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No. 45.

3rd Session, 6th Parliament, 23 Victoria, 1860.

BILL.

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

Received and read, 1st time, Monday, 12th
March, 1860.

Second Reading, Thursday, 15th March,
1860.

Honorable Mr. MOWAT.

QUEBEC.

PRINTED BY THOMPSON & 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 ;
 5 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.

1. 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.

Judicial investigation of title.

2. The investigation may be made by any Judge of the Court of Chancery on the application of the owner, or of any person with whom the owner has for valuable consideration agreed to obtain for such person an indefeasible title to or conveyance of the land under this Act.

By whom to be made.

3. A certificate by the Registrar of the said Court, according to the form given in Schedule A, of the application being made, shall be registered in the Registry Office of the County in which the land lies, before the certificate is granted.

Registry of application.

4. The application to the Judge shall be supported by the following particulars :—

How application must be supported.

1. The titles, deeds and evidences of title relating to the land that are in the possession or power of the owner.

2. A certified copy of all registered instruments affecting the land since the last judicial certificate (if any) under this Act was given.

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.

4. An Affidavit or deposition by the owner or one of the Joint owners 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.

5. The Affidavit or Deposition of the owner, shall state that he is the legal and equitable (or the equitable) owner of the land in fee simple, to the best of his knowledge and belief, subject only to any dower, leases, tenancies and incumbrances to be set forth in the Affidavit or Deposition, or in a Schedule thereto, or that there is no dower, lease, tenancy or other incumbrance of or affecting the land ; that the deeds and evidences of title which he produces, and of which a Schedule may be annexed to the Affidavit or Deposition, are all the title deeds and evidences of title relating to the land that are in his possession or power, and that he is

What the affidavit or deposition of the owner must state.

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. 5

In certain cases it may be made by other than owner.

6. This Affidavit or Deposition may in a proper case be made by some other person instead of the owner, at the discretion of the Judge to whom the application is made, and in that case the affidavit shall be modified accordingly. 10

What the certificate of Counsel or Solicitor must state.

7. 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 land in fee simple, subject only (if such be the case,) to any dower, leases, tenancies or incumbrances that may be set forth ; (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. 15

On what evidence Judge may proceed.

8. 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 English Conveyancers, provided the same satisfies the Judge of the truth of the facts intended to be made out thereby. 20 25

Form of proofs.

9. The proofs required may be by, or in the form, of affidavits or certificates ; or may be given *vivā 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. 30

Judge may order notice to be published.

10. Before giving a certificate or conveyance, the Court or Judge shall direct to be published in such 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, from the first publication of such notice. 35

Or grant certificate without notice.

11. When the Judge is satisfied respecting the title, and considers that the certificate of title can safely be granted without any other notice of the application than the published notice so required he shall grant the certificate accordingly. 40

Further publication of notice.

12. In other 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. 45

In case of contest.

13. 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 and expedient.

14. The certificate of title may be in the form contained in Schedule B 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 registered in full, both in the books of the Court of Chancery, and in the books of the Registry of the County where the land lies, without any further proof thereof. Form of certificate of title.
15. A memorandum or certificate of the registration may be endorsed on the certificate of title thus:— Registry of certificate.
- “Registered in Chancery. 1860. Book
 , Page , A. G., Registrar.
 Registered in the Registry Office for the County of , Book
 , Page (Date) Registrar.”
16. 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, subject only to any dower, leases, tenancies 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 execution of the certificate, has been made, given, and done by the proper parties, and no such certificate shall be impeached by reason of any informality therein, or in the registration thereof. Effect of certificate of title.
17. But in case a certificate or conveyance is obtained by fraudulent misrepresentation or fraudulent concealment of material facts, the same shall be liable to impeachment in equity as against every person who was by himself or his authorized agent, a party to the fraud; except as against a subsequent purchaser for value, or a subsequent mortgagee, without notice of the fraud to such purchaser or mortgagee, or against any one claiming under such subsequent purchaser or mortgagee. It may be impeached for fraud.
Exception.
18. A copy of the certificate of title, 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, as the case may be, 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. Certified copy of certificate to be evidence
19. 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 a natural born subject of Her Majesty, he shall be entitled to have any of the said matters judicially investigated and declared accordingly; and in such case 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 when registered shall have the same conclusive effect, but subject to the same conditions, and may be proved by the Judicial investigation of some fact, which may affect a title.

same evidence, as nearly as may be respectively, as in cases under the first section of this Act.

- Conveyance by the Court in case of Chancery sale.** **20.** In case of a Chancery sale, the Court of Chancery, if it thinks fit, may, before the sale, 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. 5
- Form.** **21.** The conveyance may be in the form set forth in Schedule C, to this Act. 10
- When an indefeasible title is contracted for.** **22.** Where a contract is made for the sale of an estate, and it is part of the contract that the vendor shall have an indefeasible title, the Court shall make the like investigation, and the conveyance shall be in the form and have the effect of the conveyance referred to in the preceding two sections respectively. 15
- In case of sale of land by authority of a Court of Law.** **23.** In case of a Sheriffs' sale of land in one of the Superior Courts of Law or of the County Courts, any party to the suit may, before the sale, apply to a Judge having authority to make orders in the suit, for an investigation of the title of the party whose estate is to be sold, with a view to an indefeasible title being given; and if the Judge, having reference to all the circumstances, thinks fit, after hearing the parties, he may accede to such application; and the said Judge may thereupon either investigate the title himself, in which case he shall have all the powers of a Chancery Judge under this Act, or he may direct an application for such investigation to be made to a Chancery Judge, who in that case shall proceed thereupon as in other cases under this Act; and in either case, if the title of the party is found valid, a certificate thereof shall have the same effect as a certificate granted on the application of an owner, and the costs of such application shall be in the discretion of the Judge or Court, who may impose the same on the plaintiff or defendant, or on any plaintiff or defendant in the cause. 20
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- Where any party is a minor, lunatic, &c.** **24.** 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 has no Committee of his estate, the Court or Judge may appoint a person with like power to act for the minor, idiot or lunatic. But a married woman shall, for the purposes of this Act, be deemed a feme-sole. 35
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- Proceedings not abated by certain events;** **25.** Proceedings under the foregoing provisions of 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. 45
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- Construction of this Act.** **26.** The foregoing provisions of this Act shall be so construed and

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 or incumbrances to which the title of A. B. is subject*]. Or that A. B., &c., [*stating the facts found and to be declared under the 19th Section of the Act.*]

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 affixed,] this day of in the year of Our Lord,

C. D.

A. GRANT,
Registrar.

SCHEDULE C.

Form of Chancery Deed.

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., all [*here describe the premises sold*] to hold the same unto thg said , his heirs and assigns forever, subject to [*here specify, either by reference to a Schedule or otherwise, any dower, leases, tenancies 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,

C. D.

A. GRANT,
Registrar.