

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

16 Victoria – Chapter 205

An Act to amend the Act fourteenth and fifteenth Victoria chapter ninety-two, relating to the illegal detention of Real Property in Lower Canada. Assented to 14th June, 1853.

Whereas it is necessary and expedient to amend an Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, intituled, *An Act, to provide a more summary and less expensive process for Proprietors of Real Property in Lower Canada to acquire the possession thereof token illegally detained from them in certain cases*, and to make other and further provisions of law touching the same: 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 here by enacted by the authority of the same, That in any action instituted under the provisions of the Act herein first above cited, before any Circuit Court, Circuit Judge in Vacation, or Judge of the Superior Court in Vacation, it shall and may be lawful for the Defendant or Defendants in any such suit or action, at his or their option and choice, before making defence to such suit or action, to evoke the said suit or action to the Superior Court at its next ensuing Sitting within the District where such suit or action is commenced; and immediately upon the filing of such evocation, by any Defendant or Defendants, and upon security being given as hereinafter provided, the record and proceedings shall forthwith be transmitted to the said Superior Court holden within the District where such suit or action has been so commenced, to be by the said Superior Court heard, tried and determined according to the course and practice of the said Superior Court.

II. And be it enacted, That in any such case of evocation of any suit or action, the Defendant or Defendants filing such evocation shall be held, within eight days from the filing thereof, to give good and sufficient security for the costs to be incurred by the Plaintiff or Plaintiffs in conducting such suit or action to final Judgment; and a recognizance duly entered into by two sureties, each of whom shall be a proprietor of real property of the value of Twenty-five Pounds currency, above all incumbrances, shall be sufficient; and such security may be taken by any Judge of the Superior Court or the Prothonotary of the said Court, or before any Circuit Judge or the Clerk of the Circuit Court, and the said Judges, Prothonotaries or Clerks are hereby empowered to administer all necessary oaths to persons becoming such sureties, and it shall not be necessary to give notice to the party Plaintiff, of the putting in of such security; Provided, however, that if the security required by this Section be not furnished within the delay prescribed, the right of evocation before trial and *enquête* shall be forfeited.

III. And be it enacted, That in any action to be instituted under the provisions of the Act herein first above cited, it shall and may be lawful for the party Plaintiff in such suit or action, to demand

such sum or sums of money as he or they may be entitled to by law, for rents, issues and profits, *fruits et revenus*, as well as for damages for the illegal detention of such property; and any Circuit Court, Circuit Judge in Vacation or Judge of the Superior Court in Vacation, shall and may have, hold and exercise jurisdiction over the said demand for rents, issues and profits, *fruits et revenus*, whatever be the sum demanded.

IV. And be it enacted, That in any suit or action instituted under the provisions of the Act herein first above cited, before any Circuit Court, Circuit Judge in Vacation, or Judge in the Superior Court in Vacation, it shall and may be lawful for any Defendant or Defendants in any such suit or action, in addition to any other defence which he, she or they may have to such suit or action, to plead and demand, by incidental cross-demand, any and all such sum or sums of money as he, she or they may be entitled by law to have and demand for improvements, buildings and ameliorations made upon the Real Property sought to be recovered in and by such suit or action; and any such Circuit Court, Circuit Judge in Vacation, or Judge of the Superior Court in Vacation, shall have, hold and exercise jurisdiction over any such incidental cross-demand for ameliorations, buildings and improvements, whatever may be the amount claimed thereby.

V. And be it enacted, That notwithstanding any thing contained in the fifth Section of the Act herein first above cited, it shall and may be lawful for any Defendant or Defendants to appeal from any Judgment rendered by any Circuit Court, Circuit Judge in Vacation, or Judge of the Superior Court in Vacation, under the said Act or this Act, to the Superior Court sitting in the District where such suit or action shall have been originally instituted, upon giving good and sufficient security as prescribed in the said Section, effectually to prosecute the appeal and pay all costs as well in the Court below as in the said Superior Court, if the Judgment appealed from should be affirmed.

VI. And be it enacted, That in actions instituted under the above cited Act prior to the passing of this Act and in which issue has not been joined prior to the passing of this Act, it shall be lawful for the Plaintiff, within two months after the passing of this Act, to take other special conclusions in and by his declaration for *fruits et revenus* and for damages for the illegal detention of the property sought to be recovered, and in such cases the Plaintiff shall be bound to serve such special conclusions upon the defendant or his attorney, and the defendant shall have the same delay to plead to the action after the filing of such special conclusions as he is now entitled to have after the return of any action instituted under the said Act when no such special conclusions are filed, and such defendant may plead any matter of defence or incidental demand which he might have pleaded if such action had been instituted in the Superior Court.