

## [CIVIL JURISDICTION.]

1890  
Aug. 12.*In re* WEST.

*Real Property Ordinance 1876, s. 33—Registration of Under-leases—Transfer of Land Statute, 1866, of Victoria—Registration Ordinance 1879.*

It is unnecessary to register an under-lease under the Real Property Ordinance 1876, such Ordinance, following the Transfer of Land Statute, 1866, of Victoria, containing no provision for such registration.\*

*Mr. Scott* for the petitioner.

*The Attorney-General* (Mr. Udal) for the Registrar of Titles.

The facts and arguments of the case, which was heard on 7th August when the Court reserved its decision, sufficiently appear from the judgment delivered on the 12th.

H. S. BERKELEY, C.J. This was a petition under the Real Property Ordinance 1876. The petitioner prayed for an order requiring the Registrar of Titles to enter in the "Presentation Book" kept under the 33rd section of the Ordinance a certain lease from one George Charles Johnson to the petitioner, or, in the alternative, for an order on the Registrar to register the lease, dispensing in so doing with certain requirements of the Real Property Ordinance. The prayer of the petition is vaguely drawn, but the effect is as I have stated. The facts upon which the petition is founded appear to be as follows:—One George Charles Johnson is the registered lessee for an unexpired term of years of certain lands in this Colony, of which the *Trustees, Executors, and*

\* See now the *Real Property Amendment Ordinance 1892, s. 1.*

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*Agency Company (Limited)*, of Melbourne, Victoria, are the registered proprietors. The petitioner is the under-lessee from Johnson; and it is admitted that the under-lessee is within the terms of the lease. On the 13th June last, the petitioner presented his under-lease to the Registrar of Titles for registration under the Real Property Ordinance 1876. The Registrar received the document and kept it in his possession till the 16th July last, when, on being asked by the petitioner whether the under-lease had been entered in the "Presentation Book" in order to be registered in due course, he returned to the petitioner the under-lease, stating that he could "not enter the document in the Presentation Book, inasmuch as the Certificate of Title evidencing the title to the land has not been produced, and registration cannot be proceeded with until it is produced, this not being a case in which the production of the title can be properly dispensed with."

Both the petitioner and the Registrar have all along treated an under-lease for years as an instrument requiring registration under the Real Property Ordinance of 1876. On such a supposition, it may be, that the Registrar of Titles was right in his contention. It would appear to have been the practice of the Registrar of Title's Office to register under-leases, and it was not suggested at the Bar, on either side, that the practice was wrong. I am, however, of opinion that this practice is altogether wrong, and unwarranted by the Real Property Ordinance 1876. I can see no provision of that Ordinance which requires an under-lease to be registered; nor do I see any reason why an under-lease should be registered. There is, in my reading of the Ordinance, no provisions requiring or in any way referring to such registration as being necessary. The

Ordinance does not indeed contain any provisions for the granting of an under-lease, and in this respect follows the lines of the "Transfer of Land Statute of the Colony of Victoria 1866." Registration of an under-lease then is in my opinion unnecessary, and such registration may, and indeed should be, refused by the Registrar of Titles. This will I think be found to be the practice in the Colony of Victoria, under the "Transfer of Land Statute." An unregistered instrument is quite sufficient to effect an under-lease, and if thought necessary the interests of the under-lessee could be fully protected by a caveat. It would also, of course, be open to any under-lessee to register his under-lease under the provisions of the Registration Ordinance 1879, if he could conceive or be advised that there was anything to be gained thereby; but he is not entitled to have his under-lease entered on the Register of Titles under the Real Property Ordinance, and consequently he is not entitled to have it entered in the "Presentation Book."

The Registrar was therefore right in the conclusion he came to, though he was wrong in his reasons for such conclusion; the real reason being, as I have stated, that the Real Property Ordinance 1876 contains no provision for granting an under-lease, any such provisions being from the nature of the case unnecessary, the title of the original lessor, the registered proprietor, not being in any way affected by the under-lease. The petition must therefore be dismissed; but in the circumstances without costs.

*Petition dismissed without costs.*

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