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No. 78.

3d Session, 3d Parliament, 18 Victoria, 1850.

BILL.

**An Act to amend the Act to encourage
the establishment of certain Societies,
commonly called Building Societies,
in that part of the Province of Canada
formerly constituting Upper Canada.**

**Received and Read a first time, Monday, 10th
June, 1850.**

Second Reading, Friday, 14th June, 1850.

MR. BELL.

78.

BILL.

An Act to amend the Act to encourage the establishment of certain Societies, commonly called Building Societies, in that part of the Province of Canada formerly constituting Upper Canada.

WHEREAS in the tenth section of the Act passed Preamble. in the ninth year of Her Majesty's Reign, and intituled, "*An Act to encourage the establishment of certain Societies commonly called Building Societies, in that part of the Province formerly constituting Upper Canada,*" it is among other things provided, that it shall and may be lawful for every such Society to take and hold any real estate or securities thereon, *bonâ fide* mortgaged or assigned to the said Society, either to 5 secure the payment of the shares subscribed for by its members, or to secure the payment of any loans or advances made by or debts due to such Society, and that they may also proceed on such mortgages, assignments or other securities for the recovery of the moneys thereby 10 secured, either at law or in equity or otherwise; And it is expedient that no doubt should exist with respect to the power and legality of carrying into force the stipulations of the Shareholders among themselves, or as to the power of the Society to loan money upon property 15 actually belonging to any Member thereof, before and at the time at which any moneys may be advanced, as well as for the actual purchase of such property and erection of buildings thereon: Be it therefore enacted, &c.

And it is hereby enacted by the authority of the same, Certain stipulations declared valid. 25 That from and after the passing of this Act, whenever any such Society shall have received from any Shareholder an assignment, mortgage or transfer of any real estate belonging to him or her, to secure the payment of any advances, and containing an authority to such Society to 30 sell such real estate in case of non-payment of any stipulated number of instalments or sum of money, and containing also authority and power to such Society to apply the proceeds of such sale to the payment of the advances, interest and all other charges due to such Society, such 35 stipulations and agreement shall be valid and effectual, and binding to all intents and purposes whatsoever, and it shall be lawful for such Society to cause the same to be enforced, either by foreclosure or by an action or pro- How enforced.

Where action shall be brought.

ceeding in Her Majesty's Court of Queen's Bench or Common Pleas in Upper Canada, which action shall be brought in the Court of Queen's Bench or Common Pleas, within the County or United Counties in which the lands so given in security lie, and may be brought in the names of the President and Treasurer of such Society, describing them to be such President and Treasurer, or in the Corporate name of the Society. 5

What allegations and proof shall be necessary in actions on such stipulations.

II. And be it enacted, That in any action or proceeding to be instituted by any such Society for the purpose of realizing or bringing to sale any property or estate assigned, mortgaged or transferred to the Society by any person or persons as aforesaid, it shall not be necessary to set forth the special matter in the declaration, but it shall be sufficient to allege that the defendant assigned, mortgaged or transferred the real estate (describing the same) to the Society, and that the amount, or a sufficient part of the amount, stipulated by him to be paid, has become and remains due and owing, whereby by virtue of this Act, and of the Act hereby amended, an action hath accrued to the Society, to have the said estate and property sold; and in order to maintain such action, it shall be sufficient, in addition to the customary evidence of the assignment, mortgaging or transfer of the said property or estate, to prove by any one witness, (whether in the employment of the Society or not) or by the books of the Society or any other means, that the defendant is in arrears and indebted to the Society in or exceeding a sum on the accruing of which by the terms of such assignment, mortgage or other agreement, the Society may have the right to have the said property or estate sold; and thereupon the Court shall pass judgment for the said amount, and by such judgment order the property to be sold by the Sheriff of the County or United Counties wherein it may lie, after three insertions in the course of three months, at least, in any newspaper published in the County or Counties where the lands or property may lie, and it shall not be necessary for the Sheriff to go through any formalities in seizing the said lands or otherwise; and all such proceedings shall, in so far as may be, and if it be not otherwise herein directed, be conducted in like manner as proceedings under ordinary writs of execution, and the deed to be given by the Sheriff shall have the like effect and be in the same form (as far as may be) as a deed given under an ordinary writ of execution: Provided always, that the Sheriff shall, in addition to his disbursements, be entitled to deduct only two per centum commission from the gross proceeds of sale (which two per centum shall be in lieu of poundage,) and to take and receive the sum of *twenty shillings*, and no more, for the drawing of the deed, which *twenty shillings* is to be paid by the purchaser at such sale. 10 15 20 25 30 35 40 45 50

III. And be it enacted, That every such Society shall have power either to forfeit and declare forfeited to the Society, the share or shares of any member who may be in arrear or neglect to pay such number of instalments 5 or monthly subscriptions as may be or are fixed by any stipulation or By-law, and to expel such member from the Society; and the Secretary shall make a minute of such forfeiture and expulsion in the books of the Society, or otherwise recover the same by an action of debt, which 10 action (if the amount in arrear do not exceed the sum of ten pounds) may be brought in the Division Court of the Division wherein the office of the Society is kept.

*Society may
forfeit shares
or sue for
instalments.*

IV. And whereas doubts have arisen as to the construction of the first and tenth sections of the Act hereby 15 amended, with respect to the right of such Societies to loan and advance moneys on property and estate actually belonging to and acquired by the borrower at or before the time of such borrowing and advance; and it is expedient to remove such doubts: Be it therefore declared 20 and enacted to have been and to be the intention of the said Act, that such Societies should have the power to advance, and such Societies are hereby authorized to advance in the manner usual with any such Society, moneys on any real estate whatsoever of any member of 25 such Society, as well for the actual purchase of real estate and for the erection of buildings thereon, as generally for any purpose whatsoever, upon the security of any real estate belonging to any such member at the time of his borrowing such moneys, and to take and receive 30 an assignment, mortgage or transfer of all or any such real estate in security for such advances, on the same conditions and with the same privileges in all respects as any other real estate by the said Act and by this Act authorized and required to be assigned, mortgaged or 35 transferred; and that all or any person or persons whomsoever, whether capitalists or otherwise, shall be at liberty to become members of any such Society; and that Co-partners and Corporate Bodies may hold shares therein, in the same manner as single individuals.

*Provisions of
sec. 1 and 10
of the Act
explained.*

*Who may be
Members of
Building
Societies.*

40 V. And be it enacted, That this Act shall be a Public Act, and as such be judicially taken notice of by all Judges and Justices, and other persons whomsoever, without being specially pleaded.

Public Act.