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No. 15.

2nd Session, 6th Parliament, 22 Victoria, 1859.

BILL

**An Act to amend the Registry Laws of
Lower Canada.**

Received and read, first time, Wednesday, 16th
Feb., 1859.

Second reading, Wednesday, 23rd Feb., 1859.

HON. MR. HARWOOD.

TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to amend the Registry Laws of Lower Canada.

WHEREAS, from the Registry Laws of Lower Canada not requiring that all hypothecs and incumbrances affecting real estate, shall be enregistered against the special lot of land affected by them, by a number and designation, with figurative plans of the Registration district shewing each special lot of land, great uncertainty exists as to what lands are effected by the hypothecs and incumbrances enregistered; And whereas it is expedient in aid of the owners of real estate, and to give confidence to capitalists, that greater security be given to the hypothecary creditor than is now given in case of sheriff's sales and confirmation of titles; Therefore Her Majesty, &c., enacts as follows:

I. The registrar of each registration division shall, within six calendar months from the passing of this Act, cause plans to be made, shewing each lot of land held *en fief* or *en roture*, designated on the cadaster made under the Seigniorial Act by the number and designation therein given, and such lands or lots of land as were before the said Act came into force commuted into free and common soccage, or into the tenure of *franc alev roturier*, and are not comprised within the said cadaster, shall have the number and other designation given to them by which they were known on the *Terrier* of the Seignior before the tenure thereof was so commuted, and such lands as have been sold by the proprietor of any Seignior who, under the Imperial Act, has commuted such Seignior or part of such Seignior into the tenure of free and common soccage, shall be designated by the number and designation given in the deed of that sale in free and common soccage by such Seignior or Seigniors, and the lands in the Seigniories, *Fiefs*, and *arriere Fiefs* which are exempted from the operation of the Seigniorial Tenures Act shall have the number and designation by which they were known in the *terriers* of such Seigniories, *fiefs*, and *arriere fiefs*, and if no number or designation is given in such *terriers* or deeds, the registrar of the division shall cause a number or other designation to be given on the said plans, and if lands in any township are comprised within such registration division, then the number and ranges shall be used as are indicated on the Government plans of such townships.

Plans to be made by Registrar.

II. An inspector of registry offices shall be appointed by the Governor in Council to inspect the books and direct how they are to be kept, and to see that the plans are made with care, and in such manner as he shall direct, consistent with the requirements of this Act, and who shall within eight months from the passing of this Act, affix his seal

Inspector of Registry Offices, his duties as to such plans.

to such plans, taking a duplicate of such plans to keep on record in his office.

Books to be opened by the Registrars.

III. It shall be the duty of each registrar in charge of a registry division to open books in the manner to be directed by the inspector of registry offices, devoting a page to each division of property, such page to be marked with the number and designation by which such division of property is known upon the registrar's public plan.

Descriptions according to the plan to be given of property sold, &c.

IV. The title deeds, or other instruments conveying real estate, executed or to be executed, since the coming into operation of the ordinance fourth Victoria chapter thirty, up to twelve months after the passing of this Act, must not only be enregistered in the registry office of the registry division wherein such real estate is situate, but there must also be filed in such registry office, within twelve months after the passing of this Act, a memorandum describing the real estate so transferred by the number and other designation by which such property is known on the registrar's public plan, and furnishing such description where it is not so known and indicated, as will enable such registry officer to place it there; and in default thereof, any purchaser who purchases such real estate subsequent to the twelve months after the passing of this Act, and who buys in good faith, and from the same vender, and not collusively, and who registers the deed conveying such estate in the manner hereinafter prescribed, shall have a preferable title, notwithstanding that some prior purchaser is in open and public possession of such estate, any statute to the contrary notwithstanding.

Penalty for default.

Parties having already registered titles, &c., to give in descriptions of the property affected according to the said plan.

V. All parties or their assignees, who under the requirements of the laws, have enregistered or registered by memorial, deeds, creating hypothecs or incumbrances on real estate of whatever nature, whether the same be general or special, and whether created by deed before Notary Public or before witnesses, or arising from the operation of the law only, or the judgment of courts, shall, within twelve months after the passing of this Act, file with the registry officer of the division wherein the real estate so affected is situate, a memorandum declaring the number or numbers, and other designation, by which such property is known upon the registrar's public plan, and in case of such real estate so hypothecated or affected is not known upon the registrar's public plan, they shall give such description in the memorandum as will enable the officer to mark the lot down upon his public plan; and in case of neglect to furnish such memorandum, such hypothec, claim and incumbrance shall become inoperative against any subsequent bona fide purchaser of such property who shall have paid full consideration for such property, and shall have bought it subsequent to the twelve months after the passing of this Act, and shall lose priority to any hypothec created for money advanced upon such special lot, subsequent to the expiration of the said twelve months, the deeds transferring such real estate and Acts creating such hypothec, being duly enregistered in conformity with the requirements of this Act.

Penalty for default.

Claims arising out of dower to be registered by description of the

VI. Widows, minors and tutors, curators or friends, may file a memorial of the claim arising out of dower, with the registrar of the County in which the property affected by the dower, is situated, stating the nature of such dower, whether it is customary or prefixed, and how

derived, and describing the property affected by it, by the number and description whereby such property is known upon the registrar's public plan; and in case of neglect, the right under the dower shall be inoperative against any subsequent *bona fide* purchaser of such estate, or hypothecary creditor for the amount of his hypothec, such purchase or hypothec being made or created after twelve months after the passing of this Act, but the tutor and curator shall be personally responsible in case of neglect; and when the dower is not open, it is hereby declared obligatory upon the husband, wife, children or friends to enregister such dower, with a description of the property affected thereby, and how derived, within twelve calendar months after the passing of this Act; and in case of neglect, the right under such dower shall cease for ever.

property affected, according to the said plan.

VII. The customary dower shall not obtain in the case of any marriage which shall take place after the passing of this Act, the said dower in regard to such marriages being hereby entirely abolished, notwithstanding any law to the contrary, and no other dower shall be allowed from such marriages, but the dower prefix, the said dower prefix being duly enregistered according to the requirement of the law.

Douaire coutumier abolished.

VIII. After the expiration of twelve months from the passing of this Act, all deeds, conveyances, and instruments conveying real estate, or creating hypothecs or incumbrances thereon, either executed before Notary Public or before witnesses, shall contain a description of the real estate so transferred, hypothecated or encumbered, giving it the number or concession, or other designation, whereby the said real estate is known upon the registrar's public plan, or as forming a part of such lot, with a figurative plan and description shewing what part; and if such real estate to transferred, hypothecated or incumbered, should not be specially designated upon the registrar's public plan, but form part of a larger block of unconceded land or other undescribed property, such deed, conveyance or instrument shall have affixed to it a figurative plan of the said real estate so conveyed, hypothecated or encumbered, showing also its connection with or proximity to other real estate designated upon the registrar's public plan: and in case of neglect such deed, conveyance or instrument be null and void.

Registration after one year from the passing of this Act to be accompanied by a figurative plan.

IX. It shall be the duty of all Registrars to enter the memorandums descriptive of what property is affected by previously enregistered deed, in rotation as received, in a book especially appropriated to them, from whence they shall be posted and written in red ink to the margin of the original entry of registration describing the property affected by the same, and from thence shall be posted into the *terrier* or land book, to the page set apart for each especial lot of land, referring therein to the original entry for full particulars; And it shall also be the duty of each registrar to enter in rotation, as received, all new transfers of property or of deeds, creating, hypothecs or incumbrances, or other instruments, by which such are created, as well as judgments of Court carrying hypothecs, or memorials of other hypothecary or privileged claims, from whatsoever source they may arise, in his great book of registration, and from thence by marginal reference he shall post the title and amount of the said transfer, hypothec, or other incumbrance, to the page in the *terrier* or land book set apart for such especial real estate so transferred or effected.

How the Registrar shall enter the descriptions of property affected by deeds registered in his office.

Sheriff seizing
real property
to give notice
to parties hav-
ing registered
claims upon it.

X. After fifteen calendar months from the passing of this Act, it shall be the duty of all sheriffs having seized real estate under a judgement of the Court, to get a memorandum from the registry office of all hypothecary claims affecting the said property ; and in the advertisement for sale of such property in the Official Gazette and at the church door of the parish in which the property is situate, such hypothecary claims shall be inserted as being enregistered in favor of A or B, (as the case may be) ; And further, the said sheriff shall cause to be served by one of his officers, upon each mortgagee, if he resides within the district, or upon his appointed agent, if indicated by memorandum on record at the registry office, a notice of such seizure and intended sale, at least one month before the appointed time of sale, that they may make their opposition, or take such course as they may see fit. 5 10

Persons apply-
ing for con-
firmation of
title to notify
persons hav-
ing registered
claims on the
property.

XI. After the expiration of fifteen calendar months from the passing of this Act, any party applying for confirmation of title, shall get from the registry office a memorandum of all mortgages or incumbrances enregistered affecting the property in question ; and in the official notices it shall be inserted that on such property there are mortgages enregistered in favor of A or B, and a notice of such application shall also be served upon the parties or their appointed agent by a bailiff of the Superior Court, informing them of such application for confirmation of title, at least one month before judgment can be pronounced. 15