

Laws of His Majesty's Province of Upper Canada, passed in the year 1816. York: R. C. Horne, 1816.

56 George III – Chapter 16

An Act to afford Relief to Persons holding or possessing Lands, Tenements of Hereditaments in the District of Niagara. Passed 22d March, 1816.

Whereas many Deeds, Conveyances, Wills, Mortgages, Leases, and other Mesne Conveyances, affecting certain Lands, Tenements and Hereditaments within the District of Niagara, and the Memorials of other Deeds, Conveyances, Wills, Mortgages, Leases, and other Mesne Conveyances, affecting other Lands, Tenements and Hereditaments within the said District, and also the Books wherein such Memorials were enregistered, pursuant to the provisions of an Act passed in the thirty-fifth year of His Majesty's Reign, entitled "an Act for the public Registering of Deeds, Conveyances, Wills and other Incumbrances" which shall be made or may affect, any Lands, Tenements and Hereditaments within this Province, were during the late war with the United States of America, taken, burnt, lost or destroyed, to the great damage of His Majesty's liege subjects in this Province, and whereas it is necessary to the Peace and Quiet of His Majesty's said subjects to the maintaining them on their Estates, Rights and Possessions, and their protection against fraudulent Conveyances of such Lands, Tenements and Hereditaments, That remedy be therefore provided, may it therefore please Your Majesty that it be enacted, and 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 & for the Governor, Lieut. Governor, or Person Administering the Government of this Province, for the time being, from time to time and at any time within two years from and after the passing of this Act, to issue one or more Commission or Commissions, under the Great Seal of this Province directed to any five fit and descreet Persons, which said Commissioners or any three of them, shall have full power and authority to enquire of such Deed, Conveyance, Will, Mortgage, Lease or other Mesne Incumbrance affecting any Lands, Tenements, or Hereditaments within the said District, so taken, burnt, lost or destroyed as aforesaid, and to take and receive proof and evidence thereof and thereupon to proceed in manner hereinafter directed.

II. And be it further enacted by the authority aforesaid, That if any person or persons who is or are possessed or seized of and in any Lands, Tenements or Hereditaments within the said District who shall so as aforesaid have lost the Deed, Conveyance, Will, Mortgage, Lease or other Mesne Conveyance, under which, he, she, or they, shall claim, and shall thereof make oath or affirm before the said Commissioners or any three of them, which oath or affirmation they are hereby empowered to take and administer, that then and in such case if a Memorial, Record or Probate of such Deed, Conveyance, Will, Mortgage, Lease or other Mesne Conveyance, shall be found in

the Register Office of the Counties of Lincoln and Haldimand, in the said District or in the Office of the Register of the Surrogate Court thereof, the party claiming under such Deed, Conveyance, Will, Mortgage, Lease or other mesne Conveyance, shall produce an attested copy of such Memorial, Record or Probate, from the Register of the said Offices respecting to the said Commissioners, which said Commissioners, the same attested copy shall cause to be Transcribed, Entered, and Recorded, in a Book or Books to be provided in a manner, here-in-after mentioned, and shall on such copy cause to be endorsed a Certificate of such Entry and Record and such copy so endorsed, or the Entry or Record thereof so made, together with the actual possession of the party claiming under such Deed, Conveyance, Will, Mortgage, Lease or other mesne Conveyance, shall be held, deemed, esteemed, and taken in Law to be good evidence of Title in the party claiming, until better evidence shall appear, provided nevertheless, that when any person or persons shall so as aforesaid, have lost the Deed, Conveyance, Will, Mortgage, Lease, or other mesne Conveyance, under which he, she or they, may claim any such Lands, Tenements or Hereditaments, whereof no Memorial, Record or Probate can be found, in such Offices as aforesaid, and the party claiming make oath, or affirm, before the said Commissioners, or any three of them, which oath or affirmation, they are hereby empowered to administer and take, that the Deed, Conveyance, Will, Mortgage, Lease, or other mesne Conveyance under which he, she or they claim hath been bona-fide, lost or destroyed, and shall by other testimony or evidence prove that he, she, his, her or their ancestor, or other person under whom he, she or they shall claim, have been in the actual undisturbed and peaceable possession of the Lands, Tenements, or Hereditaments, claimed by and for the space of three years, then next before, or shall by the Witness or Witnesses to such Deed, Conveyance, Will, Mortgage, Lease or other mesne Conveyance or other parole or written evidence, prove the substance, matter, import, and effect thereof, that then and in such case the said Commissioners, or any three of them, the said matter evidence, and proof, shall cause to be made an entry of, set down in writing and Recorded in such Book or Books as aforesaid, the description of the Lands claimed, the name of the Township and County wherein situated and the name, addition and place of abode of the party claiming the same, which said Entry and Record so made by the said Commissioners or an attested copy thereof shall be held, deemed, esteemed and taken in Law, as good evidence of title in the party claiming until better evidence shall appear, Provided also, that such Entry and Record or copy thereof, shall not be taken, held or construed to extend to bar him, her or them, or the heirs of him, her or them, who at the time of making thereof had better title, but every such other person or persons and his, her or their heirs, then living and residing within this Province, may at any time within seven years after making such Entry and Record, have, pursue and prosecute, his her or their title at Law, notwithstanding such Entry and Record, which shall not be given in evidence to bar him, her or them, or the heirs of him, her or them, that at the time of making thereof had better right and who shall pursue the same within the time aforesaid, saving also to Infants, Persons of non sane Memory, femes Coverts, and persons beyond the Sens, or residing without this Province, the right of so pursuing and prosecuting their Title at Law, at any time within three years next after they shall become of full age, of sane Memory, non Covert or shall come into this Province.

III. And be it further enacted by the authority aforesaid, That the said Commissioners or any three of them shall provide fit and sufficient Books of Record wherein set down, to enter, and Record all proceedings had before them in the execution of the said commission, and shall have

full power and authority to nominate and appoint some fit and proper person to be Clerk or Secretary of the said Commission whose duty it shall be, fully, fairly, and truly to enter, set down, Transcribe and Record, in such Book or Books as aforesaid, all proceedings of the said Commissioners, or any three of them and the nature and effect of such written or other evidence as shall come before them, and who before entering on such duty, shall take and subscribe the following oath, "I, A. B. do make oath and swear, that I will truly and faithfully discharge and perform the duty of Secretary to the Commissioners appointed under the authority of an Act of the Parliament of Upper-Canada, entitled "An Act to afford relief to persons holding or possessing Lands, Tenements or Hereditaments in the District of Niagara, and will make true Records of all proceedings had before the said Commissioners, without partiality to any person whatsoever, so help me God," and which said Clerk or Secretary so appointed, shall have power to administer to each and every of the said Commissioners the following oath to be by them made and subscribed, before entering on the execution of the said Commission, which oath in the following form shall be written, in such Book as aforesaid, "We A.B. C.D. E.F. G.H. and J.K. do severally make oath and swear, That we will truly and faithfully discharge and perform the duty of Commissioners, under the provisions of an Act of Parliament of this Province, entitled "An Act to afford relief to persons holding or possessing Lands, Tenements or Hereditaments, in the District of Niagara," and will cause true Records to be made of all proceedings laid before us in the execution of the said Commission without partiality, favor or affection to any person."

IV. Be it further enacted by the authority aforesaid, That no sitting of the said Commissioners, shall be held or holden, unless Notice in writing of the time and place of holding the same, subscribed by one of the said Commissioners, shall first be affixed up in the Register Office of the said counties, and unless the time and place of holding thereof, shall first in open Court be proclaimed at some General Quarter Sessions of the Peace, for the said District, by and for the space of two months next before the sitting of the said Commission.

V. And be it further enacted by the authority aforesaid, That the said Commissioners or any three of them shall have full power and authority to cause to come before them at any sitting so to be holden as aforesaid, any person or persons to give evidence, on oath, touching the loss or destruction of any Deed, Conveyance, Will, Mortgage, Lease or other Mesne Conveyance affecting any Land, Tenements, or Hereditaments within the said District, or touching or affecting the Estate, Right and Interest of any person or persons claiming the same, and the Testimony and Evidence, which shall by any such person or persons be thereof given before the said Commission, the said Commissioners shall cause to be set down in writing, entered and Recorded, in such Book or Books to be provided as aforesaid, which person or persons appearing and attending to give such evidence, shall be entitled to demand and receive under rule or order of the said Commissioners, from the party on whose behalf they shall attend, a like allowance as is paid to witnesses attending the trial of Issues in His Majesty's Court of His Bench, Provided nevertheless that no such Evidence or Testimony affecting any Lands, Tenements or Hereditaments, within the said District, or the Estate. Rights and Interests, of any person therein shall be admitted, taken, entered or Recorded, by the said Commissioners in such Book or Books as aforesaid, unless proof be adduced to the said Commissioners that a sufficient description in writing, mentioning and setting forth the Lands, Tenements or Hereditaments claimed the Town, Township, County or

other place wherein situated, and the name, place and abode of the person or persons claiming shall have been affixed up in the Register Office of the said Counties, and on the door of the Court House, or other Building, wherein a Court of General Quarter Sessions of the Peace shall be holden for the said District, at least one month before the sitting of the said Commission, and whereas for preventing of frauds in conveyances double Mortgages and other collusions in the sale and conveyance of Lands, Tenements or Hereditaments within the said District, and to the intent that persons minded to purchase, may have notice of any previous Deed or Conveyance.

VI. Be it further enacted by the authority aforesaid, That when any person who on the first day of June in the year of our Lord one thousand eight hundred and fifteen was now, and still is, in the lawful Seizin and possession of any such Lands, Tenements or Hereditaments under and by virtue of any Deed, Conveyance, Will, Mortgage, Lease or other Mesne Conveyance to him, her or them, made, on which is endorsed by the Register, of the said Counties, that a memorial thereof, was enregistered in the Register Office of the said Counties, then and in such case, each and every such person or persons shall during the continuance of this Act, produce and bring before such Commissioners at their settings such Deed, Conveyance, Will, Mortgage, Lease or other Mesne Conveyance, and the said Commissioners the said Indorsements, the description of the Lands, Tenements or Hereditaments conveyed by such Deed, Conveyance, Will, Mortgage, Lease, or other mesne conveyance, with the names, additions and places of abode, of the parties and witnesses thereto shall cause to be transcribed, set down, written, entered and Recorded, in such Book or Books, as aforesaid, and shall cause to be endorsed a certificate of such entry on the same, which certificate shall be taken to be sufficient proof, of the original Registering of such Memorial, and of the Record and entry thereof by the said Commissioners, and that every sale or conveyance which shall hereafter be made of any Lands, Tenements or Hereditaments, within the said District, shall be held, deemed, esteemed, and taken to be fraudulent and void, against purchasers for valuable consideration from any person or persons in the actual possession of the Lands, Tenements or Hereditaments sold, unless such certificate so as aforesaid endorsed, shall be set down, entered and Recorded in such Book or Books as aforesaid, before the enregistering of a Memorial of such subsequent Deed, or conveyance in the Register Office of the said Counties, saving, nevertheless the Rights of Infants, Femes Coverts, Persons of non sane Memory and beyond the seas.

VII. And be it further enacted by the authority aforesaid, That it shall and may be free and lawful, to and for all His Majesty's subjects, from time to time, and at all times, during the sitting of the said Commission, and between the times and periods thereof, to search in, and examine any of the Books or Records, of the said Commission, and the entries therein made as aforesaid, and to demand and receive from the Clerk or Secretary thereof, copies, transcripts and certificates of any such entries, upon payment of such fees as in like cases are allowed, and paid to Registers in the several Districts of this Province.

VIII. And be it further enacted by the authority aforesaid, That at the ending and finishing of the said Commission, the Books and Records thereof and of all proceedings had before the said Commissioners, subscribed with their names shall by them, be deposited in the Register Office of the said Counties, to be kept among the Records thereof, and that the entry in such Books or

Record, of a Certificate so made and endorsed, that a Memorial of any such Deed, Conveyance, Will, Mortgage, Lease or other Mesne Conveyance, was enregistered in the Register Office of the said Counties, shall be taken, held, esteemed and deemed as full evidence of the Registry thereof, as if the said Memorial and Record thereof had not been lost or destroyed as aforesaid.

IX. And be it further enacted by the authority aforesaid, That in case any person who shall appear before the said Commissioners to give evidence, respecting or affecting any such claim or claims, as aforesaid, shall wilfully or corruptly forswear him, her or themselves or shall therein wilfully or corruptly make any false affirmation or declaration, he, she or they, shall incur, and be subjected to the like pains and penalties as would be incurred upon Conviction of wilful and corrupt perjury in any evidence given in His Majesty's Court of King's Bench in this Province, on any cause there depending.