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No. 121.

1ST. SESS. 1ST. PARLIAMENT, 4 & 5 VICTORIA, 1841.

B I L L .

An Act to provide for the voluntary commutation of the Seigniorial Tenure in the Seigniories of Lower Canada.

Received and read first time, Tuesday, 31st. August, 1841.

Second reading, Friday, 3rd September, 1841.

150 Copies.

MR. DUNSCOMB.

BILL.

An Act to provide for the Voluntary Commutation of the Seignorial Tenure in the Seignories of Lower Canada.

WHEREAS experience has shown that by reason of the progress of improvement in this Province, the Seignorial Tenure, as it exists in that part of the Province called Lower Canada, has become unsuitable to the wants of the Country, and in certain cases an impediment in its improvement, and burthensome upon its Inhabitants; and whereas the provisions made in the several Acts passed by the Parliament of the United Kingdom, for the commutation of the said Tenure, have not been found practically well fitted for the attainment of the end proposed: and whereas it is expedient to adopt effective and equitable means for the gradual removal of the burthens and obstacles to improvement resulting from the said Tenure, and with a due regard to vested interests, and the lawful rights of all parties concerned: to substitute for the same a free Tenure, in harmony with the interests and wishes of Her Majesty's subjects in this Province, and whereas, if power to effect a Voluntary Commutation of Tenure were given in certain cases, it would tend to advance the good which might be expected from a more general measure; Be it therefore enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, "An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada;" and it is hereby enacted by the authority of the same, that from and after the passing of this Act, it shall not be necessary that any Seignor in possession of any Estate held in Lower Canada, in Fief or in Seignory, should, in order to be able to effect a Commutation of Tenure with the

Preamble.

In order to a commutation of between any Seignor and those who hold of him it shall not be necessary that the Seignor shall have first com-



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Quebec 4, QUES

mutated with those of whom he holds.

Canada Tenures Act cited.

proprietor of any *Arrière Fief* or *Censitaire*, within the limits of such Estate, have first obtained a Commutation of the Tenure of such Estate from Her Majesty or the Dominant Seigneur of whom such Estate is holden, in the manner provided by an Act of the Parliament of the United Kingdom aforesaid, passed in the sixth year of the Reign of His late Majesty King George the Fourth, chapter fifty nine, and intituled, "An Act to provide for the extinction of Feudal and Seignorial Rights, and burthens on Lands held à *Titre de Fief* and à *Titre de Cens*, in the Province of *Lower Canada*; and for the gradual conversion of those Tenures into the Tenure of Free and Common Soccage; and for other purpose relating to the said Province," but that all persons and parties may hereafter effect a Voluntary Commutation of such Tenure, and of any Seignorial Rights and Dues in the manner hereinafter provided.

Lands of which the Tenure shall be commuted after the passing of this Act, shall be subject to the same Laws as if held in *Franc aleu roturier*.

II. And be it enacted, that whenever a Commutation of Tenure shall have taken place after the passing of this Act, between any Seigneur who may have obtained a Commutation from the Crown, in the manner prescribed by the Act above cited, and any one of his *Censitaires*, or between the Crown and any *Censitaire* holding immediately of the Crown, the Land to which such Commutation may relate shall not by virtue thereof be held, granted, bargained, sold, alienated, conveyed and disposed of, nor shall pass by descent, in such manner and form, and upon and under such rules and restrictions as are in force by the Law of England, in reference to the grant, bargain, sale, alienation, conveyance, disposal and descent of Lands holden by the Tenure of Free and Common Soccage, or to the Dower or other rights of married women in such Lands; but that the said Lands shall be and continue to be in every such respect subject to the Laws of that part of the Province of Canada wherein they are situate, in the same manner as if the said Lands were held under the Tenure of *Franc Aleu roturier*: provided that nothing in this section contained, shall

apply or to be construed to apply to any Lands whereof the Tenure shall have been so commuted before the passing of this Act.

III. And be it enacted, that the bounds, limits and abuttals, and the superficial contents of any Fief or Estate held in *Censive*, of which the Tenure shall be commuted, shall be set forth at length in the deed of Commutation, with a breviat of the Survey thereof, and such other particulars as may be requisite to avoid all future difficulties as to the extent of ground to which such Commutation shall extend.

Extent of ground to which the commutation applies to be made certain in the deed of commutation.

IV. And be it enacted, that every Commutation to be made by virtue of this Act, shall be made by a deed passed before two Notaries, or one Notary and two witnesses, which deed shall be registered in the Registry office for the County or District in which the property is situate, in the manner provided by Law for the registration of deeds in other cases.

Form of executing such deed.

Registration.

V. And be it enacted, that the parties to any such Commutation, may effect the same for a sum certain, or for such other consideration as they shall agree upon ; and for any sum which shall thereupon remain due to the Seigneur as part of such consideration, the Seigneur shall have the privileges by Law given to a *Bailleur de Fonds* on the property commuted, and no other, saving however his recourse against his *Censitaire* personally and his heirs and assigns, as the case may be: or such Commutation may be effected for a yearly rent, perpetual and *foncière*, for which the Seigneur shall have, on the property so commuted and no other, the same privileges as a Seigneur hath by Law for seignorial rents imposed immediately after the *Cens* ; but such rent shall bear no profit of *Lods et Ventés* or seignorial profits or dues of any kind : and such rent, or the capital of which it forms the interest, shall be prescriptible and may be purged by *decret* or ratification of title, in the same manner as *rentes constituées*, or the capital thereof may by Law be.

Consideration.

How secured.

Rente foncière.

VI. And be it enacted, that any rent consti-

In what cases
any such rent
shall be re-
deemable.

Cases in
which the com-
mutation must
be for a yearly
rent.

Commutation
of rights held in
mortmain, &c.
or entailed.

tuted as the consideration for such Commutation as aforesaid shall be redeemable at the option of the *Censitaire*, by one payment including all arrears, in cases where the Seigneur has the right of alienating such rent; but if the Seignory be entailed (*substituée*) or held in mortmain, or by a corporation, or the Commutation be made on the part of the Seigneur 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 Seignory wherein it may be due: Provided always, that in all cases where the party, with whom as the Seigneur or as the representative of the Seigneur the Commutation is effected, shall not have the power of alienating any Seignorial Right commuted, the Commutation of such right shall be made for an annual rent and not for a sum payable at once.

VII. And be it enacted, that the Commutation of any Seignorial Right held in mortmain or by any corporation, shall be accompanied by the same formalities as the alienation of any immoveable property of the same party would be; and Tutors, Curators and Administrators of any kind, shall be thereunto authorised in the manner required by Law to enable them to alienate the real property of the parties they represent; and the owners and possessors of any entailed Seignorial Rights, the absolute property whereof is entailed on their children or descendants, born or to be born, or on the children or descendants of their collateral relatives, descendants of the party by whom the entail was created, may commute such rights on an *avis de parens* duly homologated according to Law; but if the absolute property of such rights be entailed on persons not related to the then possessor, then no such Commutation shall be effected without the consent of a Curator to the entail duly appointed in the usual form; Provided, that in all cases mentioned in this section, the Commutation shall be made for an annual rent and not otherwise.

VIII. And be it enacted, that any person or persons representing any party holding in mortmain or any Corporation, and any Tutor, Curator or Administrator, or the possessor of an entailed estate, who shall on account of any such Commutation collusively receive for his or her advantage, or for that of any third party, any sum of money, promise or valuable consideration over and above the rent stipulated, and any Seigneur in possession, who in effecting any such Commutation shall have assumed to alienate rights with regard to which he has no power of alienation, and shall under such pretence have received any principal sum for such Commutation, when in fact such principal sum ought to have been received by some other party or converted into annual rent, such person or Seigneur may, on being legally convicted of such offence before any Court of competent jurisdiction, be condemned to pay a penalty equal to double the amount which he shall have so received collusively under such falsepretence; and any possessor of an *arrière fief* or *Censitaire*, who shall collusively pay to any such person or Seigneur, any sum of money in order to obtain any such commutation as aforesaid, with intent to defraud any other party, may be condemned to a penalty equal to double the sum so received, to be imposed in like manner by the Court before whom such offender shall have been convicted.

- Penalty on persons fraudulently or collusively receiving or paying money in order to effect Commutation.

IX. And be it enacted, that the Directors and principals of any community or corporation holding estates in mortmain, and all Curators, Tutors and Administrators, and all possessors of entailed estates, shall be bound to take all necessary precautionary measures for the conservation of any such rents as aforesaid in which the parties they represent may be interested; and in any case of compulsory redemption of such rent, shall be bound within one year thereafter to re-invest the principal sum in a secure and profitable manner, for the benefit of the Corporations or persons therein interested.

Certain persons bound to see that such rents as aforesaid are preserved.

X. And be it enacted, that whenever any

Arrears on
property com-
muted.

such commutation shall have taken place, all arrears due on the property to which it relates, shall be held to be commuted and extinguished, unless the contrary be stipulated; and in the case last mentioned, or where such arrears shall be valued apart, or shall remain as a charge upon the property, the precise amount shall be ascertained and mentioned in the deed of commutation: but no such arrangement shall affect any arrears on any other property held by the same party: Provided also that when any such commutation shall be effected on a part only of any *arrière fief*, *Censive*, or grant, a proportionate part of the arrears due on the whole shall be held to be commuted and extinguished:—Provided further, that when a part only of any fief, *Censive*, or grant shall be so commuted, the Seigniorial charges and dues on the part uncommuted, shall be proportionably reduced.

Proviso.—

Effect of
such commuta-
tion.

XI And be it enacted, that any commutation effected under this Act, shall, as well for the past as for ever afterwards, discharge the possessor of the *arrière fief* or *Censive* commuted, as such, from all confiscations, fines, *Quints*, *Lots et ventes*, reliefs, *Cens*, *prestations*, reservations and obligations, and other Feudal and Seigniorial rights of what nature or kind soever, excepting always any sums, capital or rent, which may form the consideration for such commutation as aforesaid; and after such commutation, the property to which it shall relate shall be held in free and common soccage, but shall, with reference to the grant, bargain, sale, alienation, conveyance, disposal or descent, or to the dower or rights of married women, and in all respects, save only its freedom from all Seigniorial dues and burthens as aforesaid, remain subject to the same Laws by which it was governed before such commutation, until such Laws shall be altered by competent authority: Provided also that nothing in this Act contained shall extend to affect any commutation of Tenure effected in any Seigniority held by the Ecclesiastics of the Seminary of St. Sulpice, under the Ordinance in that behalf made and provided.

Tenure of
the property
afterwards.

XII. And be it enacted, that no commutation shall be effected for a part only of the Seigniorial rights affecting any property; but such commutation shall be in all cases, full and perfect, so as to produce a change of Tenure as aforesaid.

Commutation not to be for part only of the Seigniorial rights on the property.

XIII. And be it enacted, that those who hold in mortmain, and Corporations, Tutors, Curators and Administrators, possessing property held *en arrière fief*, or *en Censive*, the Tenure whereof may be commuted with advantage to those whom they represent, may effect such commutation by paying the consideration out of the moneys of those whom they represent, or may validly bind them to the payment of the rent stipulated in the deed of commutation, provided they observe the formalities required by law in the alienation of the property of such parties holding in mortmain or Corporations, or of those whose rights such Tutors, Curators or Administrators represent.

Persons representing corporation, &c. may commute in certain cases, and bind their principals.

Forms to be observed.

XIV. And be it enacted, that the Seigneur shall keep a Register, in which shall be entered, at full length, all deeds of Commutation, and all receipts for principal sums received for the redemption of any rent constituted as the consideration of any Commutation, and all judgments relating to any such Commutation, with a proper index; and such Register shall be open to all persons at all seasonable times; and the Seigneur or the person in whose keeping such register shall be, may demand currency for each communication of any such register; and copies of all entries in such registers shall be delivered to any party interested, by the Seigneur or his agent, on payment of currency, for each hundred words: and such register shall be held to be a public memorial made for the common benefit of the Seigneur and his *Censitaires*, and placed in the keeping of the Seigneur.

Registers to be kept by Seignors.

XV. And be it enacted, that each Seigneur shall, in the month of January in each year, transmit to the Receiver General a statement on oath, of all commutations to which he

Accounts of monies received for commutations to be transmitted

to the Receiver
General.

One fifth of
the sum re-
ceived shall be
paid to Her
Majesty.

Cases where
the Seignory is
not held im-
mediately of
the Crown pro-
vided for.

Accounting
clauses.

shall have consented during the then last year, and of the consideration stipulated in each case, and of all payments of consideration money, or of arrears of rents, or of the principal thereof, made to him during such year on account of any commutation then or theretofore effected by him or those who held the seignory before him, and also a statement of all rents due for commutations, and payments of principal to be made within his Seignory, so as to ascertain clearly the sum received in each year for the causes aforesaid; and Her Majesty, as Seigneur Dominant, shall be entitled to one fifth part of the amount so received by the Seigneur in any year, as a compensation for the diminution in the value of the *Droit de Quint* and *Droit de Relief* on such Seignory; and such fifth part shall be paid to the Receiver General when such statement is delivered to him; and if any Seigneur on whose Seignory any money shall become due to Her Majesty for any such cause as aforesaid, shall refuse or neglect to transmit such statement on oath according to the requirements of this Act, he shall forfeit to Her Majesty, double the sum he ought to have paid in with such statement: Provided always, that any Seigneur who shall not hold immediately of the Crown, shall give in such statement as aforesaid to the Seigneur of whom he holds, and shall pay him a like sum as compensation for the *Droit de Quint*, or *Droit de Relief*; and such Dominant Seigneur shall within three months pay over to the Receiver General, one fifth of the sum he shall have so received.

XV. And be it enacted, that all monies paid to the Receiver General, under the authority of this Act, shall form part of the Consolidated Revenue Fund of this Province; and shall be accounted for to Her Majesty Her Heirs and Successors, through the Lords Commissioners of Her Majesty's Treasury, in such manner and form as Her Majesty, Her Heirs and Successors shall direct.