

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

14 & 15 Victoria – Chapter 92

An Act to provide a more summary and less expensive process for proprietors of Real Property in Lower Canada to acquire the possession thereof, when illegally detained from them, in certain cases. 30th August, 1851.

Whereas great inconvenience and expense are often occasioned to proprietors of lands situated in that part of this Province called Lower Canada, by persons acquiring the possession thereof without any title thereto, and against the will of such proprietors; for remedy thereof: Be it 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 any proprietor or proprietors of any lands or tenements, or both, held in free and common soccage in the townships, which are situated within that portion of the Province of Canada called Lower Canada, the possession of which lands or tenements or both shall have been illegally acquired and is detained from such proprietor or proprietors as aforesaid against his or their will, by any person or persons whomsoever, it shall be lawful for any such proprietor or proprietors as aforesaid, by a Summons issued from the office of the Clerk of the Circuit Court in any Circuit within the District where such lands or tenements are situated, to summon such occupier or occupiers, or person or persons so acquiring and detaining such illegal possession as aforesaid, before the Circuit Court in such Circuit as aforesaid, or before, any Circuit Judge in vacation, or any Judge of the Superior Court in vacation, and that such Circuit Court, Circuit Judge in vacation, or Judge of the Superior Court in vacation, shall in due course hear, determine and adjudge the matter in issue and award costs: Provided always, that when such defendant or defendants shall plead and produce an adverse title to such lands or tenements, or both, so claimed as aforesaid, then after evidence shall have been adduced and the *enquête* closed on the part of the plaintiff and defendant, it shall be lawful for either of the contesting parties, after having previously given security for costs, as well in the Court below as in the Superior Court, to inscribe such cause for final hearing and argument for the Superior Court, at the next ensuing sitting thereof within the District where such suit is commenced; and upon such security for costs having been entered up, and such inscription of the cause having been made as aforesaid, the Clerk of the Circuit Court where such action is commenced shall forthwith send up the record, and all proceedings and evidence taken and had in such cause duly certified to the said Superior Court, and thereupon the said Superior Court shall hear the arguments in such cause, determine the matter in issue and award costs, in the same manner in all respects as if the said suit or action had been originally instituted in the said Superior Court; Provided also, that unless security for costs as aforesaid shall have been entered up in such suit or action in the Circuit Court where such suit is commenced, within three days after the *enquête* shall have been closed by both contesting parties to such suit, it shall be lawful for either of the contesting parties to such suit to inscribe such

cause for final hearing and argument before such Circuit Court, Circuit Judge in vacation, or Judge of the Superior Court in vacation, as the case may be, and thereupon the said Circuit Court, Circuit Judge in vacation, or Judge of the Superior Court in vacation, may and shall proceed to hear, determine and adjudge upon the matter in issue in such cause, and award costs as he might do if no such adverse title were pleaded or produced.

II. And be it enacted, That all suits or actions instituted under this Act shall be instituted in the same manner, and be subject to the same regulations and delays between the service of process therein and the rules of pleading, as are adopted and required by law and the rules of practice in the Circuit Court as well when such suits or actions shall be instituted before a Circuit Judge in vacation or a Judge of the Superior Court in vacation, as when they shall be instituted before the Circuit Court, unless and until such suits or actions shall be removed by appeal or otherwise to the Superior Court as by this Act provided, and all documents filed and proceedings had in any suit under this Act shall be and become records of the Circuit Court where the Summons may have issued in such suit, as well if such proceedings were had before a Circuit Judge in vacation, or a Judge of the Superior Court in vacation, as if the whole of such proceedings were had before such Circuit Court; and such documents and proceedings shall be and remain records of such Circuit Court, unless the same shall be removed as hereinbefore provided, to the Superior Court; and the judgments and orders of such Circuit Judge in vacation, or Judge of the Superior Court in vacation, as well as of the Circuit Court, in any such suit, shall be executory in every respect as fully by such Circuit Court as the judgments and orders in any other suit in the Circuit Court at such place; and that the evidence in all such suits shall be reduced to writing and filed of record, in the same manner as in other appealable cases before the Circuit Court.

III. And be it enacted, That whenever the plaintiff shall be entitled to a judgment under this Act, by the Circuit Court or by a single Judge in vacation, it shall be lawful for the Circuit Court, Circuit Judge in vacation, or Judge of the Superior Court in vacation, as the case may be, to render judgment, and order the same to be entered of record by the Clerk of the Circuit Court at the place where the Writ of Summons in such cause issued, and by such judgment to declare the plaintiff the lawful proprietor of the real property in contestation, or any portion thereof, and to order and adjudge the defendant to abandon and deliver up the same to the plaintiff within twenty days after a copy of such judgment shall have been served upon him; and in default of the defendant's abandoning and delivering up the same within the said twenty days after such service upon him, a Writ of Possession may issue from the Circuit Court at the place where the record in such suit is, directed to the Sheriff of the District within which the real property adjudged is situated, to cause the plaintiff to have the possession thereof.

IV. And be it enacted, That whenever a judgment shall have been rendered under this Act, by the Circuit Court, a Circuit Judge in vacation, or a Judge of the Superior Court in vacation, an appeal shall lie to the Superior Court sitting within the District where such suit shall have been originally instituted, which said Superior Court shall proceed to hear and adjudge on such appeal as to law may appertain, and in the manner hereinafter provided.

V. And be it enacted, That the party appealing from any judgment rendered as aforesaid by the Circuit Court, or by a Circuit Judge in vacation, or by a Judge of the Superior Court in vacation, shall, within fifteen days after the rendering of the judgment to be appealed from (but without being bound to give notice thereof to the adverse party) give good and sufficient security by sureties who shall justify their sufficiency to the satisfaction of the person before whom it shall be given as hereinafter provided, that he will effectually prosecute the appeal, and (if the plaintiff be the party appealing) that he will pay the costs as well in the Court below as in the Superior Court if the judgment appealed from be affirmed; and (if the defendant be the party appealing) that he will pay the costs as well in the Court below as in the Superior Court, and that he will deliver up the real property adjudged to the plaintiff without waste, if the judgment appealed from should be affirmed; and such security shall be given either before any Judge of the Superior Court or the Prothonotary thereof, and the Bond shall be deposited and remain of record in the office of the latter; or it shall be given before any Circuit Judge, or before the Clerk of the Circuit Court where such judgment may have been rendered, and the Bond shall there be deposited and remain of record in the office of the latter; and any two sureties, each of whom shall be a proprietor of real property of the value of Fifty Pounds current money of this Province above all incumbrances payable out of or affecting the same, shall suffice to render such security valid: and the said Judges, Prothonotaries or Clerks are hereby authorized to administer all oaths required by law in such cases from the persons so becoming sureties, and to put to them all necessary inquiries and questions.

VI. And for the purpose of obviating delay and expense in the prosecution of appeals under this Act, Be it enacted, That such appeals shall be prosecuted and proceedings thereon had in a summary manner, by petition of the appellant to the Superior Court, setting forth succinctly the grounds of appeal, and praying for the reversal of the judgment appealed from, and the rendering of such judgment as the Court below ought to have rendered, a copy of which petition, with a notice of the time at which it is to be presented to the Superior Court, shall be served upon the adverse party, or at his domicile, or on his attorney *ad litem*, within fifteen days from, the rendering of the judgment appealed from; and such petition shall be presented at some weekly sitting or term (whichever shall first happen) of the Superior Court next succeeding the rendering of the judgment appealed from, if there shall be an interval of twenty days between the rendering of such judgment and such sitting or term, and if there shall not be such interval, then on the first juridical day of the sitting or term next succeeding the expiration of twenty days next after the rendering of such judgment: Provided always, that neither the day of the rendering of such judgment appealed from nor the day of the presenting of said petition to the Superior Court shall be considered as forming part of the said interval of twenty days; and provided also that a true copy of the appeal Bond given by the party appealing, certified as such by the Prothonotary or Clerk in whose office it shall have been deposited, shall be annexed to the original petition presented to the Superior Court, and that a copy or copies of the same, certified as such by the party appealing or his attorney, shall be served with the petition and notice hereinbefore mentioned upon the party respondent.

VII. And be it enacted, That the Circuit Court, Circuit Judge in vacation and Judge of the Superior Court in vacation, shall have jurisdiction in the manner hereinbefore stated and to the extent

hereinbefore given, in all suits provided for by this Act, as well where the value of the real property claimed is above as when it is under Fifty Pounds current money of this Province.

VIII. And be it enacted, That the security for costs required to be given by the first section of this Act, previously to inscribing a suit for the Superior Court as therein provided in certain cases, may be given by the party inscribing (without giving notice to the opposite party) within three days after the *enquête* is closed by the contesting parties, by good and sufficient sureties, who shall justify their sufficiency either before the Clerk of the Circuit Court where the suit is of record, or before the Judge before whom the *enquête* in such suit is had, and the Bond shall be deposited and remain of record in the office of the Clerk of the said Circuit Court; and any two sureties, each of whom shall be a proprietor of real property of the value of Fifty Pounds current money of this Province above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said Judge or Clerk is hereby authorized to administer all oaths required by law in such cases from the persons so becoming sureties, and to put to them all necessary inquiries and questions.

IX. And be it enacted, That an appeal shall lie from all judgments rendered in the Superior Court in cases instituted under this Act to the Court of Queen's Bench in the same manner, and subject to the same rules and restrictions as other appeals from the said Superior Court.

X. And be it enacted, That the costs in any suit under this Act before the Circuit Court, Circuit Judge in vacation, or a Judge of the Superior Court in vacation, shall be the same as are now allowed in actions in the Circuit Court, when the sum of money or the value of the thing demanded exceeds the sum of Twenty-five Pounds currency: Provided, nevertheless, that if such suit be removed by appeal or otherwise to the Superior Court, the costs shall be the same as in other petitory actions before the said Court; and provided further, that nothing in this Act shall be construed to deprive any proprietor or proprietors of the right they now possess of instituting any petitory action before the Superior Court, but that it shall be at their option to proceed under this Act to institute a petitory action in the Superior Court in the same manner as if this Act had not been passed.

XI. And be it enacted, That nothing in this Act contained shall have the effect of depriving any person or persons of any claim they would by law have previous to this Act coming into effect, for betterments or improvements made by them upon any real property of which they may be in occupation, nor have the effect of interfering in any way with any suit or action pending or being prosecuted in any Court in Lower Canada, for the possession of any such lands and tenements, which suit or action shall be continued as if this Act had not been passed.

XII. And be it enacted, That this Act shall apply to lands held in free and common soccage, in the Townships situated in Lower Canada only, and shall continue in force for two years, and from thence, until the end of the then next Session of the Parliament of this Province, and no longer.