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No. 18.

4th Session, 6th Parliament, 24 Vic., 1861.

BILL.

An Act for quieting the titles to Real Estate in Upper Canada.

Received and read, 1st time, Saturday, 23rd
March, 1861.

Second reading, Tuesday, 2nd April, 1861.

Mr. MOWAT.

QUEBEC :

**PRINTED BY THOMPSON, HUNTER & CO.,
ST. URSULE STREET.**

An Act for quieting Titles to Real Estate in Upper Canada.

WHEREAS it is expedient to enable owners of land to have their titles or certain facts involved therein judicially investigated, and if established, to have the same conclusively declared to be so, with a view of quieting titles and of avoiding renewed and inconclusive investigations at every transfer or mortgage of the same land; And whereas it is also expedient to make certain amendments to the Law in regard to the limitation of suits with a like view to the quieting of titles; Her Majesty, &c., enacts as follows :

Preamble.

I. Any owner of an estate in fee simple in land in Upper Canada shall be entitled to have his title judicially investigated and the validity thereof ascertained and declared; and he shall be so entitled whether his estate is legal or equitable, and whether subject to or free from any dower, leases, tenancies or other incumbrances.

Owners in fee simple entitled to judicial investigation of title.

II. When any person has any estate or interest, legal or equitable, in or out of land in Upper Canada, and such estate or interest is not an estate in fee simple, (subject or free as aforesaid), such person may also apply for the investigation of his title and a declaration of the validity thereof; but it shall be in the discretion of the Judge, by or before whom the proceedings are taken, to grant or refuse the application for the investigation; and such discretion may be invoked and exercised at any stage of the proceedings, and the decision of the Judge in exercising such discretion shall be subject to appeal like any other decision.

In case of any other estate, investigation to be discretionary with the Judge.

III. In case any owner or person interested in land has for valuable consideration agreed to obtain for another an indefeasible title to or conveyance of the land or some interest therein, under this Act, the latter may make the application, and with the same effect as the person who so agreed to obtain the title or conveyance for him.

By whom application may be made in certain cases.

IV. The application shall be to the Court of Chancery or any Judge thereof, and may be by a short petition in the form given in Schedule A.

Form of application, and to whom.

V. A certificate by the Registrar of the said Court, of the petition being filed, shall be registered in the Registry Office of the County in which the land lies, before the investigation is entered upon, and this certificate may be in the form given in Schedule B.

Registry of application.

VI. The application shall be supported by the following particulars :

1. The title deeds and evidences of title relating to the land that are in the possession or power of the person whose title is to be investigated.
2. A certified copy of all other registered instruments affecting the land, since the last judicial certificate (if any) under this Act was given, (or of all as the case may be), up to the time of the registering of a certificate of the petition as provided for by Section 5.

How the application must be supported.

3. The certificate of the Registrar of the County in which the land lies, as to registered judgments, suits in Chancery, Decrees, Rules and Orders for the payment of money, or otherwise, which affect or appear to affect the title to the land.

4. A concise statement of such facts as are necessary to make out the title, and which do not appear in the produced documents; but no abstract of produced documents shall be required, except on special grounds. 5

5. Proofs of any facts which required to be proved in order to make out the title, and which are not established by the other produced documents, unless the Judge shall dispense with such proofs until a future stage of the investigation. 10

6. An Affidavit or deposition by the person whose title is to be investigated and a certificate of one of his Counsel or Solicitors, to the effect hereinafter respectively mentioned, unless the Judge sees fit, for some special reason, to dispense with the same respectively. 15

7. A Schedule of the particulars produced under the preceding six sub-sections.

What the affidavit or deposition of the applicant must state.

VII. The Affidavit or Deposition of the person whose title is to be investigated shall state to the effect, that to the best of his knowledge and belief he is the legal and equitable owner of the estate (whatever it is) which is claimed by the petition subject only to any dower, leases, tenancies, easements and incumbrances to be set forth in the Schedule to the petition, or that there is no dower, lease, tenancy, easement or other incumbrance of or affecting the land; that the deeds and evidences of title which he produces, and of which a list is contained in the Schedule produced under the preceding section, are all the title deeds and evidences of title relating to the land that are in his possession or power, and that he is not aware of any adverse claim to any part of the land; or if he is aware of any adverse claim to any part of the land or to any interest therein, he shall set forth every such adverse claim, and shall depose that he is not aware of any except those he sets forth; And the Affidavit or Deposition, shall also set forth whether any one is in possession of the land, and under what claim, right or title. 20
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As to adverse claims or possession.

In certain cases it may be made by another person.

VIII. This Affidavit or Deposition may in a proper case be made by some other person instead of the person whose title is to be investigated, at the discretion of the Judge to whom the application is made, and in that case the affidavit shall be modified accordingly.

What the certificate of Counsel or Solicitor must state.

IX. The certificate of the Counsel or Solicitor shall state to the effect, that he has investigated the title and believes the party to be the owner of the estate which the petition claims in the land in question, subject only (if such be the case) to any dower, leases, tenancies, easements or incumbrances that may be set forth in the Schedule to the petition; (or that he so believes, subject to any questions of law or fact to be set forth in the affidavit, and in regard to which he has any and what doubt;) and that he has conferred with the deponent on the subject of the various matters set forth in the affidavit or deposition referred to in the preceding two sections, and believes the affidavit or deposition to be true. 40
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On what evidence Judge may proceed.

X. The Judge in investigating the title may receive and act upon any evidence that is now received by any of the Courts on a question of title; and any evidence which the practice of English Conveyancers authorises

to be received on an investigation of a title out of Court ; or any other evidence, whether the same be or be not receivable or sufficient in point of strict law, or according to the practice of the English Conveyancers, provided the same satisfies the Judge of the truth of the facts intended to be made out thereby.

XI. The proofs required may be by, or in the form of, affidavits or certificates ; or may be given *visà voce* ; or may be in any other manner or form that under the circumstances of the case is satisfactory to the Judge in regard to the matters to which the same relate.

Form of proofs.

10 XII. If the Judge is not satisfied with the evidence of title produced in the first instance, he shall give a reasonable opportunity of producing further evidence, or of removing defects in the evidence produced.

Further proof if Judge is not satisfied.

15 XIII. Before giving a certificate or conveyance under this Act, the Court or Judge shall direct to be published in the *Canada Gazette*, and if he sees fit in any other newspaper or newspapers, and for such period or periods as the Court or Judge thinks expedient, a notice either of the application being made, or of the Rule, order or decision of the Court or Judge thereon ; and the certificate or conveyance shall not be signed or executed until after the expiration of at least *four* weeks from the first
20 publication of such a notice.

Judge may order notice to be published.

XIV. When the Judge is satisfied respecting the title, and considers that the certificate of title can safely be granted without any other notice of application than the published notice so required, he shall grant the certificate accordingly.

Or grant certificate without notice.

25 XV. In case there is any adverse claim to any part of the land, the Judge shall direct such notices as he deems necessary to be mailed to or served on the adverse claimant.

Notice to adverse claimant.

30 XVI. In all cases he may require from time to time any further publication to take place, or any notice to be mailed or served, that he deems necessary before granting his certificate.

Further publication or service of notice.

35 XVII. In case of a contest, the Judge may either decide the question of title on the evidence before him, or may refer the same or any matter involved therein to the full Court, or to any mode of investigation which is usual in other cases, or which he may deem expedient, and may defer granting the certificate until afterwards, according as the circumstances of each case render just or expedient.

In case of contest.

40 XVIII. With a view of expediting investigations, the Judge, if he sees fit, may refer any petition presented under this Act to the Master or a Deputy Master of the said Court, or to any Counsel named by the Judge, and in such case the referee shall proceed as the Judge himself should do under this Act, had the reference not been made.

Petition may be referred to Master.

45 XIX. The Judge may also refer any title to Counsel named by the Judge, for a preliminary report or examination, and may call for the assistance of Counsel in any other way or for any other purpose that may tend to the despatch of business under this Act.

Judge may require report of Counsel.

XX. But every report or certificate under the preceding two sections shall be subject to the approval or revision of the Judge.

Report subject to revision.

- Form of certificate of title. XXI. The Certificate of Title may be in the form contained in Schedule C to this Act, and shall be under the seal of the Court, and shall be signed by one of the Judges and by the Registrar of the Court, and the same and the Schedule (if any) thereto, shall be forthwith registered in full, both in the Court of Chancery, and in the books of the Registry Office of the County where the land lies, without any further proof thereof 5
- Registry of certificate. XXII. A memorandum or certificate of the registration may be endorsed on the certificate of title or on any certified copy thereof thus:—
 “Registered in Chancery. 1860. Book 10
 , Page , A. G., Registrar.
 Registered in the Registry Office for the County of , Book
 , Page , (Date) Registrar;”
 and a memorandum or certificate so signed shall be evidence of the registration mentioned therein. 15
- Effect of certificate of title. XXIII. The Certificate of Title when so sealed, signed and registered shall have the effect of making the title therein described, conclusive and indefeasible from the day of the date of the certificate, as regards Her Majesty and all persons whatever, subject only to any dower, leases, tenancies, easements and incumbrances mentioned in the Schedule thereto, and shall be conclusive evidence that every application, notice, publication, proceeding, consent and act whatsoever, which ought to have been made, given and done previously to the granting of the certificate, has been made, given, and done by the proper parties. 20
- Certified copy of certificate to be evidence. XXIV. After a Certificate of Title is duly registered, a copy of the Certificate, purporting to be signed and certified as such copy, by the Registrar in Chancery, or by the Registrar for the County in which the land lies, shall be admissible evidence of the Certificate for all purposes whatever, without further evidence of such copy, and without accounting for the non-production of the certificate. 25 30
- Conveyance by the Court in case of Chancery sale. XXV. In case of a Chancery sale, the Court of Chancery, if it thinks fit, may investigate the title with a view to granting an indefeasible title, and in that case, a Conveyance executed to the purchaser under the seal of the Court, and the hand of one or more of the Judges and of the Registrar of the Court and purporting to be under the authority of this Act, shall have the same conclusive effect as a certificate. 35
- XXVI. The Conveyance may be in the form set forth in Schedule D to this Act.
- When an indefeasible title is contracted for. XXVII. Where a decree is made for the specific performance of a contract for the sale of an estate, and it is part of the contract that the vender shall have an indefeasible title, the Court shall make the like investigation, and the Conveyance shall be in the form and have the same effect as a Conveyance in other cases under this Act. 40
- Right to judicial investigation of some fact, which may affect a title. XXVIII. In case any person domiciled in Upper Canada, or claiming any real estate situate in Upper Canada, desires to establish, not his title to some specific property, but generally that he is the legitimate child of his parents, or that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or that his own marriage was a valid marriage, or that he is the heir, or one of the co-heirs of any person deceased, or that he is a natural born sub- 45 50

ject of Her Majesty, he may if the said Court thinks fit, have any of the said matters judicially investigated and declared.

XXIX. The application may be by a short petition stating the object of the application. Application.

5 XXX. The petition shall be supported by an affidavit of the applicant verifying the statements of the Petition, and stating further that his claim is not disputed or questioned by any person ; or if his claim is to his knowledge disputed or questioned, he shall set forth the facts in relation to such dispute or question, and shall depose that he is not aware of any dispute or question except what he has set forth, and he shall state in the affidavit such other facts as may satisfy the Court of the propriety of proceeding with the investigation. What the Petition must contain.

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XXXI. The investigation shall be made by the same Judicial authority, and in the same manner, and on the same evidence, and the same publication or other notice shall be required, and the same proceedings generally shall be had, and the certificate granted on such investigation shall be registered in the same way, and may be proved by the same evidence, as nearly as may be respectively, as in cases under the first section of this Act. Investigation, proof etc., in such case.

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20 XXXII. This certificate when registered shall be conclusive and indefeasible in favor of the party on whose application the same was granted, and all persons claiming by, from, through or under him, and shall be *prima facie* evidence in favor of all other persons, as against all persons whatever, of the truth of the fact therein declared. Effect of Certificate.

25 XXXIII. But in case a Certificate or Conveyance is obtained under this Act by fraudulent misrepresentation, or fraudulent concealment of material facts, the same shall at any time within twenty years after the discovery or notice of the fraud, be liable to impeachment in equity as against every person who was by himself or his authorized agent, a party to the fraud, or against any one claiming under such party, except a subsequent purchaser for value, or a subsequent mortgagee or judgment creditor, without notice of the fraud to such purchaser, mortgagee or creditor, or except any one claiming under such subsequent purchaser, mortgagee or judgment creditor ; but the notice necessary to be established in such case is actual notice. It may be impeached for fraud.

30 XXXIV. A separate book shall be kept in Chancery for the registering of these and other Certificates of Title, and conveyances given under this Act, and the certificates and conveyances registered therein shall be numbered in order, and convenient indexes to the book shall be kept in such form as the Court from time to time directs. Exception.

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XXXV. In case any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceeding under this Act, is a minor, an idiot or a lunatic, the guardian of the minor, or Committee of the estate of the idiot or lunatic, may make such application, give such consent, do such act and be party to such proceeding as such person might, if free from disability, have made, given, done or been party to, and shall otherwise represent such person for the purpose of this Act ; and if the minor has no guardian, or the idiot or lunatic no Committee of his estate, the Court or Judge may appoint a person with like power to Act for the minor, idiot Register to be kept.

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45 XXXVI. In case any person who, if not under disability, might have made any application, given any consent, or done any act, or been party to any proceeding under this Act, is a minor, an idiot or a lunatic, the guardian of the minor, or Committee of the estate of the idiot or lunatic, may make such application, give such consent, do such act and be party to such proceeding as such person might, if free from disability, have made, given, done or been party to, and shall otherwise represent such person for the purpose of this Act ; and if the minor has no guardian, or the idiot or lunatic no Committee of his estate, the Court or Judge may appoint a person with like power to Act for the minor, idiot Where any party is a minor, lunatic, &c.

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**Married
Women.**

or lunatic. But a married woman shall, for the purposes of this Act, be deemed a feme-sole.

**Proceedings
not abated by
certain events.**

XXXVI. Proceedings under this Act shall not abate or be suspended by any death or transmission or change of interest, but in any such event the Court or Judge may require notices to be given to persons becoming interested, or may make any order for discontinuing, or suspending, or carrying on the proceedings, or otherwise in relation thereto, as under the circumstances may be just. 5

**Proceedings
not void for
want of form.**

XXXVII. No petition, order, affidavit, certificate, registration or other proceeding under this Act shall be invalid by reasons of any informality or other technical irregularity thereon, or of any mistake not affecting the substantial justice of the proceeding. 10

**Construction
of this Act.**

XXXVIII. The foregoing provisions of this Act shall be so construed and carried out, as to facilitate, as much as possible, the obtaining of indefeasible titles by the owners of estates in land through the simplest machinery, at the smallest expense, and in the shortest time, consistent with reasonable prudence in reference to the rights or claims of other persons. 15

Appeals.

XXXIX. An Appeal will lie from any order or decision of a Judge under this Act to the full Court, and from the full Court to the Court of Error and Appeals, as in the case of Orders, Decrees, Rules and Judgments, in suits in ordinary cases. But there shall be no appeal against a certificate of title after the registration thereof in the County where the land lies, though the same may afterwards be impeached in Equity for fraud as already provided. 20 25

LIMITATION OF SUITS.

**Absence from
U. C. not to
affect time for
bringing cer-
tain suits.**

XL. In case any person is absent from Upper Canada at the time his right to make an entry or a distress, or to bring an action to recover any land or rent, first accrued, such person, or any one claiming under him, shall not be entitled by reason of such absence to make an entry or a distress, or to bring an action or suit to recover such land or rent, after the time within which it would have been necessary to do so, if such person had not been absent from Upper Canada when such right first accrued. 30

**Defective title
of party in
possession be-
lieving it
good, cured
by ten years
possession
without no-
tice.**

XLI. In case a person is in possession of land under a defective title, acquired in good faith by such person or by some person through or under whom he claims, and without notice by the person who so acquired the same of the defect therein, no action or suit at law or in Equity for the recovery of such land from the possessor, by the person who, in consequence of such defect, is entitled thereto or claims the same, shall be brought after the expiration of ten years from the time of such title being acquired by the possessor, or by the person under whom he claims: Except that if the true owner was under the disability of infancy or of an unsound mind at the time such title was acquired, the action or suit may be brought within five years after such disability ceased, or after the death of such true owner, whichever first happened. 35 40 45

Exception.

**Act not to af-
fect pending
suits, etc.**

LXII. But the preceding sections shall not affect any suit or action now pending, and shall not take away the right of any one who shall bring his suit or action within one year after the passing of this Act, and shall duly prosecute the same to final judgment.

SCHEDULE A.

IN CHANCERY.

In the matter of (the East half of lot No. in the Concession of the Township of or as the case may be, describing the property very briefly.

To the Honorable, the Chancellor of Upper Canada.

The Petition of

SHEWETH,—

That your Petitioner is absolute owner in fee simple in possession (or as the case may be,) of the following property (describing it,) or (that your Petitioner hath agreed for valuable consideration with who is the absolute owner in fee simple in possession, that he shall obtain for your Petitioner an indefeasible title to, &c.)

That there is no dower, lease, tenancy easement or other incumbrance affecting the said land, (or,—that your Petitioner's title is subject only to the dower, lease, tenancy, easement or other encumbrance in the schedule heretomentioned,) or,—that the only persons having or claiming any estate or interest in the said land are set forth in the schedule hereto annexed, and that the estate or interest belonging to or claimed by each is therein set forth.) Your Petitioner therefore prays that his title (or the title of the said to the said land,) may be investigated and declared under the Act for quieting titles to real estate in Upper Canada.

SCHEDULE B.

Form of Registrar's Certificate of an Application under this Act.

I certify that an application has been made by to the Court of Chancery, under the Act for quieting titles to Real Estate in Upper Canada, for a certificate of title to the following lands [stating them.]

ALEX. GRANT,
Registrar.

SCHEDULE C.

Form of Chancery Certificate of Title.

Number

These are to certify under the authority of the Act for quieting titles to real estate in Upper Canada, that A. B, is the (legal) owner in fee simple in possession of all, &c., [here describe the property,] free from any dower, tenancy, lease or incumbrance [or subject to, &c., specifying either by reference to a schedule or otherwise any dower, leases, tenancies, easements or incumbrances to which the title of A. B. is subject.] Or that [stating the facts found and to be declared under the 28th Section of the Act, and stating on whose application the same are declared.]

In Witness whereof [Chancellor or one of the Vice Chancellors,] of the said Court, has hereunto set his hand, and the seal of the said Court has been hereunto affixed, this day of _____ in the year of Our Lord,

A. GRANT,
Registrar.

C. D.

L. S.

SCHEDULE D.

Form of Chancery Deed.

Number.

The Court of Chancery for Upper Canada, under the authority of the Act for quieting titles to real estate in Upper Canada, doth hereby grant unto A. B., &c., [here describe the premises sold] to hold the same unto the said _____, his heirs and assigns forever, subject to [here specify, either by reference to a Schedule or otherwise, any dower, leases, tenancies, easements or incumbrances to which the sale is made subject.] In Witness whereof, [Chancellor, or one of the Vice-Chancellors of the said Court,] has hereunto set his hand, and the seal of the said Court has been hereto set, this day of _____, in the year of Our Lord,

A. GRANT,
Registrar.

C. D.

L. S.