

The Provincial Statutes of Lower-Canada, Being the fourth session of the eleventh Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1824.

4 George IV – Chapter 15

An Act to render valid certain Acts, Agreements in writing, and Contracts of Marriage (Contrats de Mariage sous seing privé) heretofore executed in the Inferior District of Gaspé, and to provide for the want of Notaries in the said Inferior District. (9th March, 1824.)

Whereas it is expedient to render valid certain informal Acts or Agreements, in writing, and Contracts of Marriage, (Contrats de Mariage sous seing privé, heretofore made and executed in the Inferior District of Gaspé, in which no public Notaries have hitherto resided,) and by the parties, bona fide, intended to be binding and to affect their property and estate, real and personal—Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower-Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great-Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North-America,' and to make further provision for the Government of the said Province;" And it is hereby enacted by the authority of the same, that from and after the passing of this Act, it shall be lawful for any person being a party, or representing by inheritance, succession or otherwise, any party, to any Will, Act or Agreement in writing, of any nature or kind, Inventory, Portage, Donation, or Contract of Marriage (Contrat de Mariage sous seing privé,) made and executed, bona fide, before the passing of this Act, in the Inferior District of Gaspé, and by which it may have been intended by the parties having signed the same, or having made their mark thereto, to bind and affect their property and estate real, at the time of the making thereof, on making oath to that effect, before the Provincial Judge for the said Inferior District of Gaspé, upon Petition to him presented to that effect, to cause the same to be entered at full length, and recorded in a Book or Register to be kept for the purpose by the Prothonotary of the Provincial Court for the said Inferior District of Gaspé, among the Records of his Office, and which book shall be duly marked, (paraphé) throughout on every leaf, with the initials of the Christian and Surname of the Provincial Judge of the said Inferior District of Gaspe.

II. And be it further enacted by the authority aforesaid, that a certified copy from such Book or Register, under the hands of the Prothonotary of the said Provincial Court, of the entry and record which shall be made in pursuance of this Act, of each and every such Will, Act or Agreement, in writing, Inventory, Portage, Donation, or Contract of Marriage, (Contrat de Mariage, sous seing privé,) shall to all intents and purposes, avail and be of the same force and effect in every Court of Law in this Province, as if the same were an authentic copy of any instrument, to the like effect executed before a Notary.

III. Provided always, and be it further enacted by the authority aforesaid that before any such Will, Act, or Agreement, in writing, Inventory, Portage, Donation, or Contract of Marriage, (Contrat de Mariage, sous seing privé,) shall be entered and recorded as hereinabove-mentioned, it shall be lawful

for the Provincial Judge of the aforesaid Inferior District, if he shall so think it expedient or necessary, to require the attendance of the several parties to the same, or in case that the parties, or any of them, having executed the same are dead, of such witnesses as were present at the time of signing or executing the same, or in default of witnesses, or in case of their death or absence, of such persons not being witnesses who may have had a knowledge of the facts and circumstances in question, and them severally to examine on oath, and if on full enquiry it shall appear to such Provincial Judge, that the Will, Act or Agreement, in writing, Inventory, Partage, Donation, or Contract of Marriage, (Contrat de Mariage sous seing privé) produced, was by the parties thereto bona fide made and executed at the time when the same may purport to have been made and executed, such Provincial Judge shall authorize and order the same to be entered and recorded as hereinabove-mentioned; but if, on the contrary, he shall have cause to believe that the same was not bona fide made and executed at the time when it may purport to have been made and executed, or that the same was made collusively, or for any illegal purpose whatever, then and in such case it shall be the duty of such Provincial Judge to reject, and to return the same to the party producing it, without entering or recording the same.

IV. Provided always, and be it further enacted by the authority aforesaid, that whenever such Will, Act or Agreement, in writing, Inventory, Partage, Donation, Contract of Marriage, (Contrat de Mariage sous seing privé,) shall have been rejected and returned by the said Provincial Judge, in the manner herein last mentioned and provided, the party producing the same shall and may have an appeal from the Judgement or decision of the said Provincial Judge in that behalf, to the Court of King's Bench for the District of Quebec, which Court shall have power to examine and revise such judgement or decision, and to affirm or reverse the same. Provided further, that no such appeal shall lie nor be granted, unless the same be notified and applied for to the said Provincial Judge within ten days after such judgement or decision shall have been made or rendered.

V. And be it further enacted by the authority aforesaid, that when and as often as any person or persons shall declare his or their intention to appeal from any such judgement or decision of the said Provincial Judge, by which any such Will, Act or Agreement, in writing, Inventory, Partage, Donation, or Contract of Marriage, (Contrat de Mariage sous seing privé,) shall have been rejected or refused to be entered and recorded as aforesaid, the said Provincial Judge shall cause to be reduced, to writing, the proceedings had before him, and all the testimony and evidence offered or adduced respecting such Will, Act or Agreements in writing, Inventory, Partage, Donation, or Contract of Marriage, (Contrat de Mariage sous seing privé,) which shall have been so rejected or refused to be entered and recorded as aforesaid; and a certified copy of the said proceedings, testimony and evidence, together with the petition of the party or parties who shall have presented such Will, Act or Agreement, in writing, Inventory, Partage, Donation, Contract of Marriage, (Contrat de Mariage sous seing privé,) and a statement of the reasons of the judgement or order by which the said Provincial Judge shall have rejected or refused to enter and record the same, shall, at the instance and request of the party or parties appealing or declaring his or their intention to appeal, be immediately transmitted by the said Provincial Judge to the Court of King's Bench at Quebec.

VI. And be it further enacted by the authority aforesaid, that if upon any such appeal made as aforesaid, the judgement or order by which such Will, Act or Agreement, Inventory, Partage, Donation, or Contract of Marriage, (Contrat de Mariage sous seing privé,) shall have been rejected or refused by

the said Provincial Judge, shall be reversed by the said Court of King's Bench, the said Court by whom such appeal shall have been determined, shall make an order that the said Will, Act or Agreement, Inventory, Partage, Donation, Contract of Marriage, (Contrat de Mariage sous seing privé,) shall be entered and recorded in the manner herein first before-mentioned, and shall cause the said order together with the said Will, Act or Agreement, Inventory, Partage, Donation, Contract of Marriage, (Contrat de Mariage sous seing privé,) and with all the proceedings evidence and testimony relating thereto, to be remitted to the said Provincial Judge of the said Inferior District, who shall cause the said Will, Act or Agreement, in writing, Inventory, Partage, Donation, Contract of Marriage, (Contrat de Mariage sous seing privé) to be entered and recorded accordingly.

VII. And be it further enacted by the authority aforesaid, that the Prothonotary for enrolling every such Will, Act or Agreement, in writing, Inventory, Partage, Donation, Contract of Marriage, (Contrat de Mariage sous seing privé,) if the same do not exceed one hundred words, shall be entitled to demand and receive the sum of two shillings and six-pence, currency; and for every hundred words exceeding one hundred, at the rate of six-pence, currency; and for every certified copy of any entry from such Book or Register, at the rate of one shilling, currency, for the first hundred words, and six-pence, currency, for every hundred words exceeding the first hundred words.

VIII. Provided always, and be it further enacted by the authority aforesaid, that nothing in this Act contained, shall be construed to render legal or valid any Act or Contract (sous seing privé) which may be found to be false or fraudulent, or which may be contrary to good morals or in any wise prohibited by Law.

IX. Provided always, and be it further enacted by the authority aforesaid, that any person who being sworn under this Act, shall falsely make oath or swear, shall on being thereof lawfully convicted, incur and suffer the pains and penalties of wilful and corrupt perjury, and provided also, that nothing in this Act contained, shall in anywise prejudice the rights of any person purporting to be a party or concerned in any such Act or Agreement, in writing, sous seing privé, who may not have appeared and admitted or affirmed the same before the Provincial Judge at the time when the same may have been attested, nor to prevent such person from taking his legal recourse against such Act or Agreement, in writing, sous seing privé, enrolled as above-mentioned, by an inscription en faux, or otherwise according to Law.

X. And be it further enacted by the authority aforesaid, that during three years from and after the passing of this Act, any Will, Actor Agreement in writing, Inventory, Partage, Donation, or Contract of Marriage, (Contrat de Mariage,) that shall be executed before any Justice of the Peace, or Minister, or Curé, or Missionary, and two subscribing witnesses, or before the Prothonotary of the Provincial Court of the said Inferior District and two subscribing witnesses shall bear mortgage (portera hypothèque) from the day of its execution, and shall, as well as the Copies thereof duly certified, be taken and received as valid and authentic in all His Majesty's Courts of Law in this Province, as if the same had been executed before Notaries. Provided always, that the originals or Minutes of all such Acts as aforesaid, shall, by the Justice of the Peace, Minister, Cure, or Missionary, having executed the same, be at the end of every year during the period aforesaid, or oftener, if necessary, in case of the death or removal from the said Inferior District of the person before whom the same may have been executed,

be transmitted to the Prothonotary of the said Provincial Court, to be by him carefully preserved among the records and remembrances of his office, for such legal purposes as the same may serve pursuant to this Act.

XI. And be it further enacted by the authority aforesaid, that this Act shall be deemed a public Act, and shall be judicially taken notice of as such by all Judges, Justices of the Peace, and all other persons whomsoever, without being specially pleaded.