

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

16 Victoria – Chapter 206

**An Act to amend and explain the Ordinance concerning the Registration of Hypothecs in Lower Canada. Assented to 14th June, 1853.**

Whereas the Ordinance of the Special Council of the heretofore Province of Lower Canada, passed in the fourth year of Her Majesty's Reign, intituled, *An Ordinance to prescribe and regulate the Registering of Titles to Lands, Tenements and Hereditaments, real or immoveable Estates and of charges and incumbrances on the same, and for the alteration and improvement of the Law in certain particulars in relation to the Alienation and Hypothecation of real Estates and the rights and interest acquired therein*, and the several Acts of the Legislature of Canada amending the said Ordinance, do not contain any enactments with respect to the cancelling of registrations having no foundation in law, or based upon Deeds conferring no legal title, privilege or hypothec on real or immoveable property, or based upon Deeds invalid, irregular, extinguished, acquitted and paid, or when the rights of privilege or hypothec have been removed by legal proceedings; And whereas the absence of an enactment of this nature involves heavy and serious disadvantages, and for other purposes hereinafter mentioned: 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 whenever a creditor or person claiming to be so, shall have registered, in conformity with the formalities required by the Ordinance and Acts above mentioned, against the property of the debtor or person claimed to be so, any right, privilege or hypothec whatsoever, which he shall claim to possess against the property of such debtor, and the Deed upon which the right, privilege or hypothec shall be based, shall not be founded in-law, or shall not legally confer any right or privilege or hypothec upon immovable property, or shall be irregular, invalid, extinguished, acquitted and paid, or such right of privilege or hypothec shall have been removed by legal proceedings, and such creditor having been duly required thereto by such debtor, shall refuse to consent to the cancelling of the registration by him of such claim against the property of such debtor, the latter may thereupon by action brought before any competent Court of Civil Jurisdiction in the District in which the real property or any part thereof charged with such right, privilege or hypothec by virtue of the said registration, shall be situate, demand that the claim so registered be, according to the circumstances of the case, either declared null and to confer in law no right, privilege or hypothec on the property, of the plaintiff, or null, irregular, unfounded in law, extinguished, acquitted and paid, or removed by legal proceedings, and that the registration of the said Deeds and any entry relating thereto, made in the office of the Register of the County in which such real property affected by such registration shall be situated, be cancelled in the registers of the said Register; and upon satisfactory proof of the allegations contained in the declaration, the Court shall grant the prayer of the plaintiff with costs against the defendant, as

well those incurred in the action as in effecting such cancellation, and if the allegations be not proved to the satisfaction of the Court the action shall be dismissed with costs: Provided always, that an authentic copy of the Judgment ordering the cancellation shall be served in the usual manner upon the defendant at his domicile.

II. And be it enacted, That the Register of every County in whose office such registration shall have been made, or his Deputy, upon production to him of a copy duly certified by the Cleric of the said Court, of the judgment ordering the cancellation of the said registration, and a Certificate that the delay to appeal from the judgment has expired, shall proceed to the cancellation thereof in the manner provided by the said Ordinance, for the cancellation of hypothecs discharged or paid, subject to the penalties imposed by the said Ordinance.

III. And be it enacted, That the foregoing enactments shall extend equally to registrations made before or after the passing of this Act.

IV. And whereas doubts have arisen as to the interpretation of the said Ordinance with respect to the obligation of a *bailleur de fonds* to register the Deed creating or constituting the privilege *bailleur de fonds*, in the manner prescribed by the first and fourth sections of the said Ordinance, relative to the registration of hypothecary, privileged or judgment claims: And whereas to ensure every possible efficacy to the publicity of hypothecs it is expedient to remove these doubts; Be it declared and enacted, and it is hereby declared and enacted, That by the terms of the said Ordinance, the *bailleur de fonds* shall be bound in conformity with the requirements of the said Ordinance, to register the Deed creating or constituting his right of *bailleur de fonds*, in the manner prescribed by the said Ordinance, and by the Acts amending the said Ordinance, with respect to the registering of hypothecary, privileged or judgment claims.

V. And be it enacted, That from and after the passing of this Act, any *bailleur de fonds* whose claim shall have been created after the passing of this Act, shall be bound, in all respects, to register his said claim in the same manner as other hypothecary, privileged or judgment creditors are bound to do by virtue of the requirements of the said Ordinance, within the period of thirty days from the date of the passing of the Acte creating his right of *bailleur de fonds*.

VI. And be it enacted, That every *bailleur de fonds* whose right of title of *bailleur de fonds* have been acquired subsequent to the operation of the said Ordinance, who shall not at the date of the passing of this Act, in conformity with the requirements of the said Ordinance and of the Acts amending the said Ordinance, have registered the Deed creating or constituting his right of *bailleur de fonds*, shall be bound to register the same within a period of six months from and after the passing of this Act, and failing so to do, such right of *bailleur de fonds* shall be null and of no effect whatever, with respect to any subsequent purchaser, donee or hypothecary, privileged or judgment creditor, for or upon good and valuable consideration, as provided by the said Ordinance: Provided always, that nothing in this section shall be construed to affect or extend to the judgments of the Civil Courts in Lower Canada which have by their judgments decided that the *bailleur de fonds* was not bound to register the Deed establishing his right of *bailleur de fonds*; and Provided also, that nothing in this section contained shall in any way affect the rights of parties

who shall not have registered their claims of *bailleur de fonds*, until the expiration of the delay allowed for the registration of such claims, but such rights shall, until the expiration of the delay fixed as aforesaid, have the same force and effect as if this Act had never been passed.

VII. And whereas by the Twenty-eighth Section of the above recited Ordinance, it is amongst other things ordained and enacted, That from and after the day on which the said Ordinance shall come into force, no general hypothec shall be stipulated in, or constituted by, or result from any Deed, Contract or Obligation in writing whatsoever, to be thereafter made and entered into, and that no conventional hypothec, charge or incumbrance on lands, tenements or hereditaments, real or immoveable estates, should from and after the day last aforesaid, namely, since the operation of the said Ordinance, be constituted or acquired in or by virtue of any Deed, Contract or Obligation in writing, which should be executed or made after the said day, according to law, unless the sum of money intended to be secured by such hypothec, charge or incumbrance should be, in the same Deed, Contract or Obligation in writing, or the acknowledgment thereof, specified, and that no such hypothec, as last aforesaid should be constituted or acquired for any other purpose than for securing the payment of a sum or sums of money specially mentioned as aforesaid: Be it enacted, That the said section has not applied, and shall not be construed to apply, and shall not apply to donations made *inter vivos* subject to life rents, payable in kind and appreciable in money, or to any description of charges and obligations appreciable in money, and that the registration of such Deeds executed in the form prescribed by the laws in force in this Province, and as hereinbefore mentioned, has preserved and shall preserve to persons interested therein all hypothecary claims and rights of *bailleur de fonds*, to the extent of the sum equivalent to the life rents and other charges and obligations appreciable in money, specified and stipulated in the said donations, in the same manner as if the said life rents and other charges and obligations had been and were estimated in money, by and in the said Deeds of donation, at the amount of the value to be estimated in money of the said life rents and other charges and obligations.

VIII. And whereas no provision is made by the Ordinance aforesaid, with respect to the punishment of persons hypothe-cating, or who shall hereafter hypothecate immovable property or rights, representing themselves to be proprietors thereof, or pretending to be such proprietors, or to possess claims thereto, and great inconvenience and frauds have resulted therefrom which have hitherto remained unpunished: Be it therefore enacted, That whoever shall pretend to hypothecate any real property or properties, of which he shall not be the proprietor, and to which he shall have no legal title, shall be guilty of misdemeanor, and being duly convicted thereof shall be liable to be imprisoned for a period not exceeding twelve calendar months, and to the payment of such fine and penalty not exceeding Twenty-five Pounds current money of this Province, as the Court before which such conviction shall take place, shall think proper to adjudge, and the proof of the ownership of the real property or claim shall rest with the person who shall as aforesaid have pretended to hypothecate the same.

IX. And be it enacted, That notwithstanding any thing in the Thirty-fifth Section of the Ordinance cited in the Preamble to this Act, the said Section and the provisions thereof, and each and every one of them, shall after the passing of this Act, extend to and have force and effect not only in the case therein mentioned of the sale and alienation of lands and tenements, real or immovable,

held in Free and Common Soccage or *en fief* or *à titre de cens* or *franc-alleu*, or under any other tenure whatever which shall or may be subject or liable to legal or customary dower, but shall extend to and have force and effect in every case in which the husband shall bind, mortgage or hypothecate such lands and tenements, real or immovable Estate held in Free and Common Soccage or *en fief*, or *à titre de cens* or *franc-alleu*, or under any other tenure; and in any Deed or Conveyance which may be made by any husband by which such lands and tenements are so bound, mortgaged or hypothecated for or by reason of a loan, or for any other cause whatsoever, it shall be lawful for any married woman to join with her husband in such Deed, and release her dower and right to dower in the same manner and to the same effect as she is authorized to do by the said thirty-fifth Section above cited in the case of sale or alienation of lands and tenements as aforesaid.