

No. 16.

3rd Session , 6th Parliament. 23 Victoria, 1860.

BILL.

An Act respecting the rights of innocent occupants of land in Upper Canada, under titles which prove defective.

Received and read first time, Monday, 5th
March, 1860.

Second reading, Wednesday, 7th March,
1860.

Mr. MOWAT.

QUEBEC:

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An Act respecting the rights of innocent occupants of Land in Upper Canada, under titles which prove defective.

WHEREAS it is expedient to afford further relief in certain cases to innocent persons who improve or occupy land, on the faith of a title which proves defective : Therefore, Her Majesty, &c., enacts as follows :

Preamble.

- 5 I. When a person in possession of another's land, but under color of a title apparently good, and believed by such person to be good, and acquired without any actual notice to him of the defect therein, makes beneficial improvements on the property, by which the value of it is enhanced, he shall be entitled to compensation in respect of such
10 enhanced value, and shall have a lien, or charge, on the land therefor.
- II. Instead of paying such compensation, the rightful owner may elect to relinquish the land to the possessor, or to confirm his apparent estate therein, (as the case may be), on being paid the value thereof independent of such improvements ; and he shall, in that case, have a lien or
15 charge on the land, or on such estate therein (as the case may be,) for such value.
- III. In case of a person being in possession of another's land under color of such title as aforesaid, he shall not be liable to an action at law for mesne profits, nor to a suit in equity for an account of the rents
20 and profits of the property, during the period of his being in possession, without notice of the defect in his title, save and except that his liability to such an action or suit, shall continue to the extent of any taxes which accrued during such period, and were not paid by such person. But if he makes a claim for beneficial improvements, the rents and profits may
25 be set off against the same, to answer or reduce such claim for improvements.
- IV. In case any action of ejectment is brought by the rightful owner against a person in possession under such circumstances as mentioned in the first section, such person may give notice of his claim
30 under this Act ; and the Jury may assess the damages and value respectively, in the same manner, and the writ of possession shall issue on the same conditions, and the rule as to costs, and the course of proceeding generally, shall be the same (as nearly as may be) as the 53rd and 54th sections of the 93rd chapter of the Consolidated Statutes for Upper
35 Canada provide in the case of improvements made on another's land in consequence of an unskilful survey.
- V. But the Court in such case, or the Court in which any other suit is brought under this Act, may grant time to either party for making his payment, or may direct the payment to be made by instalments,
40 and may impose such terms in other respects as the justice of the case under all the circumstances seems to require.

Lien given for enhanced value by improvements made by innocent occupant.

Or owner may obtain a lien for the value without the improvements.

Innocent occupant not liable for mesne profits, &c.

They may be set off against claim for improvements.

Provision in case of action of ejectment against such innocent occupant. Certain sect. of cap. 93 of Con. Stat. U. C. to apply.

Court may grant time to pay, to either party.

Enforcement
of lien.

VI. The lien or charge provided for by the first and second sections respectively, may be enforced in the same manner as the rights of equitable mortgagees are enforced.

Certain sec-
tions of Com.
Law Proc.
Act, to apply.

VII. The sections of the Common Law Procedure Act, numbered respectively from 333 to 338, shall be deemed to apply to this Act, as if the 3rd, 4th, and 5th sections of this Act had been incorporated with the said Common Law Procedure Act; but it shall not be necessary to lay before Parliament the rules, orders or regulations, made by the Judges for the purposes of this Act. 5

Act limited to
U. C.

VIII. This Act applies to Upper Canada only.

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