

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

12 Victoria – Chapter 9

An Act to explain and amend an Act of the Parliament of the late Province of Upper-Canada, passed in the second year of Her Majesty's Reign, intituled, *An Act for the protection of the Lands of the Crown in this Province from trespass and injury*, and to make further provision for that, purpose. 25th April, 1849.

Whereas it is expedient to explain and amend a certain Act of the Parliament of the late Province of Upper Canada, passed in the second year of Her Majesty's Reign, intituled, *An Act for the protection of the Lands of the Crown in this Province from trespass and injury*, and to make further provision for the protection of such Lands in that part of this Province: 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 so much of the first Section of the said Act as doth or may in any wise limit or restrain the provisions thereof, or the jurisdiction of the Commissioners appointed or to be appointed under the authority of the same, to Lands for the cession of which to Her Majesty no agreement hath been made with the Tribes occupying the same, and who may claim title thereto, shall be and the same is hereby repealed; and that the said Act and all the provisions thereof shall extend and shall be construed to extend to all Lands in that part of this Province called Upper Canada, whether such Lands be surveyed or unsurveyed, for which no Grant, Lease, Ticket either of Location or Purchase, or Letter of License of Occupation hath been or shall have issued, either under the Great Seal, or by or from the proper Department of the Provincial Government, to which the issuing of the same at the time belonged, and whether such Land be part of those usually known as Crown Reserves, Clergy Reserves, School Lands or Indian Lands, or by or under any other denomination whatsoever, and whether the same be held in trust or in the nature of a trust for the use of the Indians or of any other parties whomsoever.

II. And be it enacted, That if upon investigation before the said Commissioners, or any one or more of them appointed under the said Act, against any one under the second Clause of the said Act, it shall appear to the said Commissioners that any person or persons hath or have been actually in possession of any such Lands or of any part thereof, or that any person or persons have at any time within twelve calendar months next before such investigation claimed to be in possession of any of such Lands, or of any part thereof, or claimed or pretended to have a right to such possession, but it shall nevertheless appear uncertain to such Commissioners who the party or parties may be who shall then be in actual possession of such Lands, or whether the persons in such possession claim or pretend to be in such possession in their own right, or merely as tenants, bailiffs, or servants of others, then and in every such case, it shall and may be lawful for the said Commissioners, or any one of them, to give a Notice to quit, similar to that required to be given by

the said Act, but directed generally to all persons having or claiming possession of the Land in question, and to their tenants, bailiffs and servants, and all others whom it shall or may many wise concern: which Lands shall be described in such Notice to quit and in every other Notice to quit under the said Act, with the same certainty as would be necessary in a Deed of Conveyance thereof from party to party, and shall require such persons to quit and remove from the possession and occupation of such Lands within not less than thirty days from the day of the service of such Notice: and if all persons whomsoever, except such as shall have a written authority from such Commissioners, or one of them, to remain upon such Lands, shall not quit and remove from the possession and occupation of the same within the time specified in such Notice, it shall and may be lawful for the said Commissioners, or any one of them, to issue a Warrant of Removal under their hands and seals, or under the hand and seal of one of them, directed to the Sheriff of the County wherein such Lands are situate, setting forth such Lands with the same certainty as required in the said Notice to quit as aforesaid, and commanding him to eject and remove all persons whomsoever from such Lands, so unlawfully possessed or occupied, or claimed to be possessed or occupied as aforesaid, which Warrant the Sheriff to whom the same is directed, shall have full power and authority to execute, and shall execute and carry into effect, in the same manner as by law he is authorized to execute and carry into effect Writs issued by Her Majesty's Courts of Law, for restoring and delivering possession of Lands recovered in any action of trespass and ejectment in that part of this Province.

III. And be it enacted, That the Summons to appear issued upon any complaint made under the said Act shall in all cases contain such a description of the parcels of Lands with respect to which the proceeding is adopted, as would be necessary in a Deed of Conveyance thereof from party to party: and that henceforth it shall not be necessary that either the said Summons or the said Notice to quit shall be personally served upon the parties concerned, but it shall be sufficient to enable the Commissioners to proceed upon any such Summons or Notice, if the same shall have been served either by personally delivering the same to the person or persons in the actual possession or occupation of the Lands mentioned therein, or by leaving such Notice with the wife of such person, on the said premises, or by leaving the same with any grown person found on such premises, and in such last case putting up a duplicate of such Notice in some conspicuous place on the same premises, or where no grown person is found on the said premises, then by putting up duplicates of such Notice in four conspicuous places on such premises: Provided always, that no fine shall be imposed upon any party under the said Act, except upon personal service of such Summons, or service thereof on such person's wife as aforesaid.

IV. And be it enacted, That if after the execution of any Warrant of Removal, whether such Warrant be issued by such Commissioners, or any one of them, specially for the removal of particular parties, or generally for the removal of all parties found trespassing or intruding upon such Lands, the party or parties removed, or any other person or persons whomsoever, shall return or enter into or upon the premises with respect to which such Warrant of Removal was so executed, or if the Sheriff to whom such Warrant shall have been directed shall have reason to believe that any such person or persons or any others, will so return or enter into or upon such Lands, or any part thereof, unless the same be protected from such entry or intrusion, by the issue of process for the prevention thereof, it shall and may be lawful for such Sheriff, and he is hereby

required to make a Special Return of such Warrant of Removal into Her Majesty's Court of Queen's Bench for Upper Canada, setting forth the return, entry or intrusion of such person or persons, or his belief that such return, entry or intrusion into or upon such Lands, will take place unless the same be protected by the issue of process for the prevention thereof, and upon such Return to the said Warrant being so made as aforesaid, it shall and may be lawful to sue out of the said Court of Queen's Bench a Writ of Removal by Continuance, as nearly as may be in the form to this Act prefixed marked A, and upon the Sheriff making a similar Return to such Writ of Removal by Continuance, an *Alias*, and after that upon similar Returns, *Pluries* Writs of a similar description shall and maybe issued as often as it may be necessary for the protection of such premises against such intruders.

V. Provided always, and be it enacted, That upon a Rule to shew cause, to be obtained by any party concerned in such proceedings, or shewing an interest entitling him, her or them to be heard in that behalf, and which Rule shall be served personally, on at least one of the Commissioners for the time being, appointed for the protection of such Lands as aforesaid, the said Court of Queen's Bench shall and may order a Supersedeas to any such Writ *Alias* or *Pluries* Writ as aforesaid, whereupon no further proceedings shall be had upon any such Writ of Removal by Continuance, or upon the proceedings of the said Commissioners upon which the same was founded, but in the event of its being deemed necessary to proceed against such party or any other for intrusion or trespass into or upon any such Lands, resort shall be had to the like proceedings of Notice to quit and Warrant of Removal as at the first.

VI. And be it enacted, That in the case of any summary conviction of any party by the said Commissioners, or any one of them, for returning and unlawfully resuming the occupation of any such Lands, or any part thereof, or for trespass committed upon any such Lands, it shall and may be lawful to remove as of course such conviction by *Certiorari*, into Her Majesty's said Court of Queen's Bench for Upper Canada, and thereupon for the satisfaction of the fine set or imposed by such conviction, to issue into any of the Districts of Upper Canada one or more Writs of *Fieri Facias* and *Capias ad Satisfaciendum*, in the nature of the Exchequer Long Writ, as nearly as may be in the form to this Act prefixed, marked B, with an *Alias* and as many *Pluries* and Testatum Writs of the like description as may be necessary, till the amount of such fine be levied and made as in the case of other debts due to Her Majesty: Provided always, that if at the time of the removal of any such conviction by *Certiorari* as aforesaid, the party convicted shall be in custody under the Warrant of the Commissioners, or any one of them, for non-payment of such fine, he or they shall not be discharged from such imprisonment at the end of the time prescribed in such Warrant, if the said Sheriff shall then have a Writ of *Fieri Facias* and *Capias ad Satisfaciendum* for the levying of such fine, and shall have been unable to make the amount thereof of the goods and chattels, lands or tenements of such party, but such party shall in every such case remain charged in custody upon such Writ until the said fine be fully paid or satisfied, as in the case of other Crown Debtors similarly charged.

VII. And be it enacted, That the Commissioners appointed or to be appointed under the authority of the said Act, when engaged in the execution of their office, and each of such Commissioners when so engaged, shall have the same power and authority to commit for any contempt

committed against them or him, as is now by law vested in Justices of the Peace in similar cases for contempts against them in the execution of their office.

A.
Writ of Removal by Continuance.
Upper Canada.

Victoria by the Grace of God, &c.

To the Sheriff of _____ Greeting:

Whereas by a certain Warrant of Removal made by _____ one (or two, as the case may be) of the Commissioners appointed under the Great Seal of Our Province of Canada, for the receiving information and enquiry into complaints against persons for illegally possessing themselves of Lands of Our Crown un gran ted and not under location, and Lands not ceded to Us or Our Predecessors by the Indian Tribes occupying the same, you were formerly commanded that (here recite Commissioners' Warrant of Removal) which said Warrant you lately returned to Us into Our Court of Queen's Bench before Us, at Toronto, and thereupon certified to Us that (here insert the Sheriff's Return, setting forth the return of the party or parties, or his belief that he or they would return unless the Land be protected by the issue of Process for the protection thereof) according to the form of the Statute in such case made and provided: Therefore, We command you, that immediately after receipt hereof you proceed to the said Lands and premises, and remove or cause to be removed all and singular such person and persons, if any, whom you shall find in or upon the same, from the possession thereof, and give and cause to be given to such person or persons as shall for that purpose be appointed by Our said Commissioners, or any one of them, under their or his hand and seal, the full, quiet, and peaceable possession of the said premises and every part and parcel thereof, and that such person or persons, and all others having from time to time a similar Warrant from Our said Commissioners, or any one of them, in such quiet and peaceable possession of the said premises, that you support, help and maintain from time to time, as often as occasion shall and may require; and what you shall do in the premises you certify to Us in Our said Court of Queen's Bench, before Us, at Toronto, on the _____ day of _____ Term next, together with this Writ; and herein fail not at your peril.

Witness the Honorable _____ Chief Justice, &c. (as in other Writs issued out of the said Court.)

B.
Writ of *Fieri Facias* and *Capias ad Satisfaciedum*.
Upper Canada.

Victoria by the Grace of God, &c.

To the Sheriff of _____ Greeting:

Whereas by a certain conviction had before _____ two of Our Commissioners appointed under the Great Seal of Our Province of Canada, for receiving informations and enquiring into complaints against persons illegally possessing themselves of Lands of Our Crown, ungranted and not under location, and Lands not ceded to Us or Our Predecessors by the Indian Tribes occupying the same, it was considered by the said Commissioners (here set out the conviction) which said conviction for certain reasons We caused to be certified to Us in Our Court of Queen's Bench before Us, at Toronto, according to the form of the Statute in such case made and provided: We, therefore, being willing to be satisfied the said fine so by the said Commissioners set and imposed upon the said _____ do hereby command you that you levy of the goods and chattels of the said _____ in your Bailiwick, the amount of the said fine so set and imposed upon him as aforesaid, so that you may have that money in Our said Court of Queen's Bench before Us at Toronto, on the _____ day of _____ next: _____ and if it shall happen that sufficient goods and chattels of the said _____ shall not be found in your Bailiwick for payment of the said fine, then, We command you that you levy of the Lands and Tenements of the said _____ in your Bailiwick, the amount of the said fine so set and imposed on him as aforesaid, and have that money in Our said Court before Us on the day and at the place aforesaid; and if it shall happen that sufficient neither of goods or chattels, Lands or Tenements of the said _____ shall be found in your Bailiwick for payment of the said fine, then, We command you that you take the Body of the said _____ wheresoever he shall be found in your Bailiwick, and him safely keep in your prison until he hath fully satisfied Us the said fine so set and imposed upon him as aforesaid: and in what manner you shall have executed this Our Command, make appear to Us in Our said Court before Us, on the day and at the place aforesaid, and have then there this Writ.

Witness the Honorable _____ Chief Justice (as in other, Writs issued out of the same Court.)