

No. 84.

1st Session, 4th Parliament, 16 Victoria, 1862.

BILL

An Act to regulate the proceedings relative to the seizure of Real Property in cases of *Folle enchère*, in Lower Canada.

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MR. SICOTTE.

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(84)

BILL.

An Act to regulate the proceedings relative to the seizure of real Property in cases of *Folle enchère*, in Lower Canada.

WHEREAS justice demands that creditors should not be deprived of their claims upon the real property of their debtors, or unjustly delayed in the recovery of their claims by the outbidding of insolvent and unknown purchasers at the sale and adjudication of the real property of their debtors, seized by authority of Justice; And whereas the Courts are not by law invested with sufficient authority to guard against the fraudulent arrangements of debtors with the bidders, on such occasions; Be it enacted, &c.,

Preamble.

- 10 That whenever it shall appear to the Court out of which the seizure shall have issued, by the return of the Sheriff or of any other officer of the Court duly authorized to act in such seizure, that the purchaser of real property taken in execution has neglected to pay the price of his adjudication according to the conditions of the sale, the Court, at the instance of the plaintiff or of the defendant or of any opposing party, shall order the Sheriff or other officer of the Court as above mentioned to proceed anew with the sale of the said real property at the *folle enchère* of the purchaser after two notices on two consecutive Sundays at the door of the Parish Church of the place in which such real property is situate, or if there be no such Church then at the most public place of resort, and after two advertisements published in a public newspaper in the District; and shall direct the said Sheriff or such officer of the Court to require every bidder presenting himself at the time of such second sale, before receiving his first bidding, to deposit and pay a sum equal to three times the amount of the costs then due to the plaintiff for costs of judgment and judicial seizure.
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- II. That if the said bidder refuse to pay such sum, such Sheriff or officer of the Court shall go on with the said second sale, starting from the next preceding bidding, as if such bidder had not offered any bidding.

Re-sales on *folle enchère* shall be made by the sheriff on the order of the Court, and at the instance of the plaintiff.

Deposits of a sum equal to treble costs.

In default of such deposit sale to go on.

In the case of a third sale, the Court may order the sheriff to receive from bidders a sum equal to the debt.

III. That in case of a third sale and adjudication in consequence of the neglect of the second purchaser to deposit the price of his purchase, it shall be lawful for the Court, if thereto required by any interested party, to order such Sheriff or officer of the Court to require every bidder, before receiving his bidding, to deposit and pay into his hands a sum equal to the debt due the plaintiff, including capital, interest and costs. 5

Deposit may be dispensed with in certain cases.

IV. That when the plaintiff or his Attorney *ad litem* or any person duly authorized to act on behalf of the plaintiff, shall authorise such Sheriff or officer of the Court either in writing or in the presence of two competent witnesses, whose names such officer shall enter in his return of proceedings, to receive the bidding of a bidder without requiring the deposit of monies in the cases above mentioned, such Sheriff or officer of the Court shall receive such bidding, and shall proceed to the sale and adjudication of the real property seized, without requiring the deposit and payment of the sums aforesaid or of any sum whatsoever. 10 15

Bidder may be required to make a deposit after issue of writ.

V. That if after the issue of the Writ *de terris* and before the first adjudication, the plaintiff or his Attorney in the cause shall declare on oath before one of the Judges of the Court, that he is credibly informed and believes that the defendant with a view to retard the sale of the real property seized, will cause the real property to be adjudged to insolvent or unknown purchasers, the Court shall have power to order such Sheriff or officer of the Court, who is hereby required to obey such order, to require every bidder at the sale of any real property to deposit and pay into his hands a sum equal to that due for costs up to the day of sale before receiving such bidding, unless such Sheriff or officer of the Court shall, at the time of the sale, be authorized by the plaintiff, or by his Attorney *ad litem*, or by some party duly authorized to attend to his interests, to receive such bidding without requiring such deposit or payment. 20 25 30

Contrainte par corps against *fol enchérisseur*.

VI. That in every case the *fol enchérisseur et adjudicataire* shall, in addition, be required to pay all other damages and interest accruing to the judgment creditor, and *contrainte par corps* may issue against such bidder for the recovery of the difference between the price bid by him and that of the re-sale on *folle enchère*, without his being entitled to claim any overplus that might exist. Such overplus shall be paid to the other creditors in their order, or if the creditors without interest, then to the judgment debtor. 35 40

VII. That such *contrainte par corps* shall be ordered by the Court at the instance of the plaintiff, or of the defendant, or of any opposant not collocated for the full amount of his debt, who shall make it appear by production before the Court of the
 5 Record and of the proceedings on the seizure of the real property, that such bidder has not paid in and deposited the purchase money, and that a difference exists between the price of such bidder and that of the second sale; and such *contrainte* shall be ordered and shall last until such pretended bidder shall have paid
 10 the amount of such difference and of all costs incurred in the obtaining of such *contrainte par corps*.

At whose instance *contrainte par corps* may issue.