

II. The Clerk of the Circuit Court in and for any Circuit, and the Clerk of any Commissioners' Court, or any person authorized by law to act as such Clerk, shall have power and authority to receive the necessary affidavits and to issue such writs of attachment, *arrêt simple* or *saisie arrêt*, in the same manner as by law the Clerks of the said Circuit Court might heretofore do in cases exceeding ten pounds currency; Provided however, that nothing herein contained shall prevent any Judge of the Superior Court or any Circuit Judge, or any Commissioner of small causes, from receiving such affidavit upon which to issue such writs of attachment as aforesaid; and the said Judges and Commissioners are hereby empowered to administer the necessary oaths and receive the said affidavits, and grant a *fiat* or order for any such writs returnable into the said Circuit Court and Commissioners' Court respectively, to be therein heard, tried and determined, according to law and the course and practice of the said Courts respectively.

Clerks of Courts may receive the required affidavit.

Proviso: Judge or Commissioner may also receive it.

III. The additional costs of issuing and executing such writs of attachment as hereinbefore provided for, shall be taxed by the Judges holding the Court wherein the said proceedings are had, at such sum as shall in their discretion seem reasonable, subject always to the provisions of any tariff now in force or hereafter to be adopted in reference to such cases; and the costs of such writs and proceedings in the Commissioners' Courts shall be the same as in cases of seizure on writs of execution issuing from the said Courts.

Costs under this Act, how taxed.

Costs in Commissioners' Courts.

IV. This Act shall apply to Lower Canada only.

Extent of Act.

C A P. C V I I I .

An Act to repeal certain Acts and to consolidate the laws relating to Lessors and Lessees.

[Assented to 30th May, 1855.]

WHEREAS it is expedient to reform and consolidate the Acts and Ordinances regulating the rights of Lessors and Lessees: 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, as follows:

Preamble.

I. The Act of the Parliament of Lower Canada passed in the third year of the reign of King William the Fourth, intituled, *An Act to regulate the exercise of certain rights of Lessors and Lessees*, the Ordinance of the Special Council for the affairs of Lower

Repeal of present Acts.

L. C., 3 W. 4, c. 1.

Lower

L. C., 2 V. c. 47. Lower Canada, passed in the second year of Her Majesty's Reign, intituled, *An Ordinance to amend and continue the Act to regulate the exercise of certain rights of Lessors and Lessees*, and the Act of the Parliament of this Province passed in the sixteenth year of Her Majesty's Reign, intituled, *An Act to amend the Act to regulate the exercise of certain rights of Lessors and Lessees in Lower Canada*, are hereby repealed.

Rights of action of the Lessor as regards—

Not garnishing.

Waste.

Using for undue purposes.

Retaining unlawful possession.

Damages for contravening lease or law.

Recovery of rent.

Right of action of Lessee as regards—
Repairs.

Damages for contravening lease or law.

Rescission for lease.

II. The Lessor or Proprietor shall have a right of action under this Act—

1. To rescind the lease, when the tenant fails to garnish the house, tenement, farm or premises leased with sufficient furniture or stock to secure the rent as required by law ;

2. To rescind the lease, when the tenant commits waste upon the premises leased ;

3. To rescind the lease, when the tenant uses the premises leased for illegal purposes, or contrary to the evident intent for which the same are leased ;

4. To recover possession of the property leased in all cases when there is a cause for rescission of the lease, and when the tenant shall continue in possession of the premises leased, against the will of the proprietor or lessor after the expiration of the lease, or without paying the rent according to the stipulations of the lease, when a lease exists, or according to the sixteenth section of this Act when there is no lease ;

5. To recover damages arising from a violation of an agreement of lease, or of the legal obligations arising from the relation of lessor and lessee ;

6. To join with any action to enforce the aforesaid remedies, a *demande* for rent due, or to which the lessor or proprietor is entitled, with or without attachment (*saisie gagerie*), and to exercise the *droit de suite* when necessary.

III. The Lessee shall have the right of action—

1. To compel the proprietor or lessor to make the repairs and ameliorations stipulated in the lease, or incumbent upon him by law, of the property leased, and to obtain power to make such repairs at the expense of such proprietor, or if such lessee shall so declare his option, to have a rescission of the lease in default of such repairs and ameliorations being made ;

2. For the recovery of damages arising out of an agreement of lease, or of the relation of lessor and lessee ;

3. For the rescission of a lease for a breach of the contract on the part of the lessor, or a failure to perform the obligations devolving upon him by law.

IV.

IV. Any tenant sued under this Act shall be permitted to urge any matters in defence, that he could do, if sued under the ordinary process of law. Defence under this Act.

V. Actions under this Act shall be instituted in the usual manner in the Superior and Circuit Courts, and the annual value or rent of the property leased shall determine the jurisdiction of the Court, whatever may be the amount of damages and rent sued for. In what Court suit may be brought under this Act.

VI. Any judge of the Superior Court in vacation, shall have and exercise on any juridical day, all the powers of the Superior Court in term, in all suits instituted in such Court under this Act. Powers of Judges in Superior Court in vacation.

VII. Any judge of the Superior or Circuit Court shall have the same power in vacation as in term of the Circuit Court, to hear and determine suits under this Act. Of Circuit Court in vacation.

VIII. It shall be competent for the Court or Judge, as the case may be, to hear and determine all cases arising under this Act, or growing out of the relation of lessor or lessee, and award costs and every process necessary to enforce Judgment. To what such powers shall extend.

IX. Writs of summons, attachment and execution, shall be directed to and executed by the officers to whom the like writs in other cases in the Superior and Circuit Courts are directed and executed, except writs of possession issuing in the Circuit Court in any suit under this Act, which last mentioned writs shall be directed to and executed by a Bailiff of the Superior Court. By whom Writs shall be executed.

X. It shall be lawful in any action brought under this Act, with which a *demande* for rent is joined, to sue out a writ of *saisie arrét* or *arrét simple* founded upon affidavit according to law, and any moveables seized under such writs which have been used to furnish the property leased, if seized upon the premises leased, or after their removal, but within eight days thereafter, shall be sold subject to the privilege of rent, in the same manner as if seized by *saisie gagerie*. Arrét simple may be taken out in suits for rent: privilege on goods seized.

XI. One clear day between service of summons and return in any suit under this Act, shall be sufficient when the place of service is within five leagues from the sitting of the Court, and an additional delay of one day for every additional five leagues. Delay between service and summons.

XII. If the Defendant does not appear on the day of the return of the writ of summons, and before noon of the said day, default shall be recorded against him, and the Plaintiff shall be permitted to proceed *ex parte*; if the Defendant appears, he shall be held to plead in writing before noon of the next juridical Default.
Delay for pleading after appearance.

juridical day following the return day of the writ, and in default thereof, the Plaintiff may, upon filing certificate of such default to plead, proceed *ex parte*.

Delay for answering plea.

XIII. The Plaintiff shall be held to answer the plea of the Defendant on or before noon of the juridical day next after the filing thereof, and in default thereof the Defendant may obtain from the Prothonotary or Clerk of the Court, *acte* of foreclosure of the Plaintiff from the right of filing such answer, upon application therefor founded upon mere lapse of time and such default to answer, without any demand of plea or service thereof; and every subsequent pleading rendered necessary shall be made and filed before noon of the next juridical day after the filing of the Plaintiff's answer, and in default thereof foreclosure shall be granted to the Plaintiff, and he shall be permitted to proceed to trial and judgment without further completion of the issues in such cause.

For subsequent pleadings.

Enquêtes.

XIV. In causes under this Act, when the issues are complete or either party has obtained foreclosure or right to proceed *ex parte*, the plaintiff or defendant may inscribe the cause upon the roll *des enquêtes* for any juridical day subsequent to the day of the filing of such inscription, and proof shall be adduced on such day, and continued from day to day till closed by both parties; and whenever on any *enquête* day the party whose *enquête* is proceeding shall cease to adduce further evidence, his *enquête*, on the application of the opposite party, shall be declared closed: and upon the *enquête* of both parties being closed, either plaintiff or defendant may inscribe the cause for final hearing on the next juridical day after the closing of such *enquête*, without notice to the opposite party, but if such cause is inscribed upon any day subsequent to such last mentioned day, notice thereof shall be served upon the opposite party.

Closing *Enquêtes*.

Final hearing.

Appeals, and to what Courts to lie.

XV. Appeal shall be allowed from any judgment rendered in a suit under this Act instituted in the Circuit Court, to the Superior Court, and in suits instituted in the Superior Court, to the Court of Queen's Bench, under the same rules and subject to the same conditions as other appeals are instituted from judgments of the said Courts, as well if such judgments are rendered in vacation as in term.

How persons holding by permission only without lease shall hereafter be considered.

XVI. Persons holding real property by permission of the proprietor, without lease, shall be held to be lessees and bound to pay to the proprietor the annual value of such property, and their term of holding shall expire on the first day of May of each year, and such holding shall be treated for the purposes of this Act, as an annual hiring or lease, subject to *tacite reconduction*, and all rules of law applicable to leases, and the person so in occupation shall be liable to ejection for holding over, for allowing more than three months' rent to remain unpaid, or for any of the causes mentioned in this Act.

XVII.

XVII. *Enquêtes* in suits or actions instituted under this Act in the Circuit or Superior Court, shall be taken in writing unless the parties shall otherwise consent; and if in any case by consent of parties the *Enquête* is not taken in writing, it shall be the duty of the Court or Judge before whom such case proceeds, to take minutes of the evidence, which minutes shall be deposited of record, and in the event of such case being appealed, such minutes of evidence shall for the purposes of such appeal, be treated as the evidence adduced in such case.

Enquêtes to be in writing, except by consent, in which case Judge shall take notes.

XVIII. Whenever a writ of *saisie gagerie* shall issue either under this Act or under the common law, to seize the effects of a tenant, the same shall not be left in the guardianship of the defendant without the consent of the plaintiff, or unless he shall offer securities to be approved by the Sheriff or bailiff as the case may be, for the production of the said effects, who shall be liable to the same penalties and obligations therefor as guardians now are under ordinary writs of execution.

*Defendant not to be guardian under *saisie-gagerie*, except by consent or on giving security.*

XIX. The proprietor or lessor may proceed to recover possession of the property leased, if the lessee shall hold over at any time after the expiration of three days after the lease has expired, or after the term of holding has expired.

Holding over for three days to give right of action.

XX. It shall be lawful for the Court or Judge in cases under this Act, to award and tax costs according to the tariff of the Superior Court, in actions instituted in the Circuit Court wherein the amount of all the matters in contestation exceed fifty pounds, and in all cases the costs shall be taxed according to the amount in contestation: Provided that in no case shall the costs be less than what is allowed in an appealable case of the lowest class in the Circuit Court.

Costs in cases under this Act. Proviso:

XXI. Nothing in this Act shall affect any cause or proceeding instituted or commenced before this Act shall have become law, but all proceedings of such nature shall be continued and finally determined and enforced in the same manner as if this law had not been passed.

Pending suits not affected

XXII. This Act shall apply to Lower Canada only.

Extent of Act.

C A P . C I X .

An Act to amend the Judicature Laws with respect to the qualification and appointment of Bailiffs in Lower Canada.

[Assented to 30th May, 1855.]

WHEREAS great inconvenience arises in the administration of justice in Lower Canada, from the want of capacity on the part of a certain number of bailiffs who act as such before the civil tribunals, and it is expedient to subject future

Preamble: