

PROCEDURE UNDER THE ACT FOR QUIETING TITLES TO REAL ESTATE.

settled and understood. We have, with a view to securing uniformity of procedure under the Act, been at some pains to ascertain the practice followed in the office of the Inspector in Toronto, and have embodied the result of our labours in the following notes, which we believe will be found useful to the profession:—

1. The forms of petition, affidavits and certificates given in the last edition of Taylor on Titles, must be followed in all cases, as nearly as may be. (Paragraph 10, however, of petitioner's Affidavit seems no longer necessary: see 36 Vict. c. 44 s. 69, Ont.)

2. All material facts necessary to be proved to make out a petitioner's title should, where possible, be proved or corroborated by the oath of witnesses independent of the petitioner.

3. Wherever the title sought to be quieted is subject to a mortgage, the mortgage or certified copy must be produced, and the mortgagee must be notified under the Act, unless his consent to the granting of the certificate to the petitioner, subject to the mortgage, be filed. So also, where the title is subject to a contract for sale, the contract or a certified copy must be produced, and the vendee notified, or his consent filed.

4. Where the petitioner's title is acquired by possession, as a general rule the person entitled under the paper title should be served with notice under the Act.

5. A petitioner claiming by possession should be prepared to show the state of the land at the time his possession commenced: (*e.g.*, whether it was in a state of nature, or under cultivation;) also, that his possession has been continuous; also, that it has extended over the whole of the land claimed in the petition. He should also negative, as far as possible, the existence of any facts which under the statute of limitations would preserve the paper title, notwithstanding the possession: (*e.g.*, he should show that

the person entitled under the paper title was *sui juris* and under no disability at the time the possession under which the petitioner claims commenced; and that no acknowledgment of title has been given, etc.)

6. The Sheriff's certificate should include the names of all persons who in 1863 or subsequently thereto owned the lands in question; (see *Neilson v. Jarvis* 13 C.P. 176; 27 Vict. cap. 13, sec. 2; and *Miller v. Beaver Mutual &c.*, 14 C.P. 399) and where any of the owners have died, the names of their executors or administrators should also be included in the certificate.

7. Where the petitioner claims under a deed which has been lost, the grantor in the lost deed or his representative must in general be served with notice under the Act.

8. The Registrar must certify that he has extracted *all registrations* affecting the lands in question, unless some special reason can be shown for a departure from this rule.

9. Whenever an adverse claim is filed, the Referee to whom the petition is referred should make a report and order thereon, allowing or disallowing it, as the case may be, and awarding the costs occasioned by the claim as he may think proper. (The practice of the Master's office as to settling and signing reports should be followed.) This report and order must be filed in the office of the Clerk of Records and Writs, and be confirmed before any final adjudication can be made in the matter of the petition.

10. Petitions under the Act will not be entertained where the petitioner is not in the actual possession of the land by himself, or his tenants. And where he claims to be in possession by his tenant, the lease, if any, under which such tenant holds, must be produced, and the consent of the tenant to the granting of a certificate must be filed, or he must be notified under the Act.