

*The Provincial Statutes of Lower-Canada, Being the third session of the eleventh Provincial Parliament of Lower-Canada.* Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1823.

3 George IV – Chapter 11

**An Act to render voluntary Sheriff's Sales, (Décrêts Volontaires) more easy and less expensive. (22d. March, 1823.)**

Whereas the Laws now in force, make no difference between the mode of proceeding to compulsory and voluntary Sheriff's Sales, (décrêts) with respect to formalities and expenses which are alike in both cases, and whereas the rendering voluntary Sheriff's Sales more easy and less expensive, would be very beneficial to the public: 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 passed in 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;" that it is hereby enacted, by the authority of the same, that when and so often as any Proprietor or any other person desirous of purchasing real property or hereditaments, shall choose to cause the same to be sold by Sheriff's Sale, on himself (Décréter sur lui-même), or on the purchaser, it shall be sufficient for him to present to a Court having Jurisdiction and authority, to cause a Sheriff's Sale to be proceeded to in the usual form, a Petition to the said Court, setting forth the grounds of his demand, alleging his wish to cause to be sold by Sheriff's Sale, such real property or hereditaments, whereof he shall be held to give a correct description according to Law, in order to obtain from such Court an order directed to the Sheriff, to proceed to the seizure, sale and adjudication of such real property or hereditaments, in the manner prescribed with respect to any other Sheriff's Sale of real property or hereditaments, by virtue of the Laws now in force in this Province.

II. And be it further enacted by the authority aforesaid, that each proprietor or such purchaser shall in his petition, declare the person or persons on whom he intends to cause such seizure, sale and adjudication to be made, and who is the person actually in possession of such real property or hereditament, and who was in possession thereof, before that time during the three last years next before the seizure: and in order to avoid expenses and costs resulting from any opposition, afin de charge on the said real property or hereditaments, the said proprietor or purchaser may also state in such petition the real charges and servitudes, charges réelles, with which the said real property or hereditaments may be charged, (Grévés).

III. And be it further enacted by the authority aforesaid, that the aforementioned particulars shall be set forth and specified in the order or judgment, directing the Sheriff to proceed to the seizure, sale and adjudication of such real property or hereditament, and also in the publications, notices and Placards which he is by Law bound to cause to be published before proceeding to the said Sale, and more-over it shall be made known in the same manner, that the Sheriff's Sale to which he is proceeding, is a voluntary Sheriff's sale, (Décrêt Volontaire).

IV. And be it further enacted by the authority aforesaid, that inasmuch as such voluntary Sheriff's Sale must have for its main object, to make known to the person who is desirous of causing such Sheriff's Sale to be proceeded to, the charges and right's, and especially the mortgager, (hypothèques) which may be the subject of opposition à conserver, before he procures an adjudication thereof to himself, it shall in voluntary Sheriff's Sales, be the duty of every person, having rights of this nature, to claim and enforce, to produce such opposition, eight days at the least, before the day fixed for the said adjudication; and that the Sheriff shall also be held to notify the public thereof in the said Notices, Publications and Placards.

V. And be it further enacted by the authority aforesaid, that when the person suing for such voluntary Sheriff's Sale, shall become adjudicataire of the real property or hereditament for which he shall have obtained the same, he shall not be obliged to place the whole price of the adjudication in the Sheriff's hands unless it shall have been other wise agreed between the parties interested, but only the necessary expenses of the proceeding to such Sheriff's Sale, and the amount of the sums for which, opposition à conserver, shall have been made.

VI. Provided always, and be it further enacted by the authority aforesaid, that the adjudicataire shall be entitled, instead of depositing the amount of such sums which oppositions have been made, to retain the same in his own hands, on giving good and sufficient security to pay, and place the same in the hands of the said Sheriff within eight days after the judgment of distribution shall have been pronounced.

VII. Provided always, and be it further enacted by the authority aforesaid, that the Sheriff shall not require any commission upon any part of the price of the adjudication, except that which shall, in fact, have been paid to him, or for which the adjudicataire shall have given him security.

VIII. Provided always, and be it further enacted by the authority aforesaid, that nothing herein-contained, shall be construed so as to alter, change or otherwise modify the formalities prescribed by the Laws of this Province for Sheriff's Sales, (Décrêts) other than such as are voluntary, and that all those formalities which are required for compulsory Sheriff's Sales shall be observed, with respect to voluntary Sheriff's Sales which may be made in virtue of this Act, except in so far as they are hereby dispensed with, changed or altered.

IX. Provided always, and be it further enacted by the authority aforesaid, that in case of refusal or neglect on the part of the said adjudicataire or his sureties to pay within the time limited by this Act, the sums of Money to the payment of which they shall so have bound themselves towards the said Sheriff, then and in that case, they shall be liable to all such compulsory proceedings (contraintes) as all Judicial Sureties (Cautions Judiciaires) are at present liable to, for refusal to pay monies ordered by sentence or judgment, according to the ordinary course of Law.

X. Provided also, and be it further enacted by the authority aforesaid, that nothing herein-contained, shall in case of voluntary Sheriff's Sales (Décrêt volontaires) extend to prevent any person who is thereunto entitled by virtue of the Laws at present in force, from demanding that the sale of such real

property or hereditament be proceeded to at the folle enchère of an adjudicataire, in the form and manner prescribed by the Laws of this Province.

XI. And be it 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 twenty-eight, and no longer.