

Laws of Her Majesty's Province of United Canada, passed in the year 1851. Quebec: Stewart Derbshire and George Desbarts, 1852.

16 Victoria – Chapter 200

An Act to amend the Act to regulate the exercise of certain rights of Lessors and Lessees, in Lower Canada. Assented to 14th June, 1853.

Whereas the Act of the Legislature of Lower Canada passed in the third year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to regulate the exercise of certain rights of Lessors and Lessees*, has been found to work badly, and it is necessary to amend it: 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 in all the cases mentioned in the Act first above cited, whether the lease or agreement of lease be verbal, written or authentic, the cause and all proceedings therein, and matters relative thereto, whatever be the amount of the claim, or of the lease, or agreement of lease, or of the value of the thing in contestation, shall be heard, tried and determined before any Judge of the Superior Court or Circuit Judge, and in any case in term or in vacation: Provided always, that in all cases in which an action shall be brought for use and occupation, a lease shall be considered as existing between the proprietor and the occupant, but it shall not be necessary to produce or prove the same, and such lease shall be considered as expiring on the first day of May following, unless it be proved that an agreement to the contrary has been made between the parties.

II. And be it enacted, That the proceedings in all such cases shall be commenced by Summons with declaration annexed, in the usual form, and according to the practice of the Court, which shall be directed to a Bailiff of such Court for service thereof; and the service shall in all cases be one clear day before the return where the defendant shall reside within five leagues from the place of return, with an additional day for each additional five leagues of distance from the said place of return.

III. And be it enacted, That the said proceedings shall be summary, and no exception, whether formal or otherwise, shall be allowed to prevail against any such proceedings, if the same be amended forthwith by the Plaintiff, but any defect, error or omission therein may be amended at any stage thereof, according to the facts of the case, with costs or without costs, at the discretion of the Judge.

IV. And be it enacted, That the proprietor or lessor may proceed under the said Act and this Act, at any time after the end of three days from the expiration of the lease, or agreement of lease, to recover possession of the immoveable leased and detained after that time, and in the event of the lessee refusing to give up the leased premises at the expiration of the said three days, the

proprietor or lessor may commence proceedings on the next day after the expiration of the said three days.

V. And be it enacted, That the defendant shall appear and plead on the day following the return, before noon, on which day, or the next day following, the plaintiff shall answer such plea, and the *enquête* shall thereupon be ordered ipso facto without delay; and if the defendant fail to appear and plead within the time aforesaid, default shall be recorded against him, and thereupon judgment shall be immediately entered against him if the service has been personal, and after proof if the service has not been personal.

VI. And be it enacted, That the Plaintiff may, in and by the same proceedings,, and at the same time, sue for and recover possession of the immoveable leased, and of any arrears of rent due, and may seize the goods of the lessee by *saisie-gagerie*, *saisie-arrêt simple* before judgment, or *saisie entiercement*, according to law, without in either case being deprived of his privilege as such proprietor or lessor, and on due proof thereof, the judgment shall be entered for the possession and for such arrears.

VII. And be it enacted, That whenever a Writ of *saisie-gagerie* shall issue to seize the effects of a tenant, the same shall not be left in his guardianship without the consent of the plaintiff, or unless he shall offer sureties, 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.

VIII. And be it enacted, That whenever any plaintiff shall, under the said Act or this Act, sue for the recovery of any rent or any quarter's rent, or rent for any period due to him, he may at the same time and by the same proceedings, pray that the lease may be rescinded if such rent be not paid within the time to be appointed for that purpose in the judgment, or by the sale of the goods pledged for the rent, and thereupon the Judge shall order the same in and by the said judgment; and if it appear by the return of the Sheriff or Bailiff to the Writ of Execution to be issued on such judgment, that the sale of the effects seized has not produced enough to pay the rent due and costs, a Writ of Possession shall issue, addressed to the Sheriff or Bailiff, to dispossess the defendant and all others in the said premises, and to remove their effects and put the plaintiff in possession Provided always, that the return to the Writ of Execution shall be made on the day next after the sale, if the place of sale be not more than five leagues from the place where the judgment shall be rendered, and one additional day shall be allowed for every additional five leagues.

IX. And be it enacted, That the *droit de suite* shall and may be exercised by Writ of *saisie-arrêt simple* or *saisie-arrêt en mains tierces* before judgment according to law, against the effects of any tenant for the entire amount due and to become due in virtue of any lease in writing or verbal agreement for lease, which said amount shall on due proof be adjudged to the proprietor or lessor, and together with the costs of judgment and execution aforesaid, shall be levied by Writ of Execution, upon and from the sale of the said effects, if the same shall suffice therefor.

X. And be it enacted, That the Sheriff or Bailiff executing any Writ of Possession, under the said Act or this Act, shall have full power to use force, if necessary, to execute the same.

XI. Provided always, and be it enacted, That in any case where the proprietor or lessor shall have obtained a judgment of possession for any unexpired portion of any lease in writing or verbal agreement, or shall have proceeded by *droit de suite* as aforesaid, the Writ of Execution shall direct the said unexpired portion of the said lease to be first realised and sold before the sale of the said effects shall be made, and the said effects shall in that case be sold only to the extent of and for an amount sufficient to cover the-entire amount of the judgment with costs as aforesaid, and in all cases the amount levied under Writ of any Court shall be returned into and deposited in the office of the Prothonotary of such Court, as the case may be, for distribution thereof according to law and the practice of such Court, but such distribution shall not be ordered except as the terms mentioned in the lease shall expire and as the rent shall become due.

XII. And be it enacted, That an appeal shall lie from any judgment rendered as aforesaid, when the amount thereof shall be sufficient, or the object in contestation shall give a right of appeal according to law, in the same manner and on the same conditions as in other cases, but in addition to the usual security, the appeal bond shall be conditioned for the payment of all damages arising from the non-execution of the judgment, in consequence of such appeal; and no sureties shall be received unless they shall give in writing, signed by them, a description of real property to them belonging, the value whereof shall be equal to the amount for which security is to be given, over and above all hypothecs, charges or incumbrances, payable out of or affecting the same nor unless they shall (if required by the opposite, party), justify their sufficiency on oath, and produce the titles to such real property as aforesaid.

XIII. And be it enacted, That in any case, in which an opposition shall be filed to the execution of any judgment rendered under this Act and the Act amended thereby, the trial, hearing and determining of the said opposition shall be proceeded with as in original actions, adopting, as respects the proceedings but not as respects the delay, the ordinary mode of procedure on similar oppositions.

XIV. And be it enacted, That *saisies-arrêts* in the hands of third parties may be issued under the said judgments rendered or to be rendered, in the same manner as in ordinary causes, and the same proceedings shall be had on such *saisies-arrêts* as in ordinary cases.

XV. And be it enacted, That in any case in which a person shall occupy any property without a lease or agreement, but with the forbearance or gratuitous permission of the proprietor thereof, and such person shall refuse to quit the said property, summary proceedings may be had against such person in the same manner as if he were occupying the said property under a lease.

XVI. And be it enacted, That nothing in this Act shall apply to or affect any proceeding commenced before the passing thereof; save and except as regards oppositions and *saisies-arrêts*, and the provisions hereof shall apply to rural as well as urban property.

XVII. And be it enacted, That the Interpretation Act shall apply to the said first cited Act, and to this Act.

XVIII. And be it enacted, That all Laws and parts of laws which shall be inconsistent with this Act, shall be and are hereby repealed.