

Laws of Her Majesty's Province of United Canada, passed in the year 1854. Quebec: Stewart Derbyshire and George Desbarts, 1854.

18 Victoria – Chapter 106

An Act to facilitate the sale of immoveables charged with hypothecs in cases in which the proprietor thereof is unknown or uncertain. Assented to 30th May, 1855.

Whereas hypothecary creditors are subjected to serious inconveniences and useless expense, by reason of the proprietors of immoveables charged with hypothecs being in certain cases unknown or uncertain: 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, as follows:

- I. In all cases in which the proprietor of any immoveable charged with hypothec shall be unknown or uncertain, the hypothecary creditor to whom shall be due the capital sum secured by the hypothec, or at least two years' arrears of rent or interest thereupon, may present a petition, to the Superior Court for the District in which the immoveable is situate, and the following matters shall be contained and set forth in the said petition, to wit:
 1. It shall contain a correct description of the immoveable, setting forth the limits and boundaries thereof, and giving the street of the city or town, or the range or concession of the parish or township in which it may be situate, the name of the occupier, if the immoveable be occupied, the name of the last known occupier, if unoccupied, and the period for which it has remained so, and the names of all the known proprietors since the date of the act creating the hypothec;
 2. It shall contain all the allegations necessary to establish the debt and the hypothec, and further such facts and circumstances as will tend to prove that the proprietor of the immoveable is unknown or uncertain, and that the petitioner has *bonâ fide* and carefully made the necessary search in order to discover the proprietor;
 3. It shall conclude by praying that public notice be given to the proprietor as hereinafter provided, and that, failing such proprietor to appear, the Court will order the sale of the immoveable to be proceeded with as hereinafter provided;
 4. The petition shall be accompanied by a certificate, given by any person competent for that purpose according to the practice of the Court, setting forth that the petitioner or his agent have made oath of the truth of the allegations therein contained.

II. The Court shall examine the documents produced in support of the petition, and shall order such proof as it shall deem necessary, and being satisfied of the truth of the allegations of the petitioner shall order the publication of a notice in the form of Schedule A, annexed to this Act.

III. The notice so ordered shall be inserted once a week for four consecutive weeks in a newspaper published in the English language and also in a newspaper published in the French language, in the District in which the immovable shall be situate, and if no such newspapers be published in the District in which the immovable shall be situate, then the publication of the said notice shall be made in the newspapers published in one of the adjacent Districts.

IV. The notice shall be published and posted up in the French and English languages at the door of the Church immediately after Divine Service on Sunday, in the Parish in which the immovable shall be situate.

V. If within the period of two months after the last insertion of the notice in the newspapers and after the publication at the Church door, no person have appeared as hereinafter provided, the petitioner shall proceed upon his petition as in any case in which the defendant makes default, and if the Court is of opinion that all the formalities by this Act prescribed have been fulfilled, and that the allegations of the petition are sufficient and well sustained, the Court shall give judgment declaring the immovable hypothecated, and ordering that it be sold to meet the claim of the petitioner.

VI. Upon such judgment so rendered, an order of the Court shall issue, upon the application of the petitioner, addressed to the sheriff of the District, and the same proceedings in all respects shall be taken in virtue of this order, as are taken in virtue of a Writ of *fieri facias de terris*, and the Writ or order shall be in the form of Schedule B, and the Court shall dispose of the proceeds of the sale of the immovable, in the same manner as in ordinary cases of Sheriffs sale, and the sale shall have all the effects of a *decrét*.

VII. It shall be lawful for the proprietor of the immovable to enter an appearance to answer to the petition, in the same manner as in any other action, at any time before the rendering of the Judgment ordering the sale of the immovable, which appearance shall be in the form of Schedule C; and after the expiration of the delay prescribed by Section V, the petitioner shall file in the Office of the Court a declaration *en déclaration d'hypothèque*, against the party appearing, and the same proceeding shall be taken in every respect between the parties and by the Court as in an action *en déclaration d'hypothèque*.

VIII. If several persons appear, claiming, in opposition one to the other, to be proprietors of the immovable, unless some one of them pay the petitioner the amount of his claim and costs, or offer to set against the demand of the petitioner such a plea as shall be held by the Court to be valid in Law, the petitioner may, (the delay prescribed by Section V, having expired) inscribe the cause, giving notice thereof to the parties appearing, and the Court, after having heard the parties, may render judgment in conformity with Section V, which judgment shall be executed in conformity with Section VI.

IX. In case several parties shall appear claiming to be proprietors, in opposition one to the other, and one or more of them shall set against the demand of the petitioner a plea deemed by the Court to be valid in Law, judgment shall be rendered upon any such plea before proceeding to judgment in conformity with section VIII, but no party appearing shall be admitted to make such plea unless he establish, *primâ facie*, that he is proprietor of the immoveable.

X. In case several parties shall appear and the defence made by any one of them be declared good, the parties shall be nonsuited, and the Court shall adjudge costs to the parties entitled thereto, but if all the oppositions be dismissed, judgment shall be rendered in conformity with Section VIII.

XI. When a judgment ordering a sale shall have been rendered, in conformity with sections VIII and X, the parties who shall have appeared, shall have their claims adjudicated upon by the Court, after the sale of the immoveable, and the same proceedings shall be had in respect of them, as in the case of the contestation of an opposition, and the Court shall adjudge the balance of the proceeds of the sale of the immoveable, all the hypothecs and costs having been first released and paid, to any one of the parties who shall prove his or her right of property, but this shall not retard the homologation of the Report of Distribution between the petitioner and the oilier hypothecary creditors who shall have made their oppositions.

XII. Any proprietor, who shall not have appeared before the rendering of the judgment ordering the sale, may, nevertheless, at any time, present a petition praying that he may receive the balance of the proceeds of the sale of the immoveable hypothecated, and the Court, upon proof by him of his right of property, shall order that the balance be paid to him.

XIII. The Prothonotary shall publish, in the month of January in each year, a list of the unadjudged balances remaining in his hands in virtue of this Act, which list shall be in the form of Schedule D.

XIV. The Superior Court shall prepare Rules of Practice, providing for any proceedings for which sufficient provision has not been made by this Act, and a Tariff of Fees to be received by the officers of the Court for the duties imposed upon them in virtue of this Act.

XV. It shall not in any case be necessary (except in the case provided for by Section VII.) to cause service to be made of any judgment obtained in virtue of this Act, and it shall not be necessary, after the passing of this Act, to cause service to be made of any judgment en déclaration d'hypothèque obtained against a debtor absent from this Province, or who has no known domicile therein.

XVI. In case there shall be one or more known proprietors holding conjointly with unknown or uncertain proprietors, it shall be lawful to prosecute the known proprietor as joint holder with unknown or uncertain proprietors, and the form of notice to be given shall in such case be changed accordingly and proceedings may be taken with respect to the unknown or uncertain proprietors, in the manner provided by this Act.

XVII. The word "proprietor" in this Act shall also extend to usufructuaries or any other holders, inasmuch as such usufructuary or other holder may, in virtue of the law now in force, exercise the rights of the proprietor, and it shall also extend to co-proprietors par indivis.

XVIII. This Act shall apply to Lower Canada only.

Schedule A.

Form of Notice in the Newspapers.

Province of Canada, }
District of _____ }

(Name of place.)

day of _____

Know all men that A. B. of the Parish of _____ in the District of _____, by his petition filed in the office of the Court under the No. _____, prays for the sale of an immoveable situated in the said District, to wit: a land containing _____ arpents in front, by _____ in depth, in the first range of the Seigniorie of _____ in the Parish of _____ in the County of _____, bounded as follows; to wit: _____ which land is now occupied by D. C. (or has not been occupied for _____ years, and was last occupied by N.,) and the said A. B., alleging that by Deed of entered into by D. E. of _____ before F. G., Notary, at _____ on the _____ a hypothec was constituted upon the said immoveable hereinabove described, for the sum of _____, claims from the present proprietor of the said immoveable the sum of _____ due to him for _____

The said A. B. further alleges that the present proprietor of the said immoveable is unknown (or uncertain) and that the known proprietors since the date of the said Deed of _____ have been N. G. and F.

Notice is therefore given to the proprietor of the immoveable to appear before this Court within two months, to be reckoned from the fourth publication of this present notice, to answer to the demands of the said A. B., failing which, the Court will order that the said immoveable be sold by Sheriff's sale (*decrét*).

First insertion.

H. P.
Prothonotary.

Schedule B.

Form of Writ for sale of the immoveable.

To the Sheriff of the District of _____

Whereas the following notice hath been given in conformity with the Act to facilitate the sale of immoveables charged with hypothecs in cases in which the proprietor thereof is unknown or uncertain (recite the notice); and whereas judgment was rendered on the _____ day of _____, ordering the sale of the immoveable described in the said notice, you are hereby enjoined to make the ordinary announcements thereof and to sell the said immoveable in order to the payment to the said A. B., of the sum of _____ and _____ taxed costs, and you will make a return of this Writ and of the oppositions which shall have been placed in your hands, on the _____

H. P.

Attest, A. F.,
Judge.

Schedule C.

Form of Appearance.

I, B. C., appear to answer to the petition of A. B., as proprietor of the immoveable, described in the said petition, in virtue of (state in virtue of what title you are proprietor, and give the dates of the Acts or Deeds in virtue of which you are such proprietor.)

Schedule D.

Form of List to be published.

List of sums remaining unadjudged in the hands of the Prothonotary of the Superior Court for the District of _____, in virtue of the Act to facilitate the sale of immoveables charged with hypothecs in cases in which the proprietor thereof is unknown or uncertain.

Hundred pounds balance of the proceeds of the sale of an immoveable situate at _____, in the District of _____, in virtue of the Act to facilitate the sale of immoveable charged with hypothecs in cases in which the proprietor thereof is unknown or uncertain.

Hundred pounds balance of the proceeds of the sale of an immoveable situate at _____, in the District of _____, (repeat the description as given in the notice) sold upon the petition of _____ for a hypothec stipulated by C. B.; — last known occupier A. F., known proprietors, C. L., H. F.

H. P.,
Prothonotary.