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No. 168.

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1st Session, 4th Parliament, 16 Victoria, 1852.

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## BILL.

An Act for the better securing to occupiers, compensation for ameliorations made by them upon lands in certain cases.

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Received and Read a first time, Tuesday, 12th  
October, 1852.

Second Reading, Monday, 18th October, 1852

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MR. SANBORN.

**B I L L .**

**An Act for the better securing to occupiers, compensation for ameliorations made by them upon lands in certain cases.**

**W**HEREAS it has ever been the design of Her Majesty's Govern-<sup>preamb.</sup>ment in this Province to encourage the actual settlement of the unoccupied lands therein; and whereas in many portions of Lower Canada, the persons to whom lands have been granted in free and common soccage have failed to comply with the stipulations contained in the Letters Patent securing to them such lands, by actually entering upon the occupation thereof, or by causing them to be occupied and cultivated; And whereas from divers causes large tracts of land in the townships of Lower Canada have become the property of absentee proprietors, and whereas divers persons have entered upon such lands with the *bona fide* intention of purchasing the same as soon as a title thereto could be obtained, and in a course of years have reduced them from a state of nature to a high state of cultivation: And whereas through the imperfection of the existing law relating to such cases, the proprietors of such lands are enabled to eject such persons without rendering to them just compensation for the ameliorations which they have made, and are thereby permitted to profit unjustly by the labor of others, and it is therefore expedient to define more accurately and to declare the rights such of persons to compensation for ameliorations so made by them, and to provide means of securing the same to them; Be it therefore declared enacted, &c.,

That any person who at the time of the passing of this Act shall be and shall have been for a period of more than five years in the possession of any lot, tract or portion of a lot of land without any title conveying the right of property therein to him, with the *bona fide* intention of acquiring the same by purchase, (which said intention shall be determined by evidence that such person has cleared, tilled and cultivated such land in a husband-like manner without committing waste thereon,) shall be entitled to compensation for such ameliorations as he may have made in and upon such lot, tract or portion of a lot of land, to be estimated by *Experts*, according to the actual enhancement in value of such lands, by reason of the ameliorations so made, and the rents, issues and profits of such land during the time it may have been occupied, shall be estimated by such *Experts*, not according to the actual revenue to be derived from such land by reason of the augmentation in value thereof in consequence of the improvements thus made thereon, but by a just estimate of the rents, issues and profits that would have accrued to the proprietors thereof, if such lands had never been improved and ameliorated.

Persons now in possession of lands of which they have had possession five years with a *bona fide* intention of purchasing, entitled to compensation for their improvements.

II. And be it enacted, That no person who shall be and shall have been in the possession of any lot, tract or portion of a lot of land in the Such compensation to be

paid before  
such persons  
can be  
ejected.

manner and during the period stated in the preceding Section of this Act, with the intention of purchasing the same as above stated, shall be dispossessed thereof by the proprietor or proprietors of such land, unless and until such proprietor or proprietors shall pay or offer to pay to him a just compensation for the ameliorations made by him in 5 and upon such land, and that whenever any proprietor or proprietors shall institute any action, or proceeding, to dispossess such person, he shall in and by such action or proceeding offer and hold himself in readiness to pay to such person the just value of the ameliorations so made by him, to be determined by *Experts* nominated and appointed 10 in the ordinary manner according to law, over and above the rents, issues and profits of such land; and such ameliorations and rents, issues and profits shall be determined upon the principles stated in the preceding section of this Act, and until the payment by such proprietor or proprietors of such sum or sums of money as shall be esti- 15 mated by such *Experts* to be the value of such ameliorations over and above the rents, issues and profits to be determined as aforesaid, the person so in possession of such land shall have a lien upon the same, and be entitled to retain the possession thereof; Provided always, that if such proprietor or proprietors shall prefer, and shall in and by such action or proceeding instituted by him or them as aforesaid to recover the possession of such land; offer to sell and convey by a valid title the land so occupied 20 to the person in possession thereof, for the price which such land shall be actually worth at the time of the institution of such action or proceeding, after deducting therefrom the net value of the ameliorations made 25 thereon above the amount of the rents, issues and profits of such land during the time it shall have been occupied, to be determined and estimated as aforesaid, in that case unless the person so in possession shall and do within a reasonable time to be determined by the Court or Judge before whom any such action or proceeding shall be instituted, pay to 30 such proprietor or proprietors on his or their conveying such land to him by valid title, such sum or sums of money as shall be determined by evidence in such cause or proceeding, to be a just remuneration to the proprietor or proprietors for such land, he shall forfeit all right of compensation for ameliorations made upon such land, and such proprietor or 35 proprietors shall be entitled to dispossess such person without rendering to him any remuneration whatever for the improvements which he may have made upon such land.

Proviso: proprietor may, instead of paying such compensation offer to sell the land at a fair price to the occupant.

Court may grant time for payment of one half the purchase money.

III. And be it enacted, That it shall be lawful for the Court or Judge empowered to hear and try the matters referred to in the preceding Section of this Act, to grant to any occupier entitled to purchase, and who shall offer to purchase any land in the manner hereinabove provided, time for the payment of one half the purchase money of such land, not exceeding two years, to be secured with the interest accruing thereon, by special hypothec upon such land. 45

In suits under 14 and 15 V. C. 92, this act may be pleaded, and the matter tried.

IV. And be it enacted, That in any suit or action instituted by any proprietor or proprietors to dispossess any person in possession of any lot, portion of a lot, or tract of land, under and by virtue of the Act passed in the Session of the Provincial Parliament held in the fourteenth and fifteenth years of Her present Majesty's Reign, intituled "*An Act to provide 50 a more summary and less expensive process for proprietors of real property in Lower Canada, to acquire the possession thereof when illegally*

“detained from them, in certain cases,” it shall be lawful for the parties to any such suit or action to plead and establish all or any of the matters specified in this Act, and a Judge of the Circuit Court in vacation, a Judge of the Superior Court in vacation, or a Circuit Court, as the case may be, as well as the Superior Court, in the event of such suit or action being removed to the Superior Court, as is in said recited Act provided, shall be empowered and are hereby required to adjudicate therein as fully to all intents and purposes as if such suit or action had been originally instituted in the Superior Court.

10 V. And whereas in the first section of the Act hereinbefore cited, the following sentence, namely, “It shall be lawful for any such proprietor or  
 5 “proprietors as aforesaid, by a summons issued from the office of the Clerk  
 “of the Circuit Court, in any Circuit within the District where such lands  
 “or tenements are situated, to summon such occupier or occupiers,” &c.,  
 15 is incorrectly expressed in the version of the said Act published in the French language, so as to occasion doubts as to whether the real property sought to be recovered under this Act, must be situated within the limits of the Circuit within which such summons is issued: Be it therefore declared and enacted, that it is not necessary that the real property sought  
 20 to be recovered under the said Act, should be situated within the Circuit when the summons issues, provided such real property is situated within the District of which such Circuit forms a part.

Meaning of certain expressions in Sect. 1. of 14 and 15 V. C. 92, declared.

VI. And be it enacted, That nothing in this Act contained shall be  
 25 construed to deprive any person of title to land which he may have acquired by prescription, by the laws now in force in Lower Canada, nor shall it be construed to enable any person to recover from the proprietor or proprietors of any land or lands, any compensation for ameliorations made by him upon lands of which he has voluntarily abandoned the possession and occupation, nor shall any person in the occupation and possession  
 30 of land without title thereto, be entitled to recover from the proprietor or proprietors thereof, any compensation for ameliorations made by him upon such land, so long as he is permitted to retain the undisturbed possession thereof.

Act not to affect title by prescription, &c.

VII. And be it enacted, That this Act shall apply to lands held in free  
 35 and common socage in Lower Canada only, and that it shall be a Public Act.

Extent of this Act.