

The Provincial Statutes of Canada, passed in the year 1843. Kingston: Stewart Derbishire & George Desbarats, 1843.

7 Victoria – Chapter 26

An Act for securing the Province against any unnecessary loss on the judicial sale of certain parts of the vacant estate of the late Honorable Sir John Caldwell. 16th November, 1843.

Whereas, on the twentieth day of October, one thousand eight hundred and twenty-five, a judgment was rendered by the Honorable the Court of King's Bench for the District of Quebec, in favor of His late Majesty King George the Fourth, against the Honorable Sir John Caldwell, Baronet, (then the Honorable John Caldwell, Esquire,) formerly Receiver General of the late Province of Lower Canada, for the sum of ninety-six thousand, one hundred and seventeen pounds, thirteen shillings, and one penny and one half-penny, sterling money of Great Britain, equal to the sum of one hundred and six thousand, seven hundred and ninety-seven pounds, six shillings and eight pence, current money of the said late Province, being the balance of certain public monies of the said late Province then remaining unaccounted for in the hands of the said Honorable Sir John Caldwell, in his quality of Receiver General, as aforesaid: And whereas, on the nineteenth day of April, one thousand eight hundred and twenty-six, a certain other judgment was rendered by the said Court, in favor of His said late Majesty King George the Fourth, and against the said Honorable Sir John Caldwell, Baronet, (then the Honorable John Caldwell, Esquire,) as sole heir at law of the late Henry Caldwell, Esquire, deceased, for the sum of seven thousand eight hundred and eighty-one pounds, eight shillings, and nine pence and one farthing, current money of the said late Province, with interest from the first day of January, one thousand eight hundred and twenty-three, for certain other public monies then remaining unaccounted for in the hands of the said Honorable Sir John Caldwell; and whereas the said Honorable Sir John Caldwell, on or about the twenty-sixth day of October, one thousand eight hundred and forty-two, departed this life, to wit, at the City of Boston, in the State of Massachusetts, one of the United States of America, leaving as his lawful heirs and personal representatives, Sir Henry John Caldwell, of the City of Quebec, Baronet, and Graham John Eden, Henry Noel Eden and William Thomas Eden, in right of the late Ann Caldwell, their Mother, deceased, — that is to say, the said Sir Henry John Caldwell, Baronet, as being the only Son of the late Honorable Sir John Caldwell, issue of the marriage between him and the late Jane Davidson, deceased, his Wife; and the said Graham John Eden, Henry Noel Eden and William Thomas Eden, being as aforesaid, heirs of the said late Ann Caldwell, issue of her marriage with John Eden, then of the City of Montreal, Esquire, the said Ann Caldwell, having been the only daughter of the said late Honorable Sir John Caldwell, issue of his said marriage; And whereas, on the twentieth day of January last past, the said Sir Henry John Caldwell, Baronet, in due form of law, renounced the estate and succession of the said late Honorable Sir John Caldwell, Baronet, by deed before Terroux and his Colleague, Public Notaries, at Quebec, bearing date the day and year last aforesaid, and on the same day and year the said John Eden being the Tutor in due form of law appointed to the said Graham John Eden, Henry Noel Eden and William Thomas Eden, minors under the age of twenty-one years, acting on their behalf and duly authorized so to do, renounced the estate and succession of the said late Honorable Sir John Caldwell, Baronet, by deed before Terroux and his Colleague, Public Notaries, at Montreal, bearing date the day and

year last aforesaid, whereby the said estate and succession became vacant; And whereas afterwards, to wit, on the eleventh day of February last past, Antoine Archange Parent, of the City of Quebec, Esquire, Notary Public, was in due form of law appointed Curator to the said vacant estate and succession; And whereas, on the ninth day of June last past, upon information duly filed on behalf of Her Majesty, a certain other Judgment was rendered by the said Court in favor of Her Majesty, by which it was considered and adjudged by the said Court, that the said Judgment so as aforesaid rendered by the said Court on the twentieth day of October, one thousand eight hundred and twenty-five, should be and the same was thereby declared to be executory against the said Antoine Archange Parent, in his capacity of Curator as aforesaid, and that Her Majesty should have Her execution against him, as Curator as aforesaid, for the debt aforesaid in and by the Judgment last aforesaid mentioned, adjudged and awarded, to be levied of the goods and chattels, lands and tenements, which were of the said late Honorable Sir John Caldwell, at the time of his death, and in the hands of the said Antoine Archange Parent, as such Curator as aforesaid, to be administered; And whereas on the twentieth day of April last past, upon a certain other information duly filed on behalf of Her Majesty, a certain other judgment was rendered by the said Court in favor of Her Majesty, by which it was considered and adjudged by the said Court that the judgment so as aforesaid rendered on the nineteenth day of April, one thousand eight hundred and twenty-six, in favor of Our late Sovereign Lord King George the Fourth, against the said late Honorable Sir John Caldwell, should be and the same was thereby declared executory against the said Antoine Archange Parent, in his said capacity of Curator to the said vacant estate and succession of the said late Honorable Sir John Caldwell, and that in consequence the said Antoine Archange Parent, in his said capacity, be and he was thereby condemned to pay and satisfy to Her Majesty the sum of two thousand, eight hundred and ten pounds, sixteen shillings and seven pence, current money of this Province, as and for the balance then remaining due on the principal sum in the said last aforesaid judgment mentioned, (certain payments having theretofore been made in part satisfaction thereof) with the further sum of two thousand one hundred and seventy one pounds, six shillings and three pence, current money aforesaid, as and for arrears of interest accrued upon the balance of the principal sum aforesaid, from the seventeenth day of May, one thousand eight hundred and thirty, to the first clay of April last past, and with the interest on the said principal sum of two thousand, eight hundred and ten pounds, sixteen shillings, and seven pence, from the said first day of April last past, until paid; And whereas also, certain payments have been made in part satisfaction of the said judgment so as aforesaid rendered on the twentieth day of October, one thousand eight hundred and twenty-five, so that there now remains due under the last mentioned Judgment a sum of seventy three thousand, nine hundred and thirty five pounds, twelve shillings, and nine pence and one half penny, current money aforesaid; And whereas for the payment and satisfaction of the above mentioned judgments, it is necessary that certain real property, belonging to the said vacant estate and succession of the said late Honorable Sir John Caldwell, should be seized and sold at Sheriff's sale; And whereas the Fief and Seignior [Seigneur] of Lauzon, situate in the District of Quebec, in this Province, forms part of the real property still belonging to the said vacant estate and succession of the said late Honorable Sir John Caldwell, and by reason of the great value thereof, it will be highly advantageous as well to the interests of the said vacant estate and succession, as to the interests of Her Majesty, that the same should be advertised for sale during a longer period than now allowed by law in like cases; And whereas, it may become necessary, in order to avoid loss to the

Province that the said Fief and Seigniorie of Lauzon be purchased and acquired by and in the name of Her Majesty for the public uses of this Province; 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, intituled, *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, that it shall be lawful for the Governor of this Province, at any time from and after the passing of this Act, for the satisfaction of the above mentioned Judgments, to direct that a Writ or Writs of *feri facias*, or an *alias* Writ or *alias* Writs of the same nature be sued out in the usual and legal form, from and out, of the said Court of King's Bench for the District of Quebec, against the said Fief and Seigniorie of Lauzon, situate in the District of Quebec as aforesaid, the same to be under and by virtue of such Writ or Writs, seized and sold, according to law by the Sheriff of the District of Quebec: Provided always, that the sale of the said Fief and Seigniorie, so to be made under such Writ or Writs, shall not take place at any time previous to the expiration of at least twelve Calendar Months, from and after the date of the first legal advertisement of the same, to be published by the said Sheriff, and the Writ or Writs so to be sued out as aforesaid, may be made returnable accordingly.

II. And be it enacted, that the legal advertisement of such seizure and sale of the said Fief and Seigniorie, to be made as aforesaid, shall be, by the said Sheriff, inserted and published in the French and English languages, twelve times during the said twelve months, in any two Newspapers published in each of the Cities of Quebec and Montreal, and in the Canada Gazette; any law, usage, or Custom to the contrary notwithstanding: Provided always, that no inaccuracy, omission, discontinuation or irregularity in the insertion, printing or publication of the said advertisement in the said Newspapers in the said Cities of Quebec and Montreal, or either of them, shall be deemed or taken to impair or affect the sufficiency and legality of the seizure and sale of the said Fief and Seigniorie; any law, usage, or Custom to the contrary notwithstanding.

III. And be it enacted, that with regard to any seizure and sale of the said Fief and Seigniorie so to be made under and by virtue of any such writ or writs, to be issued as aforesaid, the said Antoine Archange Parent shall be held, deemed, and taken to represent the vacant estate and succession of the said late Honorable Sir John Caldwell, to all necessary intents and purposes of law whatsoever: Provided nevertheless, that the said seizure or any proceeding consequent thereupon, shall not lapse, abate, be discontinued, or in any manner affected, and the sale by virtue of the same shall not be delayed, postponed or prevented by the decease of him the said Antoine Archange Parent, or his removal from the office of Curator to the said vacant estate and succession; but that in case of such decease or removal, the seizure and sale shall proceed and continue, in like manner and to all intents and purposes as if such decease or removal had not taken place, and the same shall be good and valid in law to all intents and purposes; any seizure of the said Fief and Seigniorie made before the passing of this Act, or any other matter or thing to the contrary notwithstanding.

IV. And be it enacted, that it shall be lawful for the Governor of this Province, by and with the advice and consent of the Executive Council thereof, to cause the said Fief and Seigniorie to be

purchased and acquired for and in the name of Her Majesty, for the public uses of this Province, at any Sheriff's sale of the said Fief and Seignior, whether such sale take place under and by virtue of such writ or writs to be issued as aforesaid, or under and by virtue of any writ of execution sued out or to be sued out, by any other Creditor of the said vacant estate and succession; and for the purpose of making such purchase and acquisition for and in the name of Her Majesty, as aforesaid, it shall be lawful for the Governor of this Province, by an instrument under his hand and seal, by and with the advice and consent of the said Executive Council, to appoint as Commissioners one or more persons, with power and authority to any one or more of them to attend any such sale of the said Fief and Seignior, and to bid thereat for and in the name of Her Majesty, and to such amount as he or they shall be instructed and directed to bid by the Governor of this Province, by and with the advice and consent of the said Executive Council.

V. And be it enacted, that if at any such sale of the said Fief and Seignior, any one or more of the said Commissioners be the highest bidder or bidders, the said Fief and Seignior shall thereupon be adjudged to, and considered and deemed to be purchased and acquired for and in the name of Her Majesty, for the public uses of this Province, and the said Sheriff shall make to the said Court his return accordingly, and the property of the said Fief and Seignior, shall by virtue of such adjudication and return, vest in Her Majesty, for the public uses of this Province; and in such case it shall not be necessary for the Governor of this Province, or for the said Commissioners or any of them, to pay over to the said Sheriff the amount of the purchase money, or to give security for the payment of the same.

VI. Provided always, that no person except one of the said Commissioners shall be deemed to be the highest bidder at such sale, unless he shall then and there forthwith pay to the said Sheriff the sum of one thousand pounds, currency, to be forfeited to Her Majesty and paid by the Sheriff to the Receiver General for the public uses of the Province, if the said Fief and Seignior should be resold in the manner hereinafter mentioned in consequence of the *folle enchère* of such person, who shall nevertheless remain liable for any loss sustained by reason of his said *folle enchère*, as if no such sum as aforesaid had been paid and forfeited.

VII. Provided also, and be it enacted, that if any person other than one of the said Commissioners shall be the highest bidder at such sale as aforesaid, such person shall have thirty days, of which the day of sale shall be reckoned as one, to pay the purchase money to the Sheriff; but if on or before the last of the said thirty days, such person shall not so pay the purchase money, then such person shall forfeit all right or claim founded on his bidding or biddings, and the adjudication made to him shall be null and void; and on the day (not being a Sunday or Holiday) which shall be next after the last of the said thirty days, the Sheriff shall without further notice put up the said Fief and Seignior for sale to the highest bidder at his Office, in the City of Quebec, commencing the sale at ten of the clock in the morning of the day last aforesaid, but at such sale no person, except one of the said Commissioners, shall be deemed to be the highest bidder unless he shall then and there pay to the Sheriff the sum by him bid; and the adjudication made at such second sale shall be valid to all intents and purposes, and shall have the same effect as if made at the first sale, and the Sheriff shall make his return accordingly; any law, usage or custom to the contrary notwithstanding.

VIII. And be it enacted, that if the said Fief and Seigniori be at any such sale adjudged to, and purchased and acquired for and in the name of Her Majesty, Her Heirs and Successors, the said Court shall upon the return of the said Sheriff, proceed in due course of law to hear, try and determine the several claims which shall and may be made upon the proceeds of such sale, and to give and render such Judgment of distribution as the case may require, of which judgment the Clerk or Prothonotary of the Court shall forthwith cause a true Copy to be transmitted to the Inspector General of Public Provincial Accounts, in order that a Warrant or Warrants may thereafter issue for the payment, to any person or persons who shall be collocated in and by the said judgment, of the sum or sums of money for which he or they shall be so collocated, out of any unappropriated monies in the hands of the Receiver General.

IX. And be it enacted, that upon any such sale of the said Fief and Seigniori, the said Sheriff shall not be authorized to charge, over and above his disbursements, any Commission at the rate of two and a half per cent, as heretofore allowed, to be deducted out of the monies levied by such sale; any law to the contrary notwithstanding: but in such case, the said Sheriff shall be entitled only to charge, over and above all his disbursements, and in lieu of such Commission, a sum of twenty five pounds, currency, if the purchase of the said Fief and Seigniori be made for and in the name of Her Majesty, and a sum of one hundred pounds, currency, if such purchase be made by any other person or persons, and no more.

X. Provided always, and be it enacted, that nothing in this Act contained shall be construed to extend to any property belonging to the said vacant estate and succession, other than the said Fief and Seigniori; and any such other property may and shall be proceeded against, taken in execution and sold in the ordinary course of law, as if this Act had not been passed.

XI. And be it enacted, that the due application of any public monies paid under this Act, shall be accounted for to Her Majesty through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner and form as Her Majesty shall direct; and that an account of all such monies shall be laid before the Legislative Assembly of this Province within fifteen days after the opening of the then next Session thereof.

XII. And be it enacted, that the words "Governor of this Province," whenever they occur in this Act, shall be understood to include any person authorized to execute the Commission of Governor; that the words, "Her Majesty," shall be understood to include Her Majesty, Her Heirs and Successors; and that the words "Lower Canada," shall be understood to mean all that part of this Province which formerly constituted the Province of Lower Canada.