

Provincial Statutes of Canada, passed in the year 1845. Montreal: Stewart Derbishire & George Desbarats, 1845.

8 Victoria – Chapter 8

An Act to repeal certain Acts therein mentioned, and to make better provision for the relief of parties claiming lands in Upper Canada for which no Patent hath issued, as representing the original Nominees of the Crown. (10th February, 1845.)

Whereas it hath become necessary to make better and more effective provision than is made by the laws now in force, for determining claims to Lands in Upper Canada, for which no Patent hath issued, and for ascertaining the parties in whose favour the Patents for such lands ought respectively to issue, and for this purpose it is expedient to repeal the Acts of the Legislature of Upper Canada hereinafter mentioned, and to re-enact and consolidate such of the provisions thereof as are found effective, with such amendments and additions as experience hath shewn to be requisite: 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 the Act of the Legislature of Upper Canada, passed in the forty-fifth year of the Reign of His Majesty, King George the Third, and intituled, "An Act to afford relief to those persons who may be entitled to claim Lands in this Province, as Heirs or Devisees of the Nominees of the Crown, in cases where no Patent hath issued for such Lands;" and the Act of the said Legislature passed in the forty-eighth year of the same Reign, and intituled, "An Act to continue an Ad passed in the forty-fifth year of His Majesty's Reign, intituled, 'An Act to afford relief to those persons who may be entitled to claim Lands in this Province, as Heirs or Devisees of the Nominees of the Crown, in cases where no Patent hath issued for such Lands,'" and further to extend the benefits of the said Act; and the Act of the said Legislature passed in the fifty-second year of the same Reign, and intituled, "An Act to amend an Act passed in the forty-eighth year of His Majesty's Reign, intituled, 'An Act to continue an Act passed in the forty-fifth year of His Majesty's Reign, intituled, 'An Act to afford relief to those persons who may be entitled to claim Lands in this Province, as Heirs or Devisees of the Nominees of the Crown, in cases where no Patent hath issued for such Lands, and further to extend the benefits of the said Act, and to continue part of the same,'" and the Act of the said Legislature passed in the fifty-sixth year of the same Reign, and intituled, "An Act to revive and continue an Act passed in the fifty-second year of His Majesty's Reign, intituled, 'An Act to continue and amend an Act passed in the forty-eighth year of His Majesty's Reign, intituled, An Act to continue an Act passed in the forty-fifth year of His Majesty's Reign, intituled, An Act to afford relief to those persons who may be entitled to claim Lands in this Province, as Heirs and Devisees of the Crown in cases where no Patent hath issued for such Lands, and further to extend the benefit of the said Act,'" and to continue part of the same; and the Act of the said Legislature passed in the fifty-ninth year of the same Reign, and intituled, "An Act to continue and amend an Act passed in the fifty-sixth year of His Majesty's Reign, intituled, 'An Act to revive and continue an Act passed in the fifty-second year of His Majesty's

Reign, intituled, An Act to continue and amend an Act passed in the forty-eighth year of His Majesty's Reign, intituled, An Act to continue an Act passed in the forty-fifth year of His Majesty's Reign, intituled, An Act to afford relief to those persons who may be entitled to claim Lands in this Province, as Heirs and Devisees of the Nominees of the Crown, in cases where no Patent hath issued for such lands, and further to extend the benefit of the said Act,' and to continue part of the same;" and the Act of the said Legislature, passed in the fourth year of the Reign of His Majesty King George the Fourth, and intituled, "An Act to afford relief to persons claiming Lands in this Province, under assignments from Heirs, Devisees or Assignees, of the original Nominees of the Crown, in cases where no Patents had issued, and for other purposes therein mentioned;" and the Act of the said Legislature passed in the tenth year of the same Reign, and intituled, "An Act to afford greater facility in procuring testimony upon claims to Lands in this Province, by the Heirs or Devisees of the original Nominees of the Crown, or their Assignees," shall be, and the said Acts are and each of them is hereby repealed.

II. And be it enacted, That it shall be lawful for the Governor of this Province, from time to time, to issue such and so many Commissions under the Great Seal of this Province, to the Chief Justice of Her Majesty's Court of Queen's Bench for Upper Canada, the Vice Chancellor of Upper Canada, and the Puisne Justices of the said Court of Queen's Bench, and to such and so many other persons as he shall think fit; and such Commissioners, or any three of them of whom the said Chief Justice, the said Vice Chancellor, or one of the said Puisne Justices, shall be one (and such three Commissioners shall be a Quorum for all the purposes of this Act) shall have full power and authority in manner hereinafter mentioned, to ascertain, determine and declare, in all cases to be brought before them under the pro-visions of this Act, who is the party to whom the Patent ought to issue for the Lands to which the claims shall respectively relate: and the sittings of the said Commissioners shall be holden at the City of Toronto, on the first Monday in January and the first Monday in July, in each year, and on the thirteen days next ensuing the said days, respectively, Sundays and Holidays excepted: Provided always, that when the said Commissioners shall have good reason to believe that there will not be sufficient business to require their daily attendance throughout the term appointed for their sittings, as aforesaid, they may adjourn for any time within such term that may be consistent with the despatch of such business as may be brought before them; and the said Commissioners shall have power to appoint some fit person to be their Clerk: Provided always, that any act herein authorized or directed to be performed by one Commissioner may be so performed either in or out of the period appointed for their sittings.

III. And be it enacted, That it shall and may be lawful for each and every party claiming any Lands within Upper Canada for which no Patent hath issued, as being the Heir, Devisee or Assignee, of the original Nominee of the Crown, or as having derived a title or claim to such Lands from or through any such Heir, Devisee or Assignee, to bring his claim before the said Commissioners at their sittings, either personally or by his agent or attorney, and to produce before the said Commissioners all such documents, proofs and evidence as he may have to adduce in sup-port of such claim; and such evidence may be given viva voce before the said Commissioners, at their sittings, or by written depositions sworn before any one of the said Commissioners, or by any person specially appointed to receive the same by the said Commissioners, or before the Judge of any Circuit Court, or any Cleric of the Peace, of any Commissioner for receiving affidavits, to be

used in the Court of Queen's Bench in Upper Canada, each of whom is hereby authorized to receive such depositions and to administer the necessary oaths; and all certificates of the Surveyor General or of the Clerk of the Executive Council, or copies certified by them respectively of documents in their custody, shall also be received in evidence before the said Commissioners.

IV. And be it enacted, That the said Commissioners shall have full power and authority in all cases where they shall deem it requisite for the purposes of Justice, to summon before them, by summons under the hand of any one of them, either the claimant or any party interested in the case, or any other person whom they shall deem it expedient to examine as a witness in the case, or whom they may have reason to believe to be in possession of any document by the production of which the ends of Justice may be better attained; and to require such claimant or party, or such witness to submit to such oral examination upon oath, or to answer on oath and to sign his answers to interrogatories or cross-interrogatories in writing, or to produce such books, papers or documents in his possession, as to the said Commissioners shall appear requisite; or the said Commissioners may cause such interrogatories or cross-interrogatories as they shall deem requisite to be served upon and answered by any such claimant, party or witness, or any witness whose deposition shall be produced in evidence before them, and may cause Commissions to be issued for the examination of any witness not resident in Upper Canada, and for requiring such witness to produce such books, papers or other documents as he may have in his possession, and may at their discretion delay the proceedings in the case until such evidence and answers as they shall have thought proper to require and order, shall have been adduced and given; and if any claimant, party or person duly summoned to give evidence, or to produce any book, paper or document, or to answer any interrogatories or cross-interrogatories before the said Commissioners, or before any person commissioned by them to receive the same within this Province, shall wilfully neglect to appear at the time and place appointed in the summons, or appearing, shall refuse to answer any lawful question, or to produce any document in his possession, he shall thereby forfeit the sum of twenty-five pounds (to be recovered as hereinafter mentioned) to the party at whose instance he shall have been so summoned or required to answer or to produce such document; and if the claimant or any party interested in the case shall make default to answer any interrogatory or cross-interrogatory which he shall have been duly required to answer, the same shall be taken pro confessis, as if his answer had been such as would be most adverse to his own claim or interest.

V. And be it enacted, That no claim shall be received or proceeded upon by the said Commissioners, until the party by whom, or on whose behalf the same shall be made (or if such party consist of more than one person, then until some one of such persons) shall have made and produced before the said Commissioners, an Affidavit in writing signed by him, that such claim is just and well founded to the best of his knowledge and belief, and that he is not aware of any adverse claim, or if he be aware of any adverse claim, that he has caused notice in writing of his claim and of his intention to bring the same before the said Commissioners at the time when it shall be actually so brought, (a copy of which notice shall be annexed to the affidavit) to be served on the party having or being supposed to have such adverse claim at least one month before the date of such affidavit.

VI. And be it enacted, That the said Commissioners shall not proceed upon any such claim as aforesaid, unless a notice specifying such claim and the name or names of the party claiming, together with the number of the lot of which the lands claimed consist or of which they form part, and of the concession and the name of the Township in which the same shall lie, shall have been put up in some conspicuous place in the office of the Clerk of the Peace of the District in which such lands are situate, during at least thirty days before such claim shall come to be heard before the said Commissioners, nor unless a certificate to that effect from such Clerk of the Peace shall be produced to the said Commissioners; and it shall be the duty of the Clerk of the Peace of each District in Upper Canada, once in every three months, to make a list of the claims so put up in his Office, specifying therein the particulars of such claims in the manner in which they are hereinbefore required to be specified in the notice so put up, and to affix such list in some conspicuous part of the Court House, or place in which the Courts of General Quarter Sessions are held for the District, and to cause the said List to be publicly read and proclaimed in open Court at each such Session, by the Crier of the Court, and immediately after the delivery of the charge to the Grand Jury; and for each such certificate as aforesaid, it shall be lawful for the Clerk of the Peace to demand and receive the sum of two shillings and six pence, and no more.

VII. And be it enacted, That it shall be lawful for the said Commissioners to defer, delay, or adjourn the proceedings on any claim brought before them, and to give such further or enlarged time for the production of evidence, or for any other purpose relative to such claim, and for the decision thereon, as they shall deem expedient for the attainment of the ends of justice.

VIII. And be it enacted, That after the said Commissioners shall have fully examined any such claim as aforesaid, they may either reject or allow the same as in their judgment the justice and equity of the case may require without regard to legal forms or to the strict letter of the law or legal rules of evidence, and may report their decision to the Governor in Council; and such report shall be final and conclusive (except in the case hereinafter mentioned,) and it shall be lawful for the Governor in Council to direct that Her Majesty's Letters Patent under the Great Seal of the Province do issue, for granting the lands in question to the party who shall have been determined by the decision of the Commissioners to be entitled to the same, as representing the original Nominee of the Crown: Provided always, that such Letters Patent shall have such and none other effect or operation with regard to any charge, incumbrance, lien, matter or thing, upon or affecting the lands so granted, as Letters Patent issuing for the same in favor of the original Nominee of the Crown would have had, save only as establishing the claim of the party in whose favor they shall be granted to the lands to which they relate, as the Heir, Devisee or Assignee of, or as otherwise representing the original Nominee: And provided also, that neither the decision of the Commissioners on any claim, nor the issuing of the Letters Patent on such decision, shall extend to or in any way affect any claim of the same party, or of any other party, to any lands other than those to which such decision shall expressly relate, and which shall be mentioned and described in the report and Letters Patent, but such claim to other lands shall continue and remain as if such decision and report had not been made.

IX. And be it enacted, That no Letters Patent shall issue on any decision and report of the said Commissioners until after the expiration of one Calendar month, from the time such report shall

have been transmitted and marked as received by the Clerk of the Executive Council; and if, before the expiration of such Calendar month, any Quorum of the said Commissioners shall, from any representation made to them, find reason to believe that such decision and report were obtained by surprise or erroneously made in any respect, and that justice requires that the issuing of the Letters Patent be staid, then such Quorum of the said Commissioners may, although it be not then the regular period of their sitting, report accordingly to the Governor in Council, and the issuing of the Letters Patent shall be thereupon staid, until the Commissioners shall again report upon the case, and the said Commissioners may then rehear the case, or let in any new claim and receive or insist upon any new evidence as to them shall appear expedient to enable them to do justice in the case, and may thereafter decide and report thereon as if no prior decision and report had been made, and with like effect: Provided always, that the said Commissioners, if under the circumstances of the case it shall appear to them fair and right so to do, may allow to the party in whose favor the first decision and report shall have been made, such costs against the party at whose instance the case shall have been again taken into consideration as they shall deem just and reasonable, or may in case of fraud or wilful wrong in the conduct of such party award costs in like manner against him to the party in whose favor the subsequent decision and report shall have been made.

X. And be it enacted, That when any lands described as granted in any Schedule furnished by the Surveyor General to the Treasurer of any District in Upper Canada, under the provisions of any law concerning the collection of local taxes or assessments in that portion of this Province, but for which no Letters Patent shall have issued, shall have been sold by the Sheriff for arrears of such local taxes or assessments, and the period allowed by Law for the redemption of such lands shall have expired, it shall be lawful for the purchaser, or for the Heir, Devisee or Assignee of the purchaser to claim the same before the Commissioners aforesaid, and such purchaser shall thereupon for all the purposes of this Act be considered as an Assignee of the original Nominee of the Crown, and his claim shall be acted on and dealt with accordingly.

XI. And be it enacted, That wherever the original Nominee of the Crown, or any party through whom the party obtaining Letters Patent for any Lands under this Act shall be declared by the Commissioners to have derived his claim thereto, shall before the issuing of such Letters Patent have granted any mortgage, incumbrance or lien on such Lands, by any instrument by which the same would have been validly granted, if the Letters Patent had issued in favor of the Grantor before the date of such instrument, the same may be registered in the Office of the Register for the County in which such lands shall lie subject to the same conditions, and with the same effect and no other, and shall in law and equity have the same force and effect and no other, as if Letters Patent for the said Lands, had, before the execution of such instrument, issued in favor of such Grantor.

XII. And be it enacted, That all papers, documents, matters and things, which at the time this Act shall come in force, shall be in the custody of the Commissioners appointed under any of the Acts hereby repealed, or of their clerk, as such, shall be transferred and delivered over to the Commissioners to be appointed under this Act or their clerk; and all proceedings commenced or pending in any case before the first mentioned Commissioners under any of the Acts hereby

repealed, may be continued and completed by and before the Commissioners to be appointed under this Act, as if commenced before them, and with like effect, or such proceedings may be discontinued in any case and the parties may be required to proceed de novo, either with regard to the whole case or to any particular matter or proceeding therein, as to the said last mentioned Commissioners shall in their discretion seem meet; and any decision and report of the said first named Commissioners given and made before this Act shall come into force, shall remain good and valid, and may be acted-upon as to the issuing of Letters Patent, as if it had been given and made under the authority of this Act, and in like manner shall be subject to the provisions thereof in case it shall appear to any Quorum of the Commissioners under this Act, that it was erroneous or was obtained by surprise, and they shall so report before the expiration of ninety days from the time the report of the Commissioners under such former Acts was made.

XIII. And be it enacted, That in every case where an oath may be required under this Act, it shall be lawful for the party of whom the same may be so required to make a solemn affirmation in lieu thereof and with like effect, if such party be one of the persons who, by the laws then in force in Upper Canada, shall be allowed to make such solemn affirmation in lieu of an oath, in civil cases; and if any person shall in any such oath or affirmation wilfully swear or affirm falsely, he shall be deemed guilty of wilful and corrupt perjury, and being thereof convicted, shall be liable to the pains and penalties imposed by law for that offence.

XIV. And be it enacted, That it shall be lawful for the said Commissioners from time to time to make and establish such rules and forms, with regard to any proceedings to be had before them, and to such notices, papers and other documents as shall be required in the conduct of such proceedings, as to them shall appear expedient for the better attainment of the purposes of justice.

XV. And be it enacted, That in all cases in which any witness shall have duly appeared to give evidence before the said Commissioners, or before any person appointed by them to examine or to receive the testimony or deposition of such witness, it shall be lawful for the said Commissioners to order and direct the party at whose instance such witness shall have been summoned, or his testimony or depositions taken, to allow to such witness for his loss of time and expenses, such sum as the said Commissioners shall deem equitable, which order such party shall obey, or in default, such sum shall be recoverable from such party by action in any Court in this Province, having jurisdiction in civil cases to a like amount, due regard being had to the limits of the local jurisdiction of such Court.

XVI. And be it enacted, That the clerk of the said Commissioners shall be entitled to demand and recover for the following services respectively, the fees hereinafter mentioned, from the persons requiring such services, that is to say: for filing each petition, one shilling, currency; for setting down for hearing any claim, two shillings and six pence, currency; on the hearing of any claim, five shillings, currency; for making up a report on the same, ten shillings, currency; for each certificate of the allowance of any claim, one shilling and three pence, currency; for a copy of the order respecting any claim, one shilling and three pence, currency; for each summons for the attendance of any witness or witnesses, two shillings, currency; for each commission for the

examination of witnesses, ten shillings, currency; for any certified copy of any paper or document in his custody, one shilling and three pence, currency for the certificate, and at the rate of six pence, currency for each one hundred words in such copy; and such reasonable fees for any service not herein specially mentioned or included in those so mentioned, as the said Commissioners shall from time to time allow him, as a fair and just compensation for the labour by him performed, and no more; and for receiving any affidavit or deposition under the authority of this Act, the person authorized to receive and receiving the same, not being one of the Commissioners to be appointed for carrying this Act into effect, shall be entitled to demand and recover from the party requiring him to receive the same, the sum of one shilling and three pence, and no more; and all such fees as aforesaid may be required to be paid before the service for which they are granted shall be performed, or if not so required, may be recovered in the manner hereinbefore appointed with regard to the sum allowed to a witness.

XVII. And be it enacted, That a copy of any order, report or decision, to be made by the said Commissioners under the authority of this Act, certified by their Clerk and countersigned by one of the said Commissioners, shall be received in any civil suit or action in any Court in this Province, as evidence of the making of such order, report or decision, in the manner and form and according to the tenour thereof as set forth in such copy; nor shall it be necessary in such suit or action to prove the signatures of such Clerk or Commissioner, unless, after the party intending to produce the same, shall have given due notice of such intention to any adverse party, according to the course and practice of the Court, such adverse party shall in like manner have signified his intention to dispute such signatures, or either of them, in which case it shall be requisite to prove the same, and the costs attending such proof may, in the discretion of the Court, be allowed to the party making such proof, whatever be the result of the suit or action.

XVIII. And be it enacted, That the words "Governor of this Province," wherever they occur in this Act, shall be understood to include the Lieutenant-Governor, or person administering the Government of this Province; the words "Upper Canada," shall be understood to mean all that part of this Province which formerly constituted the Province of Upper Canada; the words "Heir, Devisee, or Assignee," shall be understood to include the Heirs, Devisees, or Assignees of any Heir, Devisee or Assignee, to any Degree; the word "Lands," shall be understood to mean any lot or lots, piece or parcel of Lands, of what extent soever they may be, to which any claim shall be made under this Act; and wherever the Commissioners under this Act are empowered or directed to do or perform any Act, it shall be understood that such Act may be done or performed by any Quorum of such Commissioners; and words importing the singular number or the masculine gender only shall be understood to include several persons, matters and things, as well as one person, matter or thing, and females as well as males, unless it be otherwise specially provided, or there be something in the subject or context repugnant to or inconsistent with such construction.