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No. 224.

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2nd Session, 3rd Parliament, 12 Victoria, 1849.

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## BILL.

An Act to amend the Act passed in the third year of the Reign of His late Majesty King William the Fourth, chapter one, intituled, "*An Act to regulate the exercise of certain rights of Lessors and Lessees.*"

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Received and read a first time Monday, 2nd April, 1849.

Second reading Thursday, 5th April, 1849.

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Mr. LEMIEUX.

## BILL.

An Act to amend the Act passed in the third year of the Reign of His late Majesty King William the Fourth, chapter one, intituled, "*An Act to regulate the exercise of certain rights of Lessors and Lessees.*"

WHEREAS the Act of the Legislature of Lower Canada, passed in the third year of the Reign of His late Majesty King William the Fourth, intituled, "*An Act to regulate the exercise of certain rights of Lessors and Lessees,*" has been found to work badly, and it is necessary to amend it: Be therefore enacted, &c.

And it is hereby enacted by the authority of the same, That in all the cases mentioned in the Act cited in the Preamble to this Act, if the amount of the rent or the value of thing required to be done, or of the lease, possession, or other right sought to be recovered or enforced or rescinded, do not exceed *fifty pounds*, the case and all proceedings therein and matters relative thereto may be heard, tried and determined before any Judge of the Court of Queen's Bench, or any Judge of the Superior Court, or by any Circuit Judge when sitting within the Circuit in which the immovable in question may lie, and if such amount or value exceed *fifty pounds*, then by any two Judges of the Court of Queen's Bench, sitting together, and (in either case) in term or in vacation; and of such amount or value the allegation of the Plaintiff or of some person acting for him and cognizant of the facts, shall be *prima facie* evidence.

II. And be it enacted, That all writs or process issuing in any such case, shall run in the name of the Queen, and shall bear the seal of the Court before a Judge or Judges whereof the case is to be heard, and shall be signed by the Prothonotary or Clerk of the Court, and shall be issued by him without any *fiat* or special order, at the instance of any party entitled thereto; and shall not be tested in the name of any person, but the words "in witness whereof, we have caused the Seal of our said Court to be hereunto affixed," shall be instead of such teste; and such writ or process may be either in English, or in French; and that the said writs shall be directed to any of the Bailiffs of the Court of Queen's Bench.

III. And be it enacted, That the proceedings in any such case shall be summary; and no exception shall be allowed to any petition, declaration, process or paper, unless

form to be allowed.

the Judge or Judges shall be of opinion that the Defendant was *bonâ fide*, unable to understand from the same what he was required to pay or do, or to allow to be done; and any other defect, error or omission may be amended at any stage of the proceedings so as to make the paper in which it occurs agree with the facts of the case. 5

When proceedings may be commenced.

IV. And be it enacted, That the proprietor or lessor may proceed under the said Act and this Act, at any time after the end of three days from the expiration of the lease whether written or verbal, to recover possession of the 10 immovable leased and detained after that time.

Delay between service of process and return.

V. And be it enacted, That if the Defendant do not reside more than five leagues from the place where he shall be summoned to appear, he shall have one clear day's delay between the day of service of the summons 15 and the day of appearance, and one additional day for every additional five leagues; but he shall plead and the case shall be heard and determined, on the day of appearance, unless the Judge or Judges shall see fit to adjourn the case, as he or they may do. 20

Rent and possession may be recovered by the same proceeding.

VI. And be it enacted, That the Plaintiff may at the same time and by the same proceedings, sue for and recover possession of the immovable leased and any arrears of rent due, and may seize the goods of the Lessee by *saisie gagerie*, and the Judge or Judges, shall on proof 25 to their satisfaction, give judgment for the possession and for such arrears.

Plaintiff may pray rescission of the lease if the rent be not paid within a certain time, &c.

VII. And be it enacted, That whenever any Plaintiff shall under the said Act or otherwise sue for the recovery of any rent or any quarter of rent due to him, he may at 30 the same time and by the same proceedings pray that the lease may be rescinded if such rent be not paid within the time to be appointed for that purpose in the judgment or by the sale of the goods pledged for the rent; and on the return of the Sheriff or Bailiff, that such sale has not produced enough to pay the rent due and costs, the Judge 35 or Judges may direct the issue of a further writ addressed to the Sheriff or Bailiff, to dispossess the Defendant and all others, and to remove their effects and put the Plaintiff in possession: Provided always, that the return to the 40 writ first mentioned shall be made on the day next after the sale, if the place of sale be not more than five leagues from the place where the Judge or Judges sit, and one additional day shall be allowed for every additional five leagues. 45

When rescission is granted possession may be also given if not

VIII. And be it enacted, That the Judge or Judges directing the rescission of any lease, verbal or in writing, may by the same judgment direct that if peaceable possession of the immovable in question be not given to

the Plaintiff within a certain time after the judgment, yielded quietly. a writ shall issue to the Sheriff or Bailiff, commanding him to remove therefrom all persons and their effects and to put the Plaintiff in possession thereof.

5 IX. And be it enacted, That the Sheriff or Bailiff executing any writ of possession under this Act, shall have full power to use force if necessary to execute the same, and to call in the Queen's name on all persons to aid him if need shall be, and any person so called upon and refusing or neglecting to give such aid, shall thereby incur a penalty of pounds.

Powers of the officer giving possession.

X. And be it enacted, That an appeal shall lie from any judgment under this Act, when the sum or value in property shall be sufficient, in the same manner and on the same conditions as in other cases, but in addition to the usual security, the appeal-bond shall be conditioned for the payment of all damages arising from the non-execution of the judgment in consequence of such appeal.

Appeal; what security must be given.

20 XI. And be it enacted, That if in any case the rent of the immovable in question shall not exceed *fifty pounds* per annum, the matter shall be decided by one Judge or Circuit Judge, whatever be the period of the lease, or the supposed value thereof, or of the immovable or of the then possession thereof.

Where the rent is not over £50, one Judge may decide, &c.

25 XII. And be it enacted, That nothing in this Act shall apply to or affect any proceeding commenced before the passing thereof.

As to proceedings now pending.