

The Provincial Statutes of Lower-Canada, Being the second session of the thirteenth Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1829.

9 George IV – Chapter 20

An Act provide for the more effectual Extinction of Secret Incumbrances on Lands, than was heretofore in use in this Province. (14th March, 1829.)

Whereas, to secure the property and possessions of His Majesty's subjects, and to prevent the disturbances and evictions which frequently arise from secret mortgages, unknown to the purchasers of such property and possessions, by which said mortgages, purchasers have been often obliged, after having bona fide paid the prices of such property and possessions, again to pay large sums of money by reason of such secret mortgages, or to relinquish and give up such property and possessions, it is necessary to establish certain rules and provisions which may reconcile the opposite interests of individuals in this matter; and for this purpose to establish, in an invariable manner, the order and stability of hypothecs, and to fix a certain and easy course for preserving them, so that on the one hand purchasers of immoveables, whether immoveables real, or immoveables by fiction of law, may make such purchases with confidence and obtain a valid discharge after they shall have paid the price of such immoveables; and on the other hand, the vendors of such immoveables may, within a known and reasonable time, receive such price or purchase money, without incurring the delays and heavy expenses which have been and are incident to Sheriff's Sales, the only mode of security to which purchasers so circumstanced, have hitherto been able to resort. And whereas also, such Sheriff's Sales are altogether too expensive to be resorted to where the immoveables sold are of small value; Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower-Canada, constituted and assembled by virtue of and under the authority of an Act of the Parliament of Great-Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province;" And it is hereby enacted by the authority of the same, that from and after the passing of this Act, all proprietors of immoveables, whether the same be immoveables real or immoveables by fiction of law, having acquired the same by purchase, exchange, licitation, or other title of a nature to transfer property, who are desirous of discharging such immoveables from any hypothec or hypothecs, wherewith they may have been incumbered immediately previous to, and at the time the same were purchased, or otherwise acquired by such person or persons, shall and may obtain a sentence and judgment of confirmation of their purchase or acquisition in the manner hereinafter mentioned, which said sentence or judgment of confirmation shall have the effect of discharging the privileges and hypothecs wherewith such immoveables were incumbered previous to and at the time of such purchase or acquisition as aforesaid, in respect of all, each and every the creditors of the vendors or assignors, and of their predecessors, who shall have neglected to make their opposition in

the form and within the time hereinafter prescribed; and the purchasers or proprietors of such immoveables who shall have obtained such sentence or judgment of confirmation, shall be and remain incommutable proprietors thereof, without being in any manner held or bound for the debts of the preceding proprietors of the same, in any manner or under any pretext whatsoever. Provided however, that such sentence or judgment of confirmation shall not have the effect of giving to such purchasers or proprietors in relation to the property, any other or greater real rights, Droits reels fonciers, or servitude, than their vendors had; it being hereby declared, that the sole effect of such sentence or judgment of confirmation shall be confined to the discharging of privileges and hypothecs, only.

II. And be it further enacted by the authority aforesaid, that such purchaser or proprietor, before he shall be entitled to demand or have such sentence or judgment of confirmation, shall be bound to lodge at the office of the Prothonotary of the Court of King's Bench, for the District where such immoveables shall lie or be, the title deed of purchase or acquisition thereof, and thereupon public notice thereof, under the signature of the Prothonotary, shall be given three several times in the course of four months, in the Quebec Gazette, stating the date of the deed, the names and descriptions of the parties, its operation, or general character, a description of the immoveable in question, and who was in the actual possession thereof during the three years next before such notification, and the day on which such sentence or judgment of confirmation shall be applied for, thereby calling on all persons who may have, or claim to have any privilege or hypothec, under any title, or by any means whatsoever, in or upon the immoveables, in respect of which such sentence or judgment of confirmation shall be applied for, to signify in writing their oppositions, and file the same in the office of such Prothonotary, eight days at the least before the day fixed for such application; which notification shall be in the form, or to the effect expressed in the Schedule hereunto annexed, but with any additions or alterations which the nature of the case may require, and the same shall also be publicly and audibly read at the church door of the parish, Township or place in which the immoveables shall be situate, at the issue, or immediately after divine service in the forenoon, on the four Sundays next before the day on which such application shall be made as aforesaid, and such notice shall also be posted up sit the door of such church, on the first Sunday on which the same shall be so read, and where there is no church or other place of divine worship, such notice shall be so given at the most public place or places in the parish, Township or place in which the premises shall be situate.

III. And be it further enacted by the authority aforesaid, that during the said four months it shall be competent to any lawful creditor of the vendor, assignor or of their predecessors to appear at the Office of the Prothonotary, if he see fit, and there tender and offer an encrease in the price, purchase money or other consideration in the aforesaid title deed contained, and have the same received; provided such augmentation shall amount to at least one tenth of the amount of the price purchase money or other consideration in such deed of purchase or acquisition contained; and that it shall in like manner be competent to any other creditor or creditors of such vendor or assignor in like manner to outbid such creditor, provided, that each creditor out-bidding the previous creditor or creditors offer an encrease in price not less than one twentieth of the amount of the price, purchase money or

other consideration in such deed of purchase or acquisition contained; and in the before mentioned cases to restore to the purchaser or proprietor his costs and lawful disbursements for doing all which he shall be bound to give good and sufficient security to be received by one of the Justices of the Court of King's Bench for the District in which such immoveables may lie, at the time of making such bid in the usual and accustomed manner: Provided always, that it shall and may be lawful for the purchaser or proprietor of such immoveables, to keep and retain the same upon completing and making up the highest price and sum which has been lawfully bid for the same. Provided also, that in default of such Creditors tendering and offering such encrease in the price purchase money or consideration within the delay and in the form aforesaid the value of the immoveables shall be and remain definitively fixed at the price or sum in the said Title deed contained.

IV. And be it further enacted by the authority aforesaid, that upon due proof of the formalities hereinbefore prescribed having been observed, the Court of King's Bench sitting in the superior term for the District in which such immoveables shall lie, shall and may, on the summary petition of the purchaser or proprietor, pronounce a sentence or judgment confirming such title deed, which sentence or judgment shall have, the effect hereinbefore mentioned and declared.

V. Provided always, and be it further enacted by the authority aforesaid, that in the case of immoveables by fiction of law, such proceedings and sentence or judgment of confirmation shall be had and obtained in the Court of King's Bench sitting in the superior term, for the District where the vendor or assignor of such immoveable by fiction of law, shall have had his domicile for three years next preceding the sale to be so confirmed as aforesaid, or if his domicile during that period has been in more districts than one, then in that District in which he shall be actually domiciliated giving the like public notice in the several other Districts where he may have been so domiciliated during any part of the three years last aforesaid.

VI. And be it further enacted by the authority aforesaid, that when the deed; of purchase, exchange, or other title of a nature to transfer property, includes immoveables real, or ground rents, rentes foncieres, situate within the limits of different Districts, the sentence or judgment of confirmation shall be obtained in such Districts respectively, in default of which the purchasers or proprietors shall be liable to the hypothecs of the vendor or assignor in relation to such immoveables as shall be within the limits of the District in which no such sentence or judgement shall be obtained; it being hereby nevertheless provided, that in the case of purchase or other title of a nature to transfer property of Fiefs or Seigniories [Seigneuries], which shall extend to different Districts, such proceedings and sentence or iudgment of confirmation shall be had and obtained m the Court of King's Bench, sitting in the superior term, for the District in which the principal manor of such Fief or Seigniori shall lie.

VII. And be it further enacted by the authority aforesaid, that all persons, bodies politic or corporate, ecclesiastical or civil, women subject to marital authority, minors, Persons interdicted or absentees, who may have, or claim to have any privilege or hypothec under

any title, or by any means whatsoever, even for Dower not yet open (Douaire non encore ouvert,) in or upon the immoveables, in respect of which such sentence or judgment of confirmation shall be so applied for, shall be held and bound to file their oppositions, containing the usual election of domicile, with the Prothonotary of the Court in which such proceedings are had, within the period above limited, in order to preserve their privileges or hypothecs, in default of which such privileges or hypothecs shall be discharged and extinguished; Provided nevertheless, that nothing herein-contained, shall diminish the liability of administrators, husbands, tutors, or curators, as by law established, for the consequences of any neglect in relation to the premises, or in any manner or way to affect substitutions; and provided also that it shall and may be lawful for such purchaser as aforesaid, to discharge and extinguish all or any of the privileges or hypothecs so preserved by paying the price, purchase money or consideration fixed and established in the manner herein before provided to the creditors who shall be entitled to receive the same or by depositing the amount thereof in the hands of the Prothonotary of the Court in which such proceedings are had as aforesaid, to be distributed according to law.

VIII. Provided also, and be it further enacted by the authority aforesaid, that nothing herein-before contained, shall extend or be construed to extend to take away, diminish, alter or any way affect the rights or hypothecs of women during marriage, upon the immoveables of their husbands, or of children upon the immoveables of their fathers in relation to dower not yet open, nor in any manner or way to affect substitutions.

IX. Provided also, and be, it further enacted by the authority aforesaid, that seignors [seigneurs] and all persons, bodies politic or corporate, ecclesiastical or civil, holding as proprietors any Fief or Seignior, shall not be held or bound to file any opposition in relation to the cens et rentes foncieres, and other feudal and seigniorial rights and burthens upon or in respect of the lands for which such proceedings shall be had as aforesaid: it being nevertheless hereby expressly declared and provided in, relation to any arrears of cens et rentes, or any lods et ventes, or other feudal or seigniorial rights or dues that may have accrued before such immoveables were so purchased or otherwise acquired as aforesaid, they shall be held and bound to file their oppositions within the time and in the manner herein-before provided in respect of other creditors.

X. And be it further enacted by the authority, aforesaid, that amongst the opposing creditors, those who are privileged shall be first paid out of the price or purchase money of such immoveables; after the payment of such as are so privileged, the hypothecary creditors shall be collocated according to the order and rank of their hypothecs, and if there shall remain any further sum or sums of money, the same shall be distributed amongst the chirographary opposing creditors, in preference to the privileged or hypothecary creditors who shall have neglected to file their oppositions.

XI. And be it further enacted by the authority aforesaid, that the following fees only shall be allowed: To the Prothonotary, for filing the Deed, one shilling, currency; for every Opposition, six pence, currency; for every necessary Certificate, six pence, currency; for

every Sentence or Judgment, two shillings, currency; for a copy thereof, one shilling, currency. To the Bailiff, for posting up the Advertisement, one shilling, currency; for each, publication thereof, one shilling, currency; to him for every league he shall travel in the country, one shilling and six pence, currency; for his certificate, one shilling, and six pence, currency. To the Printer, for every ten lines of printing, in both languages, five shillings, currency, for the first insertion, and one shilling and three pence, currency, for every subsequent insertion; and when such insertion shall exceed ten lines; then he shall be entitled to receive eight pence per line for the first insertion in both, languages, and, two pence per line for every subsequent insertion, and no more for his advertisement.

XII. And be it further enacted by the authority aforesaid, that if no Oppositions exist, the sentence or judgment of confirmation to be so pronounced as aforesaid, shall be so pronounced purely and simply; and in the case of oppositions the same shall be mentioned and referred to in such sentence or judgment of confirmation leaving the parties to enforce the same upon the proceeds of such sale in the ordinary course of law.

XIII. And be it further enacted by the authority aforesaid, that every Prothonotary shall give due attendance at his office every day in the week, Sundays and Holy-days excepted, during the usual hours for the despatch of all business in any manner relating to the purposes of this act; and that every such Prothonotary, as often as required shall make searches concerning all proceedings that are had as aforesaid, and deliver such extracts and certificates as may be lawfully required, and if such Prothonotary shall be guilty of any neglect, misdemeanour or fraudulent practice whereby any of the provisions of this act may be evaded, he shall, pay the damages with full costs of suit to every person that shall be injured thereby, to be recovered by action in any of His Majesty's Courts of King's Bench in this Province.

XIV. And be it further enacted by the authority aforesaid, that from and after the passing of this Act, all proceedings in the nature of voluntary decrees, shall be and they are hereby abolished.

XV. And be if further enacted by the authority aforesaid, that this Act shall be and remain in force, until the first day of May, one thousand eight hundred and thirty-four, and from thence to the end of the then next Session of the Provincial Parliament, and no longer.

SCHEDULE.

Public Notice is hereby given, that there has been lodged in the office of the Prothonotary of the Court of King's Bench of and for the District of _____ a Deed, made and executed before A. B. and colleague Notaries Public, on the _____ day of _____ between C. D. of _____ of the one part, and E F. of _____ of the other part, being a sale by the said C. D. to the said E. F. of a lot or parcel of land situate, &c. and possessed by _____ as proprietor for three years past, and all persons who may have or claim to have any privilege or hypothec under any title or by any means whatsoever in or

upon the said lot of land immediately previous to and at the time the same were acquired by the said C. D. are hereby notified, that application will be made to the said Court on the day of for a sentence or judgment of confirmation; and they are hereby required to signify in writing their Oppositions, and file the same in the office of the said Prothonotary eight days least before that day, in default of which they will be for ever precluded from the right of doing so.