

No. 310.

2nd Session, 3rd Parliament, 12 Victoria, 1849.

BILL.

An Act to amend the Act to encourage
the establishment of certain Societies,
commonly called Building Societies,
in that part of the Province of Canada
formerly constituting Upper Canada.

Received and Read a first time, Monday, 21st
May, 1849.

Second Reading, Tuesday, 22nd May, 1849.

Mr. BELL.

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BILL.

An Act to amend the Act to encourage the establishment of certain Societies, commonly called Building Societies, in that part of the Province of Canada formerly constituting Upper Canada.

- WHEREAS** in the tenth section of the Act passed Preamble.
 in the Session held in the ninth year of Her Majesty's Reign, and intituled, "*An Act to encourage the establishment of certain Societies commonly called Building Societies, in that part of the Province of Canada formerly constituting Upper Canada,*" it is among other things provided, that it shall and may be lawful for every such Society to take and hold any real estate or securities thereon, *bona fide* mortgaged or assigned to the said
 10 Society, either to secure the payment of the shares subscribed for by its members, or to secure the payment of any loans or advances made by, or debts due to such Society, and that they may also proceed on such mortgages, assignments or other securities for the recovery of the
 15 moneys thereby secured, either at law or in equity or otherwise; and it is expedient that no doubt should exist with respect to the power and legality of carrying into force the stipulations of the Shareholders among themselves, or as to the power of the Society to loan money
 20 upon property actually belonging to any member thereof, before and at the time at which any moneys may be advanced, as well as for the actual purchase of such property and erection of buildings thereon: Be it therefore enacted, &c.
- 25 And it is hereby enacted by the authority of the same, Certain stipulations declared valid.
 That from and after the passing of this Act, whenever any such Society shall have received from any shareholder an assignment, mortgage or transfer of any real estate belonging to him or her, to secure the payment of
 30 any advances, and containing an authority to such Society to sell such real estate in case of non-payment of any stipulated number of instalments or sum of money, and containing also authority and power to such Society to apply the proceeds of such sale to the payment of the
 35 advances, interest and all other charges due to such Society, such stipulations and agreement shall be valid and effectual and binding to all intents and purposes whatsoever, and it shall be lawful for such Society to cause the same to be enforced, either by foreclosure or by
 40 an action or proceeding in Her Majesty's Court of How enforced.
 Queen's Bench within that part of this Province formerly

called Upper Canada, and such action may be brought in the names of the President and Treasurer of such Society, describing them to be such President and Treasurer, or in the corporate name of such Society.

What allegations and proof shall be necessary in actions on such stipulations.

II. And be it enacted, That in any action or proceeding to be instituted by any such Society for the purpose of realizing or bringing to sale any property or estate assigned, mortgaged or transferred to the Society by any person or persons as aforesaid, it shall not be necessary to set forth the special matter in the declaration, but it shall be sufficient to allege that the defendant assigned, mortgaged or transferred the Real Estate, (describing the same,) to the Society, and that the amount or a sufficient part of the amount stipulated by him to be paid has become and remains due and owing, whereby, by virtue of this Act and of the Act hereby amended, an action hath accrued to the Society, to have the said estate and property sold; and in order to maintain such action it shall be sufficient, in addition to the customary evidence of the assignment, mortgaging or transferring of the said property or estate, to prove by any one witness, (whether in the employment of the Society or not,) or by the books of the Society or any other means, that the defendant is in arrears and indebted to the Society in or exceeding a sum on the accruing of which, by the terms of such assignment, mortgage or other agreement the Society may have the right to have the said property or estate sold; and thereupon the court shall pass judgment for the said amount, and by such judgment order the property to be sold by the Sheriff of the District wherein it may lie, after three insertions in the course of three months at least, in any newspaper published in the District where the lands or property may lie, and it shall not be necessary for the sheriff to go through any formalities in seizing the said lands or otherwise; and all such proceedings shall, in so far as may be, and if it be not otherwise herein directed, be conducted in like manner as proceedings under ordinary writs of execution, and the deed to be given by the sheriff shall have the like effect and be in the same form as a deed given under an ordinary writ of execution: Provided always, that the Sheriff of the District shall, in addition to his disbursements, be entitled to deduct only two per centum commission from the gross proceeds of sale, and to take the sum of twenty shillings and no more for the drawing of the deed; which twenty shillings is to be paid by the purchaser at such sale.

Allowance to Sheriff.

Society may forfeit the shares, or sue for the instalments.

III. And be it enacted, That any such Society shall have power either to forfeit and declare forfeited to the Society, the shares of any member who may neglect or be in arrear to pay such number of instalments as may be or are fixed by any stipulation or By law, and to ex-

pel such member from the Society, (and that the Secretary shall make a minute of such forfeiture and expulsion in the books of the Society,) or sue for the recovery of the amount so in arrear.

5 IV. And whereas doubts have arisen as to the construction of the first and tenth Sections of the Act hereby amended, with respect to the right of such Societies to loan and advance moneys on property and estate actually belonging to and acquired by the borrower at the time
 10 of such borrowing and advance, and it is expedient to remove such doubts; Be it therefore enacted and declared to have been and to be the intention of the said Act, that such Societies should have the power to advance, and such Societies are hereby authorized to advance in the manner usual with any such Society, moneys on any real estate whatsoever of any member of such Society, as well for the actual purchase of the same and for the erection of buildings thereon, as generally for any purpose whatsoever, upon the security of any real estate
 20 belonging to any such member at the time of his borrowing such moneys, and to take and receive an assignment, mortgage or transfer of all such real estate whatsoever in security for such advances, on the same conditions and with the same privileges in all respects as any other real estate by the said Act and by this Act authorized and
 25 required to be assigned; and that all or any person or persons whomsoever, whether capitalists or otherwise, shall be at liberty to become members of any such Society, and that corporate bodies may hold shares therein in the same
 30 manner as single individuals.

Provisions of Sect. 1 and 10 of the Act explained.

Who may be members of the Society.

V. And be it enacted, That this Act shall be a Public Act, and as such be judicially taken notice of by all Judges and Justices and other persons whomsoever, without being specially pleaded. Public Act.