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No. 33.

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1st Session, 8th Parliament, 27 Victoria 1863.

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**BILL.**

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

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Received and read, first time, Tuesday, 1st  
September, 1863.

Second reading, Wednesday, 2nd September,  
1863.

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**Mr. J. B. E. DORION.**

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**QUEBEC :**

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# BILL

No. 33.]

[1863—2nd Sess.

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

**W**HEREAS 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 the proprietors of such lands; And whereas the surveys of many such tracts have been most imperfect and unsatisfactory, and the lines of boundaries 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 land they are—have long held and still hold possession of many portions of such tracts of land, 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 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 such settlers by such enactments as hereinafter are set forth for the lessening of such delays, costs and hardships, in suits hereafter to be instituted; therefore, Her Majesty, &c., enacts as follows:

1. Any settler or individual, who, by himself or by his *auteurs*, shall have openly and publicly enjoyed 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 borne such taxes and other public burthens as during such term may have been imposed thereon, and shall have increased the market value thereof by improvements made with the view of permanent settlement thereon as owner thereof, provided such possession commenced before the date of the passing of this Act, but not otherwise, shall be held entitled to claim in such suit, in the manner and under the limitations hereinafter set forth, the increased market value which such improvements may have given thereto, over and above the value of the use and occupation of the said land, before he shall be dispossessed thereof.

Settlers on lands with five years' possession: entitled to the value of their improvements subject to certain deduction.

2. Should the parties not agree as to such increased market value and as to the value of such use and occupation, then, upon the 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, the value of such improvements may be determined by experts.

of the Court, and before the inscription of the cause for final hearing, the then fair market value of the land irrespectivel of such improvements, and also the increased market value given to the land by such improvements, as well as the value of the use and occupation thereof, 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. 5

On demand for expertise no special conclusions need be taken in respect thereof

3. It shall not be necessary in order to the sufficiency, in point of form, of any such demand for *expertise* under this Act, that the party making it should take any special conclusions in respect thereof, or should make any more special averment than that he is a settler entitled to an *expertise* under this Act, and demands the same. 10

Experts to decide according to equity.

4. Such *experts* shall, in all cases, decide according to equity and good conscience, and shall be bound by no merely technical rules of 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 whatsoever; Provided always, that it shall be competent to the Court summarily to examine such *experts* or any of them touching their proceedings, or any other matter at all pertinent to the subject of such award, and if the Court be of opinion, by reason of such examination, that justice is not done by such award, the same may be reformed by the Court in its discretion. 15 20

PROVISO

Proprietors may pay the value of the improvements or receive the value of the land without them

5. Upon such homologation or reformation, as the case may be, 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 *bailleur de fonds*—with payment of such value of the said lands irrespectively of 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 the overplus of such increased value given to the said land by such improvements, after deducting the value of the said use and occupation and declaring the said land, in default of such payment or tender within such year, to be the property of such settler, charged—by privilege of *bailleur de fonds*—with payment of such value of the said land irrespectively of 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. 25 30 35 40

When only a writ of possession shall be sued out

6. 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 continued possession of the settler notwithstanding such payment or tender; and in case of full 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 possession. 45

The proprietor not to recover certain costs unless he gives notice of the action

7. If in any such suit, 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 institution of such suit, he shall have served upon the settler a sufficient written notice of his intention to institute the same 50

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 contradistinguished from those arising out of or connected with any *expertise* therein had under this Act.

5 8. 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 thereon, over and above the value of the use and occupation thereof, or in  
10 case of refusal by the proprietor 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.

Answer to notice.

9. If within one month after being served with such answer, the proprietor shall pay or in due form tender to the settler the specified sum  
15 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 wherein the land is situate, to demand a writ of possession for such land.

If proprietor pay the amount demanded, the settler may be compelled to quit.

20 10. 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 possession 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  
25 executed in the same manner as though issued in pursuance of a final judgment rendered by such Court in a suit duly instituted for 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  
30 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 on certain considerations.

Proviso.

11. 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  
35 (whereof the settler shall have had reasonable notice) to the Superior Court in the said District, to demand an *expertise* in the premises, under this Act.

Proprietor may demand an *expertise* in certain cases.

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

Settler may demand an *expertise* in certain cases.

13. Upon such demand duly made by either party, such Court shall take cognizance thereof, and shall cause such *expertise* to take place, and  
45 the award therein made shall be homologated, and judgment thereon shall be rendered,—the whole, to all intents whatsoever, as 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  
50 demanded an *expertise* under the foregoing provisions of this Act.

Court to order *expertise*.

14. If in any such suit, the 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  
55 such suit was instituted, either within the month hereinbefore allowed for

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

the service of his answer to such notice, or after due service of an answer by him offering to leave the land upon the payment of an amount which shall not appear to the Court to be unreasonable, and without default upon his part to abide by and carry out in good faith such offer,—the Court, by its judgment to order that the settler cover against the proprietor the costs of such suit as contradistinct from those arising out of or connected with any *expertise* therein under this Act.

Costs of  
*expertise*.

**15.** 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 see fit.

Forms of no-  
tice and an-  
swer.  
Service there-  
of.

**16.** Any notice or answer to be served under the seventh and eighth sections respectively of this Act, may be in the form of the Schedules A. and B. respectively to this Act appended, or in any other equitable form, and may be served by the leaving of a true and certified copy thereof, either personally with the party or at the domicile—elected—of such party, by any Bailiff or other literate person not less than twenty years of age, and qualified to attest such service; Provided always, that in case of such service being made by any person other than a Bailiff, the same shall be attested by such person under oath: And provided also, that no such 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 the examination of the party making such service, or otherwise, that the same was in fact duly made.

Proviso.

Proviso

Proof of  
notice, &c.

**17.** No express proof of the signature or handwriting of any notice or answer shall in any case be required; but it shall be evidence (upon contestation thereof it shall appear to the Court to have been authorized by the party; and until denied by the party, such authentication shall always be presumed.

Punishment  
of persons  
fying notice  
or answer  
without  
authority.

**18.** Should it at any time appear to the Court upon such application, 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 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 order such person to pay to such party his reasonable costs and damages occasioned, taxed at such amount as to the said Court may see fit: Provided always, that no such summary condemnation shall 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 in any criminal proceedings against such person in any case wherein he may be so acted as to be guilty of any misdemeanor or felony in the premises.

Proviso.

Proceedings  
for *expertise*  
may be in  
vacation.

**19.** All proceedings for or in respect of any *expertise* under this Act may be had, and all orders and judgments thereto relating may be rendered, as well in vacation as in term; and in case of appeal to the Judge, the Prothonotary or Clerk of the Court having jurisdiction in the premises, shall have all the powers of such Judge as are in force at the same: save only that all judgments for homologating any

**20.** 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 of his right of appeal upon the ground of title only.

Judgments homologating awards to be final. Proviso.

**21.** Nothing in this Act contained shall at all effect 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 any right of parties, in any suit now pending, or 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.

Rights under agreement, &c., not affected.

**22.** 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 1863."

Short title of this 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 1863," 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

#### 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, over and above the value of the use and occupation of the said land, and which I hereby claim under "The Lower Canada Settlers' Protection Act of 1863," 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 hereby further name E. F., (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.