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No. 200.

6th Session, 4th Parliament, 11 Victoria, 1852.

BILL.

An Act to amend the "Act to regulate the exercise of certain rights of Lessors and Lessees," in Lower Canada.

Received and read a first time, Friday, 5th Nov.
1852.

Second reading, Tuesday, 15th February, 1853

MR. LEMIEUX.

QUEBEC:

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

(200)

B I L L .

An Act to amend the " Act to regulate the exercise of certain rights of Lessors and Lessees," in Lower Canada.

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, &c.,

Preamble.

L. G. 3 W. 4, c. 1.

That in all the cases mentioned in the Act first above cited, whether the lease or agreement for lease be verbal, written or authentic, the cause and all proceedings therein, and matters relative thereto, whatever the amount of the claim, or of the lease, or agreement for 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.

By what Judges cases shall be heard.

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.

Mode of proceeding.

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 Defendant, 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.

Proceedings to be summary.

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 for lease, to recover possession of the immoveable leased and detained after that time.

When proceedings may be commenced.

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

Delay between

service and
appearance,
&c.

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 services have been personal, and after proof if the services have not been personal.

Plaintiff may
proceed for
rent and
possession.

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 entièrement*, 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. 10

Effects seized
not to be left
in charge of
defendant
without
security.

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 give two 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. 15 20

Plaintiff may
demand the
rescission of
the lease, &c.

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*. 25 30 35

Proviso.

How the
droit de suite
may be
enforced.

IX. And be it enacted, That the *droit de suite* shall and may be exercised by writ of *saisi 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 40

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, it the same shall suffice therefor.

5 X. And be it enacted, That the Sheriff or Bailiff executing any such writ of possession, shall have full power to use force, if necessary, to execute the same.

Sheriff or Bailiff may use force in executing writ of possession. Unexpired portion of a lease to be the first thing sold.

XI. Provided always, and be it enacted, That in any case where the proprietor or lessor shall have obtained a judgment of possession
10 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 only be sold to the extent
15 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 any writ of 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.

20 XII. And be it enacted, That an appeal shall lie from any judgment rendered as aforesaid, when the amount thereof shall be sufficient, 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
25 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,
30 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.

Appeal given.

What security the Appellant must give.

XIII. And be it enacted, That nothing in this Act shall apply to or affect any proceeding commenced before the passing thereof;
35 and the provisions hereof shall apply to rural as well as urban property.

Application of Act.

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

Interpretation.

XV. And be it enacted, That all laws and parts of laws which
40 shall not be concordant with the present Act, shall be and are hereby repealed.

Inconsistent Acts repealed.