



No. 117.

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4th Session, 3rd Parliament, 14 Victoria, 1851.

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## BILL.

An Act to amend the Act to regulate  
the exercise of certain rights of Les-  
sors and Lessees, in Lower Canada.

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Received and read a first time, Thursday, 12th  
June, 1851.

Second reading, Monday, 16th June, 1851.

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Mr: LEMIEUX.

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TORONTO: PRINTED BY LOVELL AND GIBSON.

**BILL.**

An Act to amend the "Act to regulate the exercise of certain rights of Lessors and Lessees," in Lower Canada.

**WHEREAS** the Act of the Legislature of Lower Canada, passed in the third year of the Reign of His late Majesty King William the Fourth, intituled "*An Act to regulate the exercise of certain rights of Lessors and Lessees,*" has been found to work badly, and it is necessary to amend it ; Be it therefore enacted, &c.,

Preamble.  
L. C. 3 W. 4.  
c. 1.

That in all cases mentioned in the Act cited in the preamble to this Act, if the amount of the rent or value of the thing required to be done, or of the lease, possession, or other right sought to be recovered or enforced or rescinded, do not exceed *fifty pounds*, the case and all proceedings therein, and matters relative thereto, may be heard, tried and determined before any Judge of the Superior Court, or Circuit Judge, and if such amount or value exceed *fifty pounds*, then by any two or three Judges of the Superior Court sitting together, and (in either case) in term or in vacation ; and of such amount or value the allegation of the plaintiff or of some person acting for him and cognizant of the facts shall be *prima facie* evidence.

By what Judges cases under the said Act, may be heard and determined.

II. And be it enacted, That all writs or process issuing in any such cause, shall run in the name of the Queen, and shall bear the seal of the Court before a Judge or Judges whereof the case is to be heard, and shall be signed by the Prothonotary or Clerk of the Court, and shall be issued by him without any *fiat* or special order, at the instance of any party entitled thereto, and shall not be tested in the name of any person, but the words "in witness whereof, we have caused the seal of our said Court to be hereunto affixed," shall be instead of such *teste* ; and such writ or process may be either in English or in French ; and the said writs shall be directed to any of the Bailiffs of the Superior Court.

Form of writ in such cases.

III. And be it enacted, That the proceedings in any such case shall be summary, and no exception shall be allowed to any petition, declaration, process or paper, unless the Judge or Judges shall be of opinion that the defendant was *bona fide* unable to understand from the same what he was required to pay or do, or to allow to be

Proceedings to be summary: what exception only shall be allowed.

done; and any other defect, error or omission, may be amended at any stage of the proceedings, so as to make the paper in which it occurs agree with the facts of the case.

When proceedings may be commenced.

IV. And be it enacted, That the proprietor or lessor may proceed under the said Act and this Act at any time after the end of three days from the expiration of the lease, whether written or verbal, to recover possession of the immovable leased and detained after that time. 5

Delay between service of summons and appearance.

V. And be it enacted, That if the defendant do not reside more than *five leagues* from the place where he shall be summoned to appear, he shall have one clear day's delay between the day of service of the summons and the day of appearance, and one additional day for every additional *five leagues*; but he shall plead on the day of appearance, and the case shall be heard and determined on the next juridical day, unless the Judge or Judges shall see fit to adjourn the case, as he or they may do. 10 15

Plaintiff may proceed for rent and possession at once.

VI. And be it enacted, That the plaintiff may, at the same time and by the same proceedings, sue for, and recover possession of the immovable leased, and any arrears of rent due, and may seize the goods of the lessee by *saisie gagerie*, and the Judge or Judges shall, on proof to their satisfaction, give judgment for the possession and for such arrears. 20 25

Plaintiff demanding rent may pray the rescission of the lease if he be not paid within a certain time.

VII. And be it enacted, That whenever any plaintiff shall, under the said Act or otherwise, sue for the recovery of any rent or any quarter's rent due to him, he may at the same time and by the same proceedings, pray that the lease may be rescinded if such rent be not paid within the time to be appointed for that purpose in the judgment, or by the sale of the goods pledged for the rent; and on the return of the Sheriff or Bailiff to the writ, that such sale has not produced enough to pay the rent due and costs, the Judge or Judges may direct the issue of a further writ, addressed to the Sheriff or Bailiff to dispossess the defendant and all others, and to remove their effects and put the plaintiff in possession; Provided always, that the return to the writ first mentioned shall be made on the day next after the sale, if the place of sale be not more than *five leagues* from the place where the Judge or Judges sit, and one additional day shall be allowed for every additional *five leagues*. 30 35 40

Proviso.

Judge directing rescission may also direct that a writ of

VIII. And be it enacted, That the Judge or Judges directing the *rescission* of any lease, verbal or in writing, may, by the same judgment, direct that if peaceable possession in the immovable in question be not given to the plaintiff within a certain time after the judgment, a writ 45

shall issue to the Sheriff or Bailiff, commanding him to remove therefrom all persons and their effects, and to put the plaintiff in possession thereof.

possession shall issue.

IX. And be it enacted, That the Sheriff or Bailiff executing any writ of possession under this Act, shall have full power to use force, if necessary, to execute the same, and to call, in the Queen's name, on all persons to aid him if need shall be, and any person so called upon and refusing or neglecting to give such aid, shall thereby incur a penalty of pounds.

Powers of Sheriff. &c. executing such writ.

X. And be it enacted, That an appeal shall lie from any judgment under this Act, when the sum or value in property shall be sufficient, in the same manner and on the same conditions as in other cases, but in addition to the usual security, the appeal bond shall be conditioned for the payment of all damages arising from the non-execution of the judgment, in consequence of such appeal; and no surety shall be received unless he shall give in writing, signed by him, a description of real property to him belonging, the value whereof shall be equal to the amount for which security is to be given, over and above all hypothecs, charges or incumbrances, payable out of, or affecting the same, nor unless he shall (if required by the opposite party), justify his sufficiency on oath, and produce the titles to such real property as aforesaid.

Appeal to lie if the sum in question be sufficient.

Sureties must specify their real property, &c.

XI. And be it enacted, That if in any case the rent of the immovable in question shall not exceed fifty pounds per annum, the matter shall be decided by one Judge of the Superior Court sitting in the District in which the said property lies, or by one Circuit Judge residing in the said District, whatever be period of the lease, or the supposed value thereof, or of the immovable or of the then possession thereof.

Certain Judges may decide cases whatever be the value of the property; &c.

XII. And be it enacted, That nothing in this Act shall apply to, or affect any proceeding commenced before the passing thereof.

Not to affect pending cases.