



BY AUTHORITY.

THE THIRD YEAR OF THE REIGN OF HIS MAJESTY  
KING EDWARD VII.

CAP. XXVI.

An Act to amend Chapter 83 of The Consolidated Statutes, of  
"Landlord and Tenant."

Passed 9th May, 1903.

Be it enacted by the Lieutenant-Governor and Legislative  
Assembly as follows:—1. Section 22 of the said Chapter is hereby repealed and  
the following substituted and enacted in lieu thereof:—

"22. When any tenant or any person holding or claiming by, through or under him shall, after the expiration of the tenancy, or on due notice, Forms (F) and (G), to quit being given, refuse to deliver up the possession to the person entitled thereto, such person may apply to a Judge of a County Court in and for the County where the land lies or premises may be, or to two Justices of the Peace for the County where the land lies or premises are situate, on affidavit to be made before such Judge or Justices, or before any person authorized to take affidavits to be read in the Supreme Court, by the landlord or person entitled to the possession of the premises, or by the attorney or agent of either of them, that such tenant or person holding or claiming by, through or under him has held or occupied the premises particularly designated in the affidavit for a certain period then expired, or as tenant at will, and refuses to deliver up possession to the person entitled thereto, and that due notice to quit, when necessary, has been given and such Judge or Justices shall issue the summons, Form (H), giving at least six days notice, to be served with a copy of the affidavit annexed, either personally on the occupant or by leaving the same with some adult person of the household on the premises, to show cause why he holds over. If the occupant is not the tenant of the claimant but holds or claims under such tenant, he shall forthwith give the tenant under whom he holds notice of the service upon him of such summons, and for failure so to do shall be liable to such tenant for all damages sustained in consequence of such failure; but such failure on the part of the occupant to give the tenant such notice shall not prejudice the claimant's right to proceed and recover possession. The tenant may at any time at or before the hearing apply to the Judge or Justices to be joined as defendant with the occupant, and shall thereupon be so joined and shall be entitled to make defence and shall be entitled to and liable to pay costs and have the like right of appeal as if he had been defendant in the first instance, jointly with the occupant, and had been duly served with summons. If, on the return of the summons, the occupant or tenant neglect to attend, or attending no sufficient cause is shown, the Judge or Justices shall issue his or their warrant, Form (I), for possession of the land and premises and for the costs of the proceedings, and the Sheriff shall execute such warrant according to the exigency thereof. If the claimant fails to appear on the return of the summons, or if sufficient cause is shown on the part of the defence, the Judge or Justices shall dismiss the application, in which case the defendant shall be entitled to his costs of the proceedings, which shall be taxed by the Judge or Justices, who may issue execution therefor in Form (J); provided always, that in any case where the proceedings under this section shall be had and taken before two Justices of the Peace, and the tenant, landlord or other person interested in the premises considers himself aggrieved by the judgment of the Justices, and desires to appeal from such judgment, he may apply to a Judge of the County Court of the County where the lands and premises are situate, and such Judge, upon sufficient cause shown by affidavit, may make an order to move such proceedings so had before the two Justices, before him, and such order shall stay the execution given or to be given by the Justices in the meantime, and should the Justices neglect or refuse to return the proceedings to the Judge within twenty days after such order shall have been served upon them, the said Judge, upon affidavit of such service, and on the application of either party, may order that an attachment do issue out of the County Court against the Justices for such neglect or refusal; and if such attachment shall be executed, the Judge may order the Justices to be discharged upon their making a complete return of the proceedings and paying the costs of obtaining and executing such attachment; and upon return of the proceedings the Judge shall examine into and determine the matter agreeably to justice; and in case he shall affirm the decision of the Justices, when such decision had been given in favor of the person claiming to have the occupant ejected, or in case he shall reverse the decision, when such decision had been given against the person claiming to have the occupant ejected, he shall issue his warrant to the Sheriff of the County in which the lands and premises are situate, to deliver the possession of the lands and premises to the person entitled thereto and to levy for the costs as well of the proceedings

before the Justices as of the review in like manner as near as may be as if the said Justices had issued their warrant (I) under the form given them in this section; and the Judge, in case he sets aside the decision of the Justices when such decision was made in favor of the person claiming to have the occupant ejected may grant costs to the party that may be successful before him, which last mentioned costs shall be recoverable by attachment in the same manner as costs on review from a Justice's court, and the said Judge shall also order and direct the said Justices to alter their decision agreeably to the judgment on review, and the person so becoming successful before said Justices, shall have and recover his costs for the proceedings before such Justices in the same manner and to the same extent as if he had been successful in the first instance."

2. Section 23 of the said Chapter is hereby amended by substituting in line seven the word "defendant" for the word "tenant," and by substituting in line nine the word "defendant" for the word "tenant."

3. Notwithstanding the repeal of said section 22 the Forms referred to in said repealed section shall continue in force and be the Forms referred to in the first section of this Act, except Form (I), which is hereby repealed and the following enacted in lieu thereof:—

(I)

Writ of Possession and Execution.

To the Sheriff of

Whereas A. B. claims the premises situate (here describe the premises), now in the possession of C. D., who holds over and refuses to deliver them up, the matter having been heard before me (or us, as the case may be) pursuant to law, I (or we, as the case may be) do adjudge that the said A. B. shall be forthwith put in possession, and shall recover against the said C. D. (or, if the tenant under whom C. D. occupies has been made defendant, against the said C. D. and X. Y., who has been made defendant with said C. D. as tenant) his costs being \_\_\_\_\_, besides your fees for executing this writ: You are hereby commanded to put the said A. B. into immediate possession of said premises, and that you levy of the goods and chattels of the said C. D. (or C. D. and X. Y., as the case may be) the sum of \_\_\_\_\_ for his costs besides your fees; and for want of goods and chattels that you take the said C. D. (or C. D. and X. Y., as the case may be) and deliver him (or them, as the case may be) to the keeper of the gaol of the said County, who will safely keep him (or them) for (one day for every forty cents of the costs, not to exceed in the whole fifty days), unless the said costs and fees be sooner paid, and make return hereof and what you have done with- in \_\_\_\_\_ days from this date.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19 \_\_\_\_\_

N. W., J. C. C.

or

G. S. P.

R. A. B.,

Justices, etc.

4. The following is hereby enacted as Form (J) referred to in the first section of this Act:—

(J)

To the Sheriff of \_\_\_\_\_ County or any Constable of said County:

You are hereby required to levy of the goods and chattels of A. B. within the County of \_\_\_\_\_ \$ \_\_\_\_\_ for costs taxed and allowed to C. D. (or to C. D. and X. Y.) on the hearing and dismissal of an application made to me (or us) by the said A. B. under the provisions of Chapter 83 of The Consolidated Statutes, besides the costs of levying this execution, and have the money before me (or us) at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ to be rendered to the said C. D. (or C. D. and X. Y.) and have there then this precept.

Given under my (or our) hand (or hands) the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 19 \_\_\_\_\_

(Signature.)

J. C. C.

(or as the case may be).

5. Nothing herein contained shall affect any suit or other proceedings pending at the time of the passing of this Act.

CAP. XXVIII.

An Act to amend the Act 51 Victoria, Chapter 10, intitled "An Act relating to the foreclosure of Mortgages upon Railways."

Passed 9th May, 1903.

Be it enacted by the Lieutenant-Governor and Legislative Assembly as follows:—

Whenever any sale has been made or may hereafter be made under proceedings taken for the foreclosure of a mortgage upon a Railway, the bonds or debentures issued by the Railway corporation, secured by such mortgage so foreclosed, with the attached interest coupons, shall rank upon the net proceeds of such sale *pari passu*; and any coupons that have been cut off or detached from such debentures shall not rank thereon, but shall be considered to have been paid, unless