

PETITION

*Presented to the Legislative Council at the meeting held on the
21st January, 1885.*

To the Honourable

THE LEGISLATIVE COUNCIL

OF HONGKONG.

THE HUMBLE PETITION OF THE UNDERSIGNED PETITIONERS.

SHEWETH :—

I. That your petitioners the undersigned solicitors constitute the whole body of solicitors in the Colony of Hongkong.

II. That a very large number (it is believed a majority) of the titles to land in the Colony have, for various reasons, during the existence of the Colony, fallen into a most complicated and entangled condition, so much so that there are, as your said petitioners have experienced, a very great number of titles which, though possibly so far good in the sense that no one could dispossess their owners thereof, are, from a technical point of view, practically bad in the sense of their not being, as they should be, titles which a Court of Equity would force on an unwilling purchaser.

III. Owing to these facts the transfers of land in the Colony have become to a large extent difficult, if not, indeed, on open contracts; impracticable undertakings, demanding strong guarding conditions of limitation on sales, which, however, valuable as a protection to Vendors, are apt to startle intending purchasers and prejudice the biddings, or where the contract is an open one, such as by letter, as so many are, the result, as the experience of the last three years conclusively proves, is frequently a law-suit.

IV. In consequence of the legal difficulties above referred to attaching to transmissions of land, your said petitioners, at a meeting lately held by them, considered the whole question, and the mode that would be best in the public interest to effect a remedy.

V. At the same meeting your said petitioners unanimously passed the following resolutions:—

- (1.)—That in order to assimilate the law of property in this Colony to that now in force in England, and to facilitate the transfer of land in the Colony, it is very desirable that the Imperial Acts known as the Real Property Limitation Act 1874 and the Vendor and Purchaser Act 1874 should be extended to this Colony so far as the provisions of the same are applicable and with such variations and additions as may be necessary.

(2.)—That having regard to the manner in which the Crown Lots in this Colony have been and are still being divided into Sections and such Sections into Sub-sections, and the difficulty, and in some cases the impossibility, thus occasioned in tracing and obtaining production of such of the Title Deeds as relate to the whole of the Crown Lot or Section before such division, it would greatly facilitate and cheapen the transmission of land if a system for filing official copies of all Deeds which have now to be registered in the Land Office were legalized, either by duplicate copies of such deeds being left with the originals, or by such originals being copied by clerks to be appointed for the purpose, such official copies to be taken and received as evidence of the originals, and if certified copies of the memorials of all such deeds as have already been registered were (unless and except so far as they should be proved to be inaccurate) to be taken to be sufficient evidence of the deed and of the due execution thereof so far as the same were exemplified in the memorial.

VI. Your said petitioners also discussed several other points of practice and procedure, and came unanimously to the conclusion that without the aid of state legislation nothing effectual could be accomplished towards rescuing the land question of the Colony from its present hopeless and entangled position.

VII. The accompanying draft form of Ordinance has been prepared by your said petitioners after careful consideration and regard to the special nature of the requirements of the practice of conveyancing in the Colony.

VIII. If an Ordinance to the proposed effect were passed, your said petitioners have no hesitation in saying that it would be a great relief to a large majority of land-owners and would materially facilitate dealings with lands in this Colony.

Your said petitioners therefore humbly pray Your Excellency and the Legislative Council to introduce an Ordinance to the above effect and your petitioners will ever pray, &c.

A. B. JOHNSON,
Crown Solicitor.

WILLIAM WOTTON.

VICTOR H. DEACON.

ALFRED PARKER STOKES.

H. L. DENNYS.

F. H. O. WILSON.

C. ERNEST BOWLES.

ERNEST R. WOOD.

W. H. R. MOSSOP.

MATHEW J. D. STEPHENS.

HENRY J. HOLMES.

CREASY EWENS.

H. T. ARKCOLL.

DANIEL E. CALDWELL.

GODFREY C. C. MASTER.

WE, the undersigned residents and landowners of the Colony of Hongkong, having read the foregoing Petition, are advised and firmly believe that if its prayer be granted the effects will be of a highly beneficial nature to the large body of residents who have interests in, and will greatly facilitate dealings with, lands in this Colony.

W. KESWICK.	DORABJEE NOWROJEE.
T. JACKSON.	F. DODWELL.
F. D. SASSOON.	W. H. RAY.
WONG SHING.	E. L. WOODIN.
C. P. CHATER.	A. MCCONACHIE
WM. H. FORBES.	<i>Attorney for the Executors of</i>
A. P. MCEWEN.	R. J. GILMAN, <i>Deceased.</i>
J. S. LAPRAIK	R. J. ASHTON
<i>by his Attorney,</i>	<i>by his Attorney,</i>
C. D. BOTTOMLEY.	A. MCCONACHIE.
C. D. BOTTOMLEY.	A. R. HUDSON
E. R. BELLIOS.	<i>by his Attorney,</i>
E. MACKINTOSH.	A. MCCONACHIE.
J. BELL-IRVING.	W. S. YOUNG
H. HOPPIUS.	<i>by his Attorney,</i>
A. GÜLTZOW.	A. MCCONACHIE.
M. GROTE.	H. G. THOMSETT.
M. E. SASSOON.	J. P. MCEUEN
C. STIEBEL.	<i>by his Attorney,</i>
W. KERFOOT HUGHES.	H. G. THOMSETT.
L. POESNECKER.	R. K. LEIGH.
C. ERDMANN.	CHEONG KAI.
A. McIVER.	LI SING.
H. W. DAVIS	YU SUIWAN.
<i>by his Attorney,</i>	HO LAI SHI
FRED. T. P. FOSTER.	<i>by her Attorney,</i>
EDMUND SHARP	HO KAI.
<i>by his Attorney,</i>	WEI A YUK.
FRED. T. P. FOSTER.	LEE TUCK CHEONG.
GRANVILLE SHARP	CHOA CHEE BEE.
<i>by his Attorney,</i>	CHAN TAI
FRED. T. P. FOSTER.	<i>by his Attorney,</i>
FRED. T. P. FOSTER.	PUN PONG.
J. GODFREY BIRD.	CHING KWAI
CLEMENT PALMER.	<i>by his Attorney,</i>
	PUN PONG.

A BILL

ENTITLED

An Ordinance for the further limitation of actions and suits relating to the recovery of land and rent and for altering and amending the law of conveyancing within the Colony of Hongkong, 1885.

WHEREAS it is desirable further to limit the times within which actions or suits may be brought within the Colony of Hongkong for the recovery of land or rent and of charges thereon, and to facilitate the transfer of land within the Colony by means of certain amendments in the law of conveyancing: Be it therefore enacted by the Governor of Hongkong, with the advice of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as *The Conveyancing Ordinance, 1885.*

Short title.

2. The terms hereinafter mentioned shall have the meanings assigned to them unless there be something either in the subject or context repugnant to such construction that is to say:—

Interpretations.

The expression "the Land Office" shall mean the Land Office of the Colony.

The Land Office.

The expression "the Land Officer" shall mean the person (other than the Governor) who shall for the time being have the lawful control and superintendence of the Land Office.

The Land Officer.

The word "Land" shall extend to messuages, land, tenements and hereditaments of any tenure situate in the Colony.

Land.

The expression "the Court" shall mean the Supreme Court of the Colony.

The Court.

3. After the commencement of this Ordinance no person shall make an entry or distress, or bring any action or suit, to recover any land or rent, but within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall not have accrued to any person through whom he claims then within twelve years next after the time at which the right to make such entry or distress, or to bring such action or suit, shall have first accrued to the person making or bringing the same.

No land or rent to be recovered but within twelve years after the right of action accrued. [37 & 38 Vict., c. 57, s. 1.]

4. A right to make an entry or distress, or to bring an action or suit to recover any land or rent shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same shall have become an estate or interest in possession by the determination of any estate in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding that the person claiming such land or rent, or some person through whom he claims, shall, at any time previously to the creation of the estate which shall have determined, have been in the possession or receipt of the profits of such land, or in receipt of such rent; but, if the person last entitled to any particular estate on which any future estate or interest was expectant shall not have been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action or suit shall be brought by any person becoming entitled in possession to a future estate or interest but within twelve years next after the time when the right to make an entry or distress, or to bring an action or suit for the recovery of such land or rent, shall have first accrued to the person whose interest shall have so determined, or within six years next after the time when the estate of the person becoming entitled in possession shall have become vested in possession, (whichever of those two periods shall be the longer) and, if the right of any such person to make such entry or distress, or to bring any such action or suit, shall have been barred under this Ordinance, no person, afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement executed or taking effect after the time when a right to make an entry or distress, or to bring an action or suit for the recovery of such land or rent, shall have first accrued to the owner of the particular estate whose interest shall have so determined as aforesaid shall make any such entry or distress, or bring any such action or suit, to recover any such land or rent.

Provision for case of future estates. [37 & 38 Vict., c. 57, s. 2.]

Time limited to six years when person entitled to the particular estate out of possession, &c.

In cases of infancy, coverture or lunacy when right of action accrues, six years to be allowed from termination of disability or previous death. [37 & 38 Vict., c. 57, s. 3.]

5. If, at the time at which the right of any person to make an entry or distress or to bring an action or suit to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the following disabilities, that is to say, infancy, coverture, idiocy, lunacy, or unsoundness of mind, then such person, or the person claiming through him, may, notwithstanding that the period of twelve years or six years (as the case may be) hereinbefore limited shall have expired, make an entry or distress, or bring an action or suit to recover such land, or rent, at any time within six years next after the time at which the person to whom such right shall first have accrued shall have ceased to be under any such disability, or shall have died (whichever of those two events shall have first happened).

No time allowed for absence from Colony. [37 & 38 Vict., c. 57, s. 4.]

6. The time within which any such entry may be made, or any such action or suit may be brought as aforesaid, shall not in any case after the commencement of this Ordinance be extended or enlarged by reason of the absence from the Colony, during all or any part of that time, of the person having the right to make such entry, or to bring such action or suit, or of any person through whom he claims.

Thirty years utmost allowance for disabilities. [37 & 38 Vict., c. 57, s. 5.]

7. No entry, distress, action, or suit shall be made or brought by any person who, at the time at which his right to make any entry or distress or to bring an action or suit to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned or by any person claiming through him but within thirty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such thirty years, or although the term of six years from the time at which he shall have ceased to be under any such disability, or have died shall not have expired.

Mortgagor to be barred at end of twelve years from the time when mortgagee took possession or from last written acknowledgment. [37 & 38 Vict., c. 37, s. 7.]

8. When a mortgagee shall have obtained the possession or receipt of the profits of any land, or of any rent comprised in his mortgage the mortgagor, or any person claiming through him, shall not bring any action or suit to redeem the mortgage but within twelve years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, shall have been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee or the person claiming through him; and in such case no such action or suit shall be brought but within twelve years next after the time at which such acknowledgment, or (if more than one) the last of such acknowledgments was given, and when there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons, but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by from or under him or them, and any person or persons entitled to any estate or interest, to take effect after or in defeasance of his or their estate or interest, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

9. No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land or rent at law or in equity, or any legacy, but within twelve years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent, and in such case no such action or suit or proceeding shall be brought but within twelve years after such payment or acknowledgment, or (if more than one) the last of such payments or acknowledgments was given.

Money charged on land and legacies to be deemed satisfied at the end of twelve years if no interest paid nor written acknowledgment given meantime. [37 & 38 Vict., c. 57, s. 8.]

10. After the commencement of this Ordinance no action, suit, or other proceeding shall be brought to recover any sum of money or legacy charged upon, or payable out of, any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable, and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust.

Time for recovering charges and arrears of interest not to be enlarged by trusts for raising same. [37 & 38 Vict., c. 57, s. 10.]

11. In the completion of any contract for sale of land made prior to or after the commencement of this Ordinance, and subject to any stipulation to the contrary in the contract, twelve years shall be the period of commencement of title which a purchaser may require.

Twelve years the root of title. [37 & 38 Vict., c. 78, s. 1.]

12. In the completion of any such contract as aforesaid, and subject to any stipulation to the contrary therein, the obligations and rights of vendor and purchaser shall be regulated by the following rules, that is to say:—

Rules for regulating obligations and rights of vendor and purchaser. [37 & 38 Vict., c. 78, s. 2.]

First. Under a contract to grant or assign a term of years, whether derived or to be derived out of a freehold or leasehold estate, the intended lessee or assignee shall not be entitled to call for nor enquire into nor make any objection to the title to the freehold;

[37 & 38, Vict., c. 78, s. 2.]

Second. Recitals statements, and descriptions of facts, matters, and parties contained in deeds, instruments, ordinances, or statutory declarations twelve years old at the date of the contract, shall, unless and except so far as they shall be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions;

[37 & 38 Vict., c. 78, s. 2.]

Third. The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents;

[37 & 38 Vict., c. 78, s. 2.]

Fourth. Such covenants for production as the purchaser can and shall require, shall be furnished at his expense and the vendor shall bear the expense of perusal and execution on behalf of and by himself and on behalf of and by all necessary parties other than the purchaser;

Fifth. Where the vendor retains any part of or any interest in any estate to which any documents of title relate, he shall be entitled to retain such documents but shall, at his own expense if required, give to the purchaser notarially certified copies of such documents as he shall retain;

Sixth. The inability of the vendor to get in the legal estate of and in any land contracted to be sold which shall have been outstanding for a period of at least twelve years immediately preceding the date of the contract shall not be an objection to title.

13. Trustees who are either vendors or purchasers may sell or buy without excluding the application of the 10th section of this Ordinance.

Trustees may sell, &c., notwithstanding rules. [37 & 38 Vict., c. 78, s. 3.]

Vendor or purchaser may obtain decision of Judge in chambers as to requisitions or objections, &c [37 & 38 Vict., c. 78, s. 9.]

14. A vendor or purchaser of land, or their representatives respectively, may at any time and from time to time apply in a summary manner to a Judge of the Court in Chambers in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of, or connected with the contract not being a question affecting the existence or validity of the contract, and thereupon the judge shall make such order as to him shall appear just, and shall order how and by whom all or any of the costs of and incident to the application shall be borne and paid.

Copies of deeds, &c., to be made by land officer.

15. The land officer shall make and retain in the Land Office a copy (certified by him to be a true copy) of every deed, probate, letters of administration, judgment, or other instrument, or writing, whether under seal or not, which shall be registered in the Land Office under Ordinance No. 3 of 1884, or Ordinance No. 10 of 1856, and such certified copy shall be taken to be sufficient evidence of the original deed, probate, letters of administration or other instrument or writing of which it is a certified copy.

Notarially certified copies of powers of attorney, &c., to be registered.

16. Where any person shall desire to register in the Land Office any deed, or other instrument, or writing, whether under seal, or not, which shall have been or shall purport to have been executed or signed by the attorney of any party thereto under a power of attorney or other authority in writing such person shall simultaneously with such registration deposit in the Land Office a notarially certified copy of such power of attorney or other authority, and such notarially certified copy shall be taken to be sufficient evidence of the original power of attorney or authority of which it is a notarially certified copy, and any deed or other instrument, or writing, whether under seal or not, which prior to the commencement of this Ordinance shall have been or shall purport to have been executed or signed under or by virtue of any power of attorney or other authority in writing whether such power of attorney or other authority can be produced or not shall, unless and except so far as the contrary be proved, be deemed to have been duly and lawful executed in pursuance of such power of attorney or other authority, and such power of attorney or other authority shall, unless and except so far as the contrary be proved, be deemed to have contained full and sufficient power and authority for the execution or signature of such deed or other instrument or writing.

True copies of memorials of deeds, &c., registered prior to the commencement of Ordinance to be evidence.

17. A copy certified by the land officer to be a true copy of the registered memorials of any deed or other instrument or writing which shall have been registered in the Land Office prior to the commencement of this Ordinance shall, unless and except so far as the same shall be proved to be inaccurate, be taken to be sufficient evidence of the contents, and due execution of the deed, or other instrument or writing of the memorial of which it is a certified copy.

Commencement of Ordinance.

18. This Ordinance shall commence and take effect on the _____ day of _____ 1885.