

CHAP. XVII.

AN ACT to extend the provisions of an Act passed in the fifty-ninth year of the reign of His late Majesty King George the Third, entitled, "An Act to repeal an Ordinance of the Province of Quebec, passed in the twenty-fifth year of His late Majesty's reign, entitled, 'An Ordinance concerning Land Surveyors, and the admeasurement of Lands"; and also to extend the provisions of an Act passed in the thirty-eighth year of His late Majesty's reign, entitled, "An Act to ascertain and establish on a permanent footing the Boundary Lines of the different Townships in this Province, and further to regulate the manner in which Lands are hereafter to be Surveyed."

[Passed 11th May, 1839.]

WHEREAS it is expedient to extend the provisions of an Act passed Preamble. in the fifty-ninth year of the reign of His late Majesty King George the Third, chapter fourteen, entitled, "An Act to repeal an Ordinance of the Province of Quebec, passed in the twenty-fifth year of His Majesty's reign, entitled, 'An Ordinance concerning Land Surveyors and the admeasurement of Lands,'" 50 Geo. 3, c. 14, recited. and also to extend the provisions of an Act passed in the thirty-eighth year of His Majesty's reign, entitled, "An Act to ascertain and establish on a permanent footing the Boundary Lines of the different Townships in this Province, and further to regulate the manner in which Lands are hereafter to be Surveyed," so as to protect persons who have made improvements upon Lands not their own, in consequence of unskilful Surveys previously to the lines of any Township, Concession or Lot, in this Province being established under the authority of the aforesaid Act, from costs of vexatious lawsuits: *Be it therefore enacted* by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled '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 by the authority of the same, That from and after the passing of this Act, in all cases in which the Jury before whom any action of Ejectment shall be tried shall assess damages for the Defendant, as is provided for Defendant entitled to costs, when defending the action only for purpose of obtaining value of his improvements, &c.

in the twelfth clause of the aforesaid Act, for improvements made upon Land not his own, in consequence of unskilful Surveys; and when it shall be satisfactorily made to appear that the Defendant does not contest the Plaintiff's action for any other purpose than to obtain the value of the improvements made upon the land previous to the alteration and establishing of the lines in the manner pointed out in the aforesaid Act, it shall and may be lawful for the Judge before whom such action shall be tried to certify such fact upon the record, and thereupon the Defendant shall be entitled to the costs of the defence in the same manner as if the Plaintiff had been nonsuited on the trial, or a verdict rendered for the Defendant.

Defendant to give notice of amount of claim for improvements, and willingness to surrender possession;

Without which notice, or if smaller sum shall be assessed, &c. Judge not to certify in his favour.

When evidence not necessary in favour of Claimant's title.

II. *Provided always, and be it further enacted by the authority aforesaid,* That it shall be incumbent upon the Defendant, at the time of entering into the co'sent rule, to give notice in writing to the Lessor or Lessors of the Plaintiff in such Ejectment, or to his Attorney, named on the Writ or Declaration, of the amount claimed for such improvements, on payment of which sum the Defendant, or person in possession, will surrender the possession to such Lessor or Lessors, and that the said Defendant does not intend at the trial to contest the title of the Lessor or Lessors of the Plaintiff; and without such notice shall on the trial be found to have been given as aforesaid, or if the Jury shall assess for the Defendant a less sum than that claimed in the notice, or shall find that the Defendant has refused to surrender possession of the land claimed, after tender shall have been made of such amount claimed, then in either of such cases the Judge shall not certify, and the Defendant shall not be entitled to the costs of the defence, but shall pay costs to the Plaintiff, anything herein contained to the contrary thereof notwithstanding.

III. *Provided nevertheless, and be it further enacted by the authority aforesaid,* That upon the trial of any such cause, no evidence shall be required to be produced in proof of the title of the Lessor or Lessors of the Plaintiff.