

UNIVERSITY OF LONDON  
W.C.1.  
-6 JUL 1953  
INSTITUTE OF ADVANCED  
LEGAL STUDIES

In the Privy Council

No. 123 of 1936.

ON APPEAL FROM THE APPELATE DIVISION OF  
THE SUPREME COURT OF ALBERTA

Between

KNIGHT SUGAR COMPANY, LIMITED,  
(Plaintiff) **Appellant.**

—and—

THE ALBERTA RAILWAY AND IRRIGATION  
COMPANY  
(Defendent) **Respondent**

JOINT APPENDIX  
OF STATUTES

# JOINT APPENDIX OF STATUTES

## The Land Titles Act

### CHAPTER 133

The Revised Statutes of Alberta, 1922

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- Interpretation (2) In this Act, unless the Context otherwise requires:—
- Instrument (j) “Instrument” shall mean any grant, certificate of title, conveyance, assurance, deed, map, plan, will, probate or exemplification of will, letters of administration, or an exemplification thereof, mortgage or incumbrance, or any other document in writing relating to or affecting the transfer of or other dealing with land or evidencing title thereto;
- Land (l) “Land” shall mean lands, messuages, tenements, and hereditaments, corporeal and incorporeal, of every nature and description, and every estate or interest therein, and whether such estate or interest is legal or equitable, together with all paths, passages, ways, watercourses, liberties, privileges, easements, mines, minerals, and quarries appertaining thereto, and all trees and timber thereon and thereunder lying or being, unless any such are specially excepted;
- Registration (v) “Registration” shall mean—
- (i) the bringing of lands under the provisions of this Act; and
  - (ii) the entering upon the certificate of title of a memorandum authorized by this Act of any document; and
  - (iii) the entering in the proper register of any instrument authorized to be registered, of which a memorandum is not required to be entered upon a certificate of title;
- Transfer (w) “Transfer” shall mean the passing of any estate or interest in land under this Act, whether for valuable consideration or otherwise, as well as the instrument in form L of the schedule hereto;
- Transferor and Transferee (x) “Transferor” shall mean the person by whom any interest or estate in land is transferred, whether for value or otherwise, and “transferee” shall mean the person to whom any interest or estate in land is transferred whether for value or otherwise;

Decision of Registrar as to formalities in instrument

49 The Registrar shall decide whether any instrument which is presented to him for registration is substantially in conformity with the proper form in the schedule to this Act or not and may reject any instrument which he may decide for any reason to be unfit for registration.

[1906, c. 24, s. 46.]

Necessity of registration

50. After a certificate of title has been granted for any land, no instrument shall be effectual to pass any estate or interest in such land (except a leasehold interest for three years or for a less period) or render such land liable as security for the payment of money, unless such instrument is executed in accordance with the provisions of this Act and is duly registered thereunder; but upon the registration of any such instrument in the manner hereinbefore prescribed the estate or interest specified therein shall pass, or, as the case may be, the land shall become liable as security in manner and subject to the covenants, conditions and contingencies set forth and specified in such instrument or by this Act declared to be implied in instruments of a like nature.

[1906, c. 24, ss. 41, 46.]

Effect of registration

51. So soon as registered every instrument shall become operative according to the tenor and intent thereof, and shall thereupon create, transfer, surrender, charge or discharge, as the case may be, the land or the estate or interest therein mentioned in the instrument.

[1906, c. 24, s. 23.]

Priority of registration

52. Instruments registered in respect of or affecting the same land shall be entitled to priority the one over the other according to the time of registration and not according to the date of execution.

[1906, c. 24, s. 23.]

Covenants implied in instruments relating to land

53. In every instrument transferring, incumbering or charging any land for which a certificate of title has been granted, there shall be implied the following covenant by the transferor or incumbrancer, that is to say: That the transferor or incumbrancer will do such acts and execute such instruments as in accordance with the provisions of this Act are necessary to give effect to all covenants, conditions and purposes expressly set forth in such instrument or by this Act declared to be implied against such person in instruments of a like nature.

[1906, c. 24, s. 40.]

Obligation affecting land

56.—(1)The owner of land in whose name a certificate of title has been granted shall, except in case of fraud wherein he has participated or colluded, hold the same subject (in addition to the incidents implied by virtue of this Act) to such incumbrances, liens, estates or interests as are notified on the folio of the register which constitutes the certificate of title absolutely free from all other incumbrances, liens, estates or interests whatsoever except the estate or interest of an owner claiming the same land under a prior certificate of title granted under the provisions of this Act or granted under any law heretofore in force relating to title to real property.

Exceptions

Computation of priority (2) Such priority shall, in favour of any person in possession of land, be computed with reference to the grant or earliest certificate of title under which he or any person through whom he derives title has held such possession. [1906, c. 24, s. 42.]

Implied conditions 57. The land mentioned in any certificate of title granted under this Act shall by implication and without any special mention therein, unless the contrary is expressly declared, be subject to—

Reservations (a) any subsisting reservations or exceptions contained in the original grant of the land from the Crown;

Unpaid taxes (b) all unpaid taxes, including irrigation and drainage district rates.

Public easements (c) any public highway or right-of-way or other public easement, howsoever created upon, over or in respect of the land;

Leases under three years (d) any subsisting lease or agreement for a lease for a period not exceeding three years, where there is actual occupation of the land under the same;

Registered decrees etc. (e) any decrees, orders or executions against or affecting the interest of the owner of the land which have been registered and maintained in force against the owner;

Right of expropriation (f) any right of expropriation which may by Statute or Ordinance be vested in any person, body corporate, or His Majesty;

Easement (g) any right-of-way or other easement granted or acquired under the provisions of any Act or law in force in the Province.

[1906, c. 24, s. 43.]

Form of Transfer 60. When land for which a certificate of title has been granted is intended to be transferred, or any right-of-way or other easement is intended to be created or transferred, the owner may execute a transfer in the form L in the schedule to this Act, which transfer shall, for description of the land intended to be dealt with, refer to the certificate of title of the land or shall give such description as is sufficient to identify the same and shall contain an accurate statement of the estate, interest or easement intended to be transferred or created and a memorandum of each lease, mortgage and other incumbrance to which the land is subject.

Tenor of Transfer

[1906, c. 24, s. 48.]

Registration of judgement quieting title etc. 64.—(1) Any person heretofore or hereafter recovering a judgement against a registered owner of land, declaring that the said person recovering the said judgement is entitled to the exclusive right to use the said land or that he be quieted in the exclusive possession thereof by reason of adverse possession, pursuant to the **Limitation of Action Act**, may file a certified copy of such judgement in the Land Titles Office for the proper registration district.

(2) At the expiration of three months after the filing thereof, the Registrar shall, unless he is satisfied that an appeal from the said judgement is being taken, make a memorandum upon the certificate of title in the register, cancelling the same, either wholly or partially, according to the tenor of the said judgement and setting forth the particulars of the said judgement. [1921, c. 39, s. 2.]

Persons  
entitled to  
file caveat.

**120.** Any person claiming to be interested under any will, settlement or trust deed, or any instrument of transfer or transmission or under an unregistered instrument or under an execution where the execution creditor seeks to affect land in which the execution debtor is interested beneficially but the title to which is registered in the name of some other person or otherwise howsoever in any land, mortgage or incumbrance, may cause to be filed on his behalf with the Registrar a caveat in form FF in the schedule to this Act against the Registration of any person as transferee or owner of, or of any instrument affecting, such estate or interest, unless such instrument be expressed to be subject to the claim of the caveator. [1906, c. 24, s. 84.]

Appeal to  
judge from  
acts of  
Registrar

**158.** If any person is dissatisfied with any act, omission, refusal, decision, direction or order of a Registrar, such person may require the Registrar to set forth, in writing under his hand, the ground of such act, omission, refusal, decision, direction or order, and such person may then apply to the Judge of the Supreme Court of Alberta by petition, setting forth the grounds of his dissatisfaction; and the judge, having caused the Registrar to be served with a copy of the petition, shall have jurisdiction to hear the said petition and to make such order in the premises and as to the costs of the parties appearing upon the petition as the circumstances of the case require. [1906, c. 24, s. 112; 1908, c. 20, s. 15.]

Reference by  
Registrar of  
questions  
to judge for  
decision

**159.** Whenever a question arises with regard to the performance of any duty or the exercise of any function by this Act conferred or imposed upon a Registrar, or whenever in the exercise of any duty of a Registrar a question arises as to the true construction or legal validity or effect of any instrument, or as to the persons entitled, or as to the extent or nature of the estate, right or interest, power or authority of any person or class of persons, or as to the mode in which any entry or memorandum ought to be made in the day book, or register, or upon any certificate of title or duplicate thereof, or as to any doubtful or uncertain right or interest stated or claimed to be dealt with by the Registrar, he may refer the same in the form LL in the schedule to this Act to a judge of the Supreme Court of Alberta who may allow any of the parties interested to appear before him and summon any other of such persons to appear and show cause, either personally or by counsel, attorney-at-law or advocate, in relation

thereto; and the judge having regard to the persons appearing before him, whether summoned or not, shall decide the question or direct any proceedings to be instituted for that purpose and direct the particular form of entry or memorandum to be made as under the circumstances appears to be just. [1906, c. 24, s. 113; 1908, c. 20, s. 15.]

Further powers of judge

**162.** In any proceeding respecting land or in respect of any transaction or contract relating thereto, or in respect of any instrument, caveat, memorandum or entry affecting land, the judge by decree or order may direct the Registrar to cancel, correct, substitute, or issue any duplicate certificate, or make any memorandum or entry thereon or on the certificate of title and otherwise to do every act necessary to give effect to the decree or order. [1906, c. 24, s. 116.]

Appeal from judge's decision

**165.** An appeal shall lie by the Inspector of Land Titles Offices, a Registrar, or any person directly interested therein, from any order or decision of a judge made or given under the provisions of this Act to the Appellate Division of the Supreme Court of Alberta within the prescribed time, in the same manner and with the same incidents in and with which judgements and orders of that Court by a single judge may be appealed from; and the practice and proceedings relating to appeals in the said Court including costs and payment thereof and the enforcement of judgements on appeal shall, adapted to the circumstances, apply. [1906, c. 24, s. 147.]

Reference by judge to Court of Appeal

**166.** If in any matter before a judge under this Act the judge considers proper he may refer the same to the Court of Appeal, and such Court may either dispose of the matter or refer it back to the judge with such direction as it may think fit. [1906, c. 24, s. 148.]

Protection of person accepting transfer, etc., without necessity of inquiry

**175.** Except in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer, mortgage, incumbrance or lease from the owner of any land in whose name a certificate of title has been granted shall be bound or concerned to inquire into or ascertain the circumstances in or the consideration for which the owner or any previous owner of the land is or was registered or to see to the application of the purchase money or of any part thereof, nor shall he be affected by notice direct, implied or constructive, of any trust or unregistered interest in the land, any rule of law or equity to the contrary notwithstanding; and the knowledge that any trust or unregistered interest is in existence shall not of itself be imputed as fraud. [1906, c. 24, s. 135.]

FORM L.

(Sections 2(w) and 60.)

Transfer

I, A.B., being registered owner of an estate (state the nature of estate) subject, however, to such incumbrances, liens and interests as are notified by memorandum underwritten (or indorsed hereon) in all that certain tract of land containing . . . . acres, more or less, and being (part of) section . . . . township . . . . range . . . .in the (or as the case may be), (here state rights of way, privileges, easements, if any, intended to be conveyed along with the land and if the land dealt with contains all included in the original grant refer thereto for descriptions of parcels and diagrams; otherwise set forth the boundaries and accompany the description by a diagram) do hereby, in consideration of the sum of ..... dollars paid to me by E.F., the receipt of which sum I hereby acknowledge, transfer to the said E.F., all my estate and interest in the said piece of land. (When a lesser estate describe such lesser estate.)

In witness whereof I have hereunto subscribed my name this ..... day of ..... 19.....

Signed by the said A.B., in the presence of ..... } ..... (Signature)

[1906, c. 24, Schedule, Form J.]

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(Defendant) **Respondent**

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LAWRENCE JONES & Co.,

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For the Respondents.