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1st Session, 6th Parliament, 21 Victoria, 1858.

BILL.

An Act to remove doubt as to the right of parties who have settled on lands in Lower Canada, without knowing the proprietors thereof, to the improvements they have made thereon.

Received and read, first time, Monday, 15th
March, 1858.

Second reading, Monday, 22nd March, 1858.

MR. HÉBERT.

TORONTO :
PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to remove doubts as to the right of parties who have settled on lands in Lower Canada, without knowing the proprietors thereof, to the improvements they have made thereon.

WHEREAS the permanent settlement of the wild lands is of the very highest importance, and extensive tracts of lands in Lower Canada were formerly granted to certain individuals with the view of facilitating such settlement, and many of these persons have never fulfilled the conditions stipulated in the Letters Patent; And whereas a large number of these grants of land have fallen into the hands of persons absent from the country, and who have not made themselves known; And whereas the lines separating these grants of land from the Crown Domain were very imperfect and in many cases imperceptible, and a great number of the inhabitants of Lower Canada and of the British Isles have settled upon wild lands, the proprietors of which were unknown, under the impression that they were settling upon the lands of the Crown;—And whereas these settlers have cleared large tracts of land, have improved them and adapted them for cultivation, have opened roads, erected houses and barns, and constructed fences, bridges, and made other improvements of great value, and have paid the local taxes and developed the resources of their respective localities;—And whereas it is necessary to remove the doubts now existing as to the right of these settlers, (who in many cases are unjustly deprived of the fruits of their labor,) to compensation for the same, and to make better provision for an equitable adjustment of this compensation, due regard being had to the first rights of the proprietors of the said lands: Therefore Her Majesty, &c., enacts as follows:—

Preamble.

I. Any settler or individual who shall have openly and publicly, by himself or by his *auteurs*, enjoyed, or who shall hereafter enjoy the undisturbed possession, for a period of five years, of any lot or part of a lot of land in Lower Canada, which at the time he acquired possession thereof was wild and unimproved, and who shall have improved the same with a view of becoming the proprietor thereof and of settling permanently thereon, shall be deemed to be a *bonâ fide* possessor thereof, and as such entitled, according to the laws now in force in Lower Canada, to claim the increased value which the improvements made upon such lot or part of a lot shall have given thereto, before he can be dispossessed of such lot: and such increased value shall be ascertained as hereinafter provided.

Five years possession of a lot of wild land, to confer a right to payment for improvements.

II. In all cases in which the settler or occupant of any such lot of land and the proprietor of the same shall not be able to come to an

Value of the improvements,

—and of the lot without improvements,—to be fixed by *experts*.

amicable understanding with respect to the value of the improvements within the purview of the preceding section, or with respect to the conditions of purchase or sale of such lot of land, the value of the improvements as above mentioned, as also the value of the premises, provided no improvements had been made thereupon, shall be ascertained by three sworn *experts*, one of whom shall be appointed by each of the parties, and the third by the two *experts*; and in case either of the parties, after due notice from the other requiring him to make such appointment, shall fail to appoint an *expert*, or if either party appoint as *expert* or a person legally disqualified to act as such and the parties do not agree on another, or the *experts* named by the parties shall not be able to agree as to a third *expert*, the said *experts* or any one or more of them (as the case may be) shall be appointed by any Court having jurisdiction in matters concerning real property in the place where the land in question is situate, or by any Judge of such Court, after sufficient notice shall have been given in writing by the party making application for such *expertise* to the opposite party;—The *experts* shall be sworn before any such Judge aforesaid, or before some Justice of the Peace, or Commissioner for taking affidavits, having jurisdiction in the place where the lands in question are situate; and their report shall be deposited in the Registry office, after having been signed by at least two of such *experts*; and being agreed to and signed by two of them, shall be valid as if agreed to and signed by the three *experts*.

Swearing *experts*, and deposit of their report.

Proprietor to pay for the improvements, or sell for the value without the improvements.

III. At any time within one year after the value of the said improvements shall have been ascertained, as hereinbefore provided, the proprietor of the lot paying the amount awarded for the said improvements to the occupant, shall thereupon be entitled to the possession of the lot;—but, should the proprietor be unwilling to pay the occupant for his improvements, then he may signify to the said occupant, by a notice in writing, his intention of disposing of the lot to the said occupant at the value thereof ascertained by experts as aforesaid, irrespective of the improvements thereon made; And in that case, or if the proprietor neglects, during the said year after the said valuation, to pay the value of such improvements to the occupant, the said occupant shall be bound to pay the amount of the said valuation in five equal annual instalments, with interest from the date of the award of the *experts*, as hereinbefore mentioned; and the lot shall become the property of the said occupant, but shall remain charged and hypothecated, with privilege of *baillieur de fonds*, in favor of the proprietor for the said amount of principal and interest, which said privilege he may secure by the registration of the said award and of a duplicate of the said notice within the period of thirty days from the day upon which he shall have given such notice.

Transfer of property and hypothec of former owner for the value, if he will not pay for the improvements.

Act not to affect certain rights.

IV. This Act shall not affect the rights acquired or hereafter to be acquired by any possessor or occupant by virtue of prescription, or of any law now in force in Lower Canada, nor any agreement which may have been entered into between the holder and proprietor of any such lot of land.

To apply to Lower Canada only.

V. This Act shall apply to Lower Canada only.