

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1786. Saint John, NB: J. Ryan, 1786.

26 George III – Chapter 3

An Act for the Public Registering of all Deeds, Conveyances, and Wills, and other incumbrances which shall be made of, or that may affect any Lands, Tenements, or Hereditaments, within this province.

Whereas by the different and secret ways of transferring, conveying and encumbering lands, tenements and hereditaments, such as are ill-disposed have it in their power to commit frauds, whereby persons who purchase lands, or lend monies on land security, are liable to be injured in their purchases and mortgages, and to be utterly ruined by prior and secret conveyances and fraudulent encumbrances; for preventing whereof,

I. Be it enacted by the Governor, Council and Assembly, That all deeds and conveyances which shall hereafter be made and executed, and all wills and devices in writing, made or to be made and published, where the deviser or testatrix shall hereafter die, of or concerning, and whereby any lands, tenements or hereditaments in this province, may be any way affected in law or equity, may be registered at full length in such manner as is herein after directed; and that every such deed and conveyance, that shall any time hereafter be made and executed, shall be adjudged fraudulent and void, against any subsequent purchaser or mortgagee for valuable consideration, unless such deed and conveyances be registered as by this act is directed, before the registering of the deeds or conveyances under which such subsequent purchaser or mortgagee shall claim and that every such devise by will shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless such will be registered at such times and in such manner as is herein after directed.

II. And for the better settling and establishing a certain method, with proper rules and directions for registering such deeds, conveyances and wills as aforesaid, Be it further enacted, that in each and every county in this province there shall be erected and established one public office for registering such deeds, conveyances and wills, of and concerning any lands, tenements, and hereditaments, that are situate, lying and being within such county and counties respectively; to be managed and executed, by such fit and able person and persons, as shall thereto be nominated and appointed by the Governor, or the Commander in Chief of this province.

III. And be it further enacted, That all and every such register and registers shall before he or they enter upon the execution of the said office, be sworn before two of his Majesty's justices of the peace *quorum units*, in the county where such registers are respectively appointed, or before one of his Majesty's justices of the supreme court of judicature, well, truly and faithfully to execute the same office, which oath such justices are severally empowered and required to administer.

IV. And be it further enacted, That if any such person or persons, so appointed register or registers as aforesaid, shall be guilty of any neglect, misdemeanor, or fraudulent practice in the execution of the said office and offices respectively, such register or registers so guilty as aforesaid, and being lawfully convicted thereof, shall be liable to pay treble damages with full costs of suit, to every person that shall be injured thereby, to be recovered by action of debt, bill, plaint or information, in any of his Majesty's courts of record in this province.

V. And be it further enacted, That every such deed, conveyance and will, or probate of the same, which is so to be registered as aforesaid, shall be produced to the said register and registers at the time of entering and registering the same, who shall endorse a certificate on every such deed, conveyance, and will, or probate thereof, and therein mention the certain day on which such deed, conveyance or will is so entered or registered, expressing also, in what book, page and number, the same is entered and registered, and shall sign the said certificate when so endorsed; which certificates shall be taken and allowed as evidence of such respective registers in all courts of record whatsoever; and every page of such register books, and every deed, conveyance and will, which shall be entered and transcribed therein, shall be numbered, and the year and day of the month when ever such deed, conveyance and will are received, entered and registered, shall be entered in the said register books; and every register shall duly enter and register all deeds, conveyances and wills, or probate of the same, in the same order that they shall respectively come to his hands.

VI. And be it further enacted, That the due execution of all such deeds and conveyances so to be entered and registered, shall be made evident by the attestation of one or more of the subscribing witnesses thereto, who shall upon oath, or being a Quaker on solemn affirmation, before the register or before the supreme court of judicature, or before any one of the justices of the same court, or before some of the inferior courts of common pleas in this province, prove the signing, sealing and delivery of inch deeds and conveyances; or else the grantor and grantors, and persons so signing, sealing, and delivering such deeds and conveyances, shall before the said register or before one of his Majesty's justices of the courts aforesaid, or before one of his Majesty's justices of the peace, acknowledge his or their signing, sealing and delivering such deeds and conveyances; and in case of wills the same shall be proved by the attestation of one or more of the subscribing witnesses, upon oath, or being a Quaker, upon solemn affirmation, in manner aforesaid, or by due and legal probate of the same: and the said registers respectively, and the several courts and justices aforesaid, are hereby empowered to administer such oaths and affirmations aforesaid, and to take the said acknowledgements as aforesaid, and shall enter a memorandum of the administering and taking the same oaths, affirmations, and acknowledgements respectively, signed with their hands respectively, upon the said deeds, conveyances and wills, with the time when the same was so taken or administered. And no deed, or conveyance, or will, shall be entered or registered, or certificate thereof made as aforesaid, by any register, before such oath, affirmation, or acknowledgment, or probate as aforesaid, thereof duly administered and taken as aforesaid, and a memorandum thereof so entered on the

same respectively as aforesaid. And all copies of such entries and enrollments of such deeds, conveyances and wills, so registered at full length, and which copies shall be signed by such register or registers respectively, shall be allowed in all courts of record to be good and sufficient evidence of such deeds, conveyances and wills so registered, in case the same shall be destroyed by fire or other accident.

VII. And be it further enacted, That all wills that shall be registered in manner as aforesaid, within the space of six months after the death of every respective devisor or testatrix, dying within this province, or within the space of three years after the death of every respective devisor or testatrix, dying upon or in parts beyond the seas, or within the space of one year after the death of every respective devisor or testatrix in any other parts out of the limits of this province, shall be as valid and effectual against subsequent purchasers, as if the same had been registered immediately after the death of such respective devisor or testatrix; any thing herein contained to the contrary notwithstanding.

VIII. Provided always, That in case the devisee, or person or persons interested in the lands, tenements or hereditaments, devised by any such will as aforesaid, by reason of the contesting of such will or other inevitable difficulty, without his, her, or their willful neglect or default, shall be disabled to exhibit the same, or a probate thereof, for registry, within the respective times herein before limited, and that a memorial shall be entered in the said register office or offices, of such contest or impediment, within the space of six months after the decease of such devisor or testatrix, who shall die within this province, or within the space of three years next after the decease of such person who shall die upon or beyond the seas, or within the space of one year after the death of every respective devisor or testatrix, in any other parts out of the limits of this province; then and in such case the registry of such will within the space of six months next after his, her, or their attainment of such will, or a probate thereof, or removal of the impediment, whereby he, she or they were so disabled or hindred as aforesaid, shall be a sufficient registry, within the meaning of this ad; any thing herein contained to the contrary thereof in anywise notwithstanding.

IX. Provided nevertheless, That in case of any concealment or suppression of any will or devise, no purchaser or purchasers, for valuable consideration, shall be defeated or disturbed in his or their purchase, by any title made or devised by any such will, unless the will be actually registered within three years after the death of the devisor or testatrix.

X. And be it further enacted, That all bargains and sales of any lands, tenements, and hereditaments, by deed indented, or deed poll, and all grants and conveyances whatsoever, made by writing and duly signed, sealed and delivered, and acknowledged by the grantor or grantors, bargainer or bargainers, in such grants, sales, and conveyances, before one or more justice or justices of the peace, (who are hereby empowered, to take and enter on such deeds, bargains and sales, and conveyances, all such acknowledgements according to the intent of this act) which shall be entered and

registered at full length, by the said register or registers, in the public office in and by this act erected, in the county and counties where such lands, tenements, and hereditaments are situate, lying and being, shall be good, effectual, and available, to all intents and purposes whatsoever, for the passing and transferring such lands, tenements, and hereditaments, and the estate and possession thereof, to the bargainee and bargainees, grantee and grantees therein named, according to the intents and uses, and purposes in such deeds and conveyances expressed, without livery of seisin, or any other act, or deed, or form, or ceremony whatever.

XI. And be it further enacted, That all deeds of bargain and sale, and all other grants and conveyances whatsoever, so executed, acknowledged, and registered in the said public or register office and offices as aforesaid, which shall appear to be so acknowledged and registered by endorsement or certificate thereon, in form aforesaid, and all copies of the registries thereof, remaining in the said registers office or offices, duly attested and certified by the several registers, shall be allowed in all courts where such deeds and conveyances, or copies, shall be produced, to be as good and sufficient evidence as any bargains and sales enrolled in any of the courts of Westminster, and the copies of the enrollment thereof are, in any court of Great-Britain.

XII. *And be it further enacted*, That if the grantor or grantors, bargainer or bargainees, in any deed or deeds, and conveyance of lands hereafter executed, shall live in parts-beyond the sea, or out of the limits of this province, or shall happen to die before acknowledgment of such deed or deeds in the manner aforesaid, acknowledgment, certificate and proof of the execution thereof maybe made as follows, that is to say, if such grantor or bargainer live within the kingdoms of *Great-Britain* or *Ireland*, the acknowledgment of such deed may be had and taken by and before any judge of any of the courts of king's bench, or common pleas, or baron of the exchequer, or any matter in chancery, or any judge or lord of the session in *Scotland*; and if any other part of the *British* dominions, by and before any judge of the supreme or superior court of judicature, in such colony or part of said dominions wherein such grantor or bargainer shall reside, and certified on the said deed or conveyance by and under the hand of such judge or other person so taking the acknowledgment thereof as aforesaid, such certificate being also authenticated, if in the *British* plantations, under the hand and seal of the governor, lieutenant governor or commander in chief of the province where the same shall be made, and if in *Great-Britain* or *Ireland*, the public seal of some corporation, there certifying that all faith and credit ought to be given to the attestation of the person so taking the acknowledgment thereof as aforesaid; and if the grantor or bargainer shall die before the acknowledgment of such deed as aforesaid, proof of the execution thereof may be made by the oath of one or more of the subscribing witnesses thereto, before his Majesty's supreme court of judicature, or any inferior court of common pleas in this province, or before any of the courts of king's bench, or common pleas, or exchequer, in *England* or *Ireland*, or the court of session in *Scotland*, or before the supreme or superior court of judicature, in such other *British* colony as aforesaid. And all such deeds and conveyances, so acknowledged or proved, may be registered, as by this act is provided, and shall have all the force and effect to pass the lands and estate, and possession

therein granted or intended to be granted, of deeds and conveyances executed and acknowledged according to the provisions of any other and former clauses and parts of this act, and all such deeds and conveyances, and the registries and copies thereof, certified as in this clause is provided, shall be received to be as good and sufficient evidence as any other deeds, conveyances, registries, or copies in this act mentioned.

XIII. And be it further enacted, That every such register shall be allowed, for the entering and registering of all deeds, conveyances, wills, and writings as aforesaid, the sum of two shillings and no more, in case the same do not exceed two hundred words, but if such writing shall exceed two hundred words, then after the rate and proportion of six-pence an hundred for all the words contained therein, over and above the first two hundred words: And the same fees of six-pence for every hundred words, in all certificates, and in all copies given out of the said offices, and no more; and for every search in the said offices one shilling and no more.

XIV. And be it further enacted, That every such register shall give due attendance at his office daily, excepting Sundays and holidays, for the dispatch of all business belonging to his office aforesaid, and shall as often as required, make searches concerning all deeds, conveyances, wills and writings, so entered and registered as aforesaid, and give copies and certificates concerning the same under his hand.

XV. And be it further enacted, That every register at the time of his being sworn into the said office, shall enter into a recognizance, with two or more sufficient sureties, to be taken and approved of by the justice or justices by whom the said oath shall be administered, in the penalty of three hundred pounds to his Majesty, his heirs and successors, conditioned for his true and faithful performance of his duty in the execution of his said office, in all things directed and required by this act; the same to be transmitted within three months after the date thereof, by the same court or justices or justice, into the office of the clerk of his Majesty's supreme court of judicature, there to remain amongst the records of the said court.

XVI. And be it further enacted, That if any person or persons shall at any time forge or counterfeit any entry of the acknowledgment of any grantor or bargainer in such deed, bargain and sale, or conveyance as aforesaid, or any such memorandum, certificate or indorsement, as is herein mentioned or directed, and be thereof lawfully convicted, such person or persons shall incur and be liable to such pains and penalties as in and by an act made in the fifth year of Queen Elizabeth, intitled, an act against forgery of false deeds and writings, are imposed upon persons for forging and publishing false deeds, charters, or writings sealed, court rolls, or wills, whereby the freeholder inheritance of any person or persons, of, in, or to any lands, tenements or hereditaments, shall or may be molested or charged; and if any person or persons shall at any time forswear himself, or being a Quaker, shall falsely, maliciously and corruptly affirm before any register to be appointed in manner herein after mentioned, or before any court, or judge, or justice, in any of the cases herein mentioned, and be thereof lawfully convicted, such person or persons shall incur and be liable to all the pains and penalties

of persons committing, and convicted of willful and corrupt perjury in any court of record.

XVII. And be it further enacted, That in case of mortgages, where any mortgage deed shall be registered, pursuant to this act, if at any time afterwards a certificate shall be brought to the said register signed by the mortgagee, in such mortgage, his executors, administrators or assigns, and attested by two witnesses, whereby it shall appear that all monies due upon such mortgage, have been paid or satisfied in discharge thereof (which witnesses shall upon their oath, before one of the judges of his Majesty's supreme court of judicature, or before the said register, who are hereby respectively empowered to administer such oath, prove such monies to be satisfied and paid accordingly, and that they saw such certificate signed by the said mortgagee, his executors, administrators, or assigns) that then and in every such case, the said register shall make an entry in the margin of the said registry book, against the registry of the said mortgage deed, that the same was satisfied and discharged, according to such certificate, to which the same entry shall refer, and also to a registry and transcript at full length of the said certificate, which shall be made in the registry books, and he shall also file such certificate, to remain in the laid registers office. Or any such mortgagee, his executors, administrators, or assigns, having received full payment and satisfaction for all monies due by virtue of such mortgage, may acknowledge and cause such payment and satisfaction thereof to be entered in the margin of the said registry book, against the registry of the said mortgage deed, and subscribe his proper hand and name thereto, in presence of the said register, who shall also sign his name a witness thereto, which shall for ever after be a full discharge and release of such mortgage.

XVIII. Provided always, and be it further enacted, That this act shall not extend to any lease, not exceeding three years, where the actual possession and occupation goeth along with the lease.

IXX. And be it further enacted, That the several registers offices in the several counties of this province which by this act are or hereafter shall be erected and established, shall be held and kept in such convenient towns and places, in such counties respectively, as shall be appointed and ordained for that purpose by the Governor.

XX. And be it further enacted, That in all deeds of bargain and sale, and all other grants and conveyances, hereafter registered in pursuance of this act, whereby an estate of inheritance in fee simple is limited to the grantee or bargainee, and his heirs, the words *grant*, *bargain* and *fell*, shall amount to, and be construed and adjudged in all courts of judicature to be, express covenants to the bargainee or grantee, their heirs and assigns respectively, from the bargainer and grantor, for him and themselves respectively, their several and respective heirs, executors and administrators, that the bargainer and grantor respectively, notwithstanding any act done by him or them, was and respectively were, at the time of the execution of such deed and deeds, seized of the hereditaments and premises thereby granted, bargained and sold, of an indefeasible estate of inheritance, in fee simple, free from all encumbrances, (rents, duties,

conditions, and services due and reserved to the King only excepted) and for quiet enjoyment thereof against the grantor and bargainer, his and their heirs and assigns respectively, and all claiming under him or them, and also for further assurance thereof to be made by the grantor and bargainer, his and their heirs and assigns, and all claiming under him or them; unless the same shall be restrained and limited by express particular words contained in such deed or deeds; and that the bargainee and grantee, their and each of their heirs, executors, administrators and assigns respectively, shall and may, in any action or actions to be brought, assign a breach or breaches thereupon, as they might do in case such covenants were expressly inserted in such bargain and file, deed and conveyance aforesaid.