

Laws of Her Majesty's Province of United Canada, passed in the year 1847. Montreal:
Stewart Derbishire & George Desbarats, 1847.

10 & 11 Victoria – Chapter 100

An Act to amend the Act of Incorporation of the Montreal Building Society. 28th July, 1847.

Whereas in the tenth section of the Act passed in the Session held in the eighth year of Her Majesty's Reign, and intituled, *An Act for the Incorporation of certain individuals under the name and style of The Montreal Building Society*, it is among other things provided, "That it shall and maybe lawful for the said Society to take and hold any real estate or securities thereon, *bonâ fide* mortgaged, assigned or hypothecated to the said Society, either to secure the payment of the shares subscribed for by its members, or to secure the payment of any advances made by or debts due to the said Society, and may also proceed on such mortgages, assignments or other securities for the recovery of the monies thereby secured, either at law or in equity or otherwise;" And whereas owing to the forms of procedure in the Courts in that part of this Province heretofore known as Lower Canada, and from the want of proper means to carry out the provisions of the said clause, difficulties may occur; and it is also expedient that no doubt should exist with respect to the power and legality of carrying into force the stipulations of the shareholders among themselves, or as to the power of the Society to loan money on property actually belonging to any member thereof, before and at the time at which any monies may be advanced, as well as for the actual purchase of such property and erection of buildings thereon: 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, That from and after the passing of this Act, whenever the said Society shall have received from any shareholder an assignment or transfer of any real estate belonging to him or her, to secure the payment of any advances, and containing an authority to the said Society to sell such real estate in case of non-payment of any stipulated number of instalments or sum of money, (as the said Society is hereby and by the said Act authorized to do,) and containing also authority and power to the said Society to apply the proceeds of such sale to the payment of the advances, interest and all other charges due to the said Society, and after perfect payment thereof and of all costs and expenses incident thereto, to pay over the balance to the owner of such estate; such stipulations and agreement shall be valid and effectual and binding to all intents and purposes whatsoever, and it shall be lawful for the said Society to cause the same to be enforced and executed by an action or proceeding in the usual course in any Court of Law within that part of this Province called Lower Canada having competent jurisdiction, and such action may be brought in the corporate name of the said Society.

II. And be it enacted, That in any action or proceeding to be instituted by the Society for the purpose of realizing or bringing to sale any property or estate assigned to the said Society by any person or persons as aforesaid, it shall not be necessary to set forth the special matter in the

declaration, but it shall be sufficient to allege that the defendant assigned the real estate (describing the same) to the said Society, and that the amount or a sufficient part of the amount stipulated by him to be paid has become and remains due and owing, whereby, by virtue of this Act and of the Act hereby amended, an action hath accrued to the Society, to have the said estate and property sold; and in order to maintain such action, it shall be sufficient, in addition to the customary evidence of the assignment of the said property or estate, to prove by any one witness (whether in the employment of the Society or not,) or by any other means, that the Defendant is in arrear and indebted to the said Society in or exceeding a sum on the accruing of which, by the terms of such assignment or agreement, the said Society may have the right to have the said property or estate sold; and thereupon the Court shall pass judgment for the said amount, and by such judgment order the property to be sold by the Sheriff of the District wherein it may lie, after three insertions, in the course of two months at least, in any newspaper published in the District where the lands or property may lie; and it shall not be necessary for the Sheriff to go through any formalities in seizing the said lands or otherwise; but all the laws of that part of this Province heretofore called Lower Canada with respect to the protection of lands under seizure, and with respect to the fying of oppositions to and after the sale of lands, to the payment, return and distribution of the monies, to the re-sale of such lands at the *folle enchère* of any purchaser, and to the obtaining possession of any such lands after sale, shall be applicable to the proceedings authorized by this Act; and the provisions of all Laws or Ordinances of Lower Canada or of this Province, regulating the sale of real estate, and the judicial proceedings relative thereto, are, in so far as applicable and not otherwise by this Act provided for, hereby extended to all proceedings to be had under this Act; and all such proceedings shall, in so far as may be and if it be not otherwise herein directed, be conducted in like manner as proceedings under ordinary writs of execution, and the deed to be given by the Sheriff shall have the like effect as a deed given under an ordinary writ of execution: Provided always, that the Sheriff of the District shall, in addition to his disbursements, be entitled to deduct only one per centum commission (instead of two and a half per centum, as in all other cases is allowed) from the gross proceeds of sale.

III. And be it enacted, That the said Society shall have power to forfeit and declare forfeited to the said Society, the shares of any member who may neglect or be in arrear to pay such number of instalments as may be or are fixed by any stipulation or By-Law.

IV. And whereas doubts have arisen as to the construction of the first and tenth clauses of the Act hereby amended, with respect to the right of the said Society to loan and advance monies on property and estate actually belonging to and acquired by the borrower at the time of such borrowing and advance; and it is expedient to remove such doubts: Be it therefore enacted and declared, and it is therefore declared to have been and to be the intention of the said Act, That the said Society should have the power to advance, and the said Society is hereby authorized to advance, in the usual manner, monies on any real estate whatsoever of any member of the said Society, as well for the actual purchase of the same and for the erection of buildings thereon, as generally upon the security of any real estate belonging to any such member at the time of his borrowing such monies, and to take and receive an assignment of all such real estate whatsoever, in security for such advances, on the same conditions and with the same privileges in all respects as any other real estate by the said Act and by this Act authorized and required to be assigned.

V. And be it enacted, That this Act shall be a Public Act, and as such be judicially taken notice of by all Judges and Justices and other persons whomsoever, without being specially pleaded.