

1877-8.

Legislative Council.

REAL PROPERTY ACT FURTHER AMENDMENT BILL.

(New clauses to be proposed in Committee of the Whole by MR. DARLEY  
in lieu of clause 4 as printed.)

4. Where a caveat against an application to bring land under the principal Act shall have been lodged in pursuance of the twenty-first section of such Act by any person (hereinafter called the caveator) the title of the applicant shall nevertheless be examined and reported upon and if the Commissioners be of opinion that the applicant but for the claim put forward by the caveator has a good title to the land they shall give the applicant a certificate to the effect that but for the claim of the caveator the applicant has a good title to the land in question whereupon the applicant may within one month after the date of such certificate cause a summons to issue out of the Supreme Court calling open the caveator to show cause within fourteen days thereafter why he should not withdraw such caveat and if the caveator desire to show cause he shall within such period of fourteen days or within such further period as a Judge shall allow enter an appearance to such summons whereupon an issue may be at once made up without any pleading by the applicant and which issue shall be in the words following that is to say "Is the applicant entitled as against the caveator to the immediate possession of the whole or any part of the land sought to be brought under the provisions of the 'Real Property Act' without encumbrance" And thereupon by consent of the parties a special case may be stated according to the practice used in ejectment or if no special case be settled the applicant shall proceed to trial upon the issue in the same manner as in other actions Provided always that at the hearing of such special case or at the trial of such action as the case may be the applicant shall be entitled to begin Provided also that at the trial of any action the Commissioners certificate hereinbefore provided for shall be *prima facie* evidence of the applicant's right to recover the possession of the said lands and the applicant may on production of the same close his case.

Proceedings to be taken after caveat lodged.

5. If at the hearing of such special case or at the trial the caveator appear and the applicant does not appear the applicant shall be nonsuited and if the applicant appear and the caveator does not appear the applicant shall be entitled to a finding in his favour without argument or proof of his title as the case may be.

How appearance at hearing of special case or trial.

6. If the caveator after the giving of the certificate mentioned in the fourth section of this Act withdraws his caveat or does not appear to such summons or if final judgment shall be entered up against him the caveat shall be deemed to have lapsed and the application of the applicant shall thereupon be proceeded with.

Proceedings on lapse of caveat.

7. The cost of all proceedings after the lodging of a caveat shall be paid by the party finally unsuccessful.

Costs.

A *scire facias* to repeal or revoke any Crown grant may be prosecuted in the Supreme Court although such grant be not of record therein but be registered under the provisions of the principal Act for any of the causes by the same proceedings and with the same effect as if such grant were of record in the said Court.

*Scire facias.*



REAL PROPERTY NOT FURNISHING EVIDENCE

(Two classes to be presented in Evidence of Law by Mr. JAMES  
M. G. GIBSON, Esq.)

1. Where a party claims an interest in real property under a deed, will or other instrument, the burden of proof is on the party claiming the interest. The burden of proof is on the party claiming the interest. The burden of proof is on the party claiming the interest.

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