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No. 70.

1st Session, 7th Parliament, 25 Victoria, 1862.

BILL.

An Act for Quieting Titles to Real Estate,
and to authorize the issue of Debentures
chargeable on Land in Upper Canada.

Received and read, first time, Friday, 25th
April, 1862.

Second reading, Wednesday, 30th April,
1862.

MR. CRAWFORD.

QUEBEC :

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

An Act for quieting Titles to Real Estate and to authorize the issue of Debentures chargeable on land 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 view to the quieting of Titles: And whereas it is expedient to give freedom and facility to the creation and transfer of charges on land in Upper Canada: Therefore, Her Majesty, &c., enacts as follows:

1. The short title of this Act shall be, "The quieting Titles and Land Debenture Act, Upper Canada."

2. Unless the context shall require a different construction, words used in the singular number and masculine gender shall be construed to extend to one or more persons, whether sole or corporate, or male or female, and the Court shall mean the Court of Chancery for Upper Canada, or any Judge thereof, and "Debenture" shall mean a Debenture issued under the authority of this Act.

3. Any owner of an estate in fee simple 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.

4. 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.

5. 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.

6. 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.

Certificate to be registered.

7. A certificate, by the Registrar of the said Court, of the petition 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.

Particulars in support of application.

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

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 10 (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.

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 15 appear to affect, 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 20 grounds.

5. Proofs of any facts which require 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 the 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 six preceding sub-Sections. 30

Affidavit of person whose title is to be investigated.

9. 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 35 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 possess- 40 ion 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 45 one is in possession of the land, and under what claim, right, or title.

May be made by another in certain cases.

10. This affidavit or deposition may, in a proper case, be made by some other person, instead of the person whose title is to be inves-

tigated, at the discretion of the Judge to whom the application is made, and in that case the Affidavit shall be modified accordingly.

11. 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.

Certificate of Counsel or Solicitor.

12. 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 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.

What evidence may be received.

13. The proofs required may be by or in the form of affidavits or 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.

Form of proofs.

14. 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 evidence if Judge is not satisfied

15. 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 it 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 publication of such a notice.

Notice to be published.

16. 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.

Certificate granted.

17. 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.

If any adverse claim.

18. 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 notice.

19. 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

Reference to full Court, &c., in case of contest.

28. The Conveyance may be in the form set forth in Schedule D to Form.
this Act.

29. Where a decree is made for the specific performance of a Contract for
contract for the sale of an estate, and it is part of the contract that the sale with in-
5 vendor shall have an indefeasible title, the Court shall make the like defeasible
investigation, and the conveyance shall be in the form and shall have title.
the same effect as a conveyance in other cases under this Act.

30. In case any person domiciled in Upper Canada, or claiming any Investigation of
real estate in Upper Canada, desires to establish, not his title to some
10 specific property, but generally that he is the legitimate child of his of matters ne-
parents, or that the marriage of his father and mother, or of his grand- cessary to a
father and grandmother, was a valid marriage, or that his own marriage title.
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
15 Majesty, he may, if the said Court thinks fit, have any of the said mat-
ters judicially investigated and declared.

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

32. The petition shall be supported by an affidavit of the applicant, Affidavit in
20 verifying the statements of the petition, and stating further that his support of pe-
claim is not disputed or questioned by any person, or if his claim is, to tition.
his knowledge, disputed or questioned, he shall set forth the fact 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
25 shall state in the affidavit such other facts as may satisfy the Court of
the propriety of proceeding with the investigation.

33. The investigation shall be made by the same judicial authority, Proceedings
and in the same manner, and on the same evidence, and the same pub- as in cases
lication or other notice, shall be required, and the same proceedings under sect. 1.
30 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.

34. This certificate, when registered, shall be conclusive and inde- Effect of cer-
35 feasible in favor of the party on whose application the same was tificate.
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
other persons whatever, of the truth of the fact therein declared.

35. But, in case a certificate or conveyance is obtained, under this Impeachment
40 Act, by fraudulent misrepresentation or fraudulent concealment of in case of
material facts, the same shall, at any time within twenty years after fraud.
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
45 party, except a subsequent purchaser for value or a subsequent Mort-
gagee or Judgment Creditor, without notice of the fraud to such pur-
chaser, 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.

36. A separate book shall be kept in Chancery for the registering of Books to be

kept under
this Act.

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.

As to parties
under disa-
bility.

37. 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 purposes 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, or Lunatic; but a married woman shall, for the purposes of this Act, be deemed a *feme sole*.

Married wo-
man.

Provision in
case of trans-
mission of in-
terest.

38. 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.

Want of form
not to vitiate
proceedings.

39. 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.

How this Act
shall be con-
strued.

40. 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.

Appeal.

41. 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 Appeal, 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.

LIMITATION OF SUITS.

40

Absentees not
entitled to
longer time
than resi-
dents.

42. 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.

Ten years to
work pre-

43. 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 50

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.

scription with defective title and good faith.

Exception.

44. 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.

Two next preceding sections not to affect pending suits, &c.

15

LAND DEBENTURES.

45. When any conveyance or certificate of title shall be made by the Court, such conveyance or certificate may be made subject to such Debentures, and of such number and value as the Court shall authorize.

Court may certify, &c., subject to Debentures.

46. Provided that every conveyance or certificate shall express therein the amount of the Debentures to which it is subject, and of the interest annually payable thereon, and the days on which such interest is payable, and the day on which the interest shall be payable.

Particulars in such certificate

47. Before authorizing the issuing of any Debentures, the Court shall be satisfied, by inspection of rentals, valuations, or other evidence, that the amount of Debentures about to be authorized does not exceed one-third of the net cash value of the lands on which the same are charged. Provided, however, that no Debenture shall be liable to be impeached by any allegation that any greater amount had been issued than that hereinbefore authorized.

Amount limited.

Proviso.

48. The Debentures shall constitute the first charge on the property charged therewith, and shall have no priority one over another thereof, and no Debenture shall be issued where there is any prior charge on the property.

Debentures, how chargeable on land.

49. The Court shall cause a sufficient number of Books to be prepared and kept according to forms to be settled by the Court, for the purpose of recording the creation and transfer of Debentures, which Books shall be called the Registry of Debentures; and the Court shall cause a Seal to be prepared, for the purpose of sealing the said Debentures and every endorsement made thereon, and such Seal shall be in the custody of the Registrar of Debentures, or other officer to be appointed by the Court for that purpose.

Court to cause proper books to be kept.

50. Every Debenture and every interest therein which shall belong to the owner of an Estate of Inheritance in the lands charged therewith, shall be deemed real property, and shall be descendible in the same manner as the said estate, and shall be deemed in equity to be conveyed by any transfer of such estate, unless the nature and contents of the instrument affecting such transfer shall require a different construction; but no Debenture shall merge in the estate on which it is charged without the expressed directions, duly registered, of the owner thereof.

Debentures to be real estate, &c.

Assignment
of debentures.

51. The lawful owner of any Debenture shall be at liberty to assign the same by an instrument, according to a form to be settled by the Court, and, on production to the Registrar of the said Debenture, and of the assignment thereof, duly verified, he shall cause a note thereof to be entered in the said Registry, and to be endorsed on the said Debenture, and thereupon the assignee shall become the lawful owner of the said Debenture. 5

Equitable assign-
ment.

52. The lawful owner of any Debenture may make an equitable assignment thereof, by way of mortgage or otherwise, by depositing the same with any person on an agreement for value, or as a security for any debt, and the assignee shall be at liberty to apply to the Court to obtain a legal transfer of such Debenture: and the Court, if it thinks proper, may order the lawful owner of such Debenture to execute a legal transfer thereof to such equitable assignee, or may direct the said Registrar to enter a note thereof on the said equitable assignment in the said Registry, and to endorse the same on the said Debenture, and thereupon the said equitable assignee shall become the lawful owner of the said Debenture. 10 15

How to become a legal
transfer.

How debentures lost or
destroyed may be re-
placed.

53. In case of the loss or destruction of any Debenture, the lawful owner thereof may apply to the Court for a new Debenture, and the Court, on evidence of such loss or destruction, and on such public notice, by advertisement or otherwise, as it shall direct, shall be at liberty to issue a new Debenture in place of the one that had been lost or destroyed; provided that the Court, if it thinks proper, may require security by recognisance or otherwise, to indemnify any person who may have had an equitable interest or lien in or on the Debenture alleged to have been lost or destroyed. 25

New debentures.

54. If any Debenture shall be torn or otherwise damaged, or if the endorsements thereon shall be so numerous that there shall not be sufficient convenient room thereon for further endorsements, it shall be lawful for the Court to cancel the same, and to issue a new Debenture in place thereof. 30

Cost thereof.

55. The cost of making, issuing, and preparing any new or substituted Debenture shall be paid by such party as the Court shall direct to bear the same. 35

When the right to a debenture accrues to any person.

56. When the right to any Debenture, or a title to transfer the same, shall accrue to any person by operation of law, it shall be lawful for such person to apply to the Court to have a transfer entered on the said Registry to him, or according to his directions, and to have a note of such transfer endorsed on the said Debenture. 40

Recourse of holder for interest over due.

57. The lawful owner of any Debenture, to whom any interest shall remain due for the term of one month after the time appointed in such Debenture for the payment thereof, shall be at liberty to apply to the Court for a sale of the land charged with such Debenture, or may apply for a Receiver; or for both a sale and Receiver. 45

Option to receive the principal.

58. The Court shall thereupon give to the holder of every Debenture the option either to have the sum due for principal and interest on his Debenture paid out of the proceeds of the sale, according to the priority of his demand, or to have the interest only paid, and to permit the principal to remain a charge on the unsold lands until the time appointed by the Debenture for payment of the principal. 50

- 59.** The Court shall have authority to dismiss such proceedings upon payment of interest and costs, or on such other terms as it may deem equitable. Dismissing proceedings on terms.
- 60.** No proceeding shall be taken to recover any arrear of interest due on any Debenture after the lapse of two years from the time when the same shall have fallen due; provided, however, that an application to the Court by any Debenture holder, shall be deemed an application on behalf of all persons holding Debentures on the same lands so as to entitle them to recover all arrears of interest that may have accrued, due within two years previous to the date of such application. Limitation of right to recover arrears Proviso.
- 61.** The lawful owner of any Debenture which shall remain unpaid at the time appointed by such Debenture for payment of the principal thereof, may apply to the Court for a sale of the land charged therewith. If principal is due and unpaid.
- 62.** Provided that, if the owner of any Debenture and of the land chargeable therewith shall so consent, it shall be lawful for the Court to issue a new Debenture in place of such over due Debenture, which new Debenture shall bear such interest, and shall be payable at such time as shall be therein expressed. New debentures.
- 63.** Provided that, if the owner of any over due Debenture shall refuse to accept a new Debenture in lieu thereof, the owner of the land charged therewith may pay off the same, and apply to the Court to issue a new Debenture in lieu thereof, which new Debenture shall be issued to such person as the said owner shall direct. Owner may pay off old and obtain new debentures.
- 64.** Provided that, if the owner of any land shall be under any disability, the Court may appoint a Guardian *ad litem* for such owner; and the consent and directions of such Guardian shall have the same effect as if the owner had been under no disability and had given such consent or direction. Guardian to owner under disability.
- 65.** The Court shall have power to issue new Debentures under the provisions of the and Sections of this Act, chargeable on such parts only of the land on which the over due Debentures had been charged, as to the Court shall seem equitable; provided that no land shall, by virtue of the provisions of this Section, be charged with Debentures to a greater amount than is authorized by the 47th Section of this Act. New debentures on part only of the land.
- 66.** The Court shall fix and establish a Tariff of Fees payable under this Act. Tariff of fees.
- 67.** This Act shall apply to Upper Canada only. Act to apply to U. C. only.