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No. 50.

1st Session, 8th Parliament, 27 Victoria, 1863.

BILL.

An Act to diminish the expense of Sales *en justice*, and confirmations of Title, and to facilitate the taking of *enquêtes*, the summoning of absentees, and the judicial distribution of moneys in Lower Canada.

Received and read, first time, Thursday,
8rd September, 1863.

Second reading, Monday, 7th September,
1863.

Hon. Mr. ^cCARTIER.

QUEBEC :

PRINTED FOR THE CONTRACTORS BY HUNTER,
ROSE & LEMIEUX, ST. URSULE STREET.

An Act to diminish the expense of Sales *en justice* and of confirmations of Title, and to facilitate the taking of *Enquêtes*, the summoning of Absentees, and the judicial distribution of moneys, in Lower Canada.

FOR the purpose of diminishing the expenses of the proceedings hereinafter mentioned: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble.

- 5 **1.** It shall not be necessary that the Sheriff having the execution of any writ or *alias* writ of *feri facias de terris*, or of *venditioni exponas* against any immovable property, or the party prosecuting the forced licitation of any immovable property, should give notice of the sale or of the day fixed for the adjudication of such property, at the door of the church of the parish in which it lies, on either of the two Sundays next preceeding such sale; but it shall be sufficient that such notice be given on the first of the three Sundays next preceding such sale or the day fixed for the adjudication, anything in the fourth, eighteenth or twenty-second sections of chapter eighty-five of the Consolidated Statutes for Lower Canada, or in the fourth section of chapter forty-eight of the said Statutes, or in any other Act or law to the contrary notwithstanding.
- 10 **2.** It shall not be necessary that the notice required in cases of application for confirmation of title, should be read or given at the church door of the parish, township or place in which the immovable property to which such application relates is situate, or at the most public place in such parish, township or place, on any Sunday except only the Sunday next but two before the day on which such application is to be made, that is to say, on the first of the three Sundays next preceding the said day, anything to the contrary in the second section of chapter thirty-six of the said Consolidated Statutes, or in any other Act or law, to the contrary notwithstanding.
- 15 **3.** All sales by any Sheriff, of lands and tenements held in free and common socage or otherwise than *en roture* or *franc aleu roturier*, shall be made, and advertised to be made, at the Registry Office for the Registration Division in which they are included; and lands *en roture*, or *franc aleu roturier*, shall continue to be sold as heretofore at the door of the church of the parish where seized; except always, that lands and tenements held by any tenure whatever, in the city, town, or other *chef-lieu* where the Sheriff's office is kept, or in the *banlieue* (if any) of such place, may be sold, as they have hitherto lawfully been at the Sheriff's office.
- 20 **4.** When any immovable property is to be sold by any Sheriff under any writ or *alias* writ of *feri facias de terris* or *venditioni exponas*, bids may be made for such property by fying them in writing at the Sheriff's office at any time after the seizure, except during the eight days next preceding the day of sale:—
- Notice of sale to be given at the church door on one Sunday only.
- Nor in cases of application for confirmation of title.
- Where Real Property shall be sold by the Sheriff.
- Bids for property seized may be made in writing, and how.

- Affidavit to be fyled with any bid by a creditor.** 2. With any such bid, if made by a creditor of the party on whom the property is sold, there shall be fyled an affidavit of such creditor, sworn before a Judge of the Court or Commissioner for taking affidavits to be used in the Court out of which the writ issued, or before the Sheriff charged with the execution of the writ, or before any Prothonotary of the Superior Court, or any Clerk of the Circuit Court, stating the amount and nature of such creditor's claim and that the bid is made *bonâ fide* and not to delay proceedings in the cause,— 5
- By a party not a creditor.** 3. With any such bid made by a party not being such creditor, there shall be fyled an affidavit of such bidder, sworn as aforesaid, that the bid is made *bonâ fide* and not to delay proceedings in the cause; and the Sheriff may, if he thinks proper, require security from such bidder, or a deposit in money sufficient to defray the probable costs of the party siezing to be incurred up to the time of such bid, and the probable cost of a *folle enchere* in case it should be required. 10
- Form.** 4. Each bid shall indicate the property bid upon and the amount offered. 15
- Notarial form** 5. If the party bidding cannot write, the bid may be made by notarial *acte* delivered *en brevet*.
- Bids to be returned.** 6. The Sheriff shall endorse on each bid the date of the fyling thereof, and shall return it with his proceedings on the writ. 20
- Highest to be the upset price.** 7. The Sheriff shall read and publish, or cause to be read and published, at the place and time of sale, every bid in writing so received by him; and the highest of such bids shall be the upset price at which the property shall then and there be offered for sale. 25
- If no higher bid is made.** 8. If at the time and place of sale no higher bid is offered than the highest fyled in writing as aforesaid, the property shall be adjudged to the person having made such highest bid in writing, as if he were personally present and making such bid, and he shall be the *adjudicataire* to all intents and purposes as if he had become so at the time and place of sale, and he shall be liable to *contrainte par corps* in default of immediate payment of the price, and to all the obligations of an *adjudicataire*. 30
- Preceding provisions to apply to forced licitations.** 5. The enactments and provisions of the next preceding section shall apply to all cases of forced licitation, in which cases bids in writing for the property to be sold or any separate lot thereof, may hereafter be fyled at the office of the Prothonotary of the Court in the District in which the licitation has been ordered, at any time after the licitation is ordered, except during the eight days next preceding the day fixed for the adjudication; and the Prothonotary or officer conducting the sale shall have the like powers and duties with respect to such bids as are by the said section conferred or imposed upon the Sheriff selling any property; and if any property be adjudged to any person upon a bid made in writing, such person shall have the like rights and be subject to the like obligations and liabilities in respect thereof as are by the said section conferred and imposed upon a person becoming an *adjudicataire* upon a bid in writing made by him at a Sheriff's sale. 40
- Highest bid to be upset price.** 2. The bids in writing in cases of forced licitation shall be read and published by the Prothonotary in open Court, and the highest of such bids shall be the upset price of the property to which the bid relates, 50 when the same is sold on such licitation.
- No costs of opposition for claims secured by Registrar's certificate.** 6. No costs of opposition shall be allowed to any opposant to the distribution of money levied by Sheriff's sale of real estate, or of money paid into Court in any case of confirmation of title or forced licitation, when the *hypothec* of such opposant is mentioned in the Registrar's certificate. 55

7. In case of any Sheriff's sale, confirmation of title or forced
 5 licitation, any person interested in the distribution of the moneys levied
 or deposited, may, in term or in vacation, examine or cause to be ex-
 10 amined on oath, before any Judge of the Superior Court, the defendant
 or the creditor or debtor of any hypothec mentioned in the Registrar's
 certificate or in any opposition, or any other person having or being
 supposed to have cognizance of the facts, and whether such person be
 or be not *mise en cause*, as to whether any such hypothec has or has not
 been wholly or in part discharged or become extinguished, or as to
 15 any other fact material to the case; and any person so examined shall
 be bound to disclose the existence of any receipt, account, or other
 document or writing tending to prove the discharge or extinction,
 wholly or in part, of any such hypothec, or any material point relating
 thereto, and to produce the same if within his power; and if any per-
 20 son so examined appears on the certificate or in any opposition to be
 the creditor of any such hypothec, his admission that the same is wholly
 or in part discharged or extinguished, shall be evidence that it is so.
 In the absence of a Judge, any such examination may take place before
 the Prothonotary, who shall have power to take the same, and to ad-
 25 minister the necessary oath to any person so examined: provided that
 per-son so examined shall be entitled to be taxed as a witness, if he be
 interested in the distribution of any such moneys as aforesaid.

Certain par-
 ties and per-
 sons may be
 examined in
 matters res-
 pecting the
 distribution
 of moneys
 arising from
 Sheriff's sales,
 &c.

Creditor's
 evidence of
 discharge
 sufficient.

Prothonotary
 may act in
 the absence of
 a Judge.
 Proviso.

8. Any hypothecary creditor whose hypothec is mentioned in the
 Registrar's certificate, is hereby declared to have had and shall have a
 25 right to appeal from any judgment of distribution, if he deems himself
 aggrieved thereby, although such creditor did not appear or fyle an
 opposition.

Creditor
 aggrieved
 may appeal
 though he did
 not appear

9. Whenever any movable property is seized in execution in either
 of the Cities of Quebec or Montreal, on any writ issuing from the
 30 Superior or Circuit Court, the Sheriff or Bailiff having the execution of
 such writ, shall give notice of the sale of the property by advertisement
 in the French and in the English language in the newspaper published
 in such city, if there be only one, or if all be published in the same
 language,—and in English in a newspaper so published in the English
 35 language, and in French in a newspaper so published in the French
 language, if there be a newspaper published in each language;—the
 Sheriff or Bailiff shall post up and keep posted up a duplicate of such
 notice in each language in a conspicuous place in the Sheriff's office
 40 take place until after the expiration of eight days from the first pub-
 lication of such notice.

Notice by ad-
 vertisement of
 sale of
 movables
 in Quebec or
 Montreal.

Copy to be
 posted up.

10. The said notice by advertisement shall be a summary one, con-
 taining the names of parties in the cause in an abridged form, as
 in the title of the cause, a general description of the movables seized,
 45 and the time and place of sale; and the cost of such advertisement
 shall not exceed *two dollars*.

Form.
 Cost.

11. In every case wherein the Sheriff or Bailiff gives notice of the
 sale by newspaper advertisement, such notice shall be in lieu of the
 notice and publication which would otherwise be required under section
 50 two of chapter eighty-five of the Consolidated Statutes for Lower
 Canada, which shall not be given or made in such case.

To be instead
 of notice un-
 der cap. 85 of
 the Con. Stat.
 L. C.

12. Whenever any property, moveable or immovable, to be seized in
 execution, lies at a distance of more than nine miles from the place at
 which the execution issued, the seizing party or his attorney *ad litem*,
 55 may, in writing, require the Sheriff to employ, with regard to the
 locality.

Sheriff, if re-
 quired by
 seizing party,
 to appoint a
 Bailiff of the
 locality.

seizure, the notice, or the sale, a Bailiff, if any there be, residing within the parish or locality in which the writ is to be executed, which the Sheriff shall accordingly do; but in such case the Sheriff shall not be responsible, pecuniarily or otherwise, for the due execution of the writ by such Bailiff, or for any irregularity or informality arising from any neglect or error on the part of such Bailiff; and if the seizing party, in order to avoid travelling expenses, requires any such Bailiff to deliver to him, in order that he may forward the same to the Sheriff, the return of his proceedings and all documents therewith connected, the Bailiff shall accede to such request, but in such case the seizing party shall be alone responsible for the consequences of the non-transmission of the said return and documents to the Sheriff;—and in the case of the sale of any immovable property by the ministry of a Bailiff, the Sheriff shall furnish such Bailiff with the bid or bids (if any) for such property which have been made at his office, as hereinbefore provided.

Bailiff selling to be furnished with the bids.

Pending cases excepted.

No *recors* required.

Orders for calling in absentees by advertisement, may be issued, as, of course, by the Officers of the Court.

Prothonotary may take *enquêtes* by consent of parties.

Proviso as to objections.

Prothonotary may take *enquêtes* in absence of Judge.

13. The foregoing provisions of this Act shall not apply to any case in which proceedings for confirmation of title or forced licitation have been commenced, or to any case in which movable or immovable property has been seized by a Sheriff or Bailiff, before the passing of this Act.

14. In all cases of seizure of property, movable or immovable, it shall not be necessary that the Sheriff or Bailiff should be accompanied by or have the assistance of any *recors* or witnesses; but the Sheriff or Bailiff shall make such seizure without any such assistance.

15. In amendment to section sixty-one of chapter eighty-three, and of section nineteen of chapter thirty-six of the said Statutes of the Consolidated Statutes for Lower Canada, be it enacted, that upon the return in term or in vacation of the Sheriff or Bailiff to the writ, or to any order under the said section nineteen of chapter thirty-six, that the defendant or person mentioned in such order cannot be found in the district or circuit, the order mentioned in the said section of chapter eighty-three may be issued by the Prothonotary or Clerk of the Court, at the instance of the plaintiff or of the party at whose instance the order under chapter thirty-six was made, and as of course, without the intervention of a Judge; and the Prothonotary or Clerk may, on the suggestion of the plaintiff, designate in such order the newspapers in which the defendant shall be notified to appear: and the order so issued under the seal of the Court, shall have the same effect as if made in open Court; but nothing herein shall prevent the Court or a Judge from making such order, if so advised.

16. If the Judge is, from any cause whatever, unable to attend in Court on any day fixed for the taking of *enquêtes* in the Superior Court, the Prothonotary of the Court at the place of sitting shall, during the absence of such Judge, preside at the taking of *enquêtes* on every such day in the place of such Judge, and he may swear the witnesses and do all other things with regard to the *enquêtes* on every such day, which a Judge of the Court might do; but all objections taken by any party, shall by such prothonotary be taken down in writing and kept of record in the cause or proceedings, for adjudication by the Court at the final hearing thereof.

17. In any case in the Superior Court, the *enquête* or any evidence in such case may, by the consent of parties, be taken before the Prothonotary of the Court at the place where the case is pending, and

Proviso as to objections. such Prothonotary may swear the witnesses, and do all other things with regard to such *enquête* or evidence which a Judge of the Court might do; but all objections taken by any party, shall by such Prothonotary be taken down in writing and kept of record in the case or proceeding for adjudication by the Court at the final hearing thereof. 5

Inconsistent enactments repealed. **18.** So much of any Act or Law as is inconsistent with the provisions of this Act, is hereby repealed.

Interpretation. **19.** The word "hypothec" in this Act shall have the meaning assigned to it in chapters thirty-six and thirty-seven of the Consolidated Statutes for Lower Canada. 10