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No. 317.

4th Session, 3d Parliament, 14 & 15 Viet., 1851.

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*.

Received and read a first time, Monday, 25th
August, 1851.

Second reading, Tuesday, 26th August, 1851.

Mr. Sol. Gen. DRUMMOND.

1867

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*.

WHEREAS it is expedient to facilitate the commutation of the tenure of lands held *en roture*, in the several fiefs and seigniories of Lower Canada, by more ample and more effectual legislative provisions than are now in force; Be it therefore enacted, &c. Preamble.

That the Act passed in the eighth year of Her Majesty's Reign, and intituled, "*An Act the better to facilitate optional commutation of the tenure of lands en roture in the Seigniories and Fiefs in Lower Canada, into that of franc aleu roturier,*" and the Act passed in the twelfth year of Her Majesty's Reign, and intituled, "*An Act to amend the Act passed in the eighth year of Her Majesty's Reign, and intituled 'An Act the better to facilitate optional commutation of the tenure of lands en roture in the seigniories and fiefs in Lower Canada into that of franc aleu roturier,'*" shall be, and they are hereby repealed." 8 Vict. c. 42, and 12 Vict. c. 49, repealed.

II. And be it enacted, That it shall be lawful for the owner of any land held *en fief* or *en roture* in Lower Canada, to free the said land from all seigniorial rights recognized by this Act, to be redeemable (*rachetables*) as being due or payable to the Seigneur, proprietor of the Seigniority in which such land is situate, on paying the price of the redemption (*rachat*) of such rights, in the manner hereinafter provided. Redemption of Seigniorial rights.

III. The only seigniorial rights and dues on which a money value can be set, and recognized by this Act to be redeemable as such, are the following:— What rights shall be redeemable.

1. All fixed rights, that is to say, all annual Seigniorial rents, (*redevances*) consisting in money, grain, fowls, articles, or fruits of the earth, payable under the name of Seigniorial *cens et rentes*, or under any other name whatsoever, which are only payable or due by the owner or holder of a portion of land so long as he is the owner or holder thereof, and according to the length of time during which he has been in possession, and the right of banality of mills for the grinding of corn therein, whether the same be driven by water or by wind.

2. All casual rights, which are due under the name of *quint, lods et ventes, relief*, or of any other designation whatsoever, upon mutations in the property or in the possession of any land.

Appointment
of Commission-
ers for the
purposes of
this Act.

IV. And be it enacted, That it shall be lawful for the 5
Governor to appoint three persons to be Commissioners
under this Act, in and for each of the Districts of Quebec,
Three Rivers, and Montreal; and for the purposes of this
Act, the Districts of Montreal and Quebec shall be con-
sidered as retaining their present limits, notwithstanding 10
any dismemberment thereof which may hereafter take
place for judicial purposes: And it shall be lawful for
the Governor to authorize at any time, three of the said
Commissioners to act as such Commissioners in and for
the District of Gaspé, as well as in and for the District or 15
Districts for which such Commissioners shall have been
appointed; and such authority may be granted by a letter
addressed to the said commissioners by the Provincial
Secretary, and shall have the effect of conferring upon
them the same powers and authority within the limits of 20
the said District of Gaspé, as they have in the District
or Districts for which they shall have been originally ap-
pointed.

Secretary.

V. That it shall be lawful for the Governor from time
to time to appoint a Secretary to the said Commissioners 25
for each of the said Districts, and the same to remove
and appoint another in his stead in case of removal,
decease or resignation.

Emoluments of
Commission-
ers, &c.

VI. That the said Commissioners and the said Secre-
taries shall receive for their services under this Act and 30
for their necessary disbursements, such compensation as
shall be allowed to them respectively by the Governor
in Council, and no other fees or emoluments whatsoever;
and the said compensation shall, in the first place, be
defrayed from out of the consolidated Revenue Fund of 35
this Province, and shall thereafter be reimbursed out
of the fund to be created under this Act as hereinafter
provided.

Their sittings.

VII. That the Commissioners appointed under this
Act shall hold their meetings in public, in such places 40
in the Districts for which they shall be respectively ap-
pointed, and at such periods as the Governor in Council may
from time to time determine, and inform them of through
the Provincial Secretary; and they shall give such public
notice of their said meetings as they shall in the same 45
manner be required to give; and at every such meeting
two of the said Commissioners shall form a *quorum*, and
any report, decision or act which shall be concurred in
by two of the said Commissioners, shall be considered
sa done and executed by the Commissioners for the Dis- 50

Quorum.

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trict in which the land or lands affected by any such report, decision or act, shall be situate.

VIII. That it shall be the duty of the said Commissioners, to draw up a schedule in tabular form in triplicate, of all lands held *en roture* in each Seigniority in the District for which they shall be appointed, shewing the price at which the Seigniorial rights with which the said lands are charged, may be redeemed, distinguishing the price of redemption of the annual rights and charges from that of the right of banality, and from that of the casual rights, and describing each land by the number which it bears in the land-roll, (*papier terrier*) or on the plan of such Seigniority, or if there be no such land-roll or numbered plan, then by the name of the present occupier, or if the lands be not occupied, then in any other manner they shall deem expedient.

Schedule to be made by Commissioners.

IX. That in order to determine the price at which each land may be freed from the said Seigniorial rights, the said Commissioners shall observe the following rules, namely :

Rules to be followed by Commissioners.

1. To establish the price of redemption of the annual rents, (*redevances*), a valuation shall be made of the total annual amount derived from the charges upon the land, and the said amount shall represent the interest of the capital sum which shall be the price of redemption, the calculation being made at the rate of legal interest.

Rents in money.

2. To establish the price of redemption of the rents (*redevances*) payable in grain, fowls, or other articles or fruits of the earth, an average year of their value shall be established according to the price of articles of the same nature, taken from the books of the merchants nearest to the place for the average year; to establish such average year, the fourteen years immediately preceding the period at which the valuation is made shall be taken, the two highest and the two lowest shall be subtracted; and the average year shall be established on the ten remaining years; the value of personal labour, *corvées*, shall be estimated in the same manner: but the price of redemption shall in no case be calculated at a higher rate than two pence for each superficial arpent of the land subject to such annual charges, unless the said land be a Town or Village lot.

In grain, &c.

3. To establish the price of redemption of the right of banality, an estimate shall be made of the decrease in the annual receipts of the banal mills to arise from the suppression of the right of banality and from the inhabitants being freed therefrom; the amount of the said estimate shall represent the interest of the capital which shall be the price of redemption of the banality for the whole

Banality.

of the Seignior, and the said capital shall be apportioned among all the lands subject thereto, according to their superficial extent.

Casual rights. 4. And in order to establish casual rights, an average year shall be established of their value in each Seignior; the fourteen years immediately preceding the period of the valuation shall be taken, the two highest and the two lowest shall be deducted, and the average year shall be established upon the ten remaining years, the amount of the said valuation shall represent the interest at the legal rate of the capital sum to be paid as the price of redemption of the said casual rights for the whole of the Seignior; and the said Capital shall be apportioned among all the lands, according to their value, which value shall be determined by the assessment roll of the municipality in which each land is situate, or, in the absence of such assessment roll, in such other manner as the Commissioners shall deem expedient to adopt.

Appointment of Syndic to represent censitaires.

X. That it shall be lawful for the *censitaires* of each Seignior to appoint a Syndic to represent them, and to maintain their rights and pretensions before the said Commissioners, either in person or by the intervention of one or more agents or advocates by him thereunto authorized; and said Syndic shall be appointed by the majority of the *censitaires* of such Seignior present at a meeting called for that purpose, after previous notice given on two following Sundays, immediately after divine service in the forenoon, at the door of the church of each of the Parishes lying wholly or partly within such Seignior, by one of the Justices of the Peace for the District in which such Seignior is situate, on the requisition of at least three of the *censitaires* thereof.

The Seignior may appear by attorney.

XI. That it shall in like manner be lawful for the owner of any Seignior to appear in person, or by his agent or advocate thereunto duly authorized, before the said Commissioners, for the purpose of maintaining his rights and pretensions, with regard to the valuing of the redeemable rights in his Seignior.

Deposit of Schedules.

XII. That as soon as the Schedules relative to the Seignories shall be completed in the manner hereinbefore provided, the Commissioners shall transmit a triplicate of the Schedule relative to each Seignior, to the Receiver General of this Province; they shall deposit another triplicate in the office of the Superior Court in the District, in which the Seignior is situate, or if such Seignior be situate in two Districts, then in the office of the said Court in each of such Districts; and shall retain the other triplicate in their hands until it shall be otherwise provided by law; and they shall give public notice of their having so deposited the same, in the

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terms of the form A, annexed to this Act, or in other terms of like import, in the English and French languages, in at least two newspapers published in the District in which such Seigniori is situate, or in one newspaper 5 only, if there be only one published in such District.

XIII. That it shall be lawful for the owner of any land held *en roture*, as soon as the Schedule for the Seigniori in which such land is situate shall be completed and deposited as aforesaid, to redeem all the Seigniorial rights 10 to which such land is subject, at the rate specified in such Schedule, and in one or the other of the modes hereafter provided, but not otherwise.

Redemption to be according to price in Schedule.

XIV. That it shall be lawful for any such owner to pay the amount of such commutation in money, to the 15 Receiver General of the Province, or such officer as shall be appointed by him for that purpose, who, if the sum offered him is the same as that set forth in the said Schedule as the price at which such land may be freed as aforesaid, shall give and deliver to the said proprietor or to 20 his agent to that effect duly authorised, a receipt and certificate, which shall be drawn up in form of the Schedule B, to this Act annexed, or in terms of like import.

Price may be paid to Receiver General.

XV. That it shall be lawful for any such owner to effect a redemption of the said seigniorial rights on paying to 25 the said Receiver General or to his representative, only the twentieth part of the said price of commutation if the land charged with the rights which he is desirous of redeeming is situate in a seigniori in which the Crown is the seignior *dominant*, or only one-fifth part of the said 30 price of redemption if such land is situate in an *arriere fief* held under any seignior *dominant* other than the Crown; and in such cases, the said Receiver General or his representative shall give and deliver to such proprietor or to his agent a receipt and certificate in the 35 form of the Schedule C, to this Act annexed, or in words of similar import; and from the day of the date of the said receipt and certificate, the balance of the said price of commutation shall be *pleno jure* converted into a constituted rent, redeemable at any time, the interest whereof 40 shall become due and payable to the Seignior of the Seigniori in which such land is situate, at the same period as the annual rents (*redevances*) which it shall represent in part, and shall continue to be so paid from year to year, until it shall be redeemed by the payment 45 of the capital of the said rent.

Part of price may be paid.

And balance converted into a *rente constituée*.

XVI. That every such land so liberated by the redemption of the said Seigniorial rights in any of the modes above provided, shall, from the day of the date of the receipt and certificate of the Receiver General, or of his 50 representative, shewing that the Seigniorial rights with

Land released to be in *franc alevé*.

which the said land was charged have been commuted, be held in *franc aleu roturier*.

Redemption of
rente consti-
tucée.

XVII. And be it enacted, That every constituted rent (*rente constituée*) established by virtue of this Act, shall be redeemable at the option of the owner of the land by one payment, including all arrears which shall not be prescribed, in cases where the Seigneur has the right of alienating such rent; but if the seignior be entailed (*substituée*) or held by a tutor, curator or administrator, the rent and arrears only shall be received, and the principal sum shall only become payable in the cases by law provided, or when the party to whom the rent is payable shall have power of alienating the seignior wherein it may be due.

Moneys arising from redemption to be immovable property.

XVIII. That all moneys arising from the redemption of seigniorial rights under this Act, whether the same be paid as aforesaid to the Receiver General, or remain as the principal of a *rente constituée* or otherwise, (including interest) shall be held to be immovable property by fiction of law and deemed to be *propres* belonging to any party to whom the Seignior in which such land is situate shall be *propre*, and shall accordingly be subject to investment, and being so invested *bonâ fide* with a proper declaration of *emploi*, shall be substituted for the rights they represent, and shall have the same destination as such rights would have had.

Payment of price of redemption of constituted rent.

XIX. That whenever any *rente constituée* created under this Act shall be redeemed, the price of the redemption shall also be paid over to the said Receiver General, and every such *rente constituée* shall be considered in matters of succession, and in judicial proceedings and to all other intents and purposes whatever, as being a territorial right attached to the domain of the Seignior to the Seigneur or proprietor of which it is payable, and shall not be liable to be transferred, seized, sold, alienated, hypothecated or mortgaged apart from the said Seignior, but shall form part of the same, and shall also be transferred, seized, sold, alienated, hypothecated, mortgaged, and legally dealt with along with the said Seignior, shall have the same privilege *ex causâ* as the right of the *baillieur de fonds* and the like preference over all other hypothecary claims affecting the said land, as such Seigneur or proprietor would by law be entitled to for the recovery of any Seigniorial dues upon or arising out of such land previous to the redemption of the said dues; but the creditor shall not have the right to exact more than five years' arrears of any such rent.

I shall be returned to the Seigneur in default of opposition.

XX. That if, after the expiration of three months from the day of the receipt of the price of redemption of the Seigniorial Rights due or payable on any land

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whatsoever, the proprietor of the Seignior in which such land is situate, shall produce to the Receiver General a certificate, granted by the Clerk of the Superior Court for the District in which the schedule relative to such

5 Seignior, or a triplicate thereof, is deposited, stating that there is no opposition to the payment of the said price of redemption, the said Receiver General shall pay the amount of the said price to the said Seignior, with legal interest thereon, to be computed from the date of

10 the collection thereof, on his giving a duplicate receipt therefor.

XXI. That every proprietor of a Seignior who shall have within his *mouvance* another or several fiefs, and every hypothecary creditor of the proprietor of any

15 Seignior the Schedule relative to which or a triplicate thereof shall be deposited in the office of the Clerk of the Superior Court sitting in the District in which such Seignior or part thereof is situate, shall file an opposition to the distribution of all moneys arising, or which may

20 arise from the redemption of the Seigniorial Rights in such Seignior, for the preservation of their respective rights, and every such opposition shall be filed in the said office and have effect for thirty years, and if any such opposition be renewed within a less time than thirty years, the

25 opposant shall only be entitled to the costs of one single opposition.

Opposition by Seignior's creditors.

XXII. That so soon and whenever the said Receiver General shall have received, either by himself or by his representative, an amount equal to or exceeding the sum

30 of *five hundred pounds* currency for the redemption of the Seigniorial Rights in any Seignior whatsoever, or of the constituted rents which shall represent them, the amount so received, together with legal interest from the date of the receipt of the sums respectively forming such

35 amount, shall be deposited by him in the hands of the Clerk of the Superior Court sitting in the District wherein the Schedule relative to the said Seignior or a triplicate thereof shall have been deposited in the office of the Clerk of the said Court; and the said Court shall

40 make a distribution of the said moneys among the creditors, according to the order of their hypothecs, and the preference of their respective privileges; but in every case the sums so received and deposited by the Receiver General or his representative, for the price of the redemption of the Seigniorial Rights, due upon the lands situate in

45 an *arriere fief* the Seignior whereof is any other Seignior than the Crown, such Seignior *dominant* shall be entitled to receive by privilege and preference over all creditors of the Seignior holding of him, a fifth part of the said

05 price of redemption as being the proportion of the price of redemption due to him in his quality of Seignior *dominant*.

Distribution of moneys to opposants.

Corporations
may redeem
under this
Act.

XXIII. And be it enacted, That those who hold in mortmain, and persons holding entailed lands, and Corporations, tutors, curators, and administrators possessing lands, held *en roture*, the tenure whereof may be commuted with advantage to those whom they represent, may effect such commutation by paying the entire price of the redemption of the Seigniorial Rights with which such lands are charged, out of the moneys of those whom they represent, or by paying part of such price as hereinabove provided, and validly binding those whom they represent to the payment of the constituted rent (*rente constituée*) into which the balance shall be converted; provided the tutors, curators and administrators and holders of entailed lands, observe the formalities required by law in the alienation of the property of such persons, holding in mortmain or corporations, or of those whose rights shall be represented by such tutors, curators, administrators or holders of entailed lands; but persons holding in mortmain, and Corporations shall not be required to observe any other formality in or before the redemption of the said rights than those prescribed by this Act.

Communities,
&c. may invest
moneys arising
from commu-
tation.

XXIV. And be it enacted, That it shall be lawful for the several religious or ecclesiastical communities in Lower Canada, holding in mortmain fiefs or seigniories therein, to invest from time to time, as they shall see fit, in any lands or tenements in this Province, or in any public or private securities in the United Kingdom, or in this Province, which they shall deem the most advisable, or advantageous to their respective communities or corporations, any sums of money that may accrue to them from any commutation made under this Act.

Arrears.

XXV. And be it enacted, That it shall not be lawful for the owner of any land held *en roture* to effect the redemption of the Seigniorial rights due thereupon until he shall have paid to the Seignior of the Seignior in which such land is situate, all arrears of Seigniorial rights due for and in respect of such land.

Indemnity to
Seigniors.

XXVI. And whereas the period of time which has elapsed since the Courts of Justice in Lower Canada have ceased to exercise the powers formerly vested in the Governor and *Intendant* of New France, by the ancient laws of the country, for the purpose of preventing the proprietors of Seigniories from extending their pretensions beyond the bounds assigned by law; and whereas some of the said proprietors of Seigniories who have exercised lucrative privileges and exacted rents which the ancient laws of the country did not authorize, may have done so in good faith, and may have been led into error by long custom and by the tacit if not by any formal sanction of the Government and of the tribunals of the country; and whereas it is right to provide means for indemnifying such of the said Seigniors as may establish a just claim to in-

demnity on account of the revival of the ancient laws aforesaid; Be it therefore enacted, that a Public Fund shall be formed for the payment of such indemnity as may be equitably due to the owners of Seigniories in Lower Canada, and also for the repayment to the Consolidated Revenue Fund of this Province of the expenses to be necessarily incurred in carrying this Act into effect.

Indemnity fund.

XXVII. That the said fund shall be designated as the Commutation Fund, and shall be formed as follows, namely:

Commutation fund.

- 1. From the amount of all rights of *quint* now due and still unpaid to the Provincial Government, and of all those which shall hereafter become due in fiefs held directly of Her Majesty.
- 2. From the share accruing to Her Majesty as Seignior *dominant* out of the sums paid to the Receiver General for redeemable rights.
- 3. And from the amount derived from the sales or leases of mines and mineral soils, either in the fiefs and Seigniories, or in any other part of Lower Canada.

XXVIII. That it shall also be the duty of the Commissioners appointed under this Act, to enquire respecting any claim for indemnity which shall be submitted to them by the Seigniors who shall pretend to have suffered, or to be exposed to suffer loss, by reason of any Act other than this Act, passed or to be passed in the present Session of Parliament, concerning the rights or pretensions of the said Seigniors, and to make a report thereon to the Legislature of this Province at its next Session.

Commissioners to enquire into losses.

XXIX. And whereas it is important to ascertain the extent of the lands remaining waste, and unconceded in the several Seigniories in Lower Canada, be it enacted, that it shall be the duty of the said Commissioners to ascertain the extent of all lands, and parcels of land remaining waste and unconceded in the said Seigniories, and to establish the value in money of the said lands, and parcels of land, and also the value of the right of *domaine direct* held therein by the Seigniors thereof, and to make a report thereon to the Legislature at its next Session.

Valuation of waste lands, &c.

XXX. And be it enacted, That it shall be lawful for the Governor in Council, through the Provincial Secretary, from time to time to give such instructions to the said Commissioners as he shall deem expedient, in relation to the several enquiries which they shall have to institute under this Act, and the manner in which they shall be conducted, provided such instructions be not in any manner contrary to the intent of this Act.

Governor may give instructions to Commissioners.

Certain powers conferred upon them.

XXXI. And be it enacted, That the said Commissioners shall for all the purposes of this Act, have full power and authority to examine upon oath (which oath any one of them may administer,) every person who shall appear before them, either as a party interested or as a witness; 5 and shall have full power and authority to summon before them any person whom they shall think it advisable to examine, touching any of the matters submitted to their consideration, and the facts which they shall have to ascertain in order to carry the provisions of this Act into 10 effect, and to compel them to bring with them any book, plan, paper, instrument, document or thing mentioned in such summons and deemed necessary for the purposes of this Act; and if any person so summoned shall refuse or neglect to appear before them, or if after being summoned 15 and appearing, such person shall refuse or neglect to answer any lawful question to him addressed by the said Commissioners or any of them, or to bring any book, plan, paper, instrument, document or thing in his possession which he shall have been required to bring with him 20 or to furnish by such summons, the said Commissioners may order such person, if he be not already before them, to be apprehended and brought before them, and may in their discretion commit him to the Common Gaol of the District, for a period not exceeding *three months*: and 25 any wilfully false statement made on oath before the said Commissioners or any of them, shall be deemed wilful and corrupt perjury, and punishable as such.

Seigniories exempted from this Act.

XXXII. And be it enacted, That nothing in this Act contained shall extend or apply to any Seigniorship held of 30 the Crown, nor to any Seigniorship of the late order of Jesuits, nor to any Seigniorship held by Ecclesiastics of the Seminary of St. Sulpice, nor to either of the Fiefs Nazareth, St. Augustin and St. Joseph in the City and County of Montreal, nor to any of the lands held *en roture* 35 in any of the said fiefs and Seigniories.

Interpretation clause.

XXXIII. And for the interpretation of this Act, Be it enacted, That the word Seigniorship wherever it shall occur in this Act, shall be construed as meaning any part of a fief, *arrière fief* or Seigniorship held by a single individual, 40 or by a Corporation, or held by several persons in common (*par indivis*) as well as the whole of a fief, *arrière fief*, or Seigniorship, except in such parts of this Act in which the words "*arrière fief*" and "*Seigniorship*," are made use of to distinguish the *fief dominant* from the *fief servant*; and the 45 word "*Seignior*" shall be construed as meaning any Corporation, or any sole proprietor, and all persons who are proprietors in common, (*par indivis*) of any part of a fief, *arrière fief* or Seigniorship, as well as any person or Corporation, sole proprietor, and all persons proprietors 05 jointly and *par indivis* of the whole of any such fief, *arrière fief*, or Seigniorship, and the words "*Seigniorial*

rights" wherever they occur in this Act, shall include and be held to include the right of conventional pre-emption, *retrait conventionnel*, and all feudal or Seigniorial rights, duties, charges, and obligations whatsoever.

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*Form A.*

Public notice is hereby given that the Schedule (*of the fief, arrière-fief or of the Seigniorly*) of (*name of fief or Seigniorly*) shewing the prices at which the various feudal and Seigniorial rights, dues, charges, obligations and rents due and payable upon each land in such fief (*arrière fief or Seigniorly*) are redeemable, is completed, and that a triplicate copy thereof has been deposited in the office of the Receiver General, another in the office of the Superior Court in the District of \_\_\_\_\_ and the third remains in the possession of the undersigned.

*Here give the name of the locality in which the Commissioners are sitting, and the date.*

A. B. } Commissioners of  
C. D. } commutation for the  
E. F. } District of

\_\_\_\_\_

*Form B.*

OFFICE OF THE RECEIVER GENERAL.

I do hereby certify that A. B. proprietor of (*name of the land freed*) hath this day paid to me the sum of \_\_\_\_\_ being the price of the redemption of the said land from all feudal and Seigniorial rights, dues, charges, obligations and rents with which the said land was chargeable as shewn in the Schedule relating to the fief (*arrière fief or Seigniorly*) of \_\_\_\_\_ and that by an Act of the Provincial Parliament passed in the Session thereof held in the fourteenth and fifteenth years of Her Majesty's reign, and intituled, "*An Act to facilitate the redemption of Seigniorial rights in Lower Canada, and to convert the tenure of lands chargeable there-with into that of franc aleu roturier,*" such land is from this day released from all such feudal and Seigniorial rights, dues, charges, obligations and rents.

Made in duplicate at \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_ 18 \_\_\_\_\_

F. H. Receiver General.

\_\_\_\_\_

