

having the management of the Street or Road, and of the Owners and Occupiers of the Lands through which such opening is made, doing as little damage as possible to the Road or Ground wherein such Sewer or Drain may be made, and restoring it to the same or as good condition as it was in before being disturbed.

VII. And be it enacted, That if the said Trustees at any time cause or suffer to be brought or to flow into any River, Spring, Well, Stream, Canal, Reservoir, Acqueduct, Pond or Watering Place, any offensive matter from the said Burying Ground whereby the water therein shall be fouled, they shall forfeit, for every such offence, the sum of Twelve Pounds Ten Shillings currency.

Penalty on Trustees for suffering water in Rivers, &c., to be fouled.

VIII. And be it enacted, That the said penalty, with full costs of suit, may be recovered by any person having a right to use the water fouled by such offensive matter, by a Civil Action against the said Trustees for the time being, or any one or more of them, in any Court of Competent Jurisdiction; Provided always, that the said penalty shall not be recoverable unless the same be sued for during the continuance of the offence, or within six months after it has ceased.

The said penalty how and by whom to be recovered.

Proviso.

IX. And be it enacted, That in addition to the said penalty of Twelve Pounds Ten Shillings, (and whether the same be recovered or not,) any person having the right to use the water fouled by such offensive matter, may sue the said Trustees for the time being, or any one or more of them, in a Civil Action in any Court of Competent Jurisdiction, for any damage specially sustained by him by reason of the water being so fouled; or, if no special damages be alleged, for the sum of Two Pounds Ten Shillings, for each day during which such offensive matter is brought or flows as aforesaid, after the expiration of twenty-four hours from the time when notice of the offence is served on the said Trustees, or any one or more of them, by such person.

The party aggrieved may sue for damages (in addition to the penalty above mentioned);

And claim a certain sum per day, if no special damages be alleged.

C A P. C L X V I I I .

An Act to afford Relief to the Estate of the late Alexander Wood.

[30th August, 1851.]

WHEREAS the Honorable George Crookshank, as Attorney for Isabella Farrell, of Woodburnden, in the County of Kincardine, in that part of the United Kingdom of Great Britain and Ireland called Scotland, Widow, has, by petition, set forth, that Alexander Wood, formerly of Woodburnden aforesaid, Esquire, and who resided in the City of Toronto, Upper Canada, for many years previous to the year of Our Lord one thousand eight hundred and forty-two, died at Woodcot, near Stonehaven, in Scotland aforesaid, on or about the Eleventh day of September, in the Year of Our Lord one thousand eight hundred and forty-four, intestate, and that the said Isabella Farrell claims to be the Heir-at-Law of the said Alexander Wood, and as such entitled to the Real Estate left by the said Alexander Wood in Scotland and in Upper Canada, and that all the witnesses to prove such Heirship reside in Scotland aforesaid, and that for realizing said Estate in Upper Canada, it is necessary that a number of Suits at Law and in Equity shall be brought, in which proof of the Heirship of the said Isabella Farrell to the said Alexander Wood will be required; And whereas by Law it is necessary that a Commission for the proof of such Heirship shall be issued in every such Action or Suit, which will occasion serious expense and delay which it is desirable to prevent: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That any Commission or Commissions which may have issued, or may hereafter issue, in any cause now depending or hereafter to be brought in Her Majesty's Court of Queen's Bench or Common Pleas, or Her Majesty's High Court of Chancery in and for that part

Preamble.

Commissions issued by Courts of Q. B. or C. P. or Court of Chancery for proof of heirship to be

of

valid in other Suits in all Courts of Law or Equity in Upper Canada.

of Canada heretofore Upper Canada, for the examination of Witnesses for the proof of the Heirship of the said Isabella Farrell to the said Alexander Wood, deceased, and her consequent right to inherit the Real Estate of which said Alexander Wood died possessed in Upper Canada, and which shall have been or shall be hereafter returned to the said Courts of Queen's Bench, or Common Pleas, or High Court of Chancery, in any such Cause in which it or they shall have been so issued, and shall have been considered by any of the said Courts to afford good, proper and sufficient evidence of the Heirship of said Isabella Farrell, and right and title to the said Real Estate in Upper Canada, which said Alexander Wood died possessed of, according to the Laws in that behalf, shall be deemed and taken to be, in any Court of Law or Equity or any Judicial Proceeding in Upper Canada a Commission or Commissions issued in and for any Cause, Suit or Proceeding whatever, which may be hereafter had or commenced in any such Court of Law or Equity, or in any Judicial Proceeding, and in which proof of the Heirship of said Isabella Farrell, or her right or title to inherit the Real Property of which said Alexander Wood died possessed in Upper Canada, shall be required in the same manner and with the same effect as if the same had been issued, returned and opened in the particular Cause, Suit or Proceeding in which it or they may be so required or used as aforesaid.

Defendant may obtain the issue of a new Commission, &c.

II. And be it enacted, That it shall and may be lawful for any defendant or defendants in any Action or Actions in any Court of Law or Equity, or any Judicial Proceeding in Upper Canada, in which it may be necessary to give evidence of the Heirship of the said Isabella Farrell to the said Alexander Wood, deceased, to apply to the said Court in which any such Action may be brought upon Affidavit shewing good cause for the same of any matter tending to invalidate the Claim of the said Isabella Farrell to inherit any of said Real Estate, for a Commission or Commissions to examine Witnesses in reference thereto; and upon such Commission or Commissions being granted to the said defendant or defendants, no proceedings shall be had under the first section of this Act upon any Commission or Commissions taken and returned as therein mentioned, but such Action or Actions shall proceed as if this Act had never been in force: Provided always, that such defendant or defendants shall proceed upon the Order granting any such Commission or Commissions within one month after such Order shall be made.

Proviso.

C A P . C L X I X .

An Act to enable Caira Robbins Wilkes, the wife of George Samuel Wilkes, of Brantford, Esquire, to convey by herself certain Real Estate devised to her by her late father.

[30th August, 1851.]

Preamble.

WHEREAS George Samuel Wilkes, of the Town of Brantford, in the County of Wentworth, and Caira Robbins, his wife, have presented their Petition to the Legislature, setting forth that she, before her marriage, held an Undivided Estate in Fee, as tenant in common with her two sisters and one brother, in certain lands, and an Undivided Interest in Moneys secured upon Real Estate, and of certain Personal Property in the Province of Canada, as Devisee of her father Richard Wilkins, and that before their marriage, which took place in the year one thousand eight hundred and forty-three, she, by way of Marriage Settlement, conveyed her Estate and Interest in the said property, both real and personal, to Maria Wilkins and John Mittleberger as Trustees, to the use of herself for life, and afterwards, to the use of the issue of their marriage, and in the event of their being no such issue, then to herself in Fee Simple; and that partition of the said property has recently been made between the tenants in common thereof, whereby a number of Town Lots, and about Eighty-eight Acres of other Land, in the Town of Brantford, besides some other Real Estate and Personal Property of comparatively small value, fell to her; that the Petitioners have not had any issue, but that the property would be of comparatively little value to them, without power to such Trustees of disposing of the same, and praying that an Act might be passed for such purpose:

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