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No. 96.

1st Session, 5th Parliament, 18 Victoria, 1854.

BILL.

An Act to amend and consolidate the laws for the prevention of damages to and deterioration of property, either under seizure or hypothecation, to the prejudice of the seizing or hypothecary creditor.

Received and Read First time, Tuesday, 3rd
Oct., 1854.
Second Reading, Tuesday, 17th Oct., 1854.

MR. POULIOT.

QUEBEC:
PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

(16)

An Act to amend and consolidate the laws for the prevention of damages to and deterioration of property, either under seizure or hypothecation, to the prejudice of the seizing or hypothecary Creditor.

WHEREAS it is expedient to make better provision for preventing immoveable property seized in execution under judgment, or hypothecated or mortgaged, from being fraudulently injured or wasted or the value thereof diminished, to the injury of the Creditor or the pairing of his security : Be it therefore enacted, &c., as follows :

Preamble.

I. It shall not be lawful for any person, personally or by the intervention of others, to injure, waste or in any way to diminish the value of any immoveable property (whether belonging to such person or to any other person or persons) seized in execution under any judgment, hypothecated or mortgaged, by destroying, carrying away or selling any house, out-house or building whatsoever erected thereon, or by wilfully deteriorating the same, or by destroying, carrying away or injuring the timber or fences or any fixture in any house or building on such property or anything forming part of the realty, or committing any other act of waste upon such property, so as to deprive the seizing Creditor or any Creditor in whose favor such property is mortgaged or hypothecated, or his right or remedy, or so as to diminish his security in respect of such property, and any wilful contravention of the foregoing enactment shall be a misdemeanor punishable by fine or imprisonment or both, in the discretion of the Court before which the offender shall be convicted : Provided also, that the Court out of which the execution shall have issued under which such immoveable property shall be seized, or the Court in which any action founded upon a hypothec or mortgage upon such immoveable shall be pending, shall have full power to award process of attachment (*Contrainte par corps*) against any person or persons committing any offence against or contravention of the foregoing enactments, with respect to such immoveable property ; and such process shall be awarded by such Court, or by any Judge thereof, in term or in vacation, after a rule or order to shew cause duly served on the person or persons complained of, personally or at his or their respective domiciles, and after proof made to the satisfaction of the said Court or Judge, of the facts alleged against such person or persons, who may be thereupon committed to Gaol and there detained for a period not exceeding calendar months.

It shall be a misdemeanor to waste or deteriorate property under seizure or hypothecation, so as to impair the rights of the Creditor.

Proviso : and if an action be pending, *contrainte par corps* may issue against the offender.

II. Any contravention of the enactments in the first section of this Act, committed in respect to any immoveable property hypothecated or mortgaged, shall render the whole sum or capital for securing which the hypothec or mortgage shall have been given, immediately exigible, notwithstanding any delay or term which may have been granted for the

Such act of waste shall make any sum secured on the property immediately exigible.

Proviso as to
sureties.

payment thereof, or that the same be the capital of a constituted rent, such contravention being alleged in the declaration in any action brought to recover such sum and proved to the satisfaction of the Court; but this provision shall not affect the liability of any surety (*caution*) for such sum, unless he be a party to the said contravention, in which case it shall apply to and affect him as well as the principal debtor and he shall be liable as if he had been surety for the immediate payment of such sum. 5

Act not to im-
pair any other
remedy.

III. Provided always, that this Act shall not extend to deprive the party at whose suit such immoveable property as aforesaid may have been seized, or in whose favor it may have been hypothecated or mortgaged, of any legal recourse against the person or property of his debtor, which such party would have had if this Act had not been passed. 10

Ordinance 2
Vic. c. 48 re-
pealed.

IV. The Ordinance of the Governor and Special Council for Lower Canada, passed in the second year of Her Majesty's Reign, and intituled "*An Ordinance to prevent Real Property under seizure from being injured or wasted, to the damage of the party seizing,*" shall be and is hereby repealed, except only as regards any contravention of the said Ordinance committed before the passing of this Act, with regard to which it shall remain in full force. 15

Exception.