

No 52

C H A P. III.

*An ACT for securing the Titles to Lands in this province.*

Preamble

**W**HEREAS many persons are possessed of lands in this province under land-board certificates, and otherwise, by authority of his Majesty's government, and now hold, or claim to hold the same, either as the original nominees, or as the heirs, devisees or assignees of the original nominees thereof, of which lands no grants have as yet issued under the great seal of this province, whereby the legal estate and interest thereof is still vested in his Majesty: for the securing of all such persons in the ownership and possession of such lands, Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled by virtue of, and under the authority of an act passed in the parliament of Great-Britain, entitled "An act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled "An act for making more effectual provision for the government of the province of Quebec in North America, and to make further provision for the government of the said province," and by the authority of the same; That it shall and may be lawful to and for the governor, lieutenant-governor or person administering the government of this province, at any time during the space of three years from the passing of this act, to issue such, and so many commissions under the great seal of this province, for the Eastern, Midland and Western districts, and also for the county of Lincoln in the Home district, as he shall think proper, to three or more persons whereof, his Majesty's chief justice of this province, or one of the justices of the court of King's bench shall be one; which commissioners shall have power and authority in their respective districts, to hear and determine all applications that shall or may be made to them by persons holding, or claiming to hold lands as aforesaid, for grants thereof under the great seal of this province, in like manner as the same might be heard and determined by his Majesty's executive council.

Governor, &c.  
to appoint  
commissioners.

Their authority.

How persons  
claiming may  
appear.

The commissi-  
oners may com-  
pel attendance  
and the produc-  
tion of papers.

How they shall  
be guided:

II. *And be it further enacted by the authority aforesaid* That it shall and may be lawful to and for the persons so holding, or claiming to hold as aforesaid, to come before the said commissioners either in person or by their agents; constituted and appointed under their hands and seals, and to produce to the said commissioners the several documents, vouchers and other evidences on which they severally found their said claims; and the said commissioners, or any two of them, whereof the said chief justice, or justice of the court of King's bench shall be one, shall proceed to hear, decide and report thereon in manner herein after mentioned; and shall for that purpose have full power and authority to administer such oaths, and also by warrant under their hands, or the hand of one of them, compel the attendance of all such persons; and also the production of all such books, papers and other evidences as they in their discretion shall think necessary or proper.

III. *And be it further enacted by the authority aforesaid,* That in hearing and deciding on all such claims, whether the same be between subject and subject, or between the subject and

PASSED IN THE FIRST SESSION OF THE SECOND PARLIAMENT.

the crown, the said commissioners shall be guided by the real justice and good conscience of the case, without regard to legal forms and solemnities, and shall direct themselves by the best evidence that they can procure, or that is laid before them, whether the same be such evidence as the law would require in other cases or not; and in case they or the major part of them shall be satisfied, that the person or persons so holding, or claiming to hold the said lands as aforesaid, is or are entitled in equity and good conscience to hold the same, either as the original nominee or nominees thereof, or as the heir or heirs, devisee or devisees, or bona fide assignee or assignees of such original nominee or nominees, or by any other derivative title from such original nominee or nominees; the validity of which derivative title shall be judged of in like manner, they, the said commissioners, shall report the same in manner herein after mentioned.

IV. *Provided nevertheless, and be it hereby further enacted by the authority aforesaid,* That the said commissioners shall not proceed to examine any such claim as aforesaid, unless they shall have caused notice in writing of their intention to proceed upon the business of their said commission, to be fixed up in some conspicuous part of the office of the clerk of the peace, and at three other the most public places of each district respectively, at least one month before they shall begin to act therein; and also, unless notice of such claim, and of the name of the claimant, and also a description of the lands, in respect of which such claim is made, shall be fixed up in some conspicuous part of the said office, at least fifteen days before the same shall come on to be heard.

V. *Provided further, and be it hereby enacted by the authority aforesaid,* That it shall and may be lawful to, and for all persons interested, or claiming to be interested in such lands as aforesaid, to file caveats in the said office of the clerk of the peace, against the hearing of any such claim or claims as aforesaid, but in their presence; or in the presence of their agents properly constituted under their hands and seals; and also to attend in person, or by their said agent, when the said claim shall be brought forward, and to be heard against the same; but such caveat shall not retard the hearing of the said claim or claims, beyond fifteen days from the day on which the same shall have been entered in the office of the said clerk of the peace, unless it shall appear to the said commissioners that the real justice of the case requires that the same shall be deferred, in which case it shall and may be lawful for them to defer the same.

VI. *And be it further enacted by the authority aforesaid,* That the said commissioners shall from time to time transmit to the clerk of the executive council of this province, a report of all such claims as they shall have examined and decided on, and the person or persons in whose favor they shall have reported, shall be considered as entitled to have a grant or grants under the great seal of this province, of the lands in respect of which such report shall be made, and the same shall issue to such person or persons, or his or their heir or heirs accordingly.

VII. *Provided nevertheless, and be it hereby further enacted by the authority aforesaid,* That it shall and may be lawful to and for any person or persons who shall conceive him or themselves to be aggrieved by the decision of the said commissioners, to appeal therefrom to his Majesty's executive council.

Commissioners to give one month's notice

Claimants to give 15 days notice.

Persons interested may file caveats against such hearing, but in their presence.

Such caveats not to retard beyond 15 days except, &c.

Commissioners to report to the clerk of the executive council, and grants to issue accordingly.

Persons aggrieved may appeal.

Appellant to give notice &c and security.

VIII. *Provided furthermore*, That no such appeal shall be received by the said executive council, unless the appellant shall give notice to the said commissioners of his intention to appear within three days from the making of such decision; and shall also at the same time give security to the satisfaction of the said commissioners, that he will prosecute his said appeal with effect, or in default thereof will pay such costs to the person or persons in whose favor such report shall have been made, as the said council in its discretion shall award.

In case of mortgage, &c. the commissioners to certify the same.

IX. *And be it further enacted by the authority aforesaid*, That in case it shall appear to the said commissioners that the said lands, or any part of them, in respect of which a deed or deeds shall be claimed, are really and bona fide subject to any mortgage or other contract theretofore made, it shall and may be lawful to and for the said commissioners, on application for that purpose by the person or persons entitled to, or interested in such mortgage or other contract, to certify that the said lands, or any part of them, are so subject as aforesaid; and it shall and may be lawful to and for the person or persons so entitled and interested, on producing the certificate of the said commissioners to the register of the county or riding in which such lands shall be, to cause the same to be enregistered, and the said register is hereby required and authorized to enregister the same in like manner, and in the same order, and priority, and subject to the like rules and restrictions; and such enregistration shall have the like force and effect as if grants under the great seal had theretofore issued of such lands at the time or times when such mortgage, mortgages or other contracts were made.

The register to enregister the same.

Judgments let in.

X. *And be it further enacted by the authority aforesaid*, That all judgments which would have bound the said lands, or any part of them, in case grants under the great seal had theretofore issued thereof before such judgments were had, shall be let in to and have the same force and effect upon the said lands as they would in such case have had, any law to the contrary notwithstanding.

Clerk of the peace, clerk of the commission

XI. *And be it further enacted by the authority aforesaid*, That it shall and may be lawful to and for the clerk of the peace, who is hereby authorized and empowered to act as clerk to the said commission, to demand and receive to and from the several persons who shall apply to him for any of the purposes of this act, the following

### F E E S :---

Fees.	£.	s.	d.
For receiving, fixing up in his office, and setting down for hearing any claim for a grant, and also for making up a report respecting the same	0	2	6
For receiving and setting down for hearing any caveat	0	2	6
For a copy of the order respecting each claim respectively	0	2	6
For receiving and transmitting to the clerk of the executive council any notice of appeal	0	5	0