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No. 113.

1st Session, 4th Parliament, 16 Victoria, 1862.

BILL.

An Act to facilitate the redemption of Seigniorial Rights in Lower Canada, and to convert the tenure of lands chargeable therewith into that of *franc aleu roturier*; to define the rights to Seigniors and Censitaires, and to correct abuses.

Received and read a first time, Friday, 24th
September, 1862.

Second reading, Tuesday, 12th October, 1862.

MR. JOBIN.

QUEBEC :

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

BILL.

An Act to facilitate the redemption of Seigniorial rights in Lower Canada, and to convert the tenure of lands chargeable therewith unto that of *franc aleu roturier*, to define the rights of Seigniors and Censitaires, and to correct abuses.

WHEREAS it is expedient to facilitate the commutation of lands held *en roture*, in the fiefs and seigniories of Lower Canada, to define the rights of Seigniors and of Censitaires, and to put an end at as early a date as possible, to the abuses existing under the Seigniorial Tenure; Be it therefore enacted, &c.,

Preamble.

That the Acts passed in the eighth year of Her Majesty's Reign, chapter 42, in the twelfth year of Her Majesty's Reign, chapter 49, and all other laws, customs, and usages (except the law for commutation in the Seigniorie of St. Sulpice, which shall remain in full force and vigor, anything in this Act to the contrary notwithstanding,) shall be and are hereby repealed.

8 V. c. 42.
12 V. c. 49.
and other laws inconsistent with this Act repealed.

II. And be it enacted, That from and after the passing of this Act, the domain of the Seignior and his seigniorial and feudal rights, shall be released from all *droits de quint* payable to the Crown, but the Seignior shall render fealty and homage, and furnish a statement and rent roll, (*aveu et denombrement*) to the Crown, until the period of the extinction of his Seigniorial Tenure.

Droits de quint in favor of the Crown released.

III. That Her Majesty's Government shall place to the credit of the Seigniors and proprietors of such Seigniories, fiefs and *arriere-fiefs*, as are not the property of the Government, in the order and according to the value of each seigniorie, fief and *arriere-fief*, as hereinafter explained in describing the mode of estimating and establishing the said value, the amount of the value of all the seigniories, fiefs and *arriere-fiefs* at present in the possession of the Government of this Province, in order to the formation of a sinking fund in the hands of the Receiver General of this Province, for the security of third parties and of the creditors of the Seigniors; the Government retaining the share allotted to it in the said valuation for their seigniories, fiefs and *arriere-fiefs*, after deducting the costs of arbitration and other charges; and the said creditors shall declare and establish the amount of

Sinking Fund formed for the security of the rights of creditors of Seigniors.

their claims within six months after the passing of this Act, and shall thereupon deposit such declaration attested on oath in the hands of the Receiver General; and in the absence of creditors such Seigneur shall forthwith have and receive to his own profit and advantage, his share in the sinking fund, which shall include all arrears of *droits de quint*, due and payable up to that period, with the interest accrued thereon. 5

How the value of Seignories in possession of the Government shall be estimated and fixed.

IV. That the value of the said seignories, fiefs and *arrière-fiefs*, being as aforesaid in the possession of the Government of this Province, shall be established as soon as possible after the passing of this Act, by three sworn arbitrators, one of whom shall be appointed by the Government, one by the Legislative Assembly, and the third by the *Censitaires* at a meeting of delegates from each Parish situate within every such seignory, fief and *arrière-fief*, notice of such meeting having been first given at the door of the Parish church, or if there be no church, then at the most public place of resort, eight days previous to such meeting; and the Committee of Delegates shall make a Report forthwith to the Secretary of the Province of the appointment by them of an arbitrator, and in such case, one delegate from each Parish shall be sufficient; and in default of such appointment of an arbitrator by the *Censitaires*, the other two arbitrators shall name a third; and the said arbitrators and third arbitrator, as the case may be, shall proceed to make the said valuation, and shall make their Report thereon, within two months from the dates of their respective appointments. 25

Basis of valuation established.

V. That for the purpose of making such valuation, the said arbitrators and the third arbitrators, if it shall have been necessary to appoint such third arbitrators, shall take as the basis of the value of such seignory, fief or *arrière-fief*, the amount in capital of the average net annual revenue for the last ten years. 30

Arbitrators to be appointed for each Seignory, &c.

VI. That the said three arbitrators shall only be appointed for and by each seignory, fief and *arrière-fief*, and not otherwise.

How the value of Seignories, &c., held by others than the Government shall be estimated.

VII. That in order to ascertain and establish, in accordance with the intention of this Act, the value of the seignories, fiefs and *arrière-fiefs*, other than those possessed by the Government, the Seigneur and proprietor, and the Co-seigniors and co-proprietors of every such seignory, fief and *arrière-fief*, shall make a report under oath to the Government of this Province within two months from the passing of this Act, under a penalty of currency, to be paid by the party neglecting so to do, of the revenues and expenditure for the last years of every such seignory, fief or *arrière-fief* at present in his or their possession, or in the possession of his or their predecessors, (*auteurs*) and the

average net annual revenue for the said years, shall constitute the basis of the value in capital of such seignior, fief or *arrière-fief*.

VIII. That from the amount of the value established, as herein lastly provided, one-fifth shall be deducted as a compensation for the *droit de quint* remitted by the Crown, and another fifth shall in like manner be deducted as a compensation for the part and portion of the amount of the value of the said Seigniories, fiefs, and *arrière-fiefs* belonging to the Government, as above mentioned, placed to their credit, and deposited as a sinking fund in the hands of the Receiver General, and for the right of Banality, lands retained as a domain, and other rights remaining and continued to the Seigniors under and by virtue of this Act.

One-fifth to be deducted for *droit de quint* released, and one-fifth for rights retained, share of value of Government Seigniories, &c.

IX. That in case the part or portion of the sinking fund placed to the credit of the Seignior should not be sufficient for the securing and guaranteeing of the payment of the debts and claims of the creditors of the Seignior, such Seignior shall furnish good and sufficient security to his creditor or creditors for the balance of his or their claim, at his or their request; and in case there should be any minors, the proceeds of the commutations hereinafter established shall be deposited by the party commuting in the hands of the Receiver General of this Province, and bear legal interest, payable to the party entitled to receive the same.

Security to be given Seigniors in certain cases.

X. That it shall be lawful for the proprietor of any land held *en fief* or *en roture*, à titre de cens et rentes carrying *lods et ventes*, to release such lands from all seigniorial dues, charges, and seigniorial servitudes generally whatsoever, and to commute for the same; and he shall have power, after having first duly given notice by a notary, to oblige his Seignior to grant him the commutation of his lands, in consideration of the payment of one *lods et ventes* upon the amount of the value of his lands, to be amicably determined between him and his Seignior, or their representatives; or in case a difference of opinion shall arise between them, then upon the report of arbitrators, one of whom shall be appointed by the Seignior and the other by the Censitaire, or such proprietor, at the cost of both parties, with power to the said two arbitrators to choose a third, the decision of the said arbitrators and third arbitrator, who shall have first been duly sworn, shall be final and unappealable, and the opposing party shall be compelled by legal proceedings to submit thereto: Provided always, that from the amount of the value of such lands so commuted, two-fifths shall be deducted for the causes and reasons mentioned and set forth in the eighth section of this Act, and the remaining three-fifths shall be paid, on demand, to the Seignior by the proprietor or Censitaire of such lands

Commutation to be affected on payment of one *lods et ventes*.

Amount how determined in case of difference of opinion.

Proviso. Two-fifths to be deducted as aforesaid.

Censitaires having commuted may use streams of water, &c.

XI. That any proprietor or Censitaire who shall have so commuted, shall be entitled to the use of the water-courses, rivers and streams passing through or along his lands so released from seigniorial dues, and to construct thereon, both for his own use and for the use of other proprietors who shall have commuted, grist, saw, carding and fulling mills, or mills for any other manufacture, for his own profit and advantage, but without in anywise obstructing the said water-courses, rivers and streams, either by changing their course, or diminishing the volume of the water thereof, nor thereby preventing the Seignior or Seigniors from continuing to use such water-courses, rivers and streams, in the same manner as they were using the same at the time of their commutation, for his or their Banal grist mills, or other mills already existing and in operation.

Cens et rentes to be payable as agreed upon until commutation be effected.

XII. That the Censitaire or proprietor *en censive* shall continue to pay to his Seignior the *cens et rentes* which he or his predecessors shall have agreed to pay, so long as he shall not have commuted.

Unconceded lands to be conceded on certain conditions.

XIII. That the Seignior shall be bound to concede at the rate of two *sols per arpent*, all waste lands except such as are covered with maple trees or sugaries, which shall continue to be governed according to the custom established in each seigniorly respectively, and such Seignior may be compelled so to do by legal proceedings before the Circuit Court of the County wherein such seigniorly shall be situate, and there shall be no appeal from the decision of the said Court, but the *cessionnaire* shall be bound to perform the duties of actual settlement, and to clear five *arpents* in superficies in the course of the first year, to ensure payment of the *cens et rentes*, and afford to the Seignior a good and valid security for his so doing.

Domain limited.

Banalities defined.

Proviso: Tools limited.

XIV. That the Seignior shall not have as a domain more than five hundred *arpents* of land, such land to be contiguous and not divided into several parcels, and his grist mills shall only be banal to such *Censitaires* as shall have not commuted, and then only as regards the grain consumed by the family of the Censitaire, and not otherwise; Provided that the Seignior shall maintain his said banal mills in good repair, and that he shall not charge for grinding such grain more than the other proprietors of mills.

Honorary rights abolished.

XV. That from and after the passing of this Act, all honorary rights, (*droits honorifiques*) shall be and are hereby abolished.

Amount of concessions to each individual limited

XVI. That it shall not be lawful for the Seignior to concede the same individual, and to his children under the age of eighteen years a greater extent of land than one hundred and twenty acres

in superficies, under a penalty of *twenty-five* pounds currency, recoverable before any Court of competent jurisdiction, one moiety whereof shall go to the party prosecuting, and the other to the Crown, and any concession of a greater number of *5 arpens* of land shall be *pleno jure* null and void.

XVII. That the right of pre-emption and the *retrait conventionnel* shall be abolished, and shall not hereafter be stipulated in titles of concession, nor exercised in judicial and forced sales, nor in private sales, unless in the latter case, the Seignior shall prove **10** fraud. Pre-emption and Retrait limited to certain cases

XVIII. That the claim of the Seignior shall be privileged for *cens et rentes*, for five years arrears only, and to *lods et ventes* during the two first years of the exhibition of the title to the Seignior, **15** carrying *saisine*; but in both these cases, the Seignior must sue for the recovery of the amounts claimed, in the Court having jurisdiction, according to the amount of such claims respectively. Privileged claim of Seignior limited.

XIX. That it shall not be lawful hereafter for the Seignior to stipulate with, nor to require from his Censitaires, any reservation **20** of mill-sites, mines, minerals, calcareous stone, timber or other wood, quarries of stone suitable for mill stones, or lime, or any other onerous reservations generally, whatsoever, excepting such as are mentioned in the preceding Sections. Certain reservations only to be stipulated hereafter.

XX. That it shall not hereafter be lawful for the Seigniors to **25** make oppositions *afin de charge*, for the preservation of their Seigniorial rights, to sales of real estate by authority of justice, under the penalty of being condemned to pay the costs thereof, and other charges occasioned by reason of such opposition; but it shall be the duty of the Sheriff to advertize such sale as being **30** subject to Seigniorial rights, and such notice shall be held to be sufficient, and shall be equivalent to an opposition *afin de charge* on behalf of the Seignior. Seigniors not to oppose *afin de charge* for Seigniorial rights.

XXI. That this Act shall extend to all real estate, and lands **35** conceded and held *a titre de cens et rentes* carrying *lods et ventes* situate and lying without the limits of Seigniority, fief or *arrière-fief*, any law to the contrary notwithstanding. Extent of Act.