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4th Session, 3rd Parliament, 14 Victoria, 1851.

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## BILL.

An Act to provide 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.

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Received and read a first time, Tuesday, 27th  
May, 1851.

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Mr. SANEORN.

**BILL.**

An Act to provide 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.

**WHEREAS** great inconvenience and expense are often occasioned to proprietors of lands situated in that part of this Province formerly Lower Canada, by persons acquiring the possession thereof without any title thereto and against the will of such proprietors; for remedy thereof be it enacted, &c. Preamble.

That any proprietor or proprietors holding a valid title to any lands or tenements, or both, which are situated within that portion of the Province of Canada heretofore Lower Canada, the possession of which lands or tenements or both shall have been illegally acquired and is detained from such proprietor or proprietors as aforesaid against his or their will, by any person or persons whomsoever, it shall be lawful for any such proprietor or 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, or person or persons so acquiring and detaining such illegal possession as aforesaid, before the Circuit Court in such Circuit as aforesaid, or before any Circuit Judge in vacation, or any Judge of the Superior Court in vacation, and that such Circuit Court, Circuit Judge in vacation, or Judge of the Superior Court in vacation, shall in due course hear, determine and adjudge the matter in issue and award costs: Provided always, that when such defendant or defendants shall plead and produce an adverse title to such lands or tenements or both so claimed as aforesaid, then after evidence shall have been adduced and the *enquête* closed on the part of the plaintiff and defendant, it shall be lawful for either of the contesting parties, after having previously given security for costs, as well in the Court below as in the Superior Court, to inscribe such cause for final hearing and argument for the Superior Court at the next ensuing sitting thereof within the District where such suit is commenced; and upon such security for costs having been entered up, and such inscription of the cause having been made as aforesaid, the Clerk of the Circuit Court where such action is commenced shall

Party holding a valid title to lands detained from him may obtain a summons from the Circuit Court to the party detaining them.

Who may hear the case.

If adverse title be pleaded and security given the case may be evoked to the Superior Court.

forthwith send up the record, and all proceedings and evidence taken and had in such cause duly certified to the said Superior Court, and thereupon the said Superior Court shall hear the arguments in such cause, determine the matter in issue and award costs, in the same manner in all respects as if the said suit or action had been originally instituted in the said Superior Court; Provided also, that unless security for costs as aforesaid shall have been entered up in such suit or action in the Circuit Court where such suit is commenced, within three days after the *enquête* shall have been closed by both contesting parties to such suit, it shall be lawful for either of the contesting parties to such suit to inscribe such cause for final hearing and argument before such Circuit Court, Circuit Judge in vacation, or Judge of the Superior Court in vacation, as the case may be, and thereupon the said Circuit Court, Circuit Judge in vacation or Judge of the Superior Court, may and shall proceed to hear, determine and adjudge upon the matter in issue in such cause, and award costs as he might do if no such adverse title were pleaded or produced.

But not unless such security be given.

Mode of commencing suits under this Act.

II. And be it enacted, That all suits under this Act shall be instituted in the manner usual in other matters, by issuing a writ of summons and attaching thereto a declaration setting forth the cause of action and praying relief in the premises, and by causing such writ and declaration to be served upon the defendant by the delivery of true copies thereof to him personally or at his domicile, and by fying such original writ and declaration and the title or titles upon which the lands or tenements or both in question in such suit are claimed, in the office of the Clerk of the Circuit Court where such writ of summons issued on the return day of such writ of summons; and when the defendant's residence shall be within five leagues of the place of sitting of the Circuit Court where such summons is made returnable, there shall be between the days of service and return (exclusive of those days) ten intermediate days; if there be more than five leagues, then there shall be an additional delay of one day for every additional five leagues; and the defendant shall be bound to fyle his appearance on the return day of the writ, and whether the appearance be fyled in term or in vacation, the defendant shall be allowed three clear days to plead to the declaration, and the plaintiff shall have a like delay to answer, and there shall be a like delay between each further pleading allowed by law; and if, after the expiration of any delay allowed for pleading, the same shall not be fyled, the opposite party may demand the same, and if it be not fyled on or before the next juridical day after the service of such demand may foreclose the party by whom it ought to have been fyled, and the fying of such demand of plea, with a bailiff's return of service thereon upon the party from whom such pleading,

Interval between service and return.

Foreclosure for want of plea.

is due, or his attorney *ad litem*, shall be sufficient to authorize the Clerk of the Circuit Court where the record of the proceedings in such cause is kept to grant and record *acte* of foreclosure, and he shall thereupon grant and record *acte* of foreclosure without further notice or formality.

III. And be it enacted, That all documents fyled and proceedings had in any suit under this Act shall be and become records of the Circuit Court where the summons may have issued in such suit, as well if such proceedings were had before a Circuit Judge in vacation or a Judge of the Superior Court in vacation, as if the whole of such proceedings were had before such Circuit Court; and such documents and proceedings shall be and remain records of such Circuit Court, unless the same shall be removed as hereinbefore provided, or by appeal, as hereinafter provided, to the Superior Court; and the judgments and orders of such Circuit Judge in vacation or Judge of the Superior Court in vacation, as well as of the Circuit Court, in any such suit, shall be executory in every respect as fully by such Circuit Court as the judgments and orders in any other suit in the Circuit Court at such place; and that the evidence in all such suits shall be reduced to writing and fyled of record, in the same manner as in other appealable cases before the Circuit Court.

Documents fyled in such suits to be records of Circuit Court.

Judgments executory.

IV. And be it enacted, That whenever the plaintiff shall be entitled to a judgment under this Act, it shall be lawful for the Circuit Court, Circuit Judge in vacation or Judge of the Superior Court in vacation, as the case may be, to render judgment, and order the same to be entered of record by the Clerk of the Circuit Court at the place where the writ of summons in such cause issued, and by such judgment to declare the plaintiff the lawful proprietor of the real property in contestation, or any portion thereof, and to order and adjudge the defendant to abandon and deliver up the same to the plaintiff within twenty days after a copy of such judgment shall have been served upon him; and in default of the defendant's abandoning and delivering up the same within the said twenty days after the service of such copy of judgment upon him, a writ of possession may issue from the Circuit Court at the place where the record in such suit is, directed to the Sheriff of the District within which the real property adjudged is situated, to cause the plaintiff to have the possession thereof.

How judgments shall be executed.

Writ of possession.

V. And be it enacted, That whenever a judgment shall have been rendered under this Act, by the Circuit Court, a Circuit Judge in vacation, or a Judge of the Superior Court in vacation, an appeal shall lie to the Superior Court sitting within the District where such suit shall have been

Appeal given to the Superior Court.

originally instituted, which said Superior Court shall proceed to hear and adjudge on such appeal as to law may appertain, and in the manner hereinafter provided.

Delay allowed  
for appealing:  
Security to be  
given.

VI. And be it enacted, That the party appealing from any judgment rendered as aforesaid by the Circuit Court, or by a Circuit Judge in vacation, or by a Judge of the Superior Court in vacation, shall within fifteen days after the rendering of the judgment to be appealed from (but without being bound to give notice thereof to the adverse party) give good and sufficient security by sureties who shall justify their sufficiency to the satisfaction of the person before whom it shall be given as hereinafter provided, that he will effectually prosecute the appeal, and (if the plaintiff be the party appealing) that he will pay the costs as well in the Court below as in the Superior Court if the judgment appealed from be affirmed; and (if the defendant be the party appealing) that he will pay the costs as well in the Court below as in the Superior Court, and that he will deliver up the real property adjudged to the plaintiff without waste, if the judgment appealed from should be affirmed; and such security shall be given either before any Judge of the Superior Court or the Prothonotary thereof, and the bond shall be deposited and remain of record in the office of the latter; or it shall be given before any Circuit Judge, or before the Clerk of the Circuit Court where such judgment may have been rendered, and the bond shall there be deposited and remain of record in the office of the latter; and any two sureties, each of whom shall be a proprietor of real property of the value of one hundred pounds current money of this Province above all incumbrances payable out of or affecting the same, shall suffice to render such security valid: and the said Judges, Prothonotaries or Clerks are hereby authorized to administer all oaths required by law in such cases from the persons so becoming sureties, and to put to them all necessary inquiries and questions.

How and before whom  
such security  
may be given.

Oaths.

How such  
appeals may  
be prosecuted.

VII. And for the purpose of obviating delay and expense in the prosecution of appeals under this Act, be it enacted, That such appeals shall be prosecuted and proceedings thereon had in a summary manner, by petition of the appellant to the Superior Court, setting forth succinctly the grounds of appeal, and praying for the reversal of the judgment appealed from, and the rendering of such judgment as the Court below ought to have rendered, a copy of which petition, with a notice of the time at which it is to be presented to the Superior Court, shall be served upon the adverse party, or at his domicile, or on his attorney *ad litem*, within fifteen days from the rendering of the judgment appealed from; and such petition shall be presented at some weekly sitting or term (whichever shall first happen) of the Superior Court next succeeding the rendering of the judgment appealed from,

See Page 267.

if there shall be an interval of twenty days between the rendering of such judgment and such sitting or term, and if there shall not be such interval then on the first juridical day of the sitting or term next succeeding the expiration of twenty days next after the rendering of such judgment. Provided always that neither the day of the rendering of such judgment appealed from nor the day of the presenting of said petition to the Superior Court shall be considered as forming part of said interval of twenty days; and provided also that a true copy of the appeal bond given by the party appealing, certified as such by the Prothonotary or Clerk in whose office it shall have been deposited, shall be annexed to the original petition presented to the Superior Court, and that a copy or copies of the same, certified as such by the party appealing or his attorney, shall be served with the petition and notice hereinbefore mentioned upon the party respondent.

VIII. And be it enacted, That the Circuit Court, Circuit Judge in vacation and Judge of the Superior Court in vacation, shall have jurisdiction in the manner hereinbefore stated and to the extent hereinbefore given, in all suits provided for by this Act, as well where the value of the real property claimed is above as when it is under fifty pounds current money of this Province.

IX. And be it enacted, That the security for costs required to be given by the first section of this Act, previously to inscribing a suit for the Superior Court as therein provided in certain cases, may be given by the party inscribing (without giving notice to the opposite party) within three days after the *enquête* is closed by the contesting parties, by good and sufficient sureties, who shall justify their sufficiency either before the Clerk of the Circuit Court where the suit is of record or before the Judge before whom the *enquête* in such suit is had, and the bond shall be deposited and remain of record in the office of the Clerk of the said Circuit Court; and any two sureties, each of whom shall be a proprietor of real property of the value of one hundred pounds current money of this Province above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said Judge or Clerk is hereby authorized to administer all oaths required by law in such cases from the persons so becoming sureties, and to put to them all necessary inquiries and questions.

X. And be it enacted, That the costs in any suit under this Act before the Circuit Court, Circuit Judge in vacation, or a Judge of the Superior Court in vacation, shall be the same as are now allowed in actions in the Circuit Court, when the sum of money or the value of

Proviso:  
if the case be  
removed into  
Superior  
Court.

the thing demanded exceeds the sum of twenty-five pounds currency. Provided, nevertheless, that if such suit be removed by appeal or otherwise to the Superior Court, the costs shall be the same as in other petitory actions before the said Court; and provided further, that nothing in this Act shall be construed to deprive any proprietor or proprietors of the right they now possess of instituting any petitory action before the Superior Court, but that it shall be at their option to proceed under this Act or to institute a petitory action in the Superior Court in the same manner as if this Act had not been passed. 5 10

Act not to  
affect claim  
for improve-  
ments.

XI. And be it enacted, That nothing in this Act contained shall have the effect of depriving any person or persons of any claim they would by law have previous to this Act's coming into effect, for betterments or improvements made by them upon any real property of which they may be in occupation. 15

Extent of Act.

XII. And be it enacted, That this Act shall apply to Lower Canada only. 20