

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbshire & George Desbarats, 1849.

12 Victoria – Chapter 121

An Act to remedy certain defects in the Registration of Deeds and Instruments relating to Real Property in the Registry Office at Montreal. 30th May, 1849.

Whereas it appears that during the time when the late Edward Dowling, held the office of Registrar of the Municipal or Registration District of Montreal, and subsequently of the County of Montreal, for both of which he was the first Registrar, appointed under the Ordinance hereinafter mentioned, and also during the interval between his death, and the time when his Successor in the office of Registrar of the said County, was appointed and took upon himself the said office, to wit, on or about the seventeenth day of July, one thousand eight hundred and forty-five, many Deeds, Instruments and Documents were presented and received at the Registry Office, in the City of Montreal, kept by the said Edward Dowling or his Deputy, for Registration either by Memorial or at full length, or of being entered as discharges of hypothecs, in the manner by Law required, but that nevertheless the same were not Registered, transcribed or entered in the manner provided and prescribed by the Ordinance, of the Governor and Special Council, for the affairs of Lower Canada, passed in the fourth year of Her Majesty's Reign, and intituled, *An Ordinance to prescribe and regulate the Registering of Titles to lands, tenements and hereditaments, Real or Immoveable Estates, and of charges and incumbrances on the same; and for the alteration and improvement of the Law, in certain particulars, in relation to the alienation and hypothecation of Real Estates, and the rights and interest acquired therein*, or the Acts amending the said Ordinance, and that divers irregularities were committed and omissions and errors made by the said Edward Dowling and his Deputy, which might, without the intervention of the Legislature, invalidate the titles and rights of parties, who so far as depended upon them, have complied with all the requirements of the Law, to the advantage of other parties who have no just claim to benefit by the said errors and omissions in the premises; for the prevention of injustice: 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 during twelve months from and after the passing of this Act, no error, omission or irregularity on the part of the said Edward Dowling or his Deputy, shall be held to render the Registration of any Instrument incomplete or void, but the Registration thereof shall be held to be complete and valid if it shall appear that such Instrument was presented to and received by the said Edward Dowling or his Deputy, for Registration, at or before some certain time from which such Registration shall, during the period aforesaid, be held to have been completed; nor shall the Registration of such Instrument, be at any time held to be incomplete or void, provided such Registration be completed in the manner provided by this Act, before the expiration of the said period of twelve months from the passing thereof.

II. And be it enacted, That for all the purposes of this Act, the fact that any such Instrument as aforesaid, was presented to and received by the said Edward Dowling or his Deputy, at or before some certain time, may be proved, by the certificate of the said Edward Dowling or his Deputy, given before the said seventeenth day of July, one thousand eight hundred and forty-five:

By the evidence on oath of the said Deputy or of any other credible witness, supported by other evidence, on the oath of some other witness, or by some entry or memorandum in writing, (*par écrit*) and more particularly by the *procès-verbal*, executed before Maitres Gibb and Easton, Notaries Public, at the City of Montreal, and bearing date the seventeenth day of July, one thousand eight hundred and forty-five, and deposited in the office of the said Maitre Gibb, that the Instrument or an entry or writing purporting to be a transcript thereof, was deposited or left before the first day of January now last, by the said Deputy, or by the Executor of, or other person acting as he personal representative of the said Edward Dowling, in the office or custody of the present Registrar or his Deputy;

By the evidence on oath of the said Deputy of the late Edward Dowling, or of any other credible witness, supported by some receipt for fees, or memorandum or note in writing in the nature of a commencement of written proof (*par écrit*);

By any entry in any book, or note, or memorandum upon any Instrument, deposited as aforesaid, and before the day last aforesaid, in the office or custody of the present Registrar or his Deputy, such entry, note or memorandum, being proved by the oath of one credible witness, to have been made or signed by the said Edward Dowling or his Deputy, or by some person employed by one of them in the duties of their office;

If the time when any such Instrument was presented and received for Registration, cannot be proved, evidence of the like nature may be taken, that it was so presented and received between two certain periods, or before some certain day;

If there be no such evidence as aforesaid, as to the time when any such Instrument was presented and received for Registration, then, if it was deposited before the day last aforesaid, in the office of the present Registrar or his Deputy, and the privilege or hypothec to be preserved by its Registration, bear date before the coming into force of the Ordinance, cited in the Preamble to this Act, and the Instrument itself, bear date on or before the first day of November, one thousand eight hundred and forty-four, then it shall for the purposes of this Act, be deemed to have been so presented and received on or before the day last aforesaid; and in any case it shall for the said purposes, be deemed to have been so presented and received before any other Instrument, touching which evidence is in like manner wanting and being of later date;

All such proof as aforesaid, shall be for the purposes of this Act, and subject to the provisions hereinafter made.

III. And be it enacted, That the Governor of this Province may appoint by Commission, under the Great Seal thereof, three persons to be Commissioners under this Act, one of whom shall be

designated in the Commission as “Third Commissioner” and shall not be bound to act as Commissioner, except in cases where the others shall differ in opinion, or one of them shall be absent or prevented by any cause from attending to his duty as Commissioner; and any act or thing done by any two of the said Commissioners, shall have the same force and effect as if done by all of them.

IV. And be it enacted, That it shall be the duty of the said Commissioners, and they shall have full power, to take possession of (and recover if need be) all Books, Instruments and Documents, kept by or filed with the said Edward Dowling or his Deputy, or any person employed by either of them in the Registry Office aforesaid, or which ought to have been found therein by the present Registrar, at the time when he took upon himself the office of Registrar:

To take such evidence as hereinbefore is mentioned, upon any point touching which such evidence may be requisite to enable them to perform the duties hereby assigned to them;

To arrange, mark, file, identify, systematize, and complete all Books, Instruments and Documents, of which they are hereinbefore required to take possession; to cause all such books as ought to have been, and are not authenticated by any Prothonotary, to be authenticated by such Officer, to obtain new books when necessary, and cause them to be so authenticated; to compare the transcription of any Instrument, in any book with the Instrument itself, whenever such comparison shall appear to them to be desirable, to correct any errors in such transcription, and so to identify and mark any interlineation, erasure, marginal note, or other alteration in any such transcription, whether made by them or by the said Edward Dowling or his Deputy, as to prevent is being again altered without authority; and generally to do all such things with regard to such Books, Instruments and Documents as aforesaid, which the said Edward Dowling or his Deputy, could and ought to have done, distinguishing clearly what is done by them, from what was done by the said Edward Dowling or his Deputy; except that the said Commissioners, shall not complete or make any addition to or alteration in any minute or Day Book, kept by the said Edward Dowling or his Deputy, nor shall they be bound to make any search, or to give any certificate which could not be given without a search, except upon the express order of the Court of Queen’s Bench for the District of Montreal, or to give any certificate whatever which shall subject them to any personal, liability for any error therein, except that it is given to the best of their knowledge and belief; nor shall they make any index to Estates;

In completing the Books into which any Instruments ought to be transcribed, the Commissioners shall not be bound to transcribe the same in the order of their dates, or of their presentation for Registration, but shall adopt such order as may best enable them speedily to complete the work, making proper indexes, and shewing in the margin or by some book to which they shall refer, their decision as to the time at which each Instrument touching which such decision shall be deemed requisite, was presented for Registration;

They shall make in the margin of the proper books, any entry of the discharge of any hypothec or privilege, which in their opinion ought to be so entered;

They shall reduce to writing all evidence given before them, and cause the same to be entered in books to be kept for that purpose, and signed in such books by the parties giving it, and properly attested by the Commissioners, so that it cannot afterwards be varied; but the evidence given at one time, may relate to any number of books or Instruments, provided they be clearly referred to, and shall be as valid as if the Witness had been separately examined as to each;

They shall report their doings under this Act to the Governor, at such times and in such form and extent of detail as he may, through the Secretary of the Province, require of them, and shall answer such inquiries as he may from time to time direct to be made of them;

They shall, when they have performed the duties hereby assigned to them, deliver over all books, instruments and documents then in their possession as such Commissioners, to the then Registrar of the County of Montreal, to remain in the Registry Office of the said County as part of the Records and Muniments thereof;

They shall have power to summon before them and to compel the attendance of any person whom they may think it necessary to examine in the performance of their duties under this Act, and to cause him to bring with him and produce any book, instrument or document in his possession or control, and to administer an oath to such person or to any person appearing voluntarily before them; and if any person so summoned shall fail to attend, or if any person appearing before them shall refuse to answer any lawful question or to bring and produce any such book, instrument or document as aforesaid, he shall thereby incur a penalty of ten pounds to which he may be condemned by the said Commissioners, who, if such penalty be not immediately paid to them, may forthwith cause him to be apprehended and imprisoned for a period not exceeding three months, unless such penalty be sooner paid;

They may summon the Deputy, Executor or other personal representative of the said Edward Dowling to appear before them, to deliver over to them all books, instruments, and documents in his possession or control, and of which they are hereinbefore authorized to take possession, saving always his right, if any he hath, to any fees which may be due upon the same; and any non-compliance with such Summons, or his refusal to answer any such question as aforesaid, shall subject the party in default to the penalty (and in default of payment to the imprisonment) aforesaid;

They may allow a fair indemnity to the said Deputy or to any other witness, for any expenses occasioned to him by his attendance before them, except the persons mentioned in the preceding paragraph who shall be allowed no such indemnity for their attendance as witnesses;

They may, with the approval of the Governor, employ such clerks or writers and other assistance as maybe necessary for the performance of their duties with proper despatch;

They shall give public notice once in each month, from the time of their appointment until the expiration of the said period of twelve months from the passing of this Act, in the Canada Gazette,

and in one newspaper published in Montreal in English, and in one newspaper there published in French, notifying their appointment under this Act, and calling upon all persons interested in the registration of any Instrument presented to the said Edward Dowling or his Deputy for registration, to ascertain whether any thing ought to be done under this Act to perfect the registration thereof, and to govern themselves accordingly, warning them that if they neglect so to do they incur the risk attending any defect in such registration, and stating the day on which the said period will expire.

V. And be it enacted, That after the expiration of the said period of twelve months from the passing of this Act, the transcription and completion by the said Commissioners, of the registration of any Instrument presented to and received by the said Edward Dowling or his Deputy for registration, shall be as effective to perfect and make valid such registration as if such transcription had been made and such Registration completed at the proper time by the said Edward Dowling or his Deputy; nor shall it in any case be an objection to the validity of the Registration of any Instrument that the same was not entered, or was not entered at the proper time, in the Minute or Day-Book or Index, or was not filed, marked or endorsed, or that any other of the requirements of the Ordinance and Acts aforesaid, (except as to transcription touching which special provision is hereby made) by the said Edward Dowling or his Deputy; nor shall any error in the transcription of any Instrument be held in any case to invalidate the Registration thereof, unless such error be in some particular material in the case, and such as might have misled the party pleading such error, or his *auteur*, to his detriment: and any decision of the Commissioners testified by any entry, Indorsement, Memorandum or Writing whatsoever, under their Hands, as to the Registration of any such Instrument as aforesaid, or as to the period of such Registration, or any Certificate granted by them or by the Registrar of the County of Montreal, and founded upon any such decision, shall be *primâ facie* evidence of the truth of the facts found by such decision; nor shall the decision itself be liable to be impugned except by shewing that the evidence upon which it was founded was untrue, or that, if true, it was not such as, under this Act, was sufficient to warrant such decision: Provided always, that nothing in this Act shall be construed to weaken or diminish the effect of any certificate or evidence which without this Act would be proof of the Registration of any Instrument or of the period of such Registration.

VI. And be it enacted, That nothing in this Act shall be construed to diminish the liability of the personal representatives or sureties of the said Edward Dowling, or of his Deputy or his personal representatives or sureties, for any damage actually sustained by any party, and for which without this Act they would have been respectively liable.

VII. And be it enacted, That the said Commissioners shall have their office at the place where the Registry Office for the County of Montreal shall be held at the time; and that their expenses authorized by this Act, and such allowance for their services, not exceeding twenty shillings per diem, as the Governor in Council shall think it right to allow, shall be paid them from time to time out of the Public moneys of this Province.

VIII. And be it enacted, That this Act shall be known and cited as "The Montreal Registry Act," and the Commissioners aforesaid shall be known as "The Commissioners under the Montreal Registry

Act;" the Interpretation Act shall, apply to this Act; and the word "Instrument" in this Act shall include as well the Deed or Instrument which is affected by the Registration, as the Memorial thereof, when the Registration is by Memorial.

IX. And be it enacted, That the penalties imposed by this Act shall belong to the Crown for the public uses of the Province; and that no fees shall be payable to the said Commissioners for any thing done by them under this Act, except for Certificates granted by them for which they shall be entitled to the same fees as the Registrar would have for Certificates of a like kind, and which being so received, shall go towards defraying the expenses to be incurred under this Act.