

Laws of His Majesty's Province of Upper Canada in North America, passed in the year 1802.
York: John Bennet, 1802.

42 George III – Chapter 1

An Act the better to ascertain and secure the Titles to Lands in this Province. July 7th, 1802.

Whereas a certain Act of this Province passed in the thirty-seventh year of His Majesty's reign, entitled "*an Act for securing Titles to Lands in this Province*," and which Act has been since extended by a certain other Act entitled "*an Act to continue an Act entitled an Act for securing the Titles to lands in this Province*" will very shortly expire; and whereas it is judged expedient to make further provision for the ascertaining the validity of certain claims to lands in cases in which His Majesty's letters Patent have not yet been made out, Be it enacted by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Assembly 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 at any time during the space of two years from and after the expiration of the before mentioned Act, it shall and may be lawful to and for the Governor, Lieutenant Governor, or Person administering the Government of this Province to issue such and so many Commissions under the Great Seal of this Province for each and every District within the said Province, in such manner and form, and to be directed to such and so many persons as he shall judge proper, of whom His Majesty's Chief Justice of this Province or one of the Justices of the Court of King's Bench shall be one, which said Commissioners or any three of them in cases in which His Majesty's letters Patent have not as yet been made out, shall by and under the authority of such Commission or Commissions, have power to hear and determine in manner hereinafter specified all claims to Lands, or to a lien or liens upon Lands in this Province in which the claim or title of the original nominee or nominees shall be found to have accrued or existed, prior to the passing of this Act and respecting which lands no Report has been made under the said former Acts, whether such claims shall be set up by the original nominee or nominees thereof, or by persons claiming absolute title under such nominee or nominees, or as mortgage creditors of, or under such nominee or nominees; Provided the original nominee or nominees founded his, her, or their claim or claims under the authority of General Haldimand's certificates, Lieutenant Governor Hamilton's certificates, the Surveyor General's Departments, Land Board certificates, Magistrates recommendations, Treasury Tickets for Canada Bounty, and Order in Council, or any other authority in any wise derived from his Majesty.

II. And be it enacted by the authority aforesaid; That it shall and may be lawful to and for all and every person or persons setting up such claims as aforesaid, either in person or by agent duly authorized to come before and produce to such Commissioners or any three of them whereof the said Chief Justice or some one of the said Justices of the said Court of King's Bench shall be one, all such documents and evidences as he, she or they may be in possession of, for the purpose of satisfying such Commissioners as aforesaid of the validity of such claim or claims as he, she or they,

shall or may set up to any such lands as aforesaid, for which purpose such Commissioners or any one of the them, are and is hereby authorized and empowered to administer such oath or oaths either to the party or parties claiming, or to the witness or witnesses appearing in support of such claim or claims, whether the same be between subject and subjects, or between the subject and the Crown, as shall be judged proper and expedient; and also by summons under the signature of any one of the said commissioners to require the attendance of all such persons whose evidence may be judged necessary to ascertain the validity of any such claim of claims, or to explain the subject matter thereof, and in such summons also to order the production of all such books, papers and documents as shall be in the custody or power of any such person or persons, whose attendance shall be so required by such summons in such manner as such commissioner or commissioners signing such summons shall deem expedient; which summons all and every person and persons to whom the same shall be directed, is, and are hereby required to yield obedience to upon being duly served therewith. Provided always nevertheless, and it is hereby declared, that the said commissioners acting under such authority as aforesaid, are hereby authorized and empowered to receive such written or oral testimony as may be produced to them, whether the same be or be not consistent with the rules of evidence laid down or established by the Laws of England, and to give and allow such force and effect to such testimony as justice in each respective case shall in their judgment require.

III. And be it further enacted by the authority aforesaid, that after the said commissioners shall in virtue of such commission or commissions, have examined such claim or claims as aforesaid, they shall be at liberty either to reject such claim or claims, or to allow the same as in their judgment, justice and equity and good conscience of the case may require, without any regard to legal forms or solemnities whatsoever, and to report on the same accordingly, which report shall be final and conclusive, and shall be addressed to the Governor, Lieutenant Governor, or Person administering the Government of this Province in Council; and from thenceforth, the Governor, Lieutenant Governor, or Person administering the Government of the Province, shall be at liberty, and he is hereby empowered and authorized to issue his Majesty's Letters Patent for the lands specified in such report, to the party or parties, his, her or their heirs and assigns, in favour of whom such report shall have been made in manner aforesaid. Provided always nevertheless, that in case the said Commissioners or either of them shall, during their sitting, or within fifteen days after they shall have signed said report, and before his Majesty's Letters Patent shall have been issued in pursuance thereof, by representation from any person or persons claiming to be interested therein, be satisfied, or have reason to believe that the report so far as concerns any particular lot or lots of land, has been obtained by surprize, or has been made erroneously, or that another person can shew a preferable claim to such lot or lots of land, and that justice requires that such report should be staid, so far as concerns such lot or lots of land; that then it shall and may be lawful to and for the said commissioners, or any other commissioners who may sit in execution of the said commission, or of any subsequent commission, to rehear such claim, or to let in new claims to such particular lot or lots of land, and upon such rehearing such commissioners shall be at liberty to report on the claims to be thereupon heard, as if no report had before been made, and such commissioners shall also be at liberty, if they shall judge it expedient to justice, or order any of the parties, at whose instance shall rehearing was obtained to pay such sum or sums of money to the party or parties in favor of whom a Report shall have been first made, as they shall

see just, to be recovered in like manner as the costs and expences of witnesses are by this Act directed and authorized be recovered.

IV. Provided nevertheless and be it 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 the 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 a notice specifying such claim or claims, and the name or names of the claimant or claimants together with the number of the lot or lots, and of the concession or concessions with the name or names of the township and townships, district and districts, in which the lands so claimed respectively lie or are situated, shall have been fixed up in some conspicuous part of the said office of the Clerk of the Peace at least fifteen days before the same shall come on to be heard.

V. And be it further enacted by the authority aforesaid, that in all cases in which, before the Commissioners shall have proceeded to decide upon the right to any particular lot or tract of land, two or more notices by different persons, shall have been fixed up in the office of the Clerk of the Peace, claiming adversely such particular lot or tract of land, it shall and may be lawful to and for such Commissioners to defer or delay the hearing of such adverse claims or either of them, and to give to all, any or either such claimants such further or enlarged time for the production of evidence, and for the decision of such claim or claims as such Commissioners shall deem expedient to justice.

VI. And be it further enacted by the authority aforesaid, That in all cases in which any claim or claims shall or may be set up before the said Commissioners under any mortgage, or security made, or by writing agreed to be made by such original nominee or nominees as aforesaid, or by any person or persons claiming under such nominee or nominees, the said Commissioners acting under such authority as aforesaid, are, if they shall be satisfied that such claim is well founded, hereby authorized and empowered to report in favor of such mortgage or mortgages, agreement or agreements which report respecting such mortgages or agreements, the Register of each County or Riding in which such lands shall be respectively situate, shall, and they are hereby required upon the production of the certificate of the said Commissioners, specifying their allowance of the said mortgage or agreement, to enregister or cause the same to be enregistered in the respective offices, and after such mortgages or agreements shall have been so enregistered accordingly, such registration shall have the same force and effect upon the said lands as the registration would have had if the party had been seized of the legal estate in such lands.

VII. And be it further enacted by the authority aforesaid, that in case any person or persons who shall appear before the said commissioners to give evidence respecting any such claim or claims as aforesaid, shall wilfully or corruptly forswear him, her, or themselves in the giving such evidence, he, she, and they shall incur the like pains and penalties as would have been incurred upon a conviction for wilful and corrupt perjury in any evidence given in his Majesty's Court of King's Bench in this Province, in any cause there depending.

VIII. And be it further enacted by the authority aforesaid, That in all cases in which witnesses shall have duly appeared to give evidence before such commissioners, either voluntarily or in obedience to such summons as aforesaid, it shall and may be lawful to and for the said commissioners to order and direct the party or parties who shall have produced commissioners, either voluntarily or in obedience to such summons as aforesaid, it shall and may be lawful to and for the said commissioners to order and direct the party or parties who shall have produced such witness or witnesses, to pay such witness or witnesses for his, her or their loss of time and expence, such sum or sums of money as such commissioners in their judgment shall deem equitable and just, and which order the party or parties upon whom the same shall be made, is and he, she, and they is and are hereby required and enjoined to yield obedience to, and such sum or sums of money shall and may be recovered and recoverable under and by authority of this Act, by action or suit in any of his Majesty's Courts of Justice in this Province, due regard being had to their respective jurisdictions.

IX. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person administering the Government of this Province for the time being, from time or times during the existence of this Act, by warrant under his hand, to order and direct the Treasurer of the said Province to pay to and for the use of the said commissioners acting in the execution of the said commissioner respectively, such reasonable sum or sums of money, as will indemnify the said commissioners respectively against expences to be by them incurred during the sitting of, and in the execution of the said commission.

X. And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the Clerk of the Peace in each and every District who is hereby authorized and empowered to act as clerk of the said commission, to demand and receive of and from the several persons who shall apply to him for any of the purposes of this Act, the following Fees:---

For receiving, fixing up in his office, and sitting down for hearing any claim for a grant, and also for making up a report respecting the same, the sum of five shillings.

For receiving and setting down for hearing any caveat, three shillings and nine pence.

For a copy of the order respecting each claim respectively, two shillings and six pence.

For every summons signed by one or more commissioners for the attendance of one or more witnesses, two shillings and six pence.

XI. And be it enacted by the authority aforesaid, That this Act shall be in force for the space of two years from the day of the passing thereof and no longer.