

SUPPLEMENTARY ORDER PAPER.

HOUSE OF REPRESENTATIVES.

Thursday, the 10th day of September, 1885.

LAND TRANSFER BILL.

Reasons of the Legislative Council for disagreeing to certain of the Amendments made by the House of Representatives.

Clause 170 :

The object of the addition to this clause (see Appendix A, No. 1) may be better attained by the alterations in that and the preceding clause, shown in the copy of the Bill herewith (see Appendix A, No. 2).

Clause 191 (see Appendix B, No. 1) :

It is proposed to alter this clause, as shown in the copy of the Bill herewith (see Appendix B, No. 2). The object is, while exonerating everybody else from liability for error, to preserve the liability of the person who has the land or money, though it did not belong to him.

Clause 194 (as amalgamated with the original clause 195) :

Verbal amendments are suggested, as shown on pages 41 and 42 of the copy of the Bill herewith (see Appendix C, No. 1, and C, No. 2).

Clause 219 :

This alteration (see Appendix D) is not required, as "The Interpretation Act, 1878," provides for affirmations in lieu of oaths.

Clause 229 :

The addition made (see Appendix E, No. 1) is not required, as clause 39 (see Appendix E, No. 3), with the interpretation given in clause 2 of the word "instrument," appears amply sufficient to effect the object in view; and it is proposed to strike out the following words at the end of clause 229: "at any place beyond one mile from the Land Registry Office of the district," as the ample provision for making copies of evidence renders it unnecessary to take the originals away from the office (see Appendix E, No. 2).

New clause, 218A (see Appendix F) :

The Council also objects to the insertion of this clause, because the penalty appears too heavy for what may be only an error of inadvertency.

FRED. WHITAKER.
E. C. J. STEVENS.
J. C. RICHMOND.

APPENDIX A.

No. 1.

Clause 170 as amended by the House of Representatives :—

170. A married woman entitled for her separate use, without restraint on anticipation, shall, for the purpose of any dealing by her under this Act, be deemed a *feme sole*, and no acknowledgment by any married woman shall in any case be necessary.

No. 2.

Clauses 169 and 170 as now proposed to be amended by the Legislative Council :—

169. Every instrument executed for any of the purposes aforesaid by any aboriginal native of the colony, ~~or by any married woman,~~ shall be executed ~~or acknowledged, as the case may be,~~ according to any law for the time being in force regulating the dealing by such persons with land in the colony.

170. A married woman ~~entitled for her separate use, without restraint on anticipation,~~ shall, for the purpose of any dealing by her under this Act, be deemed a *feme sole*.

APPENDIX B.

No. 1.

Clause 191 as it passed the House of Representatives (the amendments made in Committee being incorporated) :—

191. Whenever any sum of money shall be lawfully paid out of the Assurance Fund as compensation for any loss occasioned by fraud or by fraudulent omission, misdescription, or misrepresentation on the part of any proprietor in bringing land under this Act, or under the Acts hereby repealed, or by any such fraud, fraudulent omission, misdescription, or misrepresentation as aforesaid on the part of any person, causing or procuring himself to be registered as a proprietor under the said Acts, or either of them, or on the part of any person acting as attorney or agent for any such proprietor or other person as aforesaid, the amount of such compensation, together with all costs incurred in testing or defending any claim or action in relation thereto, shall be deemed a debt due to the Crown from the person legally responsible for such fraud, fraudulent omission, misdescription, or misrepresentation, as the case may be, and may be recovered from him, or from his personal representatives in case of his decease, by action at law, in the name of the Registrar-General, or in case of bankruptcy may be proved as a debt due from his estate :

Provided always that such proprietor, attorney, or agent, shall receive notice of any such claim, and shall be entitled to defend the same.

A certificate signed by the Colonial Treasurer, verifying the fact of such payment out of the Assurance Fund, shall be *prima facie* proof that such payment was lawfully made as aforesaid.

All moneys recovered in any action as aforesaid shall be paid to the credit of the Assurance Fund.

All cost incurred by the Registrar-General with the sanction of the Attorney-General in prosecuting, testing, or defending any claim or action under this Act, shall be paid out of the Assurance Fund.

No. 2.

Clause 191 in the form now proposed by the Legislative Council (being the same clause in the Bill as introduced into the House amended) :—

191. Whenever any sum of money has been lawfully paid out of the Assurance Fund as compensation for any loss occasioned by fraud or error, or by fraudulent or negligent omission, misdescription, or misrepresentation of any kind on the part of any proprietor in bringing land under this Act, or under the Acts hereby repealed, or by ~~any such fraud, error, omission, misdescription, or misrepresentation as aforesaid~~ on the part of any person, causing or procuring himself to be registered as a proprietor under the said Acts, or either of them, ~~or on the part of any person acting, or professing to act, as attorney or agent for any such~~

~~proprietor or other person as aforesaid, by virtue of any dealing with or transmission from a registered proprietor, the amount of such compensation, together with all costs incurred in testing or defending any claim or action in relation thereto, shall be deemed a debt due to the Crown from the person legally responsible for such fraud, error, omission, misdescription, or misrepresentation, as the case may be, and may be recovered from him, or from his personal representatives in case of his bankruptcy or decease, by action at law, in the name of the Registrar-General, or in case of bankruptcy may be proved as a debt due from his estate.~~

A certificate signed by the Colonial Treasurer, verifying the fact of such payment out of the Assurance Fund, shall be *prima facie* proof that such payment was made as aforesaid.

All moneys recovered in any action as aforesaid shall be paid to the credit of the Assurance Fund.

All costs incurred by the Registrar-General with the sanction of the Attorney-General in prosecuting, testing, or defending any claim or action under this Act, shall be paid out of the Assurance Fund.

APPENDIX C.

No. 1.

Clauses 194 and 195 as amended by the House of Representatives:—

194. The Assurance Fund shall not, under any circumstances, be liable for compensation—

For any loss, damage, or deprivation occasioned by the breach by a registered proprietor of any trust, nor in any case in which the same land may have been included in two or more grants from the Crown; *nor*

~~195. No claim on the Assurance Fund shall arise~~ *For any loss arising* by reason of the improper use of the seal of any corporation or company, or by reason of the registration of any instrument executed by any person under any legal disability, unless the fact of such disability was disclosed on the instrument by virtue of which such person was registered as proprietor, or by reason of the improper exercise of any power of sale or re-entry, notwithstanding that effect may have been given to the same by entry on the Register.

No. 2.

Clauses 194 and 195 as now proposed to be amended by the Legislative Council:—

194. The Assurance Fund shall not, under any circumstances, be liable for compensation—

For any loss, damage, or deprivation occasioned by the breach by a registered proprietor of any trust, ~~nor~~ *or* in any case in which the same land may have been included in two or more grants from the Crown; *or*

~~195. No claim on the Assurance Fund shall arise~~ *For any loss* by reason of the improper use of the seal of any corporation or company, or by reason of the registration of any instrument executed by any person under any legal disability, unless the fact of such disability was disclosed on the instrument by virtue of which such person was registered as proprietor, or by reason of the improper exercise of any power of sale or re-entry, notwithstanding that effect may have been given to the same by entry on the Register.

APPENDIX D.

Amendment of House of Representatives in clause 219:—

Clause 219, line 18. After "oath," insert "or affirmation;" also in line 21, after "swear," insert "[affirm]."

APPENDIX E.

No. 1.

Amendment of House of Representatives in clause 229 :—

Clause 229. Insert at the end “but beyond that distance a copy of any entry in any Register or of any document shall, if certified as such under the hand of a Registrar or deputy, be evidence of such entry or document.”

No. 2.

Clause 229 as now proposed to be amended by the Legislative Council (being the same clause in the Bill as introduced into the House amended) :—

229. No Registrar or Deputy or Assistant Registrar shall be bound to produce any register or document in his possession at any place beyond one mile from the Land Registry Office of the district.

No. 3.

Clause 39, showing amendment now suggested by the Legislative Council :—

39. The Registrar, upon payment of the prescribed fee, shall furnish to any person applying for the same a certified copy of any registered instrument affecting land within his district, and every such certified copy signed by him, and sealed with his seal, shall be received in evidence for all purposes for which the original instrument might be put in evidence as if the same was an original instrument.

APPENDIX F.

The new clause 218A inserted by the House of Representatives :—

218A. If any person licensed as a land broker shall charge more than the sums mentioned in the *Sixth* Schedule his license shall be cancelled, and he shall be incapable of being again licensed as a land-broker.