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No. 15.

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4th Session, 8th Parliament, 29th Victoria, 1865.

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**BILL.**

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

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[No. 65 of 1865—1st Session.]

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**Hon. Mr. Atty. Gen. MACDONALD.**

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**QUEBEC:**  
**PRINTED BY HUNTER, ROSE & CO.,**  
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**An Act for quieting Titles to Real Estate in Upper Canada.**

**WHEREAS** it is expedient to give certainty to the title to real estates in Upper Canada, and to facilitate the proof thereof, and also to render the dealing with land more simple and economical : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Preamble.

**1.** Any owner of an estate in fee simple in land in Upper Canada, or any trustee for the sale of the fee simple, shall be entitled to have his title judicially investigated and the validity thereof ascertained and declared; and he shall be so entitled whether he has the legal estate or not, and whether his title is subject or not to any charges or incumbrances.

Owners in fee simple entitled to judicial investigation.

**2.** Any other person who has any estate or interest, legal or equitable, in or out of land in Upper Canada, 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.

**3.** 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 the Schedule A.

Form of application and to whom.

**4.** 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, and this certificate may be in the form given in Schedule B.

Registry of application.

**5.** The application shall be supported by the following particulars :

How the application must be supported.

**1.** The title deeds (if any) and evidences of title relating to the land that are in the possession or power of the applicant ;

**2.** A certified copy of the memorials of all other registered instruments affecting the land; or of all since the last judicial certificate, if any, under this Act was given (as the case may be), up to the time of the registering of a certificate of the petition as provided for by Section four ;

**3.** The certificate of the Registrar of the County in which the land lies, as to bills and proceedings in Chancery or in any County Court on its equity side, relating to the land, and of which a certificate has been registered in his office ;

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. 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;

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;

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

**What the affidavit or deposition of the applicant must state.**

6. 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 owner of the estate or interest (whatever it is) which is claimed by the petition, subject only to the charges and incumbrances set forth in the petition or in the Schedule thereto, or that there is no charge or incumbrance 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 the existence of any claim adverse to or inconsistent with his own to any part of the land or to any interest therein, or if he is aware of any such adverse claim, he shall set forth every such adverse claim, and shall depose that he is not aware of any, except what 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; and shall state that to the best of the deponent's knowledge, information and belief, the said affidavit or deposition, and the other papers produced therewith, fully and fairly disclose all facts material to the title claimed by the petitioner, and all contracts and dealings which affect the same or any part thereof, or give any right as against the applicant. 15 20 25 30 35 40

**As to adverse claims or possession.**

**In certain cases it may be dispensed with or made by another person.**

7. This affidavit or deposition may, in a proper case, be dispensed with, or may be made by some other person instead of the person whose title is to be investigated, or an affidavit or deposition as to part may be made by the one, and as to part by another, at the discretion of the Judge to whom the application is made; and in such case the affidavit shall be modified accordingly. 35 40

**What the certificate of Counsel or Solicitor must state.**

8. 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 charges or incumbrances that may be set forth in the Schedule to the petition (or that he so believes, subject to any condition, qualification or exemption to be set forth in the certificate), 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. 45 50

**On what evidence Judge may proceed.**

9. 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 Conveyan-

cers authorizes 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.

10. The proofs required may be by, or in the form of, affidavits or Form of certificates; or may be given *viva 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. proofs.

10 11. 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.

12. Before giving a certificate or conveyance under this Act, the Judge shall direct to be published in the *Canada Gazette*, and if he sees fit in any other newspaper of newspapers, and in such form and for such period or periods as the Judge thinks expedient, a notice either of the application being made, or of the order or decision of the 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 publication of such notice, or such other period as the Judge may appoint. Judge may order notice to be published,

13. 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.

14. In case of there appearing to exist any claim adverse to or inconsistent with that of the Petitioner to or in respect of any part of the land, the Judge shall direct such notice as he deems necessary to be mailed to or served on the adverse claimant, his solicitor, attorney, or agent. Notice to adverse claimant.

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

16. Before a certificate of title is granted, satisfactory evidence shall be given by certificate, affidavit or otherwise, that all taxes, rates and assessments, for which the land is liable have been paid, or that all except those for the current year have been paid. Taxes must have been paid.

17. Every claim of title under this Act shall be presumed to be subject to the following exceptions and qualifications, unless the petition for investigation expressly alleges the contrary: Claims of to be presumed to be made with certain exceptions.

1. The reservations (if any) contained in the original grant from the Crown;
2. Any municipal charges, rates or assessments theretofore imposed for local improvements, and not yet due and payable;
3. Any title or lien which, by possession or improvements or other means, the owner or person interested in any adjoining land has acquired to or in respect of the land mentioned in the certificate;
4. Any lease or agreement for a lease, for a period yet to run, of not exceeding three years, where there is actual occupation under the same.

- But claim may be without exceptions.** **18.** But if the applicant desires the certificate to declare the title to be free from the said particulars, or any of them, his petition shall so state, and the investigation shall proceed accordingly.
- Adverse claimants to file statements.** **19.** Any person having an adverse claim, or a claim not recognized in the applicant's petition, may at any time before the certificate of title is granted, file and serve on the applicant, his solicitor or agent, a short statement of his claim, which may be in the form set forth in Schedule C. **5**
- Verification.** **20.** This claim shall be verified by an affidavit to be filed therewith. **10**
- In case of contest.** **21.** 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. **15**
- Security for costs.** **22.** The Judge may, at any stage of the cause, order security for costs to be given by the applicant for a certificate, or by any person making any adverse claim.
- Payment of costs.** **23.** The Judge may order costs either as between party and party, or as between solicitor and client, to be paid by or to any person party to any proceeding under this Act, and may give directions as to the fund out of which any costs shall be paid. **20**
- Withdrawal of application.** **24.** The Petitioner may by leave of the Judge withdraw his application at any time before final adjudication on payment of all costs incurred in the investigation either by himself or by any adverse claimant. **25**
- Petition may be referred to Master or Counsel.** **25.** With a view of expediting investigations, and subject to any general orders in this behalf, the Judge, if he sees fit, may refer any petition presented under this Act to the Master or a Deputy Master or any other officer 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, and shall have the same powers. **30**
- Judge may require report of Counsel.** **26.** 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 dispatch of business under this Act. **35**
- One certificate or several.** **27.** The Judge may give one certificate of title, comprising all the land mentioned in the Petition, or may give separate Certificates to the title of separate parts of the land. **40**
- Form of certificate of title.** **28.** The certificate of title may be in the form contained in Schedule D 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, or a duplicate or counter part of the same, 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. **45**

**29.** A memorandum or certificate of the registration may be endorsed on the certificate of title or on any counterpart or certified copy thereof thus:—

“Registered in Chancery. 186 . Book ,  
 5 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.

**10 30.** The certificate of title when so sealed, signed and registered, shall be conclusive at law and in equity, and the title therein mentioned shall be deemed absolute and indefeasible, from the day of the date of the certificate, as regards Her Majesty and all persons whatever, subject only to any charges or incumbrances, exceptions or  
 15 qualifications mentioned therein, or 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 31.** 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 whatsoever, without further evidence of such copy, and  
 25 without accounting for the non-production of the certificate.

**32.** 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 purporting to be under the authority of this  
 30 Act, shall have the same conclusive effect as a certificate.

**33.** The conveyance may be in the form set forth in Schedule E to this Act.

**34.** 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 vendor shall have an indefeasible title, the Court shall make the like investigation, and the conveyance may be in the form set forth in the  
 35 same Schedule E.

**35.** In case any person domiciled in Upper Canada, or claiming any real estate in Upper Canada, desires to establish, not his title to  
 40 some specific property, but generally that he is the legitimate child of his parents, or that the marriage of his father or 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 the natural born subject  
 45 of Her Majesty, he may, if the said Court think fit, have any of the said matters judicially investigated and declared.

**36.** The application may be by a short petition stating the object of the application.

**37.** 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. 5

Investigation, proof, &c., in such case.

**38.** 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 10 the same evidence, as nearly as may be respectively, as in cases under the first section of this Act.

Effect of certificate.

**39.** 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, 15 and shall be *primâ facie* evidence in favor of all other persons, and against all persons of the truth of the fact therein declared.

Register to be kept.

**40.** 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 20 be numbered in order, and convenient indexes to the books shall be kept in such form as the Court from time to time directs.

Where any party is a minor, lunatic, &c.

**41.** 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, 25 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 30 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 or lunatic; but a married woman shall, for the purposes of this Act, be deemed a feme-sole.

Married women.

Reinvestigation at the instance of any party aggrieved.

**42.** After a certificate is granted in regard to any of the matters 35 investigated under this Act, any party aggrieved thereby may, on petition, and after satisfactorily accounting for his delay, have the title or claim re-investigated on such terms as may be just.

But those who have purchased, &c., in the meantime not to be affected.

**43.** But no proceeding on such petition shall affect the title of any person who, in the meantime, and after the registration of the certificate, 40 shall have acquired, by sale, mortgage or contract, for valuable consideration, any estate or interest in the land specified in the certificate of title; or (in case the certificate was under the thirty-fifth section of this Act), in any land or other property, the title to which was derived from, through or under the person named in the certificate, 45 in the character which is thereby declared to belong to him.

Proceedings not abated by certain events.

**44.** 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 50 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.** No petition, order, affidavit, certificate, registration or other proceeding under this Act shall be invalid by reason of any informality or other technical irregularity therein, or of any mistake not affecting the substantial justice of the proceeding. Proceedings not void for want of form.

**5 46.** An Appeal shall 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. Appeals.

**10 47.** 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. Construction of this Act.

**15 48.** If in the course of any proceeding under this Act, any person acting either as principal or agent, shall, knowingly and with intent to deceive, make, or assist or join in or be privy to the making of, any material false statement or representation, or suppress, conceal or assist or join in or be privy to the suppressing, withholding or concealing from the Court any material document, fact or matter of information, every person so acting shall be deemed to be guilty of a misdemeanor, and on conviction shall be liable to be imprisoned in the Provincial Penitentiary for a term not exceeding three years, and not less than two years, or to be imprisoned in any other prison or **25** place of confinement for any term less than two years; and in the latter case with or without hard labor, or to be fined such sum as the Court by which he is convicted shall award; any order or declaration of title obtained by means of such fraud or falsehood, shall be null and void for or against all persons other than a purchaser for valuable **30** consideration, without notice. Punishment of persons obtaining certificates under this Act by fraud. Certificate to be void. Exception.

**49.** If in the course of any proceeding before the Court, under this Act, any person shall fraudulently forge or alter, or assist in forging or altering, any certificate or other document relating to such land or the title thereto, or shall fraudulently offer, utter, dispose of or put **35** off any such certificate or other document, knowing the same to be forged or altered, such person shall be guilty of felony, and upon conviction shall be liable, at the discretion of the Court by which he is convicted, to be imprisoned in the Provincial Penitentiary for life or for any term not less than three years, or to be imprisoned in any **40** other prison or place of confinement for any term not exceeding two years, and in the latter case with or without hard labor. Forging or fraudulently altering certificate, &c., to be felony. Punishment.

**50.** No proceeding or conviction for any act hereby declared to be a misdemeanor, shall affect any remedy which any person aggrieved by such act may be entitled to, either at law or in equity, against the **45** person who has committed such act. Conviction not to affect other remedy.

**51.** Nothing in this Act shall entitle any person to refuse to answer any question or interrogatory in any civil proceeding in any Court of law or equity, but no answer to any such question or interrogatory shall be admissible in evidence against such person in any civil **50** proceeding. As to obligation to answer interrogatories.

**52.** The said Court may, from time to time, make general orders for referring all or any applications under this Act, to any master. Court may make general.



