

No. 32.

2nd Session, 7th Parliament, 26 Victoria, 1863.

BILL.

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

Received and read, first time, Friday, 27th
February, 1863.

Second reading, Monday, 2nd March, 1863.

Hon. Mr. MOWAT.

QUEBEC :

PRINTED FOR THE CONTRACTORS BY HUNTER,
ROSE & LEMIEUX, ST. URSULE STREET.

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, 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.
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.
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 Schedule A.
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, before the investigation is entered upon, and this certificate may be in the form given in Schedule B.
5. The application shall be supported by the following particulars:
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 4.
 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.

Owners in fee simple entitled to judicial investigation.

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

Form of application and to whom:

Registry of application.

How the application must be supported.

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.

3. 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. 5

7. A Schedule of the particulars produced under the preceding six sub-sections. 10

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, 15 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 any 20 claim adverse to 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 25 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 30 thereof, or give any right as against the applicant.

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 35 Judge to whom the application is made; and in such case, the affidavit shall be modified accordingly.

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 40 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 exception 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 45 preceding two sections, and believes the affidavit or deposition to be true.

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 Conveyancers authorizes to be received on an investigation of a title out of Court; or any other 50 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.

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 Proofs. or form that under the circumstances of the case is satisfactory to the Judge in regard to the matters to which the same relate.

5 **11.** If the Judge is not satisfied with the evidence of title produced Further proof if Judge is not satisfied. in the first instance, he shall give a reasonable opportunity of producing further evidence, or of removing defects in the evidence produced.

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 Judge may order notice to be published. fit in any other newspaper or 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 15 first publication of such notice, or such other period as the Judge may appoint.

13. When the Judge is satisfied respecting the title, and considers Or grant certificate without notice. 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 20 certificate accordingly.

14. In case there is any adverse claim to or in respect of any part of Notice to adverse claimant. 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.

25 **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 Taxes must have been paid. be given by certificate, affidavit or otherwise, that all taxes, rates and 30 assessments, for which the land is liable, have been paid, or that all except those for the current year have been paid.

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

35 **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.

40 **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.

45 **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. But claim may be without exceptions.

19. Any person having an adverse claim, or a claim not recognized Adverse claimants to file statements. 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, 50 a short statement of his claim, which may be in the form set forth in Schedule C.

- Verification.** **20.** This claim shall be verified by an affidavit to be filed therewith.
- 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 or expedient. 5.
- 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. 10.
- 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.
- Petition may be referred to Master or Counsel.** **24.** 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 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. 15 20
- Judge may require report of Counsel.** **25.** 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.
- One certificate or several.** **26.** The Judge may give one Certificate of Title, comprising all the land mentioned in the Petition, or may give separate Certificates as to the title of separate parts of the land. 25
- Form of certificate of title.** **27.** 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 counterpart 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. 30.
- Registry of certificate.** **28.** 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. 1860. Book.
 , Page , A. G. Registrar.
 Registered in the Registry Office for the County of , Book
 , Page , (Date) Registrar,” 40.
- and a memorandum or certificate so signed shall be evidence of the registration mentioned therein.
- Effect of certificate of title** **29.** 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 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. 45 50

30. 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 without accounting for the non-production of the certificate.

Certified copy of certificate to be evidence.

31. 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 Act, shall have the same conclusive effect as a certificate.

Conveyance by the Court in case of Chancery sale.

32. The Conveyance may be in the form set forth in Schedule E to this Act.

33. 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 same Schedule E.

When an indefeasible title is contracted for.

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

Right to judicial investigation of some fact, which may affect a title.

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

Application.

36. 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.

How the Petition must be supported.

37. 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.

38. 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, and against all persons of the truth of the fact therein declared.

Effect of certificate.

Register to be kept.

39. 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. .

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

40. 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, 10
15
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.

41. After a certificate is granted in regard to any of the matters investigated under this Act, any party aggrieved thereby may, on petition, and after satisfactorily accounting for his delay, have the title or 20
claim re-investigated on such terms as may be just.

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

42. But no proceeding on such petition shall affect the title of any person who, in the meantime, and after the registration of the certificate, 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-fourth section of this Act,) on any land or other property, the title to which was derived from, through or under the person named in the certificate, in the character which is thereby declared to belong to him. 25

Proceedings not abated by certain events.

43. Proceedings under this Act shall not abate or be suspended by 30
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. 35

Proceedings not void for want of form.

44. 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.

Appeals.

45. An Appeal will lie from any order or decision of a Judge under 40
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.

Construction of this Act.

46. The foregoing provisions of this Act shall be so construed and carried out, as to facilitate, as much as possible, the obtaining of inde- 45
feasible 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.

47. 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 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 consideration without notice.

Punishment of persons obtaining certificates under this Act by fraud.

Certificate to be void.

Exception.

48. 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 thereof, or shall fraudulently offer, utter, dispose of or put 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 other prison or place of confinement for any term not exceeding two years, and in the latter case with or without hard labor.

49. 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 person who has committed such act.

Conviction not to affect other remedy.

50. 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 proceeding.

As to obligation to answer interrogatories.

51. The said Court may, from time to time, make general orders for referring all or any applications under this Act to any master, deputy master, Counsel or other person appointed by the Court in that behalf, and to regulate the fees to be paid on such reference, and the referee shall have the same powers as a Judge within the limits prescribed by such general orders; and the Court may also, from time to time, make other general orders for the purposes of this Act, and for regulating the practice under the same; and all general orders made in pursuance of this section may from time to time be rescinded or altered by the said Court.

Court may make general orders for carrying out this Act.

52. 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, which ever first happened.

Defective title of party in possession believing it good, cured by ten years possession without notice.

Exception.

Act not to af-
fect existing
suits, etc.

53. But the preceding section 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.

Form of Petition for the Investigation, Sect. 3.

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 Judges of the Court of Chancery.

The Petition of

SH EWETH,—

That your Petitioner is absolute owner in fee simple in possession (or as the case may be,) of the following property (*describing it.*)

That there is no charge or other incumbrance affecting your Petitioner's title to the said land, (*except, &c., or,—that your Petitioner's title is subject only to the charges or incumbrances in the schedule hereto mentioned, and that the only persons having or claiming any charge, incumbrance, estate, right or interest in the said land are set forth in the schedule hereto annexed, and that the charge, incumbrance, estate, right or interest belonging to or claimed by each is herein set forth.*) Your Petitioner therefore prays that his title to the said land may be investigated and declared under the Act for quieting titles to real estate in Upper Canada.

(Signed,)

A. B.

or

C. D., Solicitor for A. B.

SCHEDULE B.

Form of Registrar's Certificate of an Application under this Act, Sect. 4.

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 an Adverse Claimant's Statement, Sect. 19.

In the matter of, &c., (*as in Petition.*)

A. B. of, &c., claims to be the owner of the said land, &c., &c., (*stating very briefly the nature of the claim and the grounds of it.*) Dated this day of 186

(Signed,)

A. B.,

or

C. D., Solicitor for A. B.

SCHEDULE D.

Form of Chancery Certificate of Title, Sect. 27.

No. _____

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 and beneficial owner in fee simple in possession (or as the case may be,) of all, &c., [*here describe the property,*] subject to the reservations mentioned in the seventeenth section of the said Act and therein numbered respectively, 1, 2, 3 and 4 (or as the case may be,) and to (specifying either by reference to a schedule or otherwise any of the other charges or incumbrances, exceptions or qualifications to which the title of A. B. is subject) but free from all other rights, interests, claims and demands whatever. Or that [*stating the facts found and declared under the thirty-fourth Section of this 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 _____

A. GRANT,
Registrar.

C. D.

L. S.

SCHEDULE E.

Form of Chancery Deed, Sects. 32 and 33.

No. _____

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 for ever, (or as the case may be,) subject to [*here specify as in the case of a Chancery certificate of title.*]

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.