

No. 17.

3rd Session, 6th Parliament, 23 Victoria, 1860.

BILL.

An Act to regulate the rights of persons married in foreign countries, and emigrating therefrom, to reside in Lower Canada.

Received and read, first time, Monday, 5th March, 1860.

Second reading, Monday, 12th March, 1860.

Mr. DUNBAR ROSE.

QUEBEC :

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An Act to regulate the rights of persons married in Foreign Countries, and emigrating therefrom to reside in Lower Canada.

WHEREAS by the laws of Lower Canada a *communauté de biens* (community of property, moveable and immoveable, acquired during marriage, in equal shares) is established between husband and wife from the time of their marriage within Lower Canada, in the absence of any marriage contract or settlement; And whereas doubts and difficulties have frequently arisen in determining the rights of persons married in the different States of Europe and America, and afterwards residing and acquiring property in Lower Canada, and it becomes necessary to make Legislative provision for simplifying and settling the law in this behalf.

Preamble.

Therefore, &c..

I. From and after the first day of January, one thousand eight hundred and sixty-one, all persons coming into Canada to reside therein who have been previously married in the British Isles, or in any other Country or State of Europe or of America, and who had entered into no marriage contract or settlement previously to such marriage, shall, after having remained domiciled during twelve months in Lower Canada, with respect to all property acquired by them during their subsisting marriage, be declared and held to have submitted themselves to the laws of Lower Canada for the government, regulation and settlement of their respective rights in and to such property, and after the expiration of the said period of twelve months, a *communauté de biens*, conformable to the laws of Lower Canada, shall be and subsist between them during the continuance of such marriage, unless such *communauté* shall or have been dissolved by authority of a competent Court or by operation of Law, and shall be held to have commenced from the period of their having acquired a domicile, or commenced a permanent residence in Lower Canada, in like manner and to the same effect as if such marriage had been first solemnized therein :

Community to commence after one year's domiciliation in L. Canada.

Provided always, that it shall be lawful for such married persons and for each of them, whether husband or wife, within the said period of twelve months to declare, in the manner hereinafter provided, their intention to abide by the laws of the particular State or country in which they may have been married in respect to the determination of their marriage rights respectively, and it shall be competent to either husband or wife to make such declaration without the presence, assistance or authority of the other of them.

Proviso : parties may declare their option to abide by the laws of the state where they were married.

II. In every case in which it may be the desire of such husband or wife to make such declaration, it shall be lawful to make the same before a Public Notary, in the form or to the effect set forth in the Schedule.

Form of declaration of such option ; and how made

Fees for execution and registration thereof.

dule A. hereunto annexed, and an authentic copy thereof shall be forthwith enrolled of record in the office of any Prothonotary or Clerk of the Superior Court, in an indexed register to be kept by him for such purpose, duly paraphrased in the manner by law required for paraphrasing Registers of Baptisms, Marriages and Burials; And for making and executing such declaration and for the enregistration thereof such Notary and Prothonotary shall be entitled, respectively, to ten cents per hundred words, subject to an immediate revision and correction of such charge by a Judge of the said court in the event of any alleged excess, without any other written appeal or formality than a notice to appear before such Judge at any time not less than two hours after the service of any such notice, the cost whereof, and any other costs necessarily incurred in respect thereto, may, in the discretion of such Judge, be awarded by him against the party in fault, and in the event of the non-payment, execution by the fiat of the said Judge may immediately issue therefor.

Short title.

III. This act may be cited as the "Foreign Marriage Rights Act, 1860."

Copies of this Act to be posted on board ships arriving in this Province.

IV. This Act shall be translated into the German language, and a sufficient number of copies thereof shall be printed in a convenient form in the English, French and German languages, and delivered to the Superintendent of the Quarantine Station at Grosse Isle, who shall cause at least one copy thereof in the said three languages to be taken on board each vessel arriving at the said Station by the officer who shall first board such vessel, and to be posted on the mast or some other conspicuous part of the vessel, accessible to every person on board, so as to be easily read by every such person; and the Master of the vessel shall so post the same to the satisfaction of such officer, and leave it so posted for at least — days after the vessel shall arrive in the Harbour of Quebec, under a penalty of ———— against any such Master neglecting or refusing to comply with the requirements of this Section.

SCHEDULE A.

We, the undersigned A. B., heretofore of (*the Country of last domicile*), and C. D., the wife of the said A. B., do hereby make known and declare that we were joined in the Holy Bonds of Matrimony on or about the day of the month of in the year one thousand hundred and , at (*insert place*) in the (*insert Kingdom or State*), according to the rights of the Church of , without having previously made or entered into any marriage contract or settlement, and that with respect to all and every our rights and the rights of each of us under the said marriage, we intend and declare that they shall remain as they existed previously to the passing of the Foreign Marriage Rights Act, 1860.

NOTE.—*Declarations by husband or wife singly to be altered accordingly.*