

Laws of Her Majesty's Province of United Canada, passed in the year 1851. York: Stewart Derbyshire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 23

**An Act to amend an Act to encourage the establishment of Building Societies in Lower Canada.
2d August, 1851.**

Whereas in the tenth Section of the Act passed in the Session held in the twelfth year of Her Majesty's Reign, and intituled, *An Act to encourage the establishment of Building Societies in Lower Canada*, it is amongst other things provided, "That it shall and may be lawful for every such 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 loans of advances made by or debts due to such Society, and may also proceed on such mortgages, assignments or other securities for the recovery of the moneys 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 the Province 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 every such Society to loan money on property actually belonging to any member thereof, before and at the time at which any moneys 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 any such Society shall have received from any shareholder a mortgage or hypothec, or 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 sums of money (as every such Society is hereby and by the said Act was 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 every such 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 any such Society, or in the names of the President and Treasurer of any such Society, describing them to be such President and Treasurer.

II. And be it enacted, That in any action or proceeding to be instituted by any such Society for the purpose of realizing or bringing to sale any property or estate hypothecated, mortgaged or 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 hypothecated, mortgaged or assigned (as the case may be) the real estate, describing the same, to the said Society, and that the amount, or sufficient part of the amount stipulated by such party 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 said 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 hypothec, mortgage or assignment of such property or estate, to prove by any one witness, whether in the employment of, or a shareholder in such 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 hypothec, mortgage, assignment or agreement, the said Society may have the right to have the said property or estate sold; and thereupon the Court shall give judgment for the said amount, and by such judgment order the property to be sold by the Sheriff of the District wherein it maybe, after three insertions in the course of four months in the Canada Gazette; 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 the Province called Lower Canada with respect to the protection of immoveable property under seizure, and with respect to the filing of oppositions to and after the sale of lands or immoveable property, to the payment, return and distribution of the money, to the re-sale of such immoveable property at the *folle enchère* of any purchaser, and to the obtaining possession of any such immoveable property after sale, shall be applicable to the proceedings authorized by this Act; and the provisions of all laws and 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 provided for by this Act, hereby extended to all proceedings to be had under this Act; and if it be not otherwise herein directed, all such proceedings, in so far as may be, shall 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 from the gross proceeds of sale.

III. And be it enacted, That every such 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 maybe or are fixed by any stipulations, or by law; and that every such Society may pursue the same course, exercise the same power, and take and use the same remedies to enforce the payment of any debt or demand due to such Society, as any person or persons, body corporate or politic, may now by law take or use for such purpose.

IV. And whereas doubts have arisen as to the construction of the first and tenth Sections of the Act hereby amended, with respect to the right of any such Society to loan and advance money 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

every such Society should have the power to advance, and every such Society is hereby authorized to advance in the usual manner, moneys 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 moneys, and to take and receive a mortgage, hypothec or 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 mortgaged, hypothecated or assigned; and further, that all securities heretofore taken for moneys advanced in the manner above mentioned, shall be valid and binding on the parties to all intents and purposes whatsoever, and in the same manner as if taken under this Act; and that all or any person or persons whosoever, whether capitalists or otherwise, shall be at liberty to become members of any such Society; and that copartners and corporate bodies may hold shares therein, in same manner as single individuals.

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.