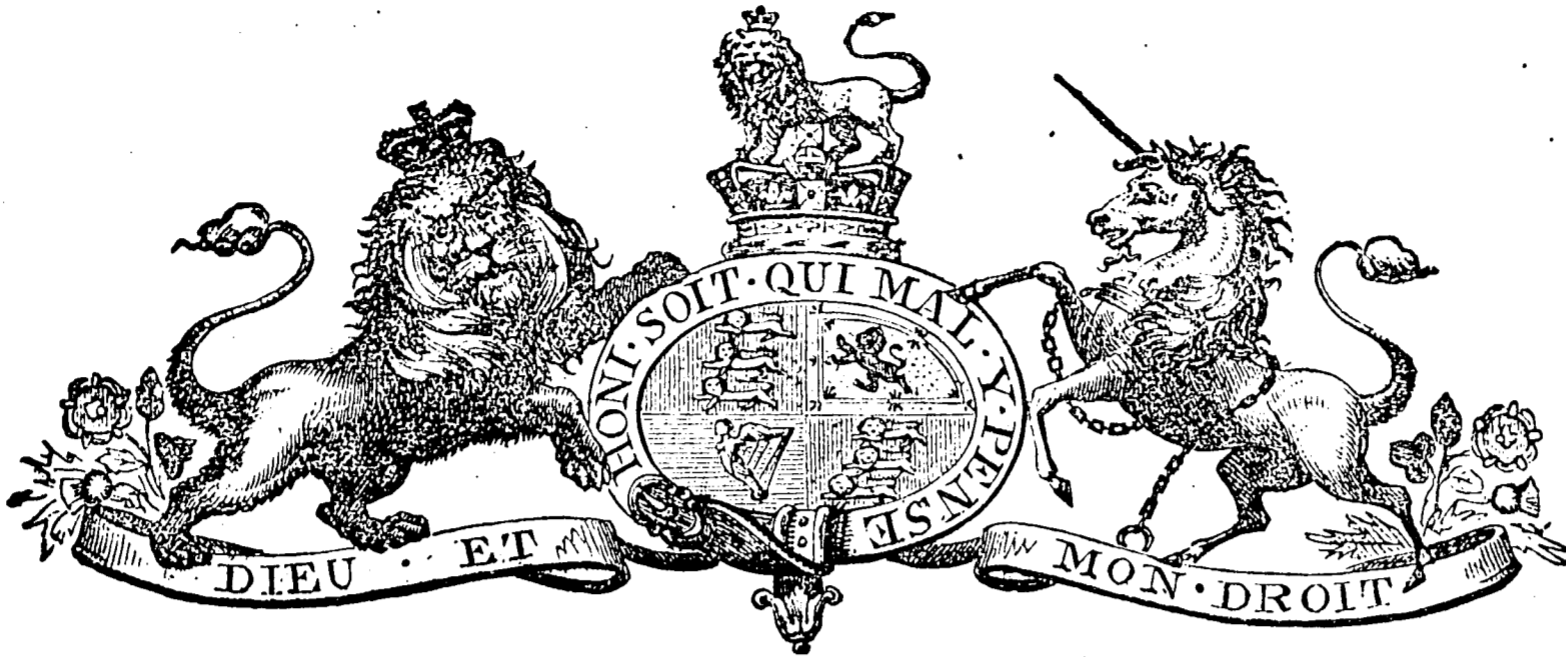


VICTORIA.



ANNO QUADRAGESIMO NONO

VICTORIÆ REGINÆ.

No. DCCCLXVIII.

An Act to further amend the "*Real Property Statute 1864.*"

[18th December 1885.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say) :—

1. This Act shall be deemed to be part of the "*Real Property Statute 1864*" and to be included in the citation thereof by its short title. Citation.
No. 213.

2. In the construction of this amending Act the word "land" shall be taken to include any part or share of or estate or interest in land of what tenure or kind soever. Interpretation of
term "land." 1.

3. On any contract for sale whether by public auction or private contract of land not under the operation of the Transfer of Land Statute the conditions of sale set out in the Schedule hereto may be adopted by inserting in the contract the words "The conditions of sale in the '*Real Property Statute 1864*' shall apply to this contract," or words having an equivalent meaning, and when so adopted the said conditions shall become and be conditions of such contract subject nevertheless to any other condition or provision contained in the contract expressly or by necessary implication modifying or excluding any of them. On contract for sale
conditions in
Schedule may be
adopted by
reference.
Schedule.

SCHEDULE.

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24th December 1885.*

SCHEDULE.

Section 3.

CONDITIONS OF SALE.

1. The purchaser shall complete his purchase upon the day that the last of the acceptances or notes for purchase money become due, but he shall be entitled to the possession of the lot or lots purchased by him or to the receipt of the rents and profits thereof upon his acceptance of the title to such lot or lots, and if from any cause whatsoever his purchase shall not be completed at the time above specified the purchaser shall pay interest on such of his acceptances or notes as shall become overdue at the rate of Eight pounds per centum per annum to the time of completion without prejudice however to the vendor's right under the fifth condition.

2. All deeds and documents in the possession of the vendor relating to the title of the property sold may at any time after the sale be inspected by the purchaser or his solicitor at the office of the vendor or his solicitor.

3. The vendor or his solicitor will at the request of the purchaser within seven days from the day of sale furnish an abstract of the title of the property within seven days from the date of such request the expense of and incident to the furnishing of such abstract to be borne by the purchaser.

4. The purchaser shall within twenty-one days of the day of sale whether any abstract shall have been required or not deliver to the vendor or his solicitor a statement in writing of all objections or requisitions (if any) to or on the title or concerning any matter appearing on the particulars or conditions or abstract, and in this respect time shall be of the essence of the contract. All objections or requisitions not included in such statements to be delivered within the time aforesaid shall be deemed absolutely waived by the purchaser, and the purchaser shall in default of such objections or requisitions (if none) and subject only to such (if any) so delivered be considered as having accepted the title, and it shall be lawful for the auctioneer or agent to pay over and deliver to the said vendor all sums of money paid and acceptances or notes given by the said purchaser on account of the purchase money without being liable to any action or other proceeding for recovery of the same.

5. In case the purchaser shall within the time aforesaid make any objection to or requisition on the title or otherwise which the vendor shall be unable or unwilling to remove or comply with and such objection or requisition shall be insisted on it shall be lawful for the vendor or his solicitor (whether he shall have attempted to remove such objection or to comply with such requisition or not and notwithstanding any negotiation or litigation in respect of the same) at any time by notice in writing to annul the sale and within one week after giving such notice to repay to the purchaser the amount of his purchase money or so much thereof as shall have been paid in full satisfaction of all claims and demands whatsoever by the purchaser, and also to return all unpaid acceptances or notes given by the purchaser but without any interest costs or damages of any description.

6. All costs and expenses of and incident to the production and inspection of deeds evidences and muniments of title not in the possession of the vendor, and of obtaining any declarations certificates and other evidences whatsoever of title not in the possession of the vendor, and of procuring any attested or other copy which the purchaser may require of any deed or other document or plan, whether in the possession of the vendor or not, which may be required for completing supporting or verifying the title or otherwise shall be borne by the purchaser.

7. The purchaser shall pay or bear the expense of all stamp duties on or in respect of the acceptances or notes provided for by the contract and of the conveyance to him.

8. The purchaser shall admit the identity of the property purchased with that comprised in the muniments of title offered by the vendor as the title to such property upon the evidence afforded by a comparison of the description in the particulars of sale and muniments and of a statutory declaration to be made (if required) at the purchaser's expense that the property sold has been enjoyed under the title for fifteen years.

9. If

9. If any mistake be made in the description or area of the property or if any other error whatsoever shall appear in the particulars of the property such mistake or error shall not annul the sale, but a compensation or equivalent to be settled by two referees mutually appointed in writing or their umpire shall be given or taken as the case may require. The party discovering such mistake or error to give notice in writing thereof to the other party within seven days after such discovery, and each party within seven days after such notice shall appoint in writing a referee, and if either party shall refuse to appoint a referee within the term above specified the referee of the other party alone may proceed in the matter and make a final decision. If two referees be appointed they are to nominate an umpire in writing before they enter upon the business and the decision of such referees or umpire as the case may be shall be final.

10. If the purchaser shall fail to comply with the above conditions or shall not pay the whole of the deposit or shall not give the acceptances or notes provided for by the contract or shall not duly pay the same or any of them the vendor shall be at liberty without notice to rescind the contract, and thereupon to deduct and retain out of the deposit and other moneys (if any) received by him under the contract all costs and expenses paid or incurred by him in negotiating and effecting such contract and incidental thereto, and shall return to the purchaser the residue of such moneys and any unpaid acceptances or notes, or the vendor may at his option upon such rescission resell by public auction or private contract the property bought by the purchaser, and the deficiency (if any) in price occasioned by such sale together with all costs and expenses attending the same shall immediately be made good by the defaulter at this present sale, and in case of non-payment the amount of such deficiency costs and expenses shall be recoverable by the vendor as and for liquidated damages, and it shall not be necessary previously to tender a conveyance to the purchaser: Provided that as regards such deficiency (if any) the vendor may deduct and retain the same together with all costs and expenses out of the deposit moneys and the amount of any of the before-mentioned acceptances or notes which shall then have been paid, repaying unto such defaulter within seven days after the completion of the re-sale the residue (if any) of such moneys and amount, but without any interest, and returning without any unnecessary delay any then unpaid acceptances or notes: Provided further that if the said deposit moneys and the amount of any of the before-mentioned acceptances or notes which shall have been paid be not sufficient to cover the amount of the aforesaid deficiency in price cost and expenses the vendor shall be entitled to recover such balance as shall remain as and by way of liquidated damages.

11. The vendor will upon due payment of the full amount of the purchase money convey the property to the purchaser by a proper assurance to be prepared by and at the expense of the purchaser.

12. The vendor will at any time after acceptance of title and before payment in full of the purchase moneys (if requested so to do by the purchaser) convey the property to the purchaser by a proper assurance prepared by and at the expense of the purchaser, the purchaser simultaneously with such conveyance reconveying the property to the vendor by way of mortgage to secure payment of the then unpaid acceptances and notes according to the terms of this contract. Such mortgage shall be prepared by the vendor at the purchaser's expense, and shall contain a power of re-entry and of sale and all such other powers in favour of the mortgagees and all such covenants on the part of the mortgagor including covenants to insure and repair as are usual in mortgages of a like nature, and pending the payment of all moneys so secured the vendor or his assigns may retain the muniments of title which the purchaser would otherwise be entitled to under these conditions.

13. Such of the muniments of title in the possession of the vendor as relate to other property may be retained by the vendor, who shall enter into the usual covenant with the purchaser for the production and furnishing copies of the same, but such covenant shall be limited so as to bind the vendor personally so long only as he shall have the custody of the said muniments, and the deed containing such covenant shall be prepared by and at the expense of the purchaser.

MELBOURNE:

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