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No. 24.

1st Session, 4th Parliament, 16 Victoria, 1852.

BILL.

An Act to prevent the Deterioration of
Lands and Hereditaments charged
with Hypothecs.

Received and Read a first time, Tuesday, 31st
August, 1852.

Second Reading, Monday, 6th September, 1852.

MR. SICOTTE.

QUEBEC:

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

(24)

BILL.

An Act to prevent the Commission of Waste on Hypothecated Lands and Hereditaments.

WHEREAS it is expedient to afford to creditors speedy and efficacious means, whereby they may prevent the fraudulent waste, dilapidation and diminution in value of lands and hereditaments hypothecated in their favor; Be it therefore enacted, &c.,

Preamble.

That if any person, either personally or by the agency of others, shall injure or waste any real estate or hereditament charged with any hypothec or shall in any wise diminish its value (whether the same belong to himself, or to some other person,) by destroying, carrying away or selling any house, building or dependence belonging to such real estate or hereditament and forming a part thereof, or by wilfully damaging the same, with intent to diminish the value thereof, by destroying, carrying away, or injuring any part of the timber work or of the fences of the said estate or hereditament, so as to diminish the value of the property hypothecated, such person may be proceeded against and punished by imprisonment, (*contrainte par corps.*)

Party wasting hypothecated property may be punished by imprisonment.

II. And be it enacted, That such imprisonment may be ordered and adjudged by any Court having jurisdiction to the amount of the sum due, and for which the said real estate or hereditament is hypothecated, or by any one judge of the said Court, either in term or in vacation, by an order or rule made at the instance of a creditor, or of any person having a valuable interest in the preservation of such real estate or hereditament, requiring him to show cause and answer to the complaint, of which a copy duly certified by the party or his Attorney, or by the Clerk of the Court, shall be served with such order.

Mode of proceeding.

III. And be it enacted, That the said order or rule shall be issued in the form used in writs of summons, and may be made returnable in term, before any Court having jurisdiction to the amount of the debt or sum alleged to be due, or in vacation, before one Judge of the said Court, at the residence of such Judge, and

Form of process, service, &c.

it shall be the business of the creditor to cause the same to be served, either on the defendant personally, or by leaving the same at his domicile, without observing the delay at present required in the service of writs of summons; but on complaint being made that the delay given is not sufficient, such Court or Judge may, if it appear desirable in order to the attainment of justice, grant to the person summoned a further delay, in order that he may prepare his defence and produce his witnesses, and in such case the person summoned shall give good and sufficient security that he will not leave that part of the Province of Canada which formerly constituted the Province of Lower Canada. 5 10

Term of imprisonment, &c.

IV. And be it enacted, That on proof of the facts alleged, or on the confession of the party summoned, such person so charged with having wasted, or caused to be wasted in manner herein before mentioned and described, any real estate or hereditament so hypothecated may, on the order of such Court or of such Judge, be imprisoned and kept in prison during a period not less than *twelve months*, and not exceeding *five years*, and shall moreover be condemned to pay all costs of such summons and proceedings, in case judgment be given against him on the said complaint, and such costs may be recovered by execution against his moveable or real property according to the usual course of procedure. 15 20

Act not to take away any existing remedy.

V. Provided always, and be it enacted, That this Act shall not deprive the party complaining of any legal action or remedy, nor take away any recourse against the person or the property of his debtor, or of the person complained of as aforesaid, to which he would have been entitled if this Act had not been passed. 25

Extent of Act.

VI. And be it enacted, That this Act shall be in force in Lower Canada only. 30