

*The Provincial Statutes of Canada*, passed in the year 1842. Kingston: Stewart Derbishire & George Desbarats, 1842.

6 Victoria – Chapter 28

**An Act to afford relief to the Estate of the late Thomas Clark. 12th October, 1842.**

Whereas Samuel Street, as Executor and Devisee in trust of and under the last Will and Testament of the late Thomas Clark, of the Township of Stamford, has by Petition set forth that the said Will was made and published by the said late Thomas Clark in England, that all the witnesses thereto are resident there; and that for realizing the said Estate, it is necessary that a number of suits at Law and in Equity shall be brought, in which proof of the due execution of the said Will will be required; And whereas by Law it is necessary that a Commission for the proof the said Will shall be issued in every such action which will occasion serious expense and delay in recovering the assets of the said Estate; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and 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, in and for that part of Canada, heretofore Upper Canada, for the examination of the Witnesses to, and proof of the last Will and Testament of Thomas Clark, of the Township of Stamford, deceased, and which shall have been or shall be hereafter returned to the said Court of Queen's Bench in any such cause in which it or they shall have been so issued, and shall be considered by the said Court to afford good, proper and sufficient evidence of the due execution of the said Will, with reference to Real Estate 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 Canada West, a Commission or Commissions issued in and for any cause or proceeding 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 said last Will of the said Thomas Clark 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 or proceeding in which it or they may be so required or used as aforesaid: Provided always, that before any such Commission or Commissions shall be received in evidence, in any other cause or judicial proceeding, than that in which they shall have been or shall be taken, a certificate shall be obtained and produced from the Judge before whom the cause was tried, in which such Commission or Commissions shall have been or shall be opened, that such Commission or Commissions afforded due and sufficient evidence of the execution of the said Will according to the Laws relating to devises of Real Estate.

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 Canada West, in which it may be necessary to give evidence of the due execution of the Will of the said Thomas Clark to apply to the said Courts upon affidavit, shewing good cause for the same, of any matter tending to

invalidate the said Will, for a Commission or Commissions to examine the witnesses to the said Will, 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.