

Laws of His Majesty's Province of Upper-Canada; Passed in the Fourth Session of the Provincial Parliament of Upper Canada, Met at Newark, on the Sixth Day of July, in the Thirty-Fifth Year of the Reign of our Sovereign Lord George the Third (1795). Niagara: Gideon Tiffany, Printer to the King's Most Excellent Majesty, 1795.

35 George III – Chapter 5

An Act for the Public registering of Deeds, Conveyances, Wills and other Incumbrances which Shall be made, or may affect any Lands, Tenements or Hereditaments within this Province.

Whereas the lands now holden within this province, under the authority of the crown will be shortly confirmed by grant from his majesty under the seal of the said province; and whereas it seems to be a desirable measure to establish a register in each county and riding within the said province, that when the said lands shall be so confirmed, if any, or any part of the same shall be transferred or alienated by any deed of sale, conveyance, enfeoffment or exchange, or by gift, devise or mortgage, a memorial of such transfer or alienation shall be made for the better securing and more perfect knowledge of the same; Be it therefore enacted by the king's most excellent majesty, by and with the advice and content 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 from and after the passing of this Act there shall be established in each and every county and riding of this province, wherein it may be deemed for the present necessary, and as often alter as occasion may require within others, an office for the enregistering of memorials of all deeds and instruments by which, lands within the same shall or may be transferred, or disposed of, by bargain and sale, enfeoffment, gift devise, mortgage or exchange, and that it shall and may be lawful for the governor, lieutenant governor, or person administering the government of this province for the time being, to name the place where such register office shall be kept, and to nominate and appoint a person of sufficient integrity and ability to each and every office that shall or may for the present be established, and as often as occasion may require within the said province, under the conditions hereinafter mentioned, who shall faithfully cause to be enregistered a memorial of all deeds and other instruments by which lands may be transferred or alieted that shall or may be presented to him in manner herein after mentioned, and because the population of the county may not for the present admit of a seperate register to be appointed to each and every office that may he for the present established; it shall and may he lawful for the governor, lieutenant governor, or person administering the goverment of this province for the time being, to nominate and appoint one sufficient person as aforesaid to hold and perform the duty or duties of one or more office or offices wheresoever they may be established, and to order and appoint the place or places, where such person shall be constantly or occasionally resident.

35 George – Chapter 5

II. And be it further enacted by the authority aforesaid, That from and after the confirmation of all or any lands to any person or persons by grant from the crown under the seal of the province, a memorial of all deeds and conveyances which shall be made and executed, and of all wills and devises in writing made, or to be made and published when the divisor or testator shall die after making and publishing of the same, of or concerning and whereby any lands, tenements or hereditaments, in any county or riding of this province may be any wise affected in law or equity, may at the election of the party or parties concerned be registered in such manner as is herein alter directed; and that every deed and conveyance that shall at any time after any memorial is so registered be made and executed of the lands, tenements or hereditaments, or any part thereof, comprised or contained in any such memorial, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless such memorial be registered as by this Act is directed, before the registering of the memorial of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim, and that every devisee by will of the lands, tenements or hereditaments or any part thereof mentioned or contained in any memorial registered as aforesaid, that shall be made and published after the registering of such memorial shall be adjudged fraudulent and void against a subsequent purchaser or mortgage for valuable consideration, unless a memorial of such will be registered in such manner as herein after directed.

III. And be it enacted by the authority aforesaid, That when and as often as the said office shall become vacant by the death forfeiture or surrender of any such register or registers, the justices of the peace for the said county or counties, riding or ridings, if more than one be held by one person or the district wherein such county or counties, riding or ridings may be, Assembled at the general quarter sessions of the peace, next after such vacancy shall happen, or the major part of them shall in open court draw up a memorial of such vacancy, and transmit the same without delay to the governor, lieutenant governor or person administering the government of this province for the time being, praying that a person of sufficient integrity and ability may be appointed to the said office or offices; and the said governor, lieutenant governor or person administering the government of this province for the time being; shall within one month after the said memorial shall be received appoint a person of sufficient integrity and ability to the said office or offices.

IV. And be it further enacted by the authority aforesaid, That all and every memorial or memorials so to be entered and registered shall be put into writing, and brought to the said office, and in case of deeds and conveyances, shall be under the hand and seal of some or one of the grantor, or some or one of the grantees, his or their heirs, executors or administrators, guardians or trustees, attested by two witnesses, one whereof to be one of the witnesses to the execution of such deed or conveyance, which witness shall upon his oath before the said register or his deputy, prove the signing and sealing of such memorial, and the execution of the deed or conveyance mentioned in such memorial; and in case of wills, the memorial shall be under the hand and seal of some or one of the devisees, his or their heirs, executors or administrators, guardians or trustees, attested by two witnesses,

one whereof shall upon his oath before the said register or his deputy prove the signing and sealing of such memorial, which respective oaths the said register or his deputy are hereby empowered to administer, and shall endorse a certificate thereof on every such memorial, and sign the same.

V. And be it further enacted by the authority aforesaid, That every memorial of any deed, conveyance, or will, shall contain the day of the month and the year when such deed, conveyance or will bears date, and the names and additions of all the parties to such deed, conveyance or will, or the devisor or testatrix of such will, and of all the witnesses to such deed, will or conveyance, and the places of their abode, and shall express or mention the lands tenements or hereditaments contained in such deed, will or conveyance, and the names of all the townships or prescribes within the said county or counties, riding or ridings, where any such lands, tenements or hereditaments are lying or being, that are given, granted, conveyed, devised or any way affected or charged by any such deed, will or conveyance in such manner as the same are expressed or mentioned in such deed, will, or conveyance, or to the same effect; and that every such deed, conveyance and will or probate of the same, of which such memorial is to be registered as aforesaid, shall be produced to the said register, or his deputy, at the time of entering such memorial, who shall endorse a certificate on every such deed, conveyance and will or probate thereof, and therein mention the certain day hour and time on which such memorial is entered and registered, expressing also in what book, page and number the same is entered, and that the said register, or his deputy shall sign the said certificate when so endorsed, which certificates shall be taken and allowed as evidence of such respective registries in all courts of record whatsoever, and that every page of such register book, and every memorial that shall be entered therein, shall be numbered, and the day of the month and the year and hour or time of the day when every memorial is registered shall be entered in the margins of the said register books and of the said memorial, and that every such register shall keep an alphabetical callendar of all townships and parishes within the said county or counties, riding or ridings, with reference to the number of every memorial that concerns the lands, tenements or hereditaments in every such township or parish respectively, and of the names of the parties mentioned in such memorial, and the said register shall enter or register the said memorials in the same order that they shall respectively come to his hand.

VI. And be it further enacted by the authority aforesaid, That every such register before he enter upon the execution of the said office shall be sworn before the justices of the peace for the county or counties, riding or ridings, to which such register shall be appointed, or district wherein such register shall reside, or any three or more of them (who are hereby empowered and required to administer such oath) in these words: —

“You shall truly and faithfully perform and execute the office and duty that is directed and required by an act of the Legislature of this province, in registering memorials of deeds, conveyances and wills, within the county or counties of _____ so long as you shall continue in the said office, and that you have not given, or promised directly, or

indirectly, nor authorized any person to give any money, gratuity or reward whatsoever, for procuring or obtaining the said office for you, so help you God.”

And that when and as often as the find register shall appoint any deputy to execute the said Office, such deputy shall before he enter upon the execution thereof, take the said oath appointed to be taken by the register, before two or more justices of the peace for the said county or counties riding or ridings, or of the district wherein they may be (who are hereby empowered and required to administer such oath) and that every register at the time of his being sworn into the said office shall also enter into a recognizance with two or more sufficient sureties, to be approved of by five or more justices of the peace of the said county or counties, riding or ridings, or of the said district by writing under their hands and seals to be registered at the next general quarter sessions of the peace for the said county or counties, riding or ridings, or district, of the penalty of one thousand pounds unto his majesty his heirs and successors, to be taken by the same justices of the peace that approved of his security, 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 by the same justices of the peace within six months after the state thereof into the court of his majesty’s bench of the said province, there to remain amongst the records of the said court.

VII. Provided nevertheless, and be it further enacted. That when any register shall die, or surrender his office, and that within the space of one year from and after such death or surrender, no misbehaviour appear to have been committed by such register in the execution of his said office, then and in such case, at the end of the said one year after his death or surrender, the recognizance so entered into by him, shall become void and of no effect to all intents and purposes whatever.

VIII. And be it further enacted by the authority aforesaid, That every such register or his sufficient deputy shall give due attendance at his office every day in the year, (except Sundays and the first week in June and the last week in December, as also the week of the Holy passion yearly and every year) between the hours of nine in the forenoon and one in the afternoon, for the dispatch of all business belonging to the said office, and that every such register or his deputy as often as required shall make searches concerning all memorials that are registered as aforesaid, and give certificates concerning the same under his hand if required by any person.

IX. And be it further enacted by the authority aforesaid, That every such register shall be allowed for the entry of every such memorial as is by this Act directed, the sum of two shillings and six pence and no more, in case the same doth not exceed one hundred words, but if such memorial shall exceed one hundred words, then after the rate and proportion of one shilling for every hundred words contained in such memorial over and above the first hundred words and the like fees for the like number of words contained in every certificate or copy given out of the said office, and no more, and for every search in the said office one shilling and six pence and no more.

X. And be it further enacted by the authority aforesaid, That if any such register or his deputy shall neglect to perform his or their duty in the execution of the said office, according to the rules and directions in this Act mentioned, or commit or suffer to be committed any undue or fraudulent practice in the execution of the said office and be thereof lawfully convicted, that then such register shall forfeit his said office and pay treble damages, with full costs of suit to every person or persons 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, wherein no essoin, protection, privilege, or wager of law shall be allowed, nor any more than one imparlance.

XI. Provided also, and be it further enacted by the authority aforesaid, That this Act shall not extend to any leases at a rack rent, or to any lease, not exceeding twenty-one years, where the actual possession and occupation goeth along with the lease, any thing in this Act contained to the contrary thereof in anywise notwithstanding.

XII. Provided always, and be it further enacted by the authority aforesaid, That where there are more writings than one for making and perfecting any conveyance or security which do name, mention or any wife affect or concern the same lands, tenements and hereditaments it shall be a sufficient memorial and register thereof if all the said lands tenements and hereditaments, and the parishes and townships where the same be be only once named or mentioned in the memorial register and certificate of any one of the deeds or writings made for the perfecting of such conveyance or security; and that the dates of the rest of the said deeds or writings, relating to the said conveyance or security with the names and additions of the parties and witnesses and the places of their abodes be only set down in the memorials, registers and certificates of the same, with a reference to the deed or writing whereof the memorial is so registered that contains or expresses the parcels mentioned in all the deeds, and directions how to find the registering the same.

XIII. And be it further enacted by the authority aforesaid, That a memorial of any such deeds, conveyances and wills, as shall be made and executed or published in any other place within the said province, not being within the county or counties, riding or ridings, wherein such lands tenements or hereditaments lie, shall be entered or registered by the aforesaid register or his deputy, in case an affidavit sworn before one of the judges of the court of kings bench, or commissioner duly authorized to take affidavits be brought to the said register or his deputy, wherein one of the witnesses to the execution of such deeds, wills and conveyances shall swear he or she saw the same executed, the same shall be a sufficient authority to the said register or his deputy to give the party that brings such deed, conveyance or will and affidavit, a certificate of the registering the same, which certificate signed by the said register or his deputy shall be taken and allowed as evidence of the registry of the same in all courts of record in this province, any thing in this Act to the contrary thereof contained in any wise notwithstanding.

XIV. And be it further enacted by the authority aforesaid, That if any person or persons shall at any time forge or counterfeit, any such memorial or certificate as are herein before

mentioned and 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 of the parliament of Great-Britain, made in the fifth year of the reign of queen Elizabeth, entitled, "An act against forgers of false deeds and writings," are imposed upon persons for forging or publishing deeds, charters or writings sealed court rolls, or wills, whereby the freehold or inheritance of any person or persons of, in, or to, any lands, tenements or hereditaments, shall or may be molested, troubled or charged; and that if any person or persons shall at any time forswear himself before the said register or his deputy or before any judge or commissioner duly authorized in any of the cases aforesaid and be thereof lawfully convicted, such person or persons shall incur and be liable to the same penalties as if the same had been made in any of the courts of record.

XV. Provided always, and it is hereby enacted, That all memorials of 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, 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 in any wife notwithstanding. 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 such will or other inevitable difficulty, without, his, her, or their willful neglect or default, shall be disabled to exhibit a memorial for the registry thereof within the respective times herein before limited, then and in such case the registry of the memorial within the space of six months next after his her or their attainment of such will or probate thereof or removal of the impediment whereby, he, she, or they are disabled or hindered to exhibit such memorial shall be a sufficient registry within the meaning of this act; herein any thing contained to the contrary thereof in any wife notwithstanding.

XVI. And be it further enacted by the authority aforesaid, That no member of the house of Assembly hereafter to be chosen, during the time that he is such member, shall be capable of being appointed register, or of executing by himself, or any other person the said office, or have, take, or receive any fee or other profit whatsoever, for or in respect thereof, nor shall any register, or his deputy, for the time being be capable of being hereafter chosen a member to serve in the assembly of this province.

XVII. And be it further enacted by the authority aforesaid, That this act shall be taken and allowed in all courts within this province as a public act; and all judges and justices are hereby required as such, to take notice thereof without special pleading the same.

Schedule of a Bargain and Sale to be Enrolled.

An Indenture dated _____ made between I. A. of _____ of the one part and D. P. of _____ of the other part, purporting a deed of bargain and sale to be enrolled of and concerning the same premises mentioned in a lease for a year, bearing date next before the day of the date of _____ the said indenture of bargain

and sale, (or as the date is) and made between the said I. A, of the one part, and the said D. P. of the other part; a memorial whereof is registered at the same time herewith, (or as the time is) which indenture, or bargain and sale is witnessed by T. A. of _____ and J. W. of _____ and is hereby required to be registered by me the said I. A. the grantor in the said deed of bar gain and sale mentioned, as witness my hand and feai this day of _____.

(Signed &c.)

I.B.

Of a Mortgage for Years.

An Indenture of mortgage dated the made between W. D. of _____ of the one part and J. W. of _____ of the other part, whereby the said W. D. for and in consideration of pounds demised unto the said J. W. all that _____ situate and being in _____ and called or known by the name of _____ now in the tenure _____ to hold unto the said J. W. for the term of _____ years: subject nevertheless to a proviso that the same shall be void, on the payment of the sum of _____ pounds and lawful interest for the same on the _____ day of _____ in the year of our Lord one thousand seven hundred and _____ which said indenture of mortgage, is witnessed by _____ and is hereby required to be registered pursuant to the said act of the legislature of this province by me the said W. D. the grantor in the said deed, as witness &c.

(Signed &c.)

I.B.

Of an Indorsement.

An Indorsement dated the _____ day of _____ made from J. E. of and W. N. of _____ on the back of a mortgaged deed dated the and made between the said J. E. of _____ the one part, and the said W. N. of the other part, of and concerning all that _____ situate and being in _____ now in the tenure or occupation of J. D. which said indorsement is witnessed by J. E. of _____ and R. W. of and is hereby required to be registered by me the said J. E. the grantor, as witness etc.

(Signed &c.)

J. E.

Of a Will.

A Will dated the made by J. F. of _____ of and concerning all that message and tenement in _____ late in the tenure and occupation of G. L. (or if the words of the will be general, then say) of and concerning all the lands tenements or hereditaments, which the said J. F. died possessed of in the county of _____ to which said will is witnessed by J. G. of _____ and F. W. of _____ and E. T. of _____ this memorial is therefore desired to be registered pursuant to the above said Act by me E. L. one of the devisees in the said will mentioned, as witness &c.

(Signed &c.)

E. L.

A Certificate of Mortgage Money being Paid.

To the Register of the County of _____.

J. W. of _____ do hereby certify that W. D. of _____ hath paid and satisfied all such sum and sums of money as were due and owing upon a mortgage made by the said W. D. to me, bearing date the _____ day of _____ and registered at _____ of the o'clock in the forenoon of the day of following, in full discharge of the same; and I do hereby require an entry of such payment and satisfaction to be made pursuant to the Act of the legislature in that case made and provided, as witness my hand this _____ day of _____. (Signed) Attested by W. M. of _____ J. H. of _____ J. W.

Memorandum that upon the certificate of the within named J. W. dated the ____ day of _____ proved by the oaths of W. M. of _____ and J. H of _____ that all monies due on the within mentioned mortgage is fully paid and satisfied in discharge of the same: this entry in discharge thereof is made pursuant to the said Act of the legislature this day of _____.

by THOMAS JONES,. Register.