

ANNO VICESIMO QUINTO & VICESIMO SEXTO

VICTORIÆ REGINÆ.

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CAP. LXVII.

An Act for obtaining a Declaration of Title.

[29th *July* 1862.]

WHEREAS it is expedient to enable Persons having Interests in Land to obtain in certain Cases a Judicial Declaration of their Title to the same, so as to enable them to make an indefeasible Title to Persons claiming under them as Purchasers for a valuable Consideration: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

Parties claiming to be entitled to Land may petition Court of Chancery for Declaration of Title.

1. Every Person claiming to be entitled to Land in possession for an Estate in Fee Simple, either absolutely or subject to any Incumbrances, Estates, Rights, or Interests, vested or contingent, or claiming to have a Power of disposing of Land for his own Benefit for an Estate in Fee Simple in possession, either absolutely or subject to any Incumbrances, Estates, Rights, or Interests vested or contingent, and every Person entitled to apply for the Registration of an indefeasible Title to the Registrar appointed under any Act which may be passed in the present Session for the Registration of Real

Estates and the Title thereto, may apply to the Court of Chancery by Petition in a summary Way for a Declaration of Title under this Act.

Petition to set forth Particulars affecting Title.

2. Every such Petition shall state what Incumbrances, Estates, Rights, and Interests, if any, the Petitioner admits to affect his Title, and subject to which he seeks to have his Title declared, and shall be in such Form as the Court shall by General Order direct.

Two Persons interested may jointly petition.

3. Any Two or more Persons claiming to have together such Estate or Interest in Land as would have enabled any One Person to petition as aforesaid may join in such a Petition, and such Proceedings shall be had thereupon as in the Case of a single Petitioner.

Petition as to Copyhold, &c. Lands not admitted.

4. No such Petition shall be admitted as to Lands of Copyhold or Customary Tenure.

Court may require to be served with Petition.

5. It shall be lawful for the Court, by General Order or otherwise, if it shall think fit, to require that the Registrar who may be appointed under any Act passed during the present Session for the Registration of Real Estates and the Title thereto shall be served with Notice of such Petition, and the Registrar shall thereupon be made a Party to and attend the Proceedings on such Petition, and the Costs thereby properly incurred shall be paid by the Petitioner.

Court may investigate Petitioner's Title.

6. The Court on the Hearing of any such Petition, on being satisfied that the Petitioner has proved such a Possession, and has stated such a Title as, if established, would entitle him to a Declaration under this Act, shall make an Order for the Investigation of the Title in the same Way as if the Petitioner had obtained as Vendor a Decree for a specific Performance of an Agreement for Sale of the Land in question for the Estate claimed in his Petition.

If Court dissatisfied, Petition to be dismissed, but subject to appeal.

7. If the Court, on such Investigation, shall not be satisfied that the Petitioner has shown such a Title as it would have compelled an unwilling Purchaser to accept, then it shall dismiss the Petition, but subject to the Right of Appeal herein-after mentioned.

When Investigation is satisfactory, Court may order a De-

8. In case the Court is satisfied after such an Investigation that the Petitioner has shown such a Title as it would have compelled an unwilling Purchaser to accept, it shall, on the Conditions herein-after mentioned being complied with, make an Order that on some Day, not

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less than Three Months from the Date of the Order, a Declaration shall be made establishing the Petitioner's Title, unless in the meantime Cause is shown to the contrary; and the Court may enlarge the Time for so showing Cause as often as it may deem proper. Declaration of Title to be made.

9. No such Order shall be made until the Petitioner shall have given Security to the Satisfaction of the Court for Payment of all Costs, if any, which may be awarded to any Person who may oppose the Petitioner's Right to the Declaration prayed for. Order not to be made until Security for Costs is given.

10. No such Order shall be made until the Petitioner and his Solicitor, and any other Person whom the Court may require, shall have made and filed an Affidavit that to the best of their respective Knowledge, Information, and Belief all Settlements, Deeds, Documents, Instruments, Maps, Plans, and Papers relating to the Title to the Land in question have been produced to the Court, or the Cause of their Non-production has been fully and fairly explained, and that all Facts material to the Title have been fully and fairly disclosed to the Court: Provided always, that the Court may dispense with such Affidavit either from the Petitioner or his Solicitor when it shall think it reasonable so to do, or may permit the same to be modified as Circumstances may seem to require. Before Order is made Petitioner to file Affidavit that all Documents have been produced.

11. The Petitioner after obtaining such Order shall give Notice of the same by Advertisement in such Newspapers and at such Times as the Court may direct, and in any other Manner which the Court may deem expedient for the Purpose of informing all Persons interested thereof, and as may be directed by any General or Special Order in that Behalf. Notice of Order to be advertised in Newspapers.

12. Any Person may, at any Time before the proposed Declaration of Title has been made, petition the Court in a summary Way to be heard against the making thereof, and the Court shall thereupon fix a Time for the Hearing of such Petition, and shall, if necessary, enlarge the Time for making the Declaration until such Petition shall have been disposed of. Court may hear Petition against Declaration of Title, or reserve Rights.

13. On the Hearing of such Petition the Court may introduce such Restrictions or Qualifications in the Title sought to be declared as the Justice of the Case requires, or may reserve the Rights of any Person or Class of Persons, or may refuse to make any Declaration of Title. On Hearing of Petition Court may qualify or refuse Declaration of Title or reserve Rights.

14. If it shall appear to the Court that all or any of the Title Deeds relating to the Land in question have been lost or destroyed, the Court may reserve Rights of

Persons under lost Deeds.

the Court may, if it shall think fit, reserve the Rights of all Persons under any such lost or destroyed Deeds.

Where Court sees no Reason for Refusal, Declaration of Title to be made.

15. If no Petition has been presented against the proposed Declaration of Title within the Time in that Behalf limited, or if, having been presented, the Court shall be of opinion that no sufficient Ground has been shown for refusing to make a Declaration of Title, then the Court shall, after the Expiration of the Time limited for showing Cause, upon being satisfied that the required Notices have been duly given, and that all other Requisitions have been duly complied with, make a Declaration that the original Petitioner has such Title to the Land in question as he sought to establish by his Petition or such Title, subject to any Restrictions, Reservations, or Qualifications which it may deem necessary or proper to introduce.

Appeal may be made to Court of Appeal within Six Months after Declaration.

16. Any Person may, at any Time within Six Months from the making of any such Declaration, appeal therefrom to the Court of Appeal in Chancery; and such Court shall on the Hearing of the Appeal make an Order confirming, varying, or annulling the Declaration as it may see fit; but if there is no such Appeal, then the said Declaration shall, at the Expiration of the said Six Months, become final for the Purposes of this Act.

Parties may appeal from Court of Appeal to House of Lords.

17. Any Person may appeal from any such Order of the Court of Appeal to the House of Lords at any Time within Six Months from the making thereof, and the said House may make an Order confirming, varying, or annulling the said Declaration as to them shall seem just; but if there is no such Appeal, then the Declaration, as approved by the said Court of Appeal in Chancery, shall at the Expiration of the said Six Months become final for the Purposes of this Act.

Declaration of Title as approved by House of Lords to be final.

18. In case of any such Appeal as aforesaid to the House of Lords, the Declaration of Title as finally approved by them shall become final for the Purposes of this Act.

Where Court refuses Title, Petitioner may appeal to Court of Appeal and House of Lords.

19. In case the Court shall have dismissed the original Petition on the Ground that the Petitioner had not shown such a Title as it would have compelled an unwilling Purchaser to accept, or if, on the Hearing of any Petition against the making of the Declaration of Title prayed for, the Court shall have refused to make any Declaration of Title, the original Petitioner shall have the same Rights of Appeal to the Court of Appeal in Chancery and to the House of Lords as is herein-before given to any Person appealing against a Declaration of Title actually made.

20. The

Declaration of Title.

20. The Declaration of Title, when it has in manner aforesaid become final for the Purposes of this Act, shall not be set aside or called in question by reason of any Irregularity or Informality in the Proceedings previous to the making thereof. Declaration of Title not to be set aside for Informality.

21. Every Declaration of Title made under this Act may, at the Option of the Person obtaining the same, be registered as an indefeasible Title under any Act which may be passed in the present Session of Parliament for the Registration of Real Estates and the Title thereto. Declaration of Title to be registered as an indefeasible Title.

22. Any Person who has obtained in manner aforesaid a final Declaration of Title shall be entitled to receive from the Court, on Payment of the proper Fees, and on Production of his Title Deeds for the Purpose next herein-after mentioned, a Certificate under the Seal of the Court setting forth the Title so declared, and further stating that the Time for appealing has expired, and such Certificate shall be conclusive Evidence of the Facts therein stated. Certificate of Court to be given to Party obtaining final Declaration of Title.

23. Before any such Certificate shall be sealed the Petitioner shall produce to the Court such of his Deeds and Muniments of Title as the Court shall require, and the same shall be stamped or marked by the Officer issuing the Certificate in such Manner as the Court shall by General Orders direct, for the Purpose of showing that a Declaration of Title has been made as to the Land therein comprised, or as to such Part thereof as is comprised in the Declaration. Production of Deeds before sealing of Certificate.

24. Such Declaration of Title, as soon as it shall have become final for the Purposes of this Act, shall in favour of any Person thereafter deriving Title as a Purchaser for valuable Consideration of the Land therein referred to, or of any Part thereof, or of any Estate, Right, or Interest therein, by, from, through, or under the Person whose Title has been so declared, be deemed and taken to have correctly declared the same, but save as aforesaid such Declaration shall have no Force or Effect whatever as to the Title of the Land comprised therein. Declaration of Title to be deemed to have correctly declared Land therein referred to.

25. Instead of a single Declaration of Title, or a single Certificate, the Court may, on the Application of the Petitioner, make separate Declarations, or give separate Certificates as to the Title of separate Parts of the Land referred to in the Petition. Court may make separate Declarations or Certificates of Title.

26. If

Declaration of Title.

Court may cancel original Certificate, and give Certificates to separate Parts of Land comprised in cancelled Certificate.

26. If for the Purpose of a Sale or other Disposition of the Land comprised in any Certificate of Title, or of any Part thereof, the Holder of any such Certificate shall be desirous of having separate Certificates of Title relating to separate Portions of the Land, it shall be lawful for the Court, on Petition by such Holder, to order his Certificate to be cancelled, and in lieu thereof to give to him separate Certificates for separate Parts of the Land comprised in the Certificate so cancelled; and every such separate Certificate shall refer to and state the Date of the cancelled Certificate, and shall have the same Effect as to the Land therein comprised as if it had been given at the Time of such Date, but no such Substitution of Certificates shall in any way prejudice or affect the Title of any Person who shall previously thereto have become entitled to any Part of the Land comprised in the original Certificate, or any Interest in the same.

Substitution of Certificates.

27. Whenever any such Substitution of Certificates shall take place the Land mentioned in every such separate Certificate may be entered upon the Register of Estates with an indefeasible Title, under any such Act for the Registration of Real Estates and the Title thereto as aforesaid; and in that Case any Transactions relating thereto shall, subject to any Regulations to the contrary that may be made by General Order, thenceforth form a separate Record in the Register, distinguished by a separate Number, or in such other Manner as the Registrar may determine.

If Certificate of Title is lost a Duplicate may be issued.

28. If any Certificate of Title shall be lost or destroyed, the Court may issue a fresh Certificate in lieu of that so lost or destroyed, expressing on the Face thereof that it is a Duplicate, but no such fresh Certificate shall be of any avail against any Person who may have already derived Title under the original Certificate.

Declaration of Title not to affect certain Claims, &c.

29. The Declaration of Title shall not affect any of the Claims, Rights, or Matters herein-after mentioned, that is to say:

Land Tax, Succession Duty, Tithe Rentcharge, Rights of Common, Rents payable to the Crown, public Rights of Way, Liability to repair Highways by reason of Tenure, Rights of Way, Watercourses, Rights of Water and other Easements, or Servitudes, Manorial Rights and Franchises, Leases or Agreements for Leases for any Term not exceeding Twenty-one Years where there is Occupation under the same.

Registration of Lands with Decla-

30. From and after the Registration of any Land, as to which any such Declaration of Title as aforesaid shall have been made, in the herein-

herein-before mentioned Register of Estates with an indefeasible Title, such Land shall be subject to the Provisions of any such Act for the Registration of Real Estates and the Title thereto as aforesaid, in the same Manner as if the Registration thereof had been made by virtue of Proceedings duly taken under such last-mentioned Act. ration of indefeasible Title.

31. If, at any Time after any such Declaration of Title as aforesaid has been made, any Person shall consider himself to be aggrieved thereby, it shall be lawful for him to present a Petition praying that the same may be recalled or varied in such Manner as may be just, and the Court shall thereupon proceed in the Hearing of such Petition in the same Manner as if the same had been presented before the Declaration of Title had been made, and the Court may, on the Hearing of the said Petition, annul the Declaration and order the Certificate or Certificates to be given up to be cancelled, or may make such Variations therein as it may deem just, and may, if it shall think fit, also direct the Registry thereof, if made, to be cancelled; but no Proceeding on any such Petition shall prejudice or affect the Title of any Person who before any such annulling or Variation shall have acquired a Title under the said Declaration as a Purchaser for valuable Consideration of the said Land or of any Estate or Interest therein. Court may hear Petition for Recal or Variation of Declaration of Title.

32. The Court may, on the Hearing of any such last-mentioned Petition, make any Order which it may deem just, restraining the Person who has obtained the Declaration, and all Persons claiming by, through, from, or under him otherwise than as a Purchaser for valuable Consideration, from in any Manner dealing with the said Land until such Petition shall have been disposed of. For Prevention of dealing with Land until Petition disposed of.

33. All Proceedings on any such Petition shall be liable to the same Right of Appeal as in the Case of Petitions presented before such Declaration of Title was made. Proceedings on Petition liable to Right of Appeal.

34. The Court shall have Power to order Costs either as between Party and Party or as between Solicitor and Client to be paid by and to any Person, Party to any Proceeding under this Act, and to give Directions as to the Fund out of which such Costs shall be paid. Power to Court to order Costs.

35. And whereas it may happen that at the Time of making such Declaration of Title as aforesaid there may be Estates, Rights, or Interests in the Land which may not be saved by the Declaration, and the Persons entitled to such Estates, Rights, or Interests may be damnified Person alienating to invest Trust Money in Purchase of Lands to

be settled to certain Uses.

damnified by the subsequent Alienation of the Land for valuable Consideration: Be it therefore enacted, That all Money received by the Person so alienating shall be deemed to have been received by him in trust to invest the same in the Purchase of Lands to be settled to the Uses and on the Trusts to and on which the Lands so alienated stood limited at the Time of such Alienation: Provided always, that this Clause shall not be deemed to impose any Liability on any Person who may have received any Money on such Alienation as a Trustee, so far as relates to Money which he may have duly applied in execution of the Trusts reposed in him.

Provision as to married Women.

36. Where any married Woman is desirous of making any Application, giving any Consent, or doing any Act, or becoming Party to any Proceeding under this Act, her Husband's Concurrence shall be required, and she shall be examined apart from her Husband touching her Knowledge of the Nature and Effect of the Application or other Act, and it shall be ascertained that she is acting freely and voluntarily; and such Examination may be taken by the Court or such Persons as are authorized to take Acknowledgments of Deeds by married Women under the Act of the Session holden in the Third and Fourth Years of King *William* the Fourth, Chapter Seventy-four, "for the Abolition of Fines and Recoveries, and for the "Substitution of more simple Modes of Assurance;" and the Form and Manner in which such Examination shall be certified to the Court shall be determined by the General Rules and Orders to be made under this Act: Provided always, that a married Woman entitled to her separate Use, and not restrained from Anticipation, shall for the Purposes of this Act be deemed a Feme Sole.

3 & 4 W. 4. c. 74.

Provision for other Persons under Disability.

37. Where any Person who (if not under Disability) might have made any Application, given any Consent, done any Act, or been Party to any Proceeding under this Act, is a Minor, Idiot, or Lunatic, the Guardian or Committee of the Estate respectively of such Person may make such Applications, give such Consents, do such Acts, and be Party to such Proceedings, as such Person respectively, if free from Disability, might have made, given, done, or been Party to, and shall otherwise represent such Person for the Purposes of this Act: Provided always, that where there is no Guardian or Committee of the Estate of any such Person as aforesaid, being infant, idiot, or lunatic, or where any Person the Committee of whose Estates if he were idiot or lunatic would be authorized to act for and represent such Person under this Act is of unsound Mind or incapable of managing his Affairs, but has not been found idiot or lunatic under an Inquisition, it shall be lawful for the Court to appoint a Guardian of

of such Person for the Purpose of any Proceedings under this Act, and from Time to Time to change such Guardian.

Proceedings not to abate by Death, &c.

38. Proceedings under this Act shall not abate or be suspended by any Death or Transmission or Change of Interest, but in any such Case of Death or Transmission or Change of Interest it shall be lawful for the Court, where it sees fit, to require Notices to be given to Persons becoming interested, or to make any Order for discontinuing, suspending, or carrying on the Proceedings, or otherwise in relation thereto, which to the Court may appear just.

Register of Estates, Titles, &c. to be kept.

39. A Register shall be kept in such Place as the Lord Chancellor shall appoint, wherein any Person having or claiming to have any Estate, Right, Title, or Interest in or to any Land, or having or claiming to have any Incumbrance thereon, shall be at liberty to enter his Name and Address, with the Name of the County, Parish, and Township in which such Land is situated, in such Form as the Chancellor shall order; and when any Person shall have made such Entry the Court shall not make an Order under this Act unless it is satisfied, after such Evidence as it shall think sufficient, that Notice of the Application for such Order has been given to such Person as shall have made such Entry in a reasonable Time before such Order is actually made.

Power to Lord Chancellor, &c. to make Rules and Orders.

40. The Lord Chancellor, with the Advice and Assistance of the Master of the Rolls, the Lords Justices of the Court of Appeal in Chancery, and the Vice-Chancellors, or of any Three of them, shall from Time to Time make such General Rules and Orders as he may see fit for carrying the Purposes of this Act into effect, and for regulating the Times and Form and Mode of Procedure, and of giving Notices, and generally the Practice of the Court in respect of the Matters to which this Act relates; and such Rules and Orders may from Time to Time be rescinded or altered by the like Authorities respectively; and all such Rules and Orders shall take effect as General Orders of the Court.

Court of Chancery to adopt Rules in Schedule until General Rules are framed.

41. Until any General Rules and Orders shall be framed under the last preceding Section, the Rules and Orders set forth in the Schedule hereto annexed shall be taken to be Rules and Orders of the Court of Chancery, but the same shall be liable to be rescinded or altered as if they had been made by the Lord Chancellor, with such Advice and Assistance as in the last preceding Section is mentioned.

Power to Lord Chancellor to appoint additional Clerks.

42. It shall be lawful for the Lord Chancellor from Time to Time to appoint such additional Clerks as to him may seem necessary

necessary for enabling the Court duly to execute the Duties imposed on it; and every such additional Clerk shall receive out of the Suitors Fee Fund such Salary as the Lord Chancellor, with the Consent of the Lords of the Treasury, may think proper.

Rules and Orders to be laid before Parliament.

43. All General Rules and Orders made as aforesaid, including all Orders for the Appointment of any additional Clerks, shall, immediately after the making and issuing thereof, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, within Twenty-one Days after the next Meeting thereof; and it shall be lawful for either House of Parliament, by any Resolution passed within Six Weeks after such Rules or Orders have been laid before it, to resolve that the same or any Part thereof ought not to continue in force, and thereupon the same shall cease to be binding.

Penalty on making false Statement and Suppression of Deeds and Evidence.

44. If in the course of any Proceeding before the Court under this Act any Person acting either as Principal or Agent shall, knowingly and with Intent to deceive, make or assist or join in or be privy to the making of any material false Statement or Representation, or suppress, conceal, or assist or join in or be privy to the suppressing, withholding, or concealing from the Court any material Document, Fact, or Matter of Information, every Person so acting shall be deemed to be guilty of a Misdemeanor, and on Conviction shall be liable to be imprisoned for a Term not exceeding Three Years, and either with or without Hard Labour, or to be fined such Sum as the Court by which he is convicted shall award: The Order or Declaration of Title obtained by means of such Fraud or Falsehood shall be null and void for or against all Persons other than a Purchaser for valuable Consideration without Notice.

Penalty on fraudulent Alterations, &c.

45. If in the course of any Proceeding before the Court under this Act any Person shall fraudulently forge or alter or assist in forging or altering any Certificate or other Document relating to such Land or to the Title thereof, or shall fraudulently offer, utter, dispose of, or put off any such Certificate or other Document, knowing the same to be forged or altered, such Person shall be guilty of Felony, and upon Conviction shall be liable, at the Discretion of the Court by which he is convicted, to be kept in Penal Servitude for Life or for any Term not less than Three Years, or to be imprisoned for a Term not exceeding Two Years, with or without Hard Labour, and with or without Solitary Confinement.

Conviction not to affect Civil Remedy.

46. No Proceeding or Conviction for any Act hereby declared to be a Misdemeanor shall affect any Remedy which any Person aggrieved

aggrieved by such Act may be entitled to, either at Law or in Equity, against the Person who has committed such Act.

Enactment of Penalty not to exclude Obligation to make Discovery.

47. Nothing in this Act contained shall entitle any Person to refuse to make a complete Discovery by Answer to any Bill in Equity, or to answer any Question or Interrogatory in any Civil Proceeding, in any Court of Law or Equity, or in the Court of Bankruptcy; but no Answer to any such Bill, Question, or Interrogatory shall be admissible in Evidence against such Person in any Criminal Proceeding.

Construction of Terms, &c. in this Act: "Person:" "Possession:" "Land."

48. In the Construction of this Act (except where the Context or other Provisions of the Act require a different Construction) the Word "Person" shall include a Body Politic or Corporate; the Word "Possession" shall include Receipt of the Rents and Profits; and the Word "Land" shall not include any incorporeal Hereditaments, but shall include all corporeal Tenements and Hereditaments not expressly excepted.

Extent of Act.

49. This Act shall relate to *England* only, and shall come into operation on the First Day of *January* One thousand eight hundred and sixty-three, and may be cited as "The Declaration of Title Act, 1862."

Short Title.

SCHEDULE.

1. Every Petition for a Declaration of Title shall contain an exact Description in their actual State of the Lands as to which the Declaration is sought, stating particularly the Boundaries thereof, and the Lands on which the same and every Part thereof abut, and, so far as conveniently may be, the Names and Descriptions of the Owners and Occupiers of such last-mentioned Lands.

2. On the Investigation of the Title to the Lands as to which the Declaration is sought, the Identity of the Lands described in the Petition, with the Parcels as described in the Title Deeds, shall be established by Affidavit or otherwise, as the Court may deem just.

3. The Court may, if it shall deem it necessary or proper, require the Petitioner to lodge in Court a Map or Plan of the Lands in question.

4. The

Declaration of Title.

4. The Petitioner, after obtaining the Order for a Declaration of Title, shall cause a Copy thereof, together with the Description of the Lands in question, with any engraved or lithographed Plan thereof (if any exists) to be served on every adjoining Occupier and Owner, or on such of them and on such other Persons (if any) as the Court may direct to be so served.

5. He shall also cause a Copy or Copies thereof to be deposited in some Office or Place, Offices or Places, to be appointed by the Court on or near to the Lands in question, to be accessible at all reasonable Times to all Persons desirous of examining the same, and Notice of every such Deposit shall be affixed in some Public Place or Places on or near to the Lands in question.

6. Every such Copy served on any adjoining Occupier or Owner, or deposited as aforesaid, shall state that any Person wishing to show Cause against the making of the proposed Declaration may do so by presenting a Petition in a summary Way to the Court of Chancery at any Time before the Day appointed for making the proposed Declaration.

7. The Petitioner, after such Deposit shall have been made, shall cause Advertisements to be inserted Three Times at least in such Newspapers on such Days as the Court shall direct, stating the said Order, and stating also where any Copy has been so deposited for Inspection.

8. Unless the last of such Advertisements is made within Four Weeks next after the Date of the Order, the Time thereby fixed for showing Cause against the same shall be enlarged for One Calendar Month, or such further Time as the Court shall direct.

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