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No. 11.

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

BILL.

An Act for the protection of settlers in
Lower Canada.

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

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

MR. HÉBERT.

TORONTO :

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act for the protection of settlers, in certain cases, in Lower Canada.

WHEREAS extensive tracts of wild land in many parts of Lower Preamble.
Canada, and more especially in the Townships thereof, have heretofore been granted to, or have come into the hands of non-resident proprietors, many of whom have not, or for long periods of time have not had any known resident agents for the management thereof, and many of whom are not, or for long periods of time have not been so much as generally known to be proprietors of such lands; And whereas the surveys of many of such tracts have been most imperfect and unsatisfactory, and the lines of boundary between the lands of different proprietors and also between such lands and those of the Crown are in very many cases doubtful or unknown, or have even never been drawn; And whereas great numbers of settlers (many of whom did not, or even now do not know on whose lands they are) have long held and still hold possession of many portions of such tracts of lands, and have cleared and otherwise greatly improved the same, and have borne and still bear all taxes and other public burthens thereon, as if they had been and were the proprietors thereof; And whereas the litigation which has taken place between such proprietors and settlers has already been productive of grave social evils, and the continuance of such litigation (unless the delays and costs thereof, and the hardships thence to result, be as much as possible lessened by legislation) must lead to still worse results; And whereas it is at once just and expedient, with the view of averting these evils, to provide for the protection of settlers upon wild land in Lower Canada, at least for a limited time, by such enactments as hereinafter are set forth, for the lessening of such delays, costs, and hardships; Therefore Her Majesty, &c., enacts:

1. Any settler or individual who, by himself or by his *auteurs*, shall have openly and publicly enjoyed or shall hereafter so enjoy the undisturbed possession, for the five years next before the institution of any suit for his ejection therefrom, of any lot or part of a lot of land in Lower Canada, which, when he or his *auteurs* acquired possession thereof, was wild and unimproved, and shall have increased the value thereof by improvements made with the view of permanent settlement, thereon as owner thereof, shall be held entitled to claim in such suit, in the manner and under the limitations hereinafter set forth, the increased value which such improvements may have given thereto, before he shall be dispossessed thereof.

Settlers on wild lands with five years possession entitled to the value of their improvements in certain cases.

Expertise, if the parties do not agree as to the amount of such value.

Value of the land without improvements to be also ascertained.

Experts not bound by mere technical rules.

Proprietor may pay the value of the improvements or receive the value of the land without them, by instalments.

Writ of possession not to issue without proof of payment or tender of value of improvements.

In suits hereafter the proprietor not to recover certain costs, unless he gives notice of the action.

II. Should the parties not agree as to such increased value, then upon the summary demand of either of them to that effect, made after the title of the proprietor shall have been either admitted or proved to the satisfaction of the Court, and before the inscription of the cause for final hearing, such increased value, and also the value of the land 5
irrespectively of such improvements, shall be ascertained by three sworn *experts*, one to be named by each party, and the third by the Court before which such suit may have been instituted; and if either party refuse or neglect to name an *expert*, the Court shall name one on his behalf. 10

III. Such *experts* shall in all cases decide according to equity and good conscience, and shall be bound by no merely technical rules of law or procedure; and their award, or the award of any two of them who may agree, being otherwise sufficient, shall be summarily homologated by such Court, without regard to any considerations of form 15
whatsoever.

IV. Upon the homologation of such award, it shall be optional with the proprietor either to take a judgment of the Court declaring the land to be the property of the settler, charged (by privilege of *baillieur de fonds*) with payment of such value of the said land irrespectively of 20
such improvements, as being the price thereof, payable in not less than two nor more than five equal yearly instalments, as the Court may ordain, and bearing interest until paid,—or to take a judgment evicting the settler upon payment or tender to him, within one year after the rendering of such judgment, of such increased value given to the said 25
land by such improvements, and declaring the said land, in default of such payment or tender within such year, to be the property of the settler, charged (by privilege of *baillieur de fonds*) with payment of such value of the said land irrespectively of such improvements, as 30
being the price thereof, payable in not less than two nor more than five equal yearly instalments, as the Court may ordain, and bearing interest until paid.

V. No writ of possession shall be sued out under any such judgment, unless upon proof summarily made to the satisfaction of the Court, of such payment or tender within such year, and of the con- 35
tinued possession of the settler notwithstanding such payment or tender; and in case of actual payment not having been made, any balance remaining due to the settler, after deduction of such further costs as may be taxed upon such writ of possession, shall be paid or again tendered to him, at the time of the execution of such writ of 40
possession.

VI. If in any such suit instituted after the passing of this Act, the settler, being entitled to an *expertise* under this Act, shall demand the same without having contested the title of the proprietor, such proprietor, unless at some time between three and six months before the 45
institution of such suit, he shall have served upon the settler a sufficient written notice of his intention to institute the same, and of a domicile within the District whereat an answer to such notice may be served upon himself, shall not be entitled to recover against the settler the costs of such suit, as contra-distinguished from those arising out of 50
or connected with any *expertise* therein had under this Act.

VII. Upon being served with such notice, the settler, at any time within one month thereafter, may serve upon the proprietor a written answer thereto, offering to leave the land upon payment of a specified sum, as being the increased value given thereto by his improvements 5 thereon, or in case of refusal by the proprietors to pay such sum, then upon payment of whatever sum may thereafter be awarded for such increased value, under this Act, and tendering the name of his *expert* in the premises.

Settler may serve an answer to such notice, naming his *expert*, &c.

VIII. If within one month after being served with such answer, the 10 proprietor shall pay or in due form tender to the settler the specified sum thereby demanded, and if the settler shall not have left the land within one month from the date of such payment or tender, it shall be competent to the proprietor, by summary petition (whereof the settler shall have had reasonable notice) to the Superior Court in the District 15 wherein the land is situate, to demand a writ of possession for such land.

If the proprietor pays for the improvements, settler compellable to quit.

IX. Such writ of possession, upon proof summarily made to the satisfaction of the Court, of such notice and answer, and of the service thereof, and of such payment or tender, and of the continued 20 session of the settler, shall be forthwith granted with costs (taxed as the Court may order) against the settler, and shall have the same effect and be executed in the same manner as though issued in pursuance of a final judgment rendered by such Court in a suit duly instituted for 25 his ejection from such land; Provided always, that in case the settler shall not have been actually paid the sum so demanded by him, and the amount of such costs shall be less than such sum or than any unpaid remainder thereof, then any balance due to him shall be paid or again tendered to him, at the time of the execution of such writ of possession.

Writ of possession to issue in such case.

Proviso for payment of any balance of value to settler.

30 X. Should the proprietor not see fit to pay or tender the sum by such answer demanded, it shall be competent to him, at any time within two months from the service upon him of such answer, by summary petition (whereof the settler shall have had reasonable notice) to the Superior Court in the said District, to demand an *expertise* in the pre- 35 mises, under this Act.

Proprietor may demand *expertise* in certain cases.

XI. If within one month from the service of such answer, payment or tender of the sum thereby demanded shall not have been made by proprietor to the settler, it shall be competent to the settler, at any time 40 within the month next following, by the like petition to demand such *expertise*.

Settler may demand *expertise* in certain cases.

XII. Upon such demand duly made by either party, such Court shall take cognizance thereof, and shall cause such *expertise* to take place, and the award therein made shall be homologated, and judgment thereon shall be rendered,—the whole, to all intents whatsoever, as 45 though a suit had been instituted in ordinary course before such Court, by the proprietor, for the ejection of the settler from the land in question, and as though the settler, without contesting the title of the proprietor, had therein demanded an *expertise* under the foregoing provisions of this Act.

Court to order *expertise*.

Settlers, in certain cases to recover costs, not being costs of *expertise*.

XIII. If in any suit instituted after the passing of this Act, for the ejectment of any settler, such settler, being entitled to an *expertise* under this Act, shall demand the same without having contested the title of the proprietor, and shall cause it to appear to the satisfaction of the Court that such suit was instituted,—either within the month 5
hereinbefore allowed for the service of his answer to such notice,—or after due service of an answer by him offering to leave the land upon payment of an amount which shall not appear to the Court to be unreasonable, and without default made on his part to abide by and carry out in good faith such offer,—it shall be competent to the Court, by its 10
judgment, to order that the settler do recover against the proprietor the costs of such suit, as contra-distinguished from those arising out of or connected with any *expertise* therein had under this Act.

Costs of *expertise* to be divided unless otherwise ordered.

XIV. All costs arising out of or connected with any *expertise* had under this Act, shall be equally borne by the parties thereto, unless the Court, from any special consideration of equity, shall adjudge otherwise; and the Court shall have full power and authority to tax such costs as it may see fit.

Forms of notice and answer, and how to be served.

XV. Any notice or answer to be served under the sixth and seventh sections respectively of this Act, may be in the form of the Schedules 20
A and B respectively to this Act appended, or in any other equivalent form, and may be served by the leaving of a true and certified copy thereof, either personally with the party, or at the domicile (real or elected) of such party, by any Bailiff or other literate person not disqualified to attest such service; Provided always, that in case of such 25
service being made by any person other than a Bailiff, the same be attested by such person under oath; And provided also, that no defect of form in the return or affidavit of such service shall avail to set aside the same, if it be shown (as at any time thereafter it may be) by further examination of the party making such service, or otherwise, that the 30
same was in fact duly made.

Proviso.

Proviso.

As to proof of notice and answer.

XVI. No express proof of the signature or hand-writing of any such notice or answer shall, in any case be required, but it shall be enough, if (upon contestation thereof) it shall appear to the Court to have been authorised by the party; and until denied by the party, 35
such authorisation shall always be presumed.

Punishment of persons fying notice or answer without authority.

XVII. Should it at any time appear to the Court, upon such contestation, that any person not having been thereto duly authorised has served or caused or procured to be served, or (after service) has fyled or caused or procured to be fyled before such Court, any such notice 40
or answer, or has aided in any wise in respect of such unauthorised service or fying, it shall be competent to the Court, (after notice and reasonable opportunity for defence, given to such person), summarily, and even without any special demand to that end by the interested party, to condemn such person to pay to such party his reasonable 45
costs and damages thereby occasioned, taxed at such amount as to the said Court may seem meet; Provided always, that no such summary condemnation shall lessen, prevent or impeach any other or further civil remedy of such party, in any case wherein such person may have acted with malicious intent,—or any criminal proceeding against such 50
person, in any case wherein he may have so acted as to be guilty of any misdemeanor or felony in the premises.

Proviso: such punishment not to effect civil damages or criminal proceedings.

XVIII. All proceedings for or in respect of any *expertise* under this Act, may be had, and all orders and judgments thereto relating may be made and rendered, as well in vacation as in term; and in case of absence of the Judge, the Prothonotary or Clerk of the Court having the jurisdiction in the premises, shall have all the powers of such Judge as touching the same, save only that all judgments for homologating any award and for finally ascertaining the rights of the parties, must be rendered by the Judge himself.

Proceedings for *expertise* may be in vacation. Prothonotary to have certain powers.

XIX. All judgments rendered under this Act, for homologating any award of *experts* and for finally ascertaining the rights of the parties, shall be final and without appeal; Provided only, that if the same shall have been rendered at the instance of a claimant proprietor, and without any admission of the title of such claimant on the part of the settler, such settler shall not thereby be deprived to his right of appeal upon the ground of title only.

Judgments homologating reports of *experts* to be final. Proviso.

XX. Nothing in this Act contained shall at all affect any right whatsoever of any proprietor, or of any possessor or occupant of land, under any agreement which may have been or hereafter may be entered into between them, or by virtue of prescription,—or the course of procedure, or the right of parties, in any suit or proceeding whatsoever not falling expressly within the purview of this Act, or wherein the rights hereby granted shall not have been in effect invoked or set up.

Act not to affect rights under agreement, prescription, &c.

XXI. In citing or referring to this Act in any Act or proceeding whatsoever, it shall be sufficient to refer to it as "The Lower Canada Settlers' Protection Act, of 1859."

Short title of Act.

XXII. This Act shall continue in force for five years, and from thence until the end of the then next Session of the Parliament of this Province, and no longer.

Continuance of Act.

SCHEDULE A.

Form of Notice, by Proprietor to Settler.

To A. B., of (stating sufficiently the address and designation of the settler.)

Take notice that I, C. D., of (stating sufficiently the address and designation of the claimant proprietor), intend to institute a suit against you, to evict you from your possession of

(describing sufficiently the land in question), which I claim as my property; and take notice also, that in order to enable you (should you so wish) to serve upon me within one month from this date, an answer to this notice, in terms of "The Lower Canada Settlers' Protection Act, of 1859," I hereby elect for my domicile within the district wherein the said land is situate, the house occupied by (describing sufficiently such house.)

Dated this day of , 18 .

C. D.

SCHEDULE B.

Form of Answer to such Notice.

To C. D., of (stating sufficiently the address and designation of the claimant proprietor).

In answer to your notice dated the _____ day of _____
 18____, served upon me, A. B., of _____ (*stating
 sufficiently the address and designation of the settler*), I hereby offer to
 leave the land therein described, upon payment of (*stating a precise
 sum*) as being the increased value given thereto by the improvements
 thereon, and which I hereby claim under "The Lower Canada Set-
 tlers' Protection Act, of 1859," or in case of your refusal to pay such
 sum, then upon payment of whatever sum may hereafter be awarded
 for such increased value under the said Act; and I further hereby name
 E. F., of _____ (*stating sufficiently the address and
 designation of the proposed expert*), to be my *expert* in the premises
 under the said Act.

Dated this _____ day of _____, 18____.

A. B.