

No. 89

2D SESSION, 3D PARLIAMENT, 12 VICTORIA, 1849.

BILL

An Act to explain and amend an Act of the Parliament of the late Province of Upper Canada, passed in the second year of Her Majesty's Reign, intituled, *An Act for the protection of the Lands of the Crown in this Province from trespass and injury*, and to make further provision for that purpose.

Received and read first time,

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Honble. Mr.

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C R O W N L A N D S
P R O T E C T I O N B I L L.

U P P E R C A N A D A.

An Act to explain and amend an Act of the Parliament of the late Province of Upper Canada, passed in the second year of Her Majesty's Reign, intituled, *An Act for the protection of the Lands of the Crown in this Province from trespass and injury*, and to make further provision for that purpose.

WHEREAS it is expedient to explain
 2 and amend a certain Act of the Preamble.
 Parliament of the late Province of Upper
 4 Canada, passed in the second year of Her
 Majesty's Reign, intituled, *An Act for the*
 6 *protection of the Lands of the Crown in this* Act of U. C.
2 Vict. c. 15.
cited.
Province from trespass and injury, and to
 8 make further provision for the protection
 of such Lands in that part of this Province:
 10 Be it therefore enacted, &c.

That so much of the first Section of the
 12 said Act as doth or may in any wise limit
 or restrain the provisions thereof, or the juris-
 14 diction of the Commissioners appointed or
 to be appointed under the authority of the
 16 same, to lands for the cession of which to
 Her Majesty no agreement hath been made
 18 with the tribes occupying the same, and
 who may claim title thereto, shall be and
 20 the same is hereby repealed; and that the
 said Act and all the provisions thereof shall
 22 extend and shall be construed to extend to
 all Lands in that part of this Province called
 24 Upper Canada, whether such Lands be sur-
 veyed or unsurveyed, for which no Grant,
 26 Lease, Ticket either of Location or Pur-
 chase, or Letter of License of Occupation
Part of sect. 1.
repealed.
And the act
extended to
all lands in U.
C. not granted,
leased, located,
&c.

hath been or shall have been issued, either under the Great Seal, or by or from the proper Department of the Provincial Government, to which the issuing of the same at the time belonged, and whether such Land be part of those usually known as Crown Reserves, Clergy Reserves, School Lands or Indian Lands, or by or under any other denomination whatsoever, and whether the same be held in trust or in the nature of a trust for the use of the Indians or of any other parties whomsoever.

Commissioners under the said act, may in cases of doubt issue a general notice to quit.

II. And be it enacted, That if upon investigation before the said Commissioners, or any one or more of them appointed under the said Act, against any one under the second Clause of the said Act, it shall appear to the said Commissioners that any person or persons hath or have been actually in possession of any such Lands or of any part thereof, or that any person or persons have at any time within twelve calendar months next before such investigation claimed to be in possession of any of such Lands, or of any part thereof, or claimed or pretended to have a right to such possession, but it shall nevertheless appear uncertain to such Commissioners who the party or parties may be who shall then be in actual possession of such Lands, or whether the persons in such possession claim or pretend to be in such possession in their own right, or merely as tenants, bailiffs, or servants of others, then and in every such case, it shall and may be lawful for the said Commissioners, or any one of them, to give a Notice to quit, similar to that required to be given by the said Act, but directed generally to all persons having or claiming possession of the Land in question, and to their tenants, bailiffs and servants, and all others whom it shall or may in any wise concern: which Lands shall be described in such Notice to quit and in every other Notice to quit under the said Act, with the same certainty as would be necessary in a Deed of Conveyance thereof from party to party, and shall require

As to the description of the lands in such notice.

such persons to quit and remove from the possession and occupation of such Lands within not less than thirty days from the day of the service of such Notice: and if all persons whomsoever, except such as shall have a written authority from such Commissioners, or one of them, to remain upon such Lands, shall not quit and remove from the possession and occupation of the same within the time specified in such Notice, it shall and may be lawful for the said Commissioners, or any one of them, to issue a Warrant of Removal under their hands and seals, or under the hand and seal of one of them, directed to the Sheriff of the County wherein such Lands are situate, setting forth such Lands with the same certainty as required in the said Notice to quit as aforesaid, and commanding him to eject and remove all persons whomsoever from such Lands, so unlawfully possessed or occupied, or claimed to be possessed or occupied as aforesaid, which Warrant the Sheriff to whom the same is directed, shall have full power and authority to execute, and shall execute and carry into effect, in the same manner as by law he is authorized to execute and carry into effect Writs issued by Her Majesty's Courts of Law, for restoring and delivering possession of Lands recovered in any action of Trespass and ejectment in that part of this Province.

Persons disobeying, the notice may be removed, on an order of the Commissioners directed to the proper Sheriff.

III. And be it enacted, That the Summons to appear issued upon any complaint made under the said Act shall in all cases contain such a description of the parcels of Lands with respect to which the proceeding is adopted, as would be necessary in a Deed of Conveyance thereof from party to party: and that henceforth it shall not be necessary that either the said Summons or the said Notice to quit shall be personally served upon the parties concerned, but it shall be sufficient to enable the Commissioners to proceed upon any such Summons or Notice, if the same shall have been served either by personally delivering the same to the person or persons

As to the description of the lands in any summons under the said act.

As to service of such summons.

in the actual possession or occupation of
 the Lands mentioned therein, or by leaving 2
 such Notice with the wife of such person,
 on the said premises, or by leaving the same 4
 with any grown person found on such pre-
 mises, and in such last case putting up a 6
 duplicate of such Notice in some conspi-
 cuous place on the same premises, or where 8
 no grown person is found on the said pre-
 mises, then by putting up duplicates of such 10
 Notice in four conspicuous places on such
 premises: Provided always, that no fine 12
 shall be imposed upon any party under the
 said Act, except upon personal service of 14
 such Summons, or service thereof on such
 person's wife as aforesaid. 16

Proviso:
 where a fine
 is imposed.

If the parties
 removed or
 return or are ex-
 pected by the
 sheriff to re-
 turn, a writ of
 removal by
 continuance
 may be ob-
 tained from the
 court of Q.
 B. for U. C.

IV. And be it enacted, That if after the
 execution of any Warrant of Removal, whe- 18
 ther such Warrant be issued by such Com-
 missioners, or any one of them, specially for 20
 the removal of particular parties, or generally
 for the removal of all parties found trespas- 22
 sing or intruding upon such Lands, the party
 or parties removed, or any other person or 24
 persons whomsoever, shall return or enter
 into or upon the premises with respect to 26
 which such Warrant of Removal was so
 executed, or if the Sheriff to whom such 28
 Warrant shall have been directed shall have
 reason to believe that any such person or 30
 persons or any others, will so return or en-
 ter into or upon such Lands, or any part 22
 thereof, unless the same be protected
 from such entry or intrusion, by the issue of 34
 process for the prevention thereof, it shall
 and may be lawful for such Sheriff, and he 36
 is hereby required to make a Special Return
 of such Warrant of Removal into Her Ma- 38
 jesty's Court of Queen's Bench for Upper
 Canada, setting forth the return entry or in- 40
 trusion of such person or persons, or his
 belief that such return entry or intrusion 42
 into or upon such Lands, will take place.
 unless the same be protected by the issue of 44
 process for the prevention thereof, and upon
 such Return to the said Warrant being so 46
 made as aforesaid, it shall and may be law-

ful to sue out of the said Court of Queen's
 2 Bench a Writ of Removal by continuance,
 as nearly as may be in the form to this Act
 4 prefixed marked A, and upon the Sheriff
 making a similar Return to such Writ of
 6 Removal by continuance, an *Alias*, and after
 that upon similar Returns, *Pluries* Writs of
 8 a similar description shall and may be issued
 as often as it may be necessary for the pro-
 10 tection of such premises against such intruders.

12 V. Provided always, and be it enacted,
 That upon a Rule to shew cause, to be ob-
 14 tained by any party concerned in such pro-
 ceedings, or shewing an interest entitling
 16 him, her or them to be heard in that behalf,
 and which Rule shall be served personally,
 18 on at least one of the Commissioners for
 the time being, appointed for the protec-
 20 tion of such Lands as aforesaid, the said
 Court of Queen's Bench shall and may or-
 22 der a *Supersedeas* to any such Writ *Alias* or
Pluries Writ as aforesaid, whereupon no fur-
 24 ther proceedings shall be had upon any such
 Writ of Removal by continuance, or upon
 26 the proceedings of the said Commissioners
 upon which the same was founded, but in
 28 the event of its being deemed necessary to
 proceed against such party or any other for
 30 intrusion or trespass into or upon any such
 Lands, resort shall be had to the like pro-
 32 ceedings of notice to quit and Warrant of
 Removal as at the first.

Such writ of removal by continuance may be superseded, upon causes shewn.

Proceedings if the party again intrude.

34 VI. And be it enacted, That in the case
 of any summary conviction of any party by
 36 the said Commissioners, or any one of them,
 for returning and unlawfully resuming the
 38 occupation of any such Lands, or any part
 thereof, or for trespass committed upon any
 40 such Lands, it shall and may be lawful to
 remove as of course such conviction by *cer-*
 42 *tiorari*, into Her Majesty's said Court of
 Queen's Bench for Upper Canada, and there-
 44 upon for the satisfaction of the fine set or
 imposed by such conviction, to issue into
 46 any of the Districts of Upper Canada one

Conviction before the commissioners may be removed as of course by *certiorari*.

And proceedings had for the satisfaction of any fine imposed by such conviction.

or more Writs of *Fieri Facias* and *Capias ad Satisfaciendum*, in the nature of the Exchequer Long Writ, as nearly as may be in the form to this Act prefixed, marked B, with an *Alias* and as many *Pluries* and *Testatum* Writs of the like description as may be necessary, till the amount of such fine be levied and made as in the case of other debts due to Her Majesty : Provided always, that if at the time of the removal of any such conviction by *Certiorari* as aforesaid, the party convicted shall be in custody under the Warrant of the Commissioners, or any one of them, for non-payment of such fine, he or they shall not be discharged from such imprisonment at the end of the time prescribed in such Warrant, if the said Sheriff shall then have a Writ of *Fieri Facias* and *Capias ad Satisfaciendum* for the levying of such fine, and shall have been unable to make the amount thereof of the goods and chattels, lands or tenements of such party, but such party shall in every such case remain charged in custody upon such Writ until the said fine be fully paid or satisfied, as in the case of other Crown debtors similarly charged.

Proviso : if the party convicted be imprisoned for non-payment of such fine, when the writ of execution issues

Commissioners may commit for contempt.

VII. And be it enacted, That the Commissioners appointed or to be appointed under the authority of the said Act, when engaged in the execution of their office, and each of such Commissioners when so engaged, shall have the same power and authority to commit for any contempt committed against them or him, as is now by law vested in Justices of the Peace in similar cases for contempts against them in the execution of their office.

WRIT OF REMOVAL BY CONTINUANCE.

UPPER CANADA.

Victoria by the Grace of God, &c.

*To the Sheriff of**Greeting :*

Whereas by a certain Warrant of Removal made by ^{one} _(or two, as the case may be) of the Commissioners appointed under the Great Seal of Our Province of Canada, for the receiving information and enquiry into complaints against persons for illegally possessing themselves of Lands of Our Crown ungranted and not under location, and Lands not ceded to Us or Our Predecessors by the Indian Tribes occupying the same, you were formerly commanded that *(here recite Commissioners, Warrant of Removal)* which said Warrant you lately returned to Us into Our Court of Queen's Bench before Us at Toronto, and thereupon certified to Us that *(here insert the Sheriff's Return setting forth the return of the party or parties, or his belief that he or they would return unless the Land be protected by the issue of Process for the protection thereof)* according to the form of the Statute in such case made and provided :
 Therefore, We command you, that immediately after receipt hereof you proceed to the said Lands and premises, and remove or cause to be removed all and singular such person and persons, if any, whom you shall find in or upon the same, from the possession thereof, and give and cause to be given to such person or persons as shall for that purpose be appointed by Our said Commissioners, or any one of them, under their or his hand and seal, the full, quiet and peaceable possession of the said premises and every part and parcel thereof, and that such person or persons, and all others having from time to time a similar Warrant from Our said Commissioners, or any one of them,

in such quiet and peaceable possession of
the said premises, that you support, help 2
and maintain from time to time, as often as
occasion shall and may require, and what 4
you shall do in the premises you certify to
Us in Our said Court of Queen's Bench, be- 6
fore Us, at Toronto, on the
day of Term next, 8
together with this Writ; and herein fail not
at your peril. 10

Witness the Honorable
Chief Justice, &c. (*as in other Writs issued* 12
out of the said Court.)

B.

WRIT OF FIERI FACIAS AND CAPIAS
AD SATISFACIENDUM.

UPPER CANADA.

Victoria by the Grace of God, &c.

To the Sheriff of

Greeting:

Whereas by a certain conviction had be- 14
fore
two of Our Commissioners appointed under 16
the Great Seal of Our Province of Canada,
for receiving informations and enquiring in- 18
to complaints against persons illegally pos-
sessing themselves of Lands of Our Crown, 20
ungranted and not under location, and Lands
not ceded to Us or Our Predecessors by the 22
Indian Tribes occupying the same, it was
considered by the said Commissioners (*here* 24
set out the conviction) which said conviction
for certain reasons We caused to be certified 26
to Us in Our Court of Queen's Bench before
Us at Toronto, according to the form of the 28
Statute in such case made and provided:
We therefore being willing to be satisfied the 30
said fine so by the said Commissioners set
and imposed upon the said 32
do hereby command you that you levy of
the goods and chattels of the said 34

2 in your Bailiwick, the amount
 of the said fine so set and imposed upon him
 as aforesaid, so that you may have that mo-
 4 ney in Our said Court of Queen's Bench
 before Us at Toronto, on the
 6 day of _____ next: and if
 it shall happen that sufficient goods and chat-
 8 tels of the said _____
 shall not be found in your Bailiwick for
 10 payment of the said fine, then We command
 you that you levy of the Lands and Tene-
 12 ments of the said _____
 in your Bailiwick, the amount of the said
 14 fine so set and imposed on him as aforesaid,
 and have that money in Our said Court be-
 16 fore Us on the day and at the place aforesaid;
 and if it shall happen that sufficient
 18 neither of goods or chattels, Lands or Tene-
 ments of the said _____
 20 shall be found in your Bailiwick for pay-
 ment of the said fine, then We command you
 22 that you take the Body of the said _____
 wheresoever he shall be found
 24 in your Bailiwick, and him safely keep in
 your prison until he hath fully satisfied Us
 26 the said fine so set and imposed upon him
 as aforesaid: and in what manner you shall
 28 have executed this Our Command, make ap-
 pear to Us in Our said Court before Us, on
 30 the day and at the place aforesaid, and have
 then there this Writ.

32 Witness the Honorable
 Chief Justice (*as in other Writs issued out*
 34 *of the same Court*).