys for negligence in not registering a mortgage was discussed, but the court being equally divided in opinion, judgment on that point was not given. In *Ross v. Strathy*, 16 U. C. Q. B. 430, it was held that an attorney employed to investigate the title to land is not bound to enquire as to arrears of taxes.

64. The registry of any instrument, under this Act, or any former Act, shall, in equity, constitute notice of such instrument, to all persons claiming any interest in such lands subsequent to such registry. Registry to be notice.

Registration is not notice under the Registry Acts of England and Ireland, nor was it in Upper Canada prior to Statute 13 & 14 Vic. cap. 63, sec. 8. (See *Street v. Commercial Bank*, 1 Grant. 169.)

Registration is notice of the thing registered for the purpose of giving effect to any equity accruing from it, but it can be notice of any given instrument only to those who are reasonably led by the nature of the transaction in which they are engaged to examine the register with respect to it. *Boucher v. Smith*, 9 Grant 347.

While the act declares that registration shall be notice, it does not provide that notice of an unregistered conveyance shall not affect a registered conveyance or judgment; and we must take it that the Legislature had knowledge of the doctrine of a Court of Equity on this head; and indeed they appear to have had it expressly under consideration, when they declared that registration should be notice. Per Vankoughnet, C., in *Bank of Montreal v. Baker*, 9 Grant 298.

Registration of an instrument not required to be registered, does not create notice. (*Doe d. Kingston Building Society v. Reinsford*, 10 U. C. Q. B. 236; *Malcolm v. Charlesworth*, 1 Keen 63.)

65. Priority of registration shall in all cases prevail unless before such prior registration there shall have been actual notice of the prior instrument by the party claiming under the prior registration. Actual notice.

As to priority of registration, see *Vuir v. Dunnet*, 11 Grant 85.

Prior to this enactment, constructive notice was held insufficient to postpone a registered conveyance executed *bona fide*. (*Soden v. Stephens*, 1 Grant 346; *Ferriss v. McDonald*, 5 Grant 310; *Hollywood v. Waters*, 6 Grant 329; *Rice v. O'Connor*, 11 Irish Ch. Rep. 510; affirmed on appeal, 12 Irish Ch. Rep. 424. The last is an interesting and instructive case on several other points, such as the effect of part performance of a parol contract as against a purchaser for value without notice; how far possession is notice of the rights of the party in possession; the distinction between equitable estates and equitable rights.

The position of the receipt for the purchase money endorsed on a deed in an unusual place, has been held a circumstance sufficient to excite suspicion and create notice of fraud. (*Kennedy v. Green*, 3 Myl. & K. 699.) But see *Greenlade v. Dore*, 3 W. R. 220; *Baldwin v. Duignan*, 6 Grant 595.

Registration by defective memorial is not notice. (*Boucher v. Smith*, 9 Grant 347; *Reid v. Whitehead*, 10 Grant. 446; *Elex v. Baugh*, 1 Y. & C. C. 620.) But see sec. 78.

A party taking an equitable mortgage, with notice of a prior equitable mortgage, cannot, by assignment to another without notice, give him a better title. (*Ford v. White*, 16 Beav. 130.)

A conveyance of lands in Middlesex (England) by settlement, upon the marriage of the settlor, registered under the statute 7 Anne, cap. 20, was held to be effectual against a prior unregistered conveyance, notwithstanding that the party claiming under the settlement had notice of the unregistered conveyance after the marriage, but before the registry of his settlement. (*Eloxy v. Lutyens*, 8 Hare 169.)

A party with notice of an incumbrance upon leasehold property having obtained an interest therein, by entering into partnership with the mortgagor, surrendered the lease and obtained from the owner of the estate a substituted lease to himself for 999 years, which he registered, and afterwards created

several mortgages thereon, the original incumbrance having in the interval been registered. It was held that as the lessee's title had been acquired with notice of, and subject to, the original incumbrance, which was registered before the mortgages made by the lessee, the original incumbrancers were entitled to prevail over the claims of the mortgagees of the lessee. (*Mac-kechnie v. Mackechnie*, 7 Grant 23.)

The general rule as to actual notice is, that to constitute binding notice, it must be given by a person interested in the property, and in the course of the treaty for the purchase. See *Sugden V. & P.*, 14th Ed., chap. xxiv.

As to equitable liens,
&c.

66. No equitable lien, charge or interest affecting land shall be deemed valid in any Court in this Province after this Act shall come into operation, as against a registered instrument executed by the same party, his heirs or assigns, and tacking shall not be allowed in any case to prevail against the provisions of this Act.

This section will produce an important change with respect to the rights and privileges of equitable mortgagees, whose rights, as heretofore recognized in the Court of Chancery, were specially preserved by the late Act; under which, in a case where a mortgage had been created by deposit of title deeds, and the borrower had signed a memorandum stating the sum loaned and times for re-payment, and agreeing to execute a writing to enable the lender to transfer or control the mortgages so deposited, it was held that the memorandum did not require registration to secure its priority over a subsequently registered incumbrance. See *Harrison v. Armour*, 11 Grant 303, and English cases there cited.

In *Neve v. Pennell*, 33 L. J. Chy. 19, it was held that a memorandum not under seal, accompanying a deposit by way of equitable mortgage of deeds, requires registry.

The latter clause of this section will not interfere with the doctrine of tacking, in cases where the provisions of this act do not apply. See *Hyman v. Root*, 10 Grant 340, and cases there cited.

What leases
must be
registered.

67. This Act shall not extend to any lease for a term not exceeding seven years, where the actual possession goeth along with the lease; but it shall extend to every lease for a longer term than seven years.

Under the former Act, leases for a term for less than twenty-one years did not require registration.

A covenant for a renewal in a lease creating a term not within the Registry Act, does not extend the term so as to bring the lease within the act. (*Doedem. Kingston Building Society v. Rainsford*, 10 U. C. Q. B. 236.)

The judgment of Burns, J., in this case, contains the following remarks, which it may be useful to insert here: "It is quite clear that no present term was created by the lease beyond fourteen years, and that if a second term of fourteen years was to exist, it must be by a new instrument to be executed between the parties; and if Mason did neglect to pay for the buildings at the expiration of the first term of fourteen years, the lessees could not, after the expiration of the first fourteen years, have held the premises under the existing deed, for the provisions respecting the second term amount only to a covenant, and not to a subsisting lease. (*Evans v. Thomas*, Cro. Jac. 172.) Without a new lease for the second term of fourteen years, the parties claiming the estate under the present instrument would have no legal title, and without such new lease, the premises would not be affected in law in anywise." See also *Clarke v. Armstrong*, 10 Lr. Chy. Rep. 263.

With regard to "the actual possession" mentioned in this section, it seems that actual occupation is requisite to bring a case within this clause, and that possession by receipt of rent is not sufficient. (*Fury v. Smith*, 1 Had. & Brooke, 786.)

The result is that registration is unnecessary in cases only where both conditions are fulfilled, namely, a term for seven years or under, and actual occupation. Therefore, where there is not such occupation, registration is necessary, even though the term should be for less than seven years.

FEES OF REGISTRARS.

68. Every Registrar shall be allowed the following fees for the following services and no more :

1. For registering every instrument, other than those hereinafter specially provided for, one dollar ; but in case the same, with the necessary entries and certificate, exceeds seven hundred words, then at the rate of fifteen cents for each additional one hundred words or the fractional part thereof, up to fourteen hundred words, and at the rate of ten cents for each additional hundred words or fractional part thereof over fourteen hundred ; and if the memorial 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, but shall be charged for and paid at the rate of fifteen cents for every one hundred words, or the fractional part thereof up to fourteen hundred, and of all over that, at the rate of ten cents for each hundred words or fractional part thereof ;

For registry.

If the instrument includes different lots in different localities.

1. This seems a somewhat troublesome mode of calculating the Registrar's fees. The meaning of the enactment can probably be best explained by supposing one or two instances : For a deed of seven hundred words or under, the fee will be one dollar ; for one of nine hundred and twenty-five words, one dollar and forty-five cents, viz : one dollar for the first seven hundred words, and forty-five cents for the remaining two hundred and twenty-five words ; for one of sixteen hundred and seventy-five words, one dollar for the first seven hundred words, one dollar and five cents for the next seven hundred, and thirty cents for the next two hundred and seventy-five, making in all two dollars and thirty-five cents.

If the instrument includes different lots in different localities, according to the decision, *In Re Lount*, 11 U. C. C. P. 97, the Registrar would have been entitled to charge fifteen cents per folio, for the first fourteen folios only, and ten cents for each subsequent folio, irrespectively of the number of separate registrations in different books ; but as this section expressly provides that the registration and copying of such into the different registry books shall be considered *separate and distinct registrations*, the above decision is no longer applicable. Therefore, supposing an instrument containing one thousand five hundred and sixty words, and embracing parcels of land situate in three different localities be brought for registration, the fees will be computed thus :

1400 words, at 15c. per folio.....	\$2 10
160 words (say 2 folios).....	0 20

\$2.30 and

\$2.30 multiplied by 2 = \$4.60

It is to be observed that the computation is to be made upon the contents of the entries in the Registrar's books, not upon the words contained in the instrument itself.

If the decision in *Smith v. Ridout*, as to copying into each book none but the lands properly pertaining to such book, applies to the present act, as may probably be held to be the intention of the Legislature, the number of folios requiring entry in the several books being diminished, the fees payable upon such an instrument as that supposed in the above example will be proportionably less.

The words "memorial or other" in this subsection are probably a slip, and may be considered as surplusage.

For searches
as to title.

2. For searching the Registry Books and Indexes relating to the title of any lot or part of a lot of land as originally patented by the Crown, or as afterwards subdivided into smaller lots, shewn by any registered map or plan thereof, when not exceeding four references, twenty-five cents, and five cents for every additional reference; 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;

Some Registrars who have heretofore kept general abstract books have been in the habit of making an extra charge for referring to them. Being obliged under this act to keep such abstract, and no provision being made for any such extra charge, hereafter it cannot be exacted and should not be paid.

Searching
index.

General;
Search.

3. For searching, if specially required, the alphabetical index of names referred to in section twenty-nine as to each name in the books of any one township; or other legally defined municipality in the county, twenty-five cents; provided, always, that if a general search as to any such name is made throughout the county, the aggregate of fees for such search shall not exceed one dollar;

Abstracts of
title.

4. For every abstract of title certified by the Registrar containing such particulars as the party searching shall require, twenty-five cents, and when such abstract exceeds one hundred words, fifteen cents for every additional hundred words; and for copies of instruments when required, ten cents for each hundred words;

On comparing this subsection with subsection 10 of section 74 of the late act, it is clear, upon the authority of *Hope v. Ferguson*, 17 U.C. Q.B. 219, and *McDonald v. Bell*, 21 U.C. Q.B. 33, that the Registrar is entitled to charge only twenty-five cents for the first one hundred words, and fifteen cents for each additional one hundred words contained in the whole abstract; not twenty-five cents for each extract from a memorial, treating it as a separate abstract.

Certificates.

5. For each certificate furnished by the Registrar, except those made under subsections one and four of this section, twenty-five cents;

6. For filing of record any plan of town or village lots, including *Filing plans.*
all necessary entries connected therewith, one dollar ;

7. For furnishing the statement and copies required under the *Statements*
twenty-third, twenty-sixth, and twenty-seventh sections of this Act, *under Sect.*
to be paid by the County Treasurer to which any city, town, town- *23, 26, 27.*
ship, village or place may belong or be attached, the sum of ten
cents for every folio of one hundred words contained in such state-
ment so furnished or copy so made ;

8. For entering for each lot under section thirty-three of this Act *Entering*
the registrations made before the first day of January, one thousand *lots under*
eight hundred and sixty-six, the sum of ten cents for the several *Sect. 33.*
entries and reference of each instrument so entered to be paid for in
the same manner as provided for in the next preceding subsection ; *Proviso.*
provided, always, that no fees shall be chargeable in respect of the
alphabetical index, and in no case shall the fees chargeable in respect
of the abstract index, for any county, exceed in the whole the sum
of two thousand dollars ;

9. For filing and registering each list of marriages delivered to *List of mar-*
him, under chapter seventy-two of the Consolidated Statutes for *riages.*
Upper Canada, one dollar ;

10. For drawing each affidavit and swearing the deponent thereto, *Affidavits.*
twenty-five cents ; the same fee to be allowed for administering the
oath when such only is required ;

11. For exhibiting in the office each original registered instru- *Showing*
ment, including search for same, ten cents ; *originals.*

It may be observed that any search made and paid for under subsection 11,
should not be included among the references paid for under subsection 2.

12. For registering each certificate of payment of mortgage money, *Certificates*
and every other certificate excepting certificates provided for in the *of discharge.*
next subsection, including all entries and certificates thereof, fifty
cents ;

13. For registering each certificate of payment of taxes, twenty- *Of payment*
five cents ; *of taxes.*

14. In abstracts and certificates where figures are used instead of *Figures how*
words to denote dates, numbers and quantities, the same shall be *changed.*
charged as if each number, though composed of several figures, were
but one word :

Table of fees. 15. Each Registrar shall keep posted up in some conspicuous place, in his office, a printed schedule of the fees and charges authorized under this Act.

It will be observed that there is no authority whatever under this act for a mailing fee, which some County Registrars have been in the habit of demanding (*In re Lount*, 11 U. C. C. P. 97); nor for any charge for extracts made by persons inspecting the books themselves.

Pay of Inspector. 69. A sum not exceeding two thousand dollars per annum, which shall include all travelling and other expenses, shall be allowed to an Inspector of Registry offices.

Recovery of fees from municipal corporations. 70. Should the County Treasurer of any County or City 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 under sections twenty-three, twenty-six, twenty-seven, and thirty-three, such Registrar may prove the same and recover the same and the costs thereof from the corporation of the County or City in any Court of Record in Upper Canada; and the Inspector's certificate of the amount and of the services rendered shall be *prima facie* evidence of the right to recover.

Fees payable before registration. 71. The Registrar shall not be compelled to register any instrument unless the fees authorized by this Act are first paid thereon.

In case of a Registrar refusing to perform any matter required of him unless unwarranted fees are paid, the proper course is to pay the amount demanded under protest, and bring an action to recover the excess, and the Registrar and his sureties may be compelled to make good the loss occasioned by the delay. A mandamus is not the proper remedy. (See *In re Lount*, 11 U. C. C. P. 97; *Smith v. Ridout*, 5 U. C. Q. B. 617.)

Where full redress can be obtained by an ordinary suit, application for summary remedies will not be encouraged. (*In re McLay*, 24 U. C. Q. B. 54.)

A mandamus was granted, however, to compel the delivery of a proper abstract, *In re Registrar of Carlton*, 12 U. C. C. P. 225.

Registrars to keep accounts of fees. 72. 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 each instrument, and for searches, and for extracts or copies, and shall make a return, under oath, of such fees and emoluments so received to the Governor, annually, on the fifteenth day of January.

MISCELLANEOUS PROVISIONS.

Registration of plans of division of lands into smaller parcels. 73. 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 assigns, agents, attorneys or successors, shall, within three months from the date of every such survey or subdivision, lodge with the Registrar a plan or a map of the same, shewing the number of the Township or Town Lots, and range or concession, the numbers or letters of Town or Village Lots, and names of streets, the measurement and magnetic bearings of each lot on a scale of not less than one inch to every four chains, which plan or map shall besides 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 all instruments affecting the land or any part thereof, executed after such plan, shall conform thereto, otherwise the same shall not be registered; 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 person complaining in 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.

Scale of plan
on 1 what to
show.

Duty of
Registrar
thereafter

Instruments
must con-
form to such
plan.

Penalty o
refusing
such plan for
registration.

How rec-
overed.

To what
lands this
section a-
plies.

This section appears to supersede section 44 of Con. Stat. U. C., cap. 93. (Con. Stat. Can., cap. 77, sec. 96.)

The provision that instruments affecting land executed after a plan thereof being filed, shall not be registered unless they conform to such plan, is an excellent one, and ought to be strictly adhered to by Registrars. Thereby the trouble and uncertainty will be avoided which has been often experienced by persons engaged in examining titles, on finding identical parcels at one time described and registered according to a plan, and at another irrespectively of it.

Where building lots have been sold according to a plan, the portions of the property laid off as roads cannot afterwards be diverted to other purposes. (*Rossin v. Walker*, 6 Grant. 619.)

It may not be out of place to mention here the cases of *McCollum v. Wilson*, 17 U. C. Q. B. 572, in appeal, *Jamieson v. McCollum*, 18 U. C. Q. B. 448, where a deed conveying land by the following description—"Part of broken lot number 94, and number 95 and 96"—was held to mean part of 94, and the whole of 95 and 96. In this case, the effect of an inaccurate particular

description by metes and bounds upon a previous general description by number of the lots intended to be conveyed was discussed. The judgments of the Courts of Appeal and Queen's Bench should be perused by those who have occasion to consider a point of this kind. A description in these words, "From lots one to thirteen," excludes both one and thirteen. *Haggart v. Kernahan*, 17 U.C.Q.B. 341.

Under the new mode of registration, the discrepancies which gave rise to the case of *Reid v. Whitehead*, 10 Grant. 446, in Appeal, 2 Err. & App. Rep. 580, are not likely to occur. The several judgments given in this case, and authorities there referred to, upon many points relating to registration generally, are well worthy of the attention of all who are interested in matters connected with the registry laws.

When plan must be registered in case of lands subdivided before this Act.

74. In sales of lands under surveys or subdivisions made before the passing of this Act, when such surveys or subdivisions so differ from the manner in which such land was surveyed or granted by the Crown that the parcel so sold cannot be easily 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, a 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 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 if under the next preceding section of this Act.

How to be made.

Plan not binding until some sale is made under it: alterations in plan.

75. 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 the person filing or registering the same, by the Court of Queen's Bench or Common Pleas, or by the Court of Chancery, or by any Judge of any of the said Courts, or by the Judge of the County Court of the County in which the lands lie, 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.

Plans of towns or villages to be registered in certain cases.

76. 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 seventy-third 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 the Inspector or 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 thereon 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 seal 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 seventy-third section.

How to be certified.

Expenses how paid.

This section appears to supersede section 48 of Con. Stats. U. C., cap. 93. (Con. Stats. Can., cap. 77, sec. 100). See notes on sec. 73.

77. In any case when the Registry books and papers have been heretofore lost or destroyed and the memorials are not forthcoming, upon proof being made to that effect before any Judge of a Court of Record in Upper Canada to the satisfaction of such Judge as evidenced by a certificate under his hand, it shall be lawful for the Registrar for the County where the lands are situate to register the instrument upon production thereof and no further proof shall be required by the Registrar than the original certificate of Registration endorsed on such instrument; and any such instrument shall have priority according to the date of the original certificate, provided always that the instrument shall be filed away by the Registrar and preserved with the records of his office.

Provision for re-registration in case Registry Books or papers are lost or destroyed.

78. No registration of any deed or other instrument heretofore made shall be deemed or adjudged void by reason of the name or names, residence or residences, addition or additions of the witness or witnesses to such deed or instrument being improperly given or described in the registered memorial thereof, or being either in part or altogether omitted from such memorial, or by reason of any clerical error or omission of a formal or technical character therein; and all registrations heretofore effected in separate Registry Books of unincorporated villages, are hereby confirmed, when the Law has been

Registration heretofore made not to be deemed void for certain defects.

Registration in books for unincorporated villages.

otherwise complied with; and such separate Registry Books shall be taken and held to form a part of the Registry Books of the Municipality of which such unincorporated village forms a part; provided always, that this clause shall not affect any case or cases now proceeding in any of the Courts of Law or Equity in Upper Canada.

Previous.

This is an important remedial provision; for when it is considered how slight a defect or discrepancy in affidavits and memorials has been held to vitiate registration, and the carelessness which has prevailed in their preparation and execution, there can be little doubt that many registrations throughout Upper Canada would be invalid but for this enactment. (See *McDonald v. Rodger*, 9 Grant. 75; *Boucher v. Smith*, 9 Grant. 347; *Eid v. Whitehead*, 10 Grant. 446; *Robson v. Waddell*, referred to in 1 U. C. L. J. N.S. 253.

Provincial Registrar to furnish statement of all Crown Grants before 1st Jan., 1866.

79. The Provincial Registrar, so soon after the first day of January next, as is practicable, shall furnish to each Registrar a statement containing full descriptions by metes and bounds of all lands theretofore granted by the Crown with the names of the grantees and dates in all cases where a general description such as "North or South half" or "North East or North West quarter" has not and cannot be given, and where particular descriptions are requisite to show clearly the parcels as they are required for the abstract indices; and the said Provincial Registrar shall also thereafter once in every three months, furnish to each Registrar a statement containing a list of the names of all persons to whom patents have issued from the Crown for grants of land within the County, since the former statements, and with such general or particular descriptions as the case shall require, and the Commissioner of Crown Lands shall furnish copies of all plans or maps of towns and townships within the same, which have not been already furnished.

And so once every three months maps to be furnished by Commissioner of Crown Lands.

False swearing under this Act to be perjury.

80. 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 lawfully 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.

Forging certificates, &c., under this Act, to be felony.

81. 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 Instrument whatever mentioned in this Act, shall be deemed 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.

INSPECTOR OF REGISTRY OFFICES.

82. The Governor may, from time to time, appoint an Inspector of Registry Offices, whose duty shall be to make a personal inspection of the building in which each office is kept, and of the books, deeds, memorials and other Instruments in each 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 or his Deputy, to settle on some uniform device for the official seals and to see that the Registrars supply themselves therewith, to inspect the abstract and alphabetical indices when any such have been kept before this Act shall come into force, and to determine whether the same have or have not been substantially and sufficiently kept in accordance with the requirements of section twenty-eight of this Act, and if so to settle the amount of fees chargeable therefor, and to certify the same; also to inspect all new abstract and alphabetical indices and to settle and certify the sums chargeable therefor under this Act and it shall also be his duty to ascertain whether the proper plans required by this Act have been filed in the several Registry Offices, and, when necessary, to enforce the provisions of the law in that respect, and also to report upon any vacancies by death or otherwise, in the offices of Registrar and Deputy Registrar, 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.

Appoint-
ment of In-
spector and
his duties.

Inspection
of new
Indices.

Reporting
Vacancies.

Sufficiency
or insuffi-
ciency of
sureties.

83. This Act may be cited as the "Registration of Titles (Upper Canada) Act;" it shall be deemed a Public Act, and the "Interpretation Act" shall apply thereto.

Short Title
of this A.

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

Appendix

APPENDIX TO ACT.

FORM A.—SECTION 10.

Know all Men by these presents that we, A. B. Registrar of ——— Esq., and C. D. of ——— Esq., and E. F. of ——— Esq., do hereby jointly and severally for our and each of our heirs, executors and administrators, covenant and promise that the said A. B., as Registrar of ———, shall well, truly and faithfully perform the duties and obligations of his office as such Registrar, and that neither he nor his Deputy shall negligently or wilfully misconduct himself in his said office to the damage of any person or persons whomsoever; nevertheless, it is hereby declared that no greater sum shall be recovered under this covenant against the several parties hereto than the following, that is to say, against the said A. B. in the whole, \$—— (the amount fixed by Order in Council) against the said C. D. and E. F., \$——, respectively (the amount fixed by Order in Council for each).

In witness whereof we have hereto set our hands and seal, this ——— day of ———, A.D. 18——.

Signed, Sealed and delivered }
in presence of. }

FORM B.—SECTION 10.

County of } I, A. B., the obligor (or covenantor) in the annexed bond
(or covenant) named (or one of the sureties in the annexed
To wit: } bond or covenant named) make oath and say as follows:

I am seized and possessed to my own use of real, or real and personal estate in Upper Canada, of the actual value of \$——, over and above all charges upon, or incumbrances affecting the same.

Sworn before me at ———, in the County of ———, this ——— day of ———, A.D. 18——.

FORM C.

Referred to in the Eleventh section of this Act.

CANADA.

County of } I (name and describe deponent), having been appointed
 To wit: } by the Governor to the office of Registrar, in and for the
 [name of registration county, &c.] do swear that I will well
 and truly and faithfully perform and execute all duties re-
 quired of me, under the laws of this Province, pertaining to
 the said office, so long as I continue therein, and that I have
 not given directly or indirectly, nor authorized any person
 to give any money, gratuity or reward whatsoever for pro-
 curing the said office for me.

Sworn before us at —, the — day of —, A.D. 18—.

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

FORM D.

Referred to in the Twenty-second Section of this Act.

This Register contains — pages exclusive of index, and is to be
 used in and for the City [Town, incorporated Village or Township,] of
 —, in the County of —, for the enregistration of memorials,
 duplicates and other instruments under the provisions of the Act re-
 specting Registrars, Registry Offices, and the Registration of Instruments
 relating to lands in Upper Canada, and is provided in pursuance of the
 requirements of the said Statute.

Dated this — day of —, A.D. 18—.

A. B., Judge of the County Court of the County of —;
 or, A. B., Warden of the County of —.

SCHEDULE E.

(Referred to in Section Twenty-eight of this Act.)

TOWNSHIP OF YARMOUTH, Lot No. —, in the 1st Concession.

1	2	3	4	5	6	7	8	9
No. of Instrument	Instrument	Its Date	Date of Registry.	Grantor.	Grantee.	Quantity of Land.	Consideration or amount of Mortgage.	
	Patent.	21st Febr'y, 1880	Crown	John Jones.....	All of said lot.		
54	E. & S.	10th Jan'y, 1885	11th Jan'y, 1885	David Brown and wife	George Smith..	N. $\frac{1}{4}$		
73	E. & S.	30th May, 1880	15th May, 1888	John Jones and wife	David Brown ..	N. $\frac{1}{4}$		
480	E. & S.	23rd June, 1840	23rd June, 1840	George Smith.....	Charles Gates..	N. $\frac{1}{4}$		
441	M.	Do. do. do.	Do. do. do.	Charles Gates and wife	George Smith..	N. $\frac{1}{4}$ con.	\$500.	
480	E. & S.	15th October, 1841	20th October, 1841	John Jones and wife	Charles Gates..	S. $\frac{1}{4}$		
1000	D. M.	23rd June, 1842	1st July, 1842	George Smith.....	Charles Gates..	N. $\frac{1}{4}$		
2660	E. & S.	26th April, 1855	1st May, 1856	Charles Gates and wife	Alexander Erie.	All		
2675	E. & S.	1st May, 1860	1st May, 1860	A. vander Erie	John McIntosh.	E. $\frac{1}{4}$ of the N. $\frac{1}{4}$ or N. E. $\frac{1}{4}$		

SCHEDULE F.

Alphabetical Index referred to in Section Twenty-nine.

No. of Memorial.	GRANTOR.	GRANTEE.	No. of Memorial.	GRANTOR. (c)	GRANTEE. (c)
	A.			A.	
1011.....	Abbott, George.....	Black, John.....	1039.....	Appleton, James.....	Beck, Peter.
1015.....	Allen, William.....	Cook, Edward.....	1039.....	Angus, Robert.....	Cooms, Joseph.
1017.....	Anderson, James.....	Smith, Thomas.....	1056.....	Anson, William.....	Whalka, Jane.
	B.			B.	
1004.....	Bernard, John.....	Green, Edward.....	1011.....	Black, John.....	Abbott, George.
1020.....	Burns, Robert.....	Cassels, George....	1070.....	Bonson, Jessie.....	Crooks, Nelson.
1039.....	Buck, Peter.....	Appleton, James....	1008.....	Burrows, Joseph.....	Hinda, Henry.
	C.			C.	
1089.....	Cooms, Joseph.....	Angus, Robert.....	1015.....	Cook, Edward.....	Allen, William.
1048.....	Coffee, Richard.....	Ingram, Benjamin..	1020.....	Cassels, George.....	Burns, Robert.
1070.....	Crook, Nelson.....	Benson, Jessie.....	1118.....	Castor, Simoon.....	Phillip, Richard.

(c) There can be little doubt that by a typographical error in the printed copy of the Act as published by authority—these words have been transposed, and that on the right hand side of the page, the name of the grantee should come first; or in other words, that the right hand columns should be the converse of those on the left hand. It is recommended that this Index be kept by placing the names of grantors in the column to the extreme right, and those of grantees in that immediately to the left of it.

FORM G.

Referred to in the Forty-sixth Section of this Act.

CANADA.

County of } I, —, Judge of the County Court of the County of
 to wit: } —, certified that I am satisfied from the proof adduced
 by (name the person producing the proof and state the
 evidences given), with the due execution of the within
 Instrument, or of the Instrument whereof the within is a
 Copy (Memorial or Duplicate, as the case may be). As
 witness my hand, at — the — day of — A. D.

18—

A. B.,

Judge of the County of —.

Signed in the presence of

A. B.,

Clerk of the County Court of the County of —.

Seal of office.

FORM H

Referred to in the Fifty-fifth Section of this Act.

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. D. — of —, some title or interest is called in
 question in the following lands (stating them).

Dated at (stating date and place).

FORM I

Referred to in the fifty-eighth Section of this Act.

To the Registrar of the County of —,
 I —, of —, do certify that — hath satisfied all money due
 on, or to grow due on (or hath satisfied the sum of \$—), mentioned
 in a certain mortgage made by —, of —, to —, which
 mortgage bears date the — day of —, A. D. 18—, and was reg-
 istered 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 registra-
 tion of each assignment 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, (or such sum of money as aforesaid, or such part of the
 lands as is herein particularly described), that is to say — is there-
 fore discharged.

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

A. B.

Two witnesses		} <i>Stating residence and occupation.</i>
	A. B.	
of —,	and	
of —,	C. D.	

For a Form of Affidavit of Execution of Discharge of Mortgage
 see page 39.

APPENDIX TO NOTES.

TABLE I (1)

LIST OF SPECIAL DEEDS AND DOCUMENTS OF WHICH THE REGISTRATION IS NECESSARY,
IN ORDER TO THEIR VALIDITY, OR TO THE PRIORITY OF THE RIGHTS OF THE PARTIES,
WITH THE TIMES WITHIN WHICH REGISTRY IS TO BE MADE, WHERE THE TIME IS
FIXED BY STATUTE.

I. DEEDS AND BONDS.

1. Deeds or conveyances of land, or of personality made to any Bishop or Incumbent under the Church Temporalities Act, must, in order to their validity, be made and executed six months before the death of the grantor and registered not later than six months after his decease. 3 Vic. cap. 74, sec. 16.
2. Deeds of real estate made to the Connexional Society of the Wesleyan Methodist Church in Canada, within twelve calendar months after execution, otherwise void. 14 & 15 Vic. cap. 142, sec. 5.
3. Deeds to Trustees for religious institutions in Upper Canada, within twelve months after execution, otherwise void. Con. State U. C., c. 69, s. 2.
4. Deeds of property belonging to the University of Toronto and Upper Canada College, in like manner and subject to the same provisions as conveyances from and to private persons. Con. State U. C., c. 62, s. 74.
5. Deeds of property for Grammar School sites, within twelve months after execution. Con. State U. C., c. 63, s. 29.
6. Deeds by which Protectors are appointed, and those by which they relinquish their office, under the Act respecting Assurance of Estates Tail, within six months after execution, otherwise void. Con. State U. C., c. 83, s. 22.
7. Every assurance under the above act is void unless registered within six months after execution, except a lease not exceeding 21 years, or not exceeding 12 months at a rack rent or 5-6ths of a rack rent.
(But see 29 Vic. cap. 24, sec. 67.) Con. State U. C., c. 83, s. 21.
8. Consent of Protector, if given by distinct deed, is void unless registered before or with the assurance. Con. State U. C., c. 83, s. 24.
9. Deeds by Real Representative under the Act respecting the Partition and Sale of Real Estate. Con. State U. C., c. 86, s. 22.
10. Sheriffs' deeds for taxes, within 18 months after sale. 29 Vic. cap. 24, sec. 54.
11. Sheriffs' deeds under process from the Courts, within six months. 29 Vic. cap. 24, sec. 54.
12. Sheriffs' deeds made before passing of this act, within one year after passing thereof. 29 Vic. cap. 24, sec. 57.
13. Mortgages, &c., made by nominee of the Crown, or any person through whom a party obtaining Letters Patent derived his claim under Heir and Devisees Act before issuing of the Letters Patent, may be registered as if patent had issued. Con. State U. C., c. 80, s. 24.

14. Deeds of assignment by Insolvent, under Insolvent Act of 1864, or notarial copy of deed executed in Lower Canada.

27 & 28 Vic. c. 17, s. 2, sub. 9.

15. Deeds, bonds, &c., creating debts to the Crown, in order to bind lands, must be recorded in the *Offices of the Clerk of the Crown, Court of Queen's Bench, Toronto*

Con. Stat. U. C., c. 5, s. 1.

II. CERTIFICATES, ORDERS, &c.

1. Certificate of the filing of a bill, or of other proceeding in Equity respecting lands.

29 Vic. cap. 24, sec. 55.

See also Con. Stat. U. C., c. 12, ss. 64, 65.

2. Certificate of filing petition, under the Act for Quietting Titles, and certificate of title.

29 Vic. c. 25, ss. 4, 28.

3. Certificate of appointment of Assignee, under the Act respecting Insolvent Debtors' Courts, within two months from date of appointment.

Con. Stat. U. C., c. 18, ss. 55, 56.

4. Order of appointment of Official Assignee, under Insolvent Act of 1864.

27 & 28 Vic. c. 17, s. 2, sub. 23.

5. Act and warrant of confirmation of Trustees on sequestered Estates, under Scottish Bankruptcy Act (Imp. Stat. 19 & 20 Vic. cap. 79), see 11 Grant. 298.

6. Order or decree for Alimony, with the same effect as the registration of a charge of a life annuity created by the defendant on his lands.

28 Vic. cap. 17, sec. 4.

7. Order for protection of married women, and order discharging the original order, shall be registered in County Registry Office, if the married woman resides in a city or town where there is a recorder or police magistrate.

Con. Stat. U. C., c. 73, s. 8.

In other cases, such orders to be registered in the Division Court Office.

Con. Stat. U. C., c. 73, s. 9.

As to evidence of such order and registration, see

Con. Stat. U. C., c. 73, s. 11.

8. Copy of report of commissioners appointed to admeasure dower.

24 Vic. cap. 40, sec. 6.

III. MARRIAGES.

1. Marriages; on or before 1st February in each year. Con. Stat. U. C., c. 72, s. 5.

IV. BY-LAWS.

1. Certified copies of By-laws passed by Municipal Corporations and other corporate bodies, under which debentures are to be issued, together with returns, to be registered within two weeks of final passing.

Con. Stat. Can., c. 84, ss. 2, 5, 6.

For fees payable to Registrars under above act, see

Con. Stat. Can., c. 84, s. 9.

2. Duplicate originals of Municipal By-laws for opening roads upon private property, passed under Con. Stat. U. C., cap. 54, ss. 331, 342.

29 Vic. cap. 24, sec. 61.

V. TOWN AND VILLAGE MAPS.

1. Maps or plans of subdivision town or village lots, within three months from date of survey, or two months after demand.

29 Vic. cap. 24, sec. 73.

2. Similar maps of surveys made before passing of above act, to be made within six months from the passing thereof; or if new survey necessary, within the time fixed by sec. 73.

29 Vic. cap. 24, sec. 74.

3. Map of new survey of Towns and Villages, where original division was made by different person and under different surveys, within six months after demand (see Con. Stats. Can., cap. 77, secs. 91-95; Con. Stats. U. C., cap. 98, ss. 39-43).

See 24 Vic. cap. 49, sec. 2.

29 Vic. cap. 24, sec. 76.

VI. RAILWAY MAPS AND DEEDS.

1. Maps of the parts of Railways and of the land taken therefor; within a reasonable time after completion of undertaking, to be filed in the registry office for the counties where such parts are respectively situate.

Con. Stats. Can., c. 66, s. 113.

2. Deeds reserving rent from railway companies to owners of land.

C. S. Can., c. 66, s. 11, sub s. 2.

VII. CONTRACTS, DECLARATIONS, &c., RELATING TO JOINT

STOCK BANKS AND COMPANIES.

1. Notarial contracts made under the Act for the encouragement of Ship Building, in registry office of the county where the ship is being built.

Con. Stats. Can., c. 42, s. 5.

Form of memorial and proof (but see 29 Vic. cap. 24, sec. 3).

Con. Stats. Can., c. 42, s. 6.

2. Articles of agreement, under the hands and seals of the parties, for the formation of a Joint Stock Bank.

Con. Stats. Can., c. 55, s. 20.

Transfer of shares.

Con. Stats. Can., c. 55, s. 24.

Registrars' fees.

Con. Stats. Can., c. 55, s. 100.

3. Statement of formation of Joint Stock Company for manufacturing and other purposes, to be acknowledged before Registrar, and filed.

Con. Stats. Can., c. 63, ss. 2, 3.

Certified copy to be evidence (see also 23 Vic. cap. 30; 24 Vic. cap. 19, ss. 1, 2; and 29 Vic. cap. 21).

Con. Stats. Can., c. 63, s. 6.

Certificate of capital stock being paid up, to be registered within thirty days after payment of last instalment.

Con. Stats. Can., c. 63, s. 25.

Supplementary declaration upon increasing capital stock.

Con. Stats. Can., c. 63, s. 42.

Certificates of payment of stock.

Con. Stats. Can., c. 63, s. 46.

Yearly report.

Con. Stats. Can., c. 63, s. 48.

4. Statement of formation of Joint Stock, Gas and Water Company, acknowledged before Mayor, and by-law granting authority.

Con. Stats. Can., c. 65, s. 2.

Certified copy to be evidence.

Con. Stats. Can., c. 65, s. 6.

Yearly report.

Con. Stats. Can., c. 65, s. 22.

Director's written statement of objection to payment of dividend, at any time before time fixed for payment.

Con. Stats. Can., c. 65, s. 24.

Above act extended by

23 Vic. cap. 32.

5. Instrument declaring formation of Joint Stock Company to facilitate the transmission of timber, with Treasurer's receipt for instalment of six per cent. and written approval of Commissioner of Public Works.

Con. Stats. Can., c. 68, s. 6.

List of new subscribers.

Con. Stats. Can., c. 68, s. 30.

Award of Arbitrators.

Con. Stats. Can., c. 68, s. 47.

6. Statement of objection by Managers, Directors, or Trustees of Assurance Companies, to payment of dividends; at any time before time fixed for payment.

Con. Stats. Can., c. 69, s. 1.

7. Declaration of formation of Library Associations and Mechanics' Institutes, acknowledged before Registrar.

Con. Stats. Can., c. 72, ss. 2, 5.

Certified copy to be evidence.

Con. Stats. Can., c. 72, s. 2.

8. Declaration of formation of Joint Stock Road Company and receipt for instalment. Con. State. U. C., c. 49, ss. 13, 14.
 Record of award of Arbitrators. Con. State. U. C., c. 49, s. 26.
 Declaration of consolidation of two or more companies. Con. State. U. C., c. 49, s. 58.
 Certificate of repayment by road company of money laid out by Municipal Council on repair of road. 23 Vic. cap. 23, sec. 3, 4.
 Resolutions to improve roads made under above act. 29 Vic. cap. 26, s. 4.
 9. Declaration of formation of Company for construction of piers, &c. Con. State. U. C., c. 50, s. 2.
 10. Declaration of formation of Company, under the Act for promotion of Agriculture in U. C., with receipt for instalment of 25 per cent. Con. State. U. C., c. 51, s. 2.
 11. Declaration of formation of Cemetery Company, together with receipt for instalment of 25 per cent. Con. State. U. C., c. 57, s. 2.
 12. Declaration of formation of Company under the Joint Stock Companies' Judicial Incorporation Act, to be acknowledged before Registrar and registered. 23 Vic. cap. 31, sec. 3, 4, 5.
 See also 24 Vic. cap. 20, sec. 1, 2.
 13. Declaration of formation of Company for purchase of roads; and receipt for instalment. 28 Vic. cap. 54, sec. 6.
 14. Declaration of the formation of a Co-operative Association, to be acknowledged before a Notary Public or Justice of the Peace. 29 Vic. cap. 22, sec. 1, 4.
 Rules and certificate of Governor General of approval, and amended rules and certificate. 29 Vic. cap. 22, sec. 6, 7.

VIII. DEEDS BY ATTORNEYS OF CORPORATE BODIES.

1. Deeds executed by Commissioners or Attorneys of the Trust and Loan Company shall be registered. 25 Vic. cap. 72, sec. 2.
 2. Instrument appointing Attorneys of the Agricultural Loan Association of Upper Canada. 27 Vic. cap. 48, sec. 6.
 3. Deeds, &c., under the corporate or official seal of the Canada Company shall be registered. 27 & 28 Vic. cap. 100, sec. 2.
 Copy of Company's charter to be registered in Registry Office for the City of Toronto, and certified copy of such registered charter to be evidence. 27 & 28 Vic. cap. 100, sec. 4.
 4. Deeds of the Bothwell, C.W., Land and Petroleum Company, (Limited), when sealed with seal of the company, to be registered without further proof. 29 Vic. cap. 91, sec. 13, 14.

TABLE I. (2)

LIST OF DOCUMENTS WHICH MAY BE REGISTERED AT THE OPTION OF THE PARTIES.

1. Certificates of Naturalization, a copy of which shall be evidence of naturalization. Con. State. Can., c. 8, sec. 5.
2. By-laws; orders, &c., of Quarter Sessions heretofore made, whereby any street, &c., has been opened on private property. 29 Vic. cap. 24, sec. 61.
3. Evidence taken by Surveyors in Upper Canada, documents and plans may be filed in registry office where the lands are situate, subject to be produced in evidence. (Registrar's fees thereon, 25c.) See also Con. State. U. C., cap. 93, sec. 51 for same provision. Con. State. Can., c. 77, s. 103.
4. Assignments of claims to land under the Act respecting the Sale and Management of Public Lands. 23 Vic. cap. 2, sec. 18.
5. Assignments of right to patent to land under Con. State. U. C., c. 80, s. 22.

NOTE.—The instruments mentioned in paragraphs 4 and 5 are to be registered, not in the county registries, but with the Commissioner of Crown Lands; and it will be observed, that though registration is optional in the first instance, yet when once made, it is necessary that it should be continued by each succeeding assignee, in order to guard against the rights which might otherwise be acquired by subsequent purchasers obtaining prior registration.

TABLE II.

TABLE OF MISCELLANEOUS STATUTORY ENACTMENTS RELATING TO REGISTRARS
AND REGISTRATION.

I. REGISTRARS, &c.

1. Registrars of Deeds shall be *ex officio* Returning Officers for those counties, unions of counties, and ridings, for which no Sheriff is *ex officio* the Returning Officer; and for refusing to perform the duty, incur a penalty of \$200.

Con. State. Can., c. 6, ss. 22, 28.
Con. State. Can., c. 1, s. 10.

And see

2. Registrars, being persons holding office at the nomination of the Crown, to which fees are attached, are ineligible as members of either House of Parliament.

Con. State. Can., cap. 3, sec. 4.

Penalty against disqualified persons sitting or voting, \$2000 per diem.

Con. State. Can., cap. 3, sec. 7.

3. Registrars are disqualified from voting at any election of a member of the Legislative Council or Assembly, and, by voting, forfeit \$2000, and their votes are void.

Con. State. Can., cap. 6, sec. 1.
C. S. U. C., c. 31, s. 7, suba. 6.

4. Registrars exempt from serving as jurors.

5. Registrars, being civil officers appointed under the Great Seal, exempt under Militia Act from attending muster and from actual service, except in case of war, &c.

27 Vic. cap. 2, sec. 4, suba. 2.

6. Registrars of Deeds for the unorganized tracts bordering on Lakes Superior and Huron appointed, and their duties, fees, &c., prescribed by

C. State. U.C., c. 128, ss. 89, 90.

II. TRANSMISSION OF LISTS OF CROWN LANDS TO REGISTRARS.

1. Commissioner of Crown Lands is to transmit yearly to County Registrars lists of public lands sold, and notice of cancellation of sales.

23 Vic. cap. 2, sec. 27.

2. Registrar of the Province is to transmit yearly to County Registrars lists of public lands patented.

23 Vic. cap. 2, sec. 27, suba. 2.

And is to furnish each Registrar a statement once in every three months containing the names of persons to whom Crown Patents have issued since the former statement.

29 Vic. cap. 24, sec. 79.

And Commissioner of Crown Lands is to furnish copies of maps and plans.

29 Vic. cap. 24, sec. 79.

TABLE OF FEES

PAYABLE TO REGISTRAR, UNDER SECTION 44 OF THE FOREGOING ACT.

1. REGISTRATION.

Each instrument required to be registered in the books of one Municipality only, not exceeding 700 words.....	\$1 00
Each such instrument exceeding 700 words, but not exceeding 1400, for the first 700 words.....	1 00
Each additional folio of 100 words, or fractional part thereof.....	0 15
Each such instrument exceeding 1400 words; for the first 700 words, \$1; for the next 700 words, \$1 05.....	2 05
Each additional folio of 100 words, or fraction thereof.....	0 10
Each instrument required to be registered in the books of two or more Municipalities, not exceeding 1400 words; for each folio of 100 words, or fractional part.....	0 15
Each such instrument exceeding 1400 words; for the first 1400....	2 10
Each additional folio of 100 words, or fractional part.....	0 10

NOTE.—The registration in each of the different registry books in the two last mentioned cases is to be considered a *distinct and separate registration*; and in all the above cases, the Registrar's fees are not to be computed by the number of words in the instruments, but by the contents of the entry in the Registrar's books, including all necessary entries and certificates.

(Subsection 1.)

Certificate of payment of mortgage money.....	0 50
Every other certificate (except that of payment of taxes) including all entries and certificates thereof.....	0 50

(Subsection 12.)

Certificate of payment of taxes.....	0 25
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(Subsection 13.)

Filing each plan of town or village lots, including all necessary entries.....	1 00
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(Subsection 6.)

Filing and registering each list of marriages under C. S. U. C., cap. 72.....	1 00
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(Subsection 8.)

2. SEARCHES.

In registry books and indexes relating to the title to a lot or part of a lot as originally patented, or as afterwards sub-divided into smaller lots, according to registered plan: for four references or under.....	0 25
Each additional reference.....	0 05
General search not to exceed.....	2 00

(Subsection 2.)

In alphabetical index of names under sec. 29, for each name in the books of any one Municipality.....	0 25
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TABLE OF FEES.

General search as to any one name throughout the county, not to exceed.....	\$1 00
(Subsection 3.)	
Exhibiting each registered instrument, including search.....	0 10
(Subsection 11.)	

3. ABSTRACTS OF TITLE.

Every abstract of registrations on a lot, as originally patented or afterwards sub-divided, not exceeding 100 words.....	0 25
The same, if exceeding 100 words, for the first 100 words.....	0 25
Each additional folio of 100 words.....	0 15
Copies of instruments, each 100 words.....	0 10
(Subsection 4.)	
Each certificate, except those made under subsecs. 1 and 4.....	0 25
(Subsection 5.)	

4. AFFIDAVITS.

Drawing each affidavit and swearing deponent.....	0 25
Administering oath, when that only required.....	0 25
(Subsection 10.)	

5. STATEMENTS, &c.

Furnishing statements and copies under secs. 23, 26 and 27, each folio of 100 words....	0 10
(Subsection 7.)	

6. ENTERING LOTS UNDER SECTION 33.

Entering for each lot the registrations made before 1st Jan., 1866, for the several entries and reference of each instrument.....	0 10
The fees chargeable in respect of the abstract index for any county, not to exceed in the whole	2000 00
(Subsection 8.)	

NOTE.—In abstracts and certificates where figures are used, each number, though composed of several figures, shall be charged for as one word.

POSTSCRIPT.

REMARKS ON THE NUMBER OF WITNESSES REQUIRED TO INSTRUMENTS—AFFIDAVITS ON DUPLICATE INSTRUMENTS—REGISTRAR'S FEES UNDER SECT. 68, SUBSECT. 5—ROBSON V. WADDELL—MILLER V. M'GILL—24 U. C. Q. B. 574, 597.—KITCHEN V. MURRAY, 18 U. C. C. P. 66.

The unavoidable delay which has taken place in the progress of this Manual through the press, affords an opportunity for noticing two or three questions which have arisen upon the Act since it came into operation. The following suggestions are with great diffidence offered in regard to these points.

1. Do instruments other than wills require more than one witness for the purpose of registration?

The inference drawn by some persons from the wording of secs. 39, 46 and 58, is that the Act contemplates two witnesses at least; but a comparison of these sections with secs. 20-23, sec. 27 and sec. 58 of the late Act, and 25 Vict. cap. 21, sec. 2, will probably incline those who consider the question to the opinion that, in the absence of any positive enactment requiring more than one witness, any inference which may be deducible from the new sections is not such a necessary inference as can be taken to import an alteration in the law upon this point. It is suggested, however, in the note on sec. 39, that as a matter of convenience and precaution, it may be well that there should be two witnesses to all instruments.

2. Is an affidavit of execution necessary on duplicate originals intended to be kept by the parties, as well as on that deposited with the Registrar?

The form of affidavit prescribed by sec. 39, provides for the witness testifying to the execution, not only of the original, but of the duplicate, if any there be. This provision would be unnecessary if an affidavit were required on the duplicate as well as on the original. But it is said that the one instrument is not a duplicate of the other, unless it contains every thing which is contained by the other.

The reply to this argument is that the words "instrument" and "affidavit" are clearly distinguished from each other throughout the Act; the term "affidavit" is not included in the term "instrument;" and the provision for a duplicate is always used in reference merely to the instrument, and not to the affidavit. The conclusion therefore seems to be that there may be a complete duplicate of the instrument, though there should not be a duplicate of the affidavit which is endorsed upon it.

It is further urged by those who insist upon duplicate affidavits, that unless there is an affidavit on each duplicate of the instrument, the Registrar cannot know certainly that one is a duplicate of the other, or identify the one as being the duplicate referred to in the affidavit. To this objection the answer is, that a duplicate affidavit will not help him to arrive at this knowledge without comparing the duplicates with each other; nor will it remove the necessity of his

comparing them before endorsing the certificate mentioned in sec. 31. There is no more difficulty now in his identifying one of two paper writings produced to him as being a duplicate of the other, than there formerly was in his identifying the deed produced as being the deed to which the memorial related, and which was mentioned in the affidavit of execution. Moreover, the wording of sec. 40, (read in connection with sec. 39) and also that of sec. 53, seem to show that one affidavit only is required, and that a Registrar will not be justified in refusing to endorse a certificate of registration upon the duplicate, merely because a duplicate affidavit is not made upon the duplicate instrument. Opinions, however, to the contrary of this have been expressed. Therefore in order to be on safe ground it may be advisable to have an affidavit on both duplicates, and this method will probably be often found convenient in practice.

3. Are Registrars, under subsec. 5 of sec. 68, entitled to charge for the certificate of registration endorsed upon a duplicate to be kept by the party?

Seeing that registration is perfect without such duplicate, the duplicate and the certificate thereon cannot be considered necessary within the terms of the 1st subsection. Moreover, under secs. 30 and 31, there may be several duplicate original parts, and it would be hardly fair that Registrars should be compelled to certify all of them without any additional fee. Therefore it would seem that a fee of 25 cents may be properly charged for the certificate endorsed upon each duplicate other than that deposited with the Registrar.

Since the main portion of this volume was put in type, a new number of Vol. 24 of the U. C. Q. B. Reports has been issued, which contains two important decisions upon the law of registration, viz., *Robson v. Waddell*, p. 574 (referred to supra page 52). In this case it was held that, under 9 Vict. ch. 34, sec. 8 (Con. Stats. U. C., ch. 89, sec. 19), a deed registered upon a memorial in which the addition of the witness to the deed was omitted, was void as against a subsequent mortgage. Such a defect as this is for the future remedied by sec. 78 of the new Act.

The other case is *Miller v. McGill*, p. 597, in which it was decided that a voluntary deed void under the 27 Eliz. c. 4, is not by priority of registration made valid as against a subsequent purchaser for value. It is also an additional authority upon the law relating to the priority gained by a subsequent purchaser for value by means of the registration of his conveyance before that of a previously executed deed.

The latest reported case bearing upon the law of registration is *Kitchen v. Murray*, 16 U. C. C. P. 69, in which, one of the deeds forming the chain of title to the property in question not having been recorded, the Court held that the title had not been deduced, and refused to disturb a verdict in favour of the plaintiff in an action for breach by the defendant of an agreement to make a good title to the land.

GENERAL INDEX.

- Abstract Index; provisions as to, 27; no extra fee for examining, 46; to be inspected, 58.
- Abstracts, Registrar to make, 22.
- Abstract, Registrar's; suggestions as to form of, 28; must be certified, 23; insufficient, 23; not sufficient evidence, when, 23; not receivable, when, 23; of lots as described in patent or on plan, 22; of half lot, 23; of parts of lots, when, 22; of one lot, how to be charged, 46; fees for, 46, 68.
- Act and Warrant in Scottish Bankruptcy may be registered, 62.
- Act—Interpretation, to apply, 58.
- Acts repealed, 18; to remain in force till 1st January, 1866, 31; saving clause, 18.
- Acts Registration, of England and Ireland, 16.
- Action against Registrar and Deputy, 22, 48.
- Action for fees against Municipal Corporations, 48.
- Actual possession, 44, 45.
- Addition of witness, 70.
- Affidavit by Registrar and Sureties, 20; form of 55.
- Affidavit of execution; of will, 30; must be filed, when, 30; form of, 31; of other instrument, 32; form of, 32; to be indorsed on instrument, and copied in full, 32; to be made as to each grantor, 32; to be deposited with Registrar, 30, 31; need not conform to technicalities, 32; before whom to be sworn—in Upper Canada, 33; Lower Canada, 33; United Kingdom, 33, 34; British Colonies, 34; India, 34; Foreign countries, 34; witness compellable to make, 34; not to be taken unless witness writes his own signature, 35; by marksman, 35; not to be taken by party to instrument, 35; taken before other witness, 35; fees on, 47, 68; whether to be made on duplicate, 69.
- Affirmation receivable, when, 34.
- Agreements for sale of lands may be registered, 29.
- Agriculture, company for promoting, declaration respecting, 64.
- Agricultural Loan Association, 64.
- Alimony, decree for, 62.
- Alterations in plans, 50.
- Alphabetical index of names, 28; fee for searching, 46, 67, 68.
- Appendix; to Act, 55; to Notes, 61.
- Articles of Agreement—*See Declaration of Formation of Companies.*
- Assignment; of claim to land, 65; of right to patent, 65; of mortgage by executor, 39; of legacy, registration of, not necessary, 41; of equitable mortgage with notice ineffectual, 44.
- Assignee of mortgage to give discharge, 38.
- Assignee, certificate of appointment of, 62.
- Attorney, power of—*See Power of Attorney.*
- Attorneys of corporate bodies, deeds by, 64.
- Attorneys; liability of, 42.
- Assurances under Act respecting Estates Tail, 61.
- Banks, joint stock, 63.
- Bill in Equity; certificate of filing may be registered, 30; filing of, not notice until certificate registered, 37; registration of certificate not necessary in mortgage cases, 37.

- Bills of sale, 28.
 Bishop, conveyance to, 61.
 Books, Registry; application to Treasurer for, 24; Registrar may provide, when, 24; to be paid for out of county or city funds, 24; to be deemed property of the Queen, 24; to be of uniform size, 24; pages of, to be numbered, 37; separate for each township, &c., 24; to be certified by C. C. judge or warden, 24; to be exhibited, 23; formerly not exhibited, 23; to be transferred, when, 25, 26; penalty for refusal to transfer, 26; when not to be delivered, 25, 26; order to restore possession of refused, when, 26; instruments to be copied in full into, 28, 32; lost or destroyed, 51; unfit for use, provision as to, 27; original to be preserved, 27; to be inspected, 53; production of evidence of, registration, 29; for unincorporated villages, 51.
 Bonds; for the sale of lands may be registered, 29; to the Crown, where registered, 62.
 Bothwell Petroleum Company, 64.
 British Colony, affidavit made in, 84.
 Burial ground sites, need not be registered, 41.
 Building lots sold according to plan, 49.
 By-laws, municipal; for opening streets, &c., on private property, must be registered, 40, 62; power to pass how given, 40; mode of registration, 40.
 By-laws, municipal; as to debentures, 62.
 Canada Company, 64.
Causa omissa, 25.
 Certificates; of filing and dismissal of bill in equity, 30; of decrees, or of proceedings affecting lands, 30, 62; of filing petition for quieting title, 62; of title, 62; of satisfaction of mortgages—(See *Discharge of Mortgage*); of payment of taxes, 30; of payment of taxes, fee on, 47, 67; of registration to be endorsed, 28, fee on, 45, 46, 47, 67; of registration to be *prima facie* evidence, 28; of registration of power of attorney, 35, 36; respecting registry books, 24; of proof before county judge to be indorsed on instrument, 35; of fees due to Registrar, 48; of appointment of assignee, 62; insufficient, 23; not evidence of title, 23; of identity need not be endorsed on deed, 35; of naturalization, 65.
 Certified copies of instruments to be furnished, 23; received in evidence, 28.
 Certified copies of power of attorney received in evidence, 36; may be registered, 36.
 Certified copies may be used in suits after notice, 36; exception, 36; costs, 36.
 Cemetery companies, deeds by, 41.
 Chamberlain—See *Treasurer*.
 Chattels, assignment of, 28.
 Church Temporalities Act, deeds under, 61.
 Cities with separate Registries, 18.
 Clerk, Registrar's, liability of, 21.
 Clerk of the Peace, fee to, for search and copy of covenant, &c., 20, 21.
 Cloud on title, 41.
 Commissioner of Crown Lands to furnish plans, 52, 66.
 Commissioners' report on Dower, 62.
 Companies, joint stock—See *respective titles of*.
 Computation of fees, mode of, 45, 46.
 Connexional W. M. Society, deeds to, 61.
 Consideration, valuable, 40, 41.
 Contracts, shipbuilding, 68.
 Conveyance general, where recorded, 24.
 Conveyances from corporate bodies, 35, 64.
 Co-operative associations, 64.
 Copy of entry in registry book, evidence, 29.
 Copy; of will, 30; of probate or letters of administration with will annexed, 30.
 Copies of memorials, 25.
 Copies, certified—(see *Certified copies*); notarial—(see *Notarial copies*).
 Corporate bodies, deeds from by attorneys, 64.
 Corporation; seal of, sufficient evidence, 35; municipal, recovery of fees from, 48.

- Coets; of proving original instrument, 86; of application to amend plan, 50.
 Court, seal of, sufficient evidence, 85.
 "County," what included in word, 17.
 County Council; to provide offices and vaults, 19; mandamus against, 19; liability of, for books, 24.
 County Judge; to certify registry books, 24; proof made before, when, 35.
 County Town; registry office to be kept in, 18.
 Covenant, registrar's; in form A, 20; transmitted and filed, 20; may be examined, 20; new may be required, 20; copy of, may be obtained, 20.
 Covenant for renewal of lease, 44.
 Crown Patents—(see *Patent, Crown*); Lands Commissioner—(see *Commissioner of Crown Lands*).
 Crown; nominee of, mortgages by, 40, 61; bonds, 62.

 Death of witness, mode of proof on, 85.
 Debentures, municipal, 62.
 Declaration of formation of companies, 63.
 Declarations receivable in certain cases, 84.
 Decree; for alimony may be registered, 62; of foreclosure may be registered, 80.
 Deeds executed in England valid in Canada without stamps, 34; mortgage, by deposit of, 44; Sheriff's—(see *Sheriff's Deeds*).
 Deed without consideration, removal of, 41.
 Defects, certain not to avoid registration, when, 61.
 Delivery of books, &c.; on separation, 25; on removal or resignation of Registrar, 26.
 Deputy-Registrars; appointment of, 21; duties and powers of, 21; oath of office to be taken by, 21; not to act as agents or advise on titles, 21; liability of, 21, 22; removal of, 21; certificate by, 23.
 Description; general, 24; in discharge of part of mortgage—(see *Discharge of part of mortgage*); in memorial, 42; by number of lot, 49, 50; effect of inaccurate particular, upon general, 49, 50; general, of lands in will, 42; course to be pursued in case of, 42.
 Descriptions to be furnished by Provincial Registrar, 52.
 Devise—(see *Will*).
 Devise general, where registered, 24.
 Directors' statement of objections, 63.
 Discharge of mortgage; may be registered, 30; mode of registering, 38; new form of under act, 59; to be given by assignee when, 38; to be executed before two witnesses, 38; proved by affidavit, 38; form of affidavit of execution of, 39; to operate as a release and re-conveyance, 38, 39; to be valid at whatever time given, 40; evidence of, 39; fee on, 47, 67; by executors, 39.
 Discharge of part of mortgage, how made, registered, &c., 39; must contain precise description of land, 39; must contain precise statement of amount, 39.
 Division Court, penalty recoverable in, 49.
 Dower, copy of report as to, 62.
 Duplicate original; may be deposited with Registrar, 30; affidavit on, 69; certificate of registration endorsed on, 28; of by-law, to be made for registration, 40.
 Durham County, Ridings of, 18.

 England, Registry Acts in, 16.
 Entering lots, fees on, 47, 68; proviso respecting fees, 47.
 Equitable estates and rights distinguished, 43; equitable interests, effect of registry laws on, 42, 44; equitable liens, invalid, 44; equitable mortgage, assignment of, with notice, 43; equitable mortgages, change in the law respecting, 44.
 Erroneous description, 49, 60.
 Errors, technical, 61.
 Estates tail, deeds under act respecting, 61.
 Evidence; certified copies to be, 23, 36; exception, 36; copy of book to be, 27; certificate of registration to be, 28; Registrar's abstract not sufficient, 23; Deputy Registrar's certificate not admissible, 23; memorial of lost deed, how far, 23;

Evidence; memorial when not, 23, 24; registry book is, 29; examined copy is, 29; certificate, not conclusive, 28; seal of corporation is, 35; of re-conveyance, what is, 39; inspector's certificate of fees, &c., to be, 48; taken by surveyors, 65.

Execution; separate proof of, 32; affidavits as to, 32; of will, affidavit as to, 30, 31; by grantees, 33.

Executors; discharge of mortgage by, 39; assignee of, 39.

Exemplifications, 23.

Exhibition buildings—*See Agriculture.*

False swearing, 52.

Fees, Registrar's, 45, 46, 47, 57, 68; mode of calculating, 45, 46; schedule of to be posted up, 48; table of, 67; account of, 48; return of, 48; inspector's certificate of, 48; when payable, 48; recovery of, from municipal corporation, 48; for new indexes, how settled, 53; for certificate on duplicate, 70.

Felony, certain offences to be, 52.

Field notes, surveyors, 65.

Figures, how charged, 47, 68.

Filing of bill—*See Bill in Equity.*

Fines against registrars, 26, 66.

Foreclosure or sale, certificate of *lis pendens* not required, in cases of, 37.

Foreign country, affidavit made in, 34.

Forgery, 52.

FORMS, abstract index, 57; affidavit by registrar and sureties, 55; affidavit of execution of instruments, 32; affidavit of execution of will, 31; affidavit of execution of mortgage, 39; alphabetical index, 58; certificate of registry book, 56; certificate of proof before County Judge, 59; certificate of *lis pendens*, 59; covenant by registrar and sureties, 55; discharge of mortgage, 59; Registrar's oath, 56.

Fraud; registry prevented by, 41; notice of, 43.

Full length; instruments to be registered at, 28; instruments and affidavits to be copied at, 32; discharge of mortgage at, 38; registration at, when, 31.

Gas and Water Companies, 63.

General description, instruments containing, where to be registered, 24.

General register book, 24; contents of, 24; statement from, on separation, 25.

Governor; to appoint registrars, 19; to appoint inspector, 53.

Governor in council; to establish registry offices, 18; may remove same, 19; to approve of plan of offices, 19; to approve of registrar's recognizance, 20.

Grammar school sites, deeds of, 61.

Grants from Crown—*See Patent (Crown.)*

Grantees, memorial signed by, 23.

Grantor, memorial signed by, 24.

Great Britain, affidavits made in, 33.

Growing timber, 41.

Half lot, abstract of, 23.

Handwriting, 27; of witness, 35.

Heir-at-law, conveyance by, 42.

Heir and Devisee Act, assignment of right under, 65.

Holidays, 22; no instruments to be registered on, 22.

Hours of office, 22.

Identity, certificate of, 35.

Incombrance, notice of, 43.

Indexes; of registrations before January 1st, 1866, to be completed, 29; to be kept according to plan, 49; to be inspected, 53.

Index; abstract, 27; alphabetical, of names, 23.

India, affidavit made in, 34.

Infancy, effect of, as to registration, 42.

Ink, quality of, 27.

- Insolvent Act; deed under, 62; appointment of assignee under, 62.
 Inspector; may require new recognizances, &c., from Registrar, 20; Registrar's seal to be approved by, 28; may order copy of obliterated book, 27; allowance to, 48; certificate of, as to Registrar's fees and services, 48; appointment and duties of, at large, 58.
 "Instrument" what word includes, 17; must conform to Plan, 49.
 Instruments; to be exhibited by Registrar, 22; not to be registered on holidays, 22; in two or more parts, 28; what may be registered, 29; to be numbered, 37; to be registered at full length, 28; to be copied in full, 32; including different lots, provision as to, 29; separate execution of, proof of, 32; registration of, when executed before 1st January, 1866, 31; unregistered, when void, 40; to be examined by inspector, 53; fees payable on several entries of, 45, 46.
 Interpretation clause, 17.
 Ireland; affidavit made in, 33, Registry Acts of, 16.
 Joint Stock Banks, 63.
 Joint Stock Companies—(*see respective titles*); judicial incorporation, 64; declarations of formation of, 63, 64.
 Judge of County Court—*See County Judge*.
 Justification; affidavit of, 20; form of, 55.
 Lanark County, ridings of, 19.
 Lands, public, assignment of claim to, 65.
 "Land," what included in word, 17.
 Leases; registration of, 44; for more than seven years, must be registered, 44; former rule as to, 44; covenant for renewal of, effect of, 44; for less than seven years, registration of, 44, 45.
 Legacy, assignment of, 41.
 Legal estate; re-conveyance of, 38, 39; transfer of, 39.
 Letters of administration with will annexed, 30.
 Liability; of Registrar on covenant, 21, 22, 48; for unskillfulness in conveying 21; similar of deputy or clerk, 21; of sureties, 21; of attorneys, 42.
 Library associations, 68.
 Liens preserved without registration, what, 41.
Lis pendens; certificate of, may be registered, 30, 62; until registered, filing of bill is not notice, 37; not required in cases of foreclosure or sale, 37.
 List of marriages to be registered, 30, 62; fee on, 47, 67.
 List of instruments, &c., requiring registration, 61-64; of which registration optional, 65.
 Lists, certain to be transmitted to Registrar, 52, 66.
 Lost books or papers, provision in case of, 51.
 Lost deed; evidence of, 23.
 Lots several, instrument containing, 29; fees on registration of, 45.
 Lower Canada; notarial copies from (*see Notarial copies*); affidavit made in, 33.
 Mailing fee, 48.
 Mandamus; against County Council, 19; against Registrar, when granted, 23, 48; against Registrar, when refused, 26, 48; against witness, 34.
 Manufacturing Companies, 63.
 Maps—*See Plans*.
 Marksman, affidavit cannot be taken from, 35.
 Marriages; list of, how registered, 30; fees on registration of, 47, 67.
 Married woman, protection order of, 62.
 Mechanics' Institutes, 68.
 Memorials; searches respecting, 22; to be delivered by one Registrar to another, when, 25, 26; copies of to be delivered, 25; received from another county to be copied, 26; evidence of lost deeds, when, 23; executed by grantee, 23; executed by grantor, 24; to be deposited with Registrar, when, 31; executed by grantee, witness to, 33; definite description in, 42.

- Memorandum of deposit of deeds, 44.
 Memorial, defective not notice, 43.
 Metes and bounds, 49, 50.
 Middlesex (England) Registry Act of, 16, 43.
 Mode of Registration—*See Registration, mode of.*
 Mortgage; discharge of—(*see Discharge of Mortgage*); registered assignment of, by whom discharged, 38; discharge of part of—(*see Discharge*); certificate of discharge endorsed on, 39; in suits for foreclosure of, *lis pendens* need not be registered, 37; equitable, invalid against registered instrument, 44; made before patent issued, 40; to creditors, imports valuable, consideration, 41; equitable, with notice, 43.
 Mortmain, registration sufficient enrolment within statutes of, 41.
 Municipal Council, power of to pass certain bye-laws, 40, 62.
 Municipal debentures, 62.
 Municipality to provide and record plans, 50, 51.
 Mutual Insurance Companies, lien of, 41.
- Naturalization, certificate of, 65.
 Neglect of attorneys to register, 42.
 New county to have separate registry, 18.
 Non-registration, effect of, 40.
 Northumberland County, ridings of, 19.
 Notarial copies, of instruments executed in Lower Canada receivable, 36; evidence of originals, 36; may be registered, 36; of deed in insolvency, 62.
 Notes, surveyor's, 65.
 Notice of intention to use certified copies, 36.
 Notice; of proceedings in equity, what constitutes, 37; registration to constitute, 43; formerly not, 43; in certain cases not, 43; actual, necessary to defeat prior registry, 43; constructive, 43; position of receipt on deed held to be, when, 43; of unregistered conveyance after marriage, 43; of incumbrance, 43; what constitutes binding, 44.
 Number of registration; to be endorsed, 37; higher indicates later registration, 37.
- Oath, Registrar's, 21; how taken, 21; to be transmitted to Provincial Secretary, 21; Form of, 56; Deputy-Registrar's, 21.
 Objections, directors' statement of, 68.
 Obliterated book; to be copied, 27; original of, to be preserved, 27.
 Occupation, actual, 44, 45.
 Office hours, 22.
 Office copy of will from L. C., 31.
 Official assignee; order appointing, 62.
 Omitting to register, effect of, 40.
 Operation of Registry Law, remarks on, 41.
 Order; of Judge to produce papers, 28; for alimony, 62; for protection, 62.
 Orders; of Quarter Sessions, 40, 65; in Insolvency, 62.
 Original instrument; to be exhibited, 22, 23; fee on, 47, 68; to be deposited with Registrar, when, 28, 30; when certified, to be evidence of what, 28.
 Original parts or duplicates; certificate of registration may be endorsed on, 28; one of, to be deposited with Registrar, 28, 30.
 Original will, production of to Registrar, 30.
- Parcels, several, deeds containing, 29; registrar's fees on, 45.
 Parol contract, part performance of, 43.
 Party to instrument not to take affidavit, 35.
 Patent (Crown); may be registered, 29; how registered, 30; registry act does not apply until grant of, 40; mortgages made before excepted, when, 40; statements of, 52; assignment of right to, 65.
 Payment of fees under protest, 48.
 Penalty; for not delivering books, 26; for not filing plan, 49, 51.

- Perjury, 52.
 Personality; deed of, under "Church Temporalities Act," 61.
 Petition under act for quieting titles, certificate of, 62.
 Petroleum Company, Bothwell, 64.
 Piers, erection of, company, 64.
 Plans; abstract to be made according to, 22; to be transferred, 25, 26; fees on filing, 47, 67; registration of, 49, 62, 68; scale of, 49; index to be kept according to, 49; instruments must conform to, 49; contents of, 49; requisites of, 49; building lots sold according to, 49; times for filing, 49, 50, 61, 62, 63; penalty for not filing, 49, 61; of surveys made before the act, 50; new plan to be made, 50; expenses of, 50; to be made by a P. L. S., 50; not binding until sale made according to, 50; may be amended, 50; of towns and villages to be registered, 50, 61; how certified, 61; expense of, 61; Commissioner of Crown lands to furnish copies of, 62; to be examined by inspector, 58.
 Possession, actual; required to render registration of leases unnecessary, 44; what constitutes, 46.
 Power general, where recorded, 24.
 Power of attorney; relating to land may be registered, 29; certified copy to be given, 36; certificate respecting, 36; certified copy of, may be registered, 36; certified copy of, to be evidence, 36.
 Priority; gained by registration, 43; valuable consideration necessary to give, 41; of mortgages to creditors, 41; lost by purchasers at sheriff's sales when, 38, 61; re-registered instrument to have, 61, not gained by registration of fraudulent title, 41; registration of sheriff's deed gives, 41.
 Private property, by-laws for opening streets on—*See By-laws, Municipal.*
 Probate of Will—*See Will, how registered.*
 Proceedings in Equity, certificate of to be registered, 37.
 Production of papers by Registrar, 23.
 Proof of instruments; executed before 1st January, 1866, 31; may be made by affirmation in certain cases, 34; may be made before County Judge, when, 35; for re-registration, 61.
 Protection of married women, order for, 62.
 Protectors; deeds respecting, 61; consent of, 61.
 Protest, payment of fees, under, 48.
 Provincial Land Surveyor, plans to be made by, 50.
 Provincial Registrar; to furnish statements of lands, 52; to furnish list of names, 52.
 Public Act, act to be, 53.
 Public Officers, Registrars subject to laws respecting, 20.
 Purchasers for value; instruments fraudulent and void against, when, 40; trustees for creditors not, 41; not bound by part performance of parcel contract, 43.
 Quarter Sessions; proof before, new mode substituted for, 35; orders and resolutions of, 40, 65.
 Quieting Titles Act, certificates under, 62.
 Quo warrant information refused, 26.
 Railway maps and deeds, 68.
 Real representative, deeds by, 61.
 Receipt; on deed, 43; for redemption money, 30.
 Recognizance, Registrar's; form of, 55; where kept, 20; new may be required, 20; old remains in force, 20; copies of, may be obtained, 20.
 Registrable instruments, 29, 61-65.
 Registrar; offices to be kept by, 19; should not provide office and charge rent, 19; how appointed, 19; in office at passing of act to continue, 20; a public officer, 20; security to be given by, 20; new recognizances may be required from, 20; liability of, on covenant, 21, 22, 48; liability of, for unskillfulness in conveyancing, 21; oath of office, 21, form of, 56; may appoint Deputy, 21; shall not act as agent or advise on titles, 21; duties of, 22; residence of, 22; to keep his office, where, 22; may be removed for misconduct, 22; action against, 21, 22;

- Registrar ; not entitled to notice of action, when, 20 ; to make searches and abstracts, 22 ; to exhibit original instruments and books of office, 23 ; to certify copies, &c., 23 ; to have a seal of office, 23 ; to furnish exemplifications, &c., 23 ; not bound to produce papers except on Judge's order, 23 ; to keep a separate book for each township, 24 ; to keep a General Register Book, 24 ; may provide books, and recover costs of same, when, 24 ; to deliver books, &c., when, 25, 26 ; refusing to make such transfer, penalty on, 26 ; duty of on receiving books, 25 ; on receiving memorials, &c., 26 ; proceedings against for refusal, 26 ; to copy memorials received from other counties, 26 ; to make affidavit as to copy of obliterated book, 27 ; to make abstract index, 27 ; to keep alphabetical list of names, 28 ; to indorse certificate of Registration, 28 ; to complete indexes made before January 1st, 1866, 29 ; to record instrument proved before County Judge, 35 ; to record instruments in order, 37 ; to indorse time, number, and book, 37 ; to sign entry of registration, 37 ; fees of, 45, 46, 47, 67, 68 ; to post up table of fees, 48 ; to keep account of fees, 48 ; to keep index referring to plan, 49 ; to be Returning Officer, 66 ; cannot be a member of Legislature, 66 ; disqualified from voting, 66 ; exempt from service on jury, and, except in war, in militia, 66 ; in unorganized tracts, 66 ; miscellaneous statutes relating to, 66.
- Registrar, Provincial—*See Provincial Registrar.*
- Registration ; mode of, 30, 37 ; effect of, or omitting to register, 40 ; of grants from Crown, 30 ; of other instruments, 30 ; of marriage lists, 30 ; of wills, 30 ; of powers of attorney, 35 ; of notarial copies, 36 ; of filing of bill, 37 ; of Sheriff's deeds, 38, 41 ; of discharge of mortgage, 38 ; of municipal road by-laws, 40 ; of leases, 44 ; of plans, 49, 50, 51 ; to be made by memorial until 1st January, 1866, 31 ; of instruments executed before 1st January, 1866, mode of, 31 ; time of, to be endorsed and entered, 37 ; certificate of, to be evidence, 37 ; entry of, to be signed by Registrar, 37 ; number of, 37 ; not invalidated by subsequent execution by grantee, 38 ; of memorial signed by grantee, 38 ; before patent nugatory, 40 ; exception, 40 ; prior, prevented by fraud, 41 ; of deed by one having no title, null, 41 ; sufficient enrolment within Statutes of Mortmain, 41 ; unnecessary, in certain cases, 41 ; notwithstanding infancy, 42 ; of instruments containing general description, 24, 42 ; of wills, times for, 42 ; to constitute notice, 43 ; formerly otherwise, 43 ; priority of, to prevail, 43 ; by defective memorial, not notice, 43 ; of instrument not requiring registration, not notice, 43 ; to prevail over equitable liens, 44 ; fees to be paid before, 48 ; made before act, not void for certain defects, 51 ; in books for unincorporated villages, confirmed, 51 ; want of, valid objection to title, 70.
- Registry Acts, English and Irish, 16.
- Registry Act ; does not apply until patent issued, 40 ; exception, 40 ; applies to growing timber, 41.
- Registry Books—*See Books Registry.*
- Registry Laws, remarks on operation of, 41 ; effect of, on equitable interests, 42.
- Registry Office in every county, &c., 18 ; to be established, when, 18 ; may be removed, when and how, 19 ; to be provided, furnished, &c., by County Council, 19 ; expense of erecting, 19 ; to be kept by Registrar, 19 ; plan and site of, to be approved by Governor, 19 ; to be inspected, 58.
- Relation of deed to time of registry, 42.
- Release ; of mortgage—(*see Discharge of Mortgage*) ; part of mortgage—(*see Discharge of part of Mortgage.*)
- Religious bodies, deeds to ; trustees for, 61.
- Remedy ; proper against Registrars for overcharge, 48 ; summary against Registrar, 26, 48.
- Remedial provision, 52.
- Removal of Registrars, 22.
- Renewal of lease, covenant for, 44.
- Repeal of Acts, 18 ; (but see p. 31) ; saving clause, as to things done, 18.
- Report, copy of, on dower, 62.
- Requirements of Registry Laws, remarks upon, 33.
- Re-registration in certain cases, 51.
- Residence of Registrars, 22.
- Road companies, 64 ; consolidation of, 64.

- Roads purchase companies, 64.
 Sale—*See Foreclosure*; under process of court, 38; for taxes, 23.
 Satisfaction of mortgage—*See Discharge of Mortgage*.
 Scale of plans, 49.
 School sites—*See Grammar School*.
 Scottish Bankruptcy Act, act and warrant under, 62.
 Seal; of office, Registrar's, 23, 36; of city, borough, &c., 33, 34; of court or corporation to be evidence, 25; of county, 30; official or notarial, 34.
 Security, what from Registrars, 20.
 Searches; Registrar to make, 22; fees for 46, 57; search, general, 46, 67.
 Separate execution of instrument, proof of, 32.
 Separated counties to have separate Registrars, 18.
 Separation or detachment of one place from another, provision for transfer of books, &c., 25.
 Settlement, marriage, 43.
 Sheriff may seize Registry books, &c. when, 26.
 Sheriff's deeds; may be registered, 29; for taxes, 38, 61; under process of law, 38, 61; for lands sold before passing of Act, 38, 61; may be defeated, how, 38; registered, how, 38; registration of, times for, 38; priority of, 41.
 Ship building contracts, 63.
 Stamp English, on deeds unnecessary, 34.
 Statements of titles, wills and instruments, to be furnished, 25; duty of Registrar upon receipt of, 26.
 Statements; fees for, 47, 68; of objections by directors, &c., 63; as to joint stock companies—(*see Declaration of formation of Companies*).
 Statutes repealed, 18, see p. 31.
 Substitution of power of attorney—*See Power of Attorney*.
 Summary remedy; provision for, 26; refused, 26, 48.
 Sureties; two or more, 20; liability of, and action against, 21, 22, 48; sufficiency of, inspector to ascertain, 53.
 Surveys—(*see Plans*); made prior to Act, 49, 50; new, when and how made, 50.
 Surveyor; plan to be made by, 50; evidence of, 55.
 Table—(*see List of Instruments*); of fees, 67.
 Tacking; not to prevail against provisions of Registry Act, 41; in cases not within the act, continues, 44.
 Taxes; certificates respecting—(*see certificate of payment of taxes*); sheriff's deed for—(*see sheriff's deeds*); a lien without registration, 41; attorney not bound to search for, 42.
 Testator, affidavit of execution by, 31.
 Timber; Transmission Companies, 63; growing, 41.
 Time of registration; to be endorsed on instrument, 37; to be entered in margin of books, 37; for registration, (*see instruments under respective titles, and pp. 61-64*)
 Title of act, short, 53.
 Title; Registrar's certificate or abstract of, 22, 23; cloud on, will be removed, 41; bad or fraudulent, not cured by registration, 41; good not acquired by transfer from party with notice, 43; want of registration is valid objection to, 70.
 Towns, plan of—*See Plans*.
 Tracts unorganised, Registrars of, 66.
 Transmission; of lists of Crown grants, 52, 66; of plans, 52, 66; of timber, companies for, 63.
 "Treasurer," meaning of, 17.
 Treasurer; to provide proper books for each township, &c., 24; to provide new books when required, 24; application to, for books, 24; default of, to provide books, 24; receipt of, for taxes, 30.
 Trustees for creditors, not purchasers for value, 41.
 Trust and Loan Company, deeds from, 64.
 University of Toronto, deed from, 61.
 Unincorporated villages, &c., registration in books of, confirmed, 51; provide respecting, 52.

INDEX

- Unorganized tracts, registrars in, 66.
Unregistered conveyance; notice of, 43; incumbrance, notice of, 43; instrument, 40, 42; title, 40, 41.
Upper Canada College, deeds from, 61.
Upper Canada, affidavit made in, 33.
Vacancies in office of Registrar and Deputy to be reported, 53.
Valuable consideration; necessity for, 40, 41; certain trustees not purchasers for, 41; mortgage to creditors imports, 41.
Villages; plan of, (*see Plans*); unincorporated, registrations in, confirmed, 51.
Warden of County to certify books, 21.
Water and gas companies, 63.
Wesleyan Society, deed to, 61.
Wharves Building Companies, 64.
"Will" what included in word, 17.
Will, how registered, 30.
Will; affidavit of execution of, 30; form of affidavit, 31; attestation of, 31; registration of, without particular description of land, 42; where to be registered, 42; office copy of, from Lower Canada, 31; should be registered notwithstanding infancy, 42; to be registered within twelve months after testator's death, 42; in case of impediment, registration of, may be deferred, 42.
Witness; should know parties, or some of them, 32; to memorial signed by grantee, 33; mandamus will lie against, 34; expenses of, to be paid, 34; addition of, 70.
Witnesses: two, 32; different, to different grantors, affidavit from each, 32; to will, 31; two, necessary to discharge of mortgage, 38; compellable to make affidavit, 34; must sign in their own handwriting, 35; when dead or absent from Canada, mode of proof, 35.
Writing should be legible, 27.
York County, ridings of, 19.
Yorkshire (England), Registry Acts of, 16.

