

*The Provincial Statutes of Lower-Canada, Being the second session of the twelfth Provincial Parliament of Lower-Canada.* Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1826.

6 George IV – Chapter 2

**An Act to provide for the summary trial of certain small causes. (29th March, 1826.)**

Whereas an easy and expeditious method for the recovery of small debts of the nature herein-after specified, within the Parishes, Seigniories [Seigneuries] and Townships of this Province, would be of great advantage to the inhabitants residing within the same: 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 and may be lawful for the Governor, Lieutenant-Governor or Person administering the Government of this Province for the time being, by any Commission or Commissions to be by him issued, to appoint such and so many persons as to him shall seem fit, in any Parishes, Seigniories or Townships within this Province, to take cognizance of such causes and suits as are herein-after specified, arising in the Parish, Seigniority or Township in which such Commissioner or Commissioners may respectively reside, (the Counties of Quebec and Montreal, and the Town and Parish of Three-Rivers [Trois-Rivières] excepted) and it shall and may be lawful to and for such Commissioner or Commissioners, upon request or application to them or any of them made, to grant and issue or cause to be granted or issued a Summons or Summonses to one or more person or persons, as the case may require, which Summons shall be in the form hereinafter mentioned and described, and shall not be returnable in less than two intermediate days, in cases where the Defendant or Defendants shall reside within the distance of two leagues from the residence of the Commissioner or Commissioners, before whom he or they may be summoned, allowing one day more between the service and return of every such Summons for every five leagues distance over and above the said two leagues at which the Defendant or Defendants may reside from the place where such Commissioner or Commissioners may hold his or their Court, as hereinafter provided, and in a summary manner to hear, try and determine the cases before them in fact and in Law, according to the evidence before them, to the best of their skill and understanding, and arising within the Parish, Seigniority or Township as aforesaid, in which such Commissioner or Commissioners may reside, or for which he or they may respectively be appointed concerning the recovery of debts, not exceeding in amount the sum of four pounds three shillings and four pence, current money of this Province of the following nature, that is to say:—for Goods, Cattle or other moveables sold and delivered, work and labour done, money lent and advanced; money paid, laid out or expended to or for the use of any person or persons, and for the rent

stipulated and agreed upon, either for houses or other immoveable property, and for hire of horses, cattle or other moveable effects, or on acknowledgement commonly called and known under the description of Bons or on such Note or Notes of Hand in which the party or parties to whom only such Note or Notes are payable, shall sue the maker or makers thereof but not in cases in which any party or parties suing shall claim as Indorsee or otherwise than as aforesaid: Provided always that in case there shall not be a Commissioner appointed or resident at the Parish, Seigniority or Township as aforesaid in which the debtor may reside or in case such Commissioner should be absent then, such debtor may be sued before the Commissioner who may reside nearest to the Parish, Seigniority or Township in the same County in which the Defendant or Defendants may reside, and in case that during any suit the Commissioner should be recused by either of the parties, such suit shall be immediately transmitted to the Commissioner of the nearest Parish, Township or Seigniority within the same County, and if the recusation be adjudged valid by such Commissioner, he shall proceed to adjudge and determine the cause, but on the contrary if he adjudge the recusation to be frivolous or unfounded, he shall send the parties before the recused Commissioner in order that he may proceed as if such recusation had not been proposed: Provided always that nothing herein-contained, shall extend or be construed to extend to prevent the Parties, Plaintiff and Defendant, from referring the matter or matters in contestation before such Commissioner or Commissioners to the judgment and decision of three Arbitrators, to be named by the Commissioner or Commissioners and by the parties respectively, the report and award of any two of whom shall be final and conclusive to all intents and purposes, and judgment entered therein to be executed as in other ordinary cases.

II. And be it further enacted by the authority aforesaid, that the several Commissioners to be appointed in virtue of this Act, shall hold their respective Courts on the first and third Saturday of every month, and on any other days to which they may then find it necessary to adjourn for hearing witnesses and for determining suits, and that such Courts shall so be held by them, publicly, in some suitable room or place which shall be provided for them, and under their directions, by the Clerks of such Commissioners, respectively, to be appointed as herein-after mentioned; and the expense of hiring and warming such room or place, and all other expenses necessary for the convenient holding of such Courts, shall be paid by the said Clerks, respectively, out of the Fees hereinafter assigned to them; Provided always, that no such Court or Courts shall, at any time, be held in any tavern or place of public entertainment, nor in any house or out-house, or other place thereunto appertaining.

III. And be it further enacted by the authority aforesaid, that it shall be lawful for such Commissioner or Commissioners, before whom any such suitor action shall have been instituted, on the application of either party, to issue Writs of Subpoena, in the form herein-after mentioned and prescribed, to compel the appearance of witnesses before him or them, under a penalty of ten shillings, current money of this Province, for each and every default, to appear as by the said Writ of Subpoena commanded, and that it shall be lawful to and for such Commissioner or Commissioners to administer to such Witnesses an oath, in the usual manner.

IV. And be it further enacted by the authority aforesaid, that from and after the passing of this Act, no person shall be capable of being appointed a Commissioner or Clerk, or of acting as such within any District of this Province, who shall not have to and for his own use and benefit, in his actual possession, a Freehold Estate, either in Fief, en roture or in free and common soccage in absolute property or by emphileose originally created for a term exceeding twenty-one years or by usufruit for his life, in Lands, Tenements or other immobiliary Property lying and being within the limits for which he shall be appointed, of the yearly value of twelve pounds currency, over and above what will satisfy and discharge all incumbrances affecting the same, and over and above all rents and charges payable out of the same.

V. And whereas it is proper to fix the costs of such causes as shall be adjudged under and in virtue of this Act by such Commissioner or Commissioners, be it further enacted by the authority aforesaid, that it shall be lawful to and for such Commissioner or Commissioners to allow to the Clerk or other person doing the duty of Clerk, under the immediate direction of such Commissioner or Commissioners, for every summons which such Clerk, or other person doing the duty of Clerk, as aforesaid, shall make and deliver, to a Suitor or Suitors, by the direction of such Commissioner or Commissioners, one shilling currency, for every copy of a Summons, sixpence currency, for every Subpoena, one shilling currency, for every copy of a Subpoena, six pence currency, for every Judgment and Copy thereof, one shilling and three pence currency, for every Warrant of Distress, one shilling and three pence currency, and that the Peace Officer or Sergeant of Militia for every service and signification of the same, shall have the sum of one shilling currency, for his service, signification and certificate thereof, and at the rate of one shilling currency, per league, for the distance he shall have gone to perform such service, the distance in returning from the place where such service shall have been made not entitling him to any allowance; and it is hereby expressly declared and provided, that no Commissioner or Commissioners shall be entitled to, nor receive any recompense or remuneration whatever, for any thing which shall by them or any of them be done, under and in virtue of this Act, as Commissioner, or Commissioners, as aforesaid ; nor shall the Clerk or other person doing the duty of Clerk to any Commissioner or Commissioners as aforesaid, be allowed to serve or signify any Summons, Subpoena, or other Writ, by him made, as aforesaid, and any such service or signification and certificate thereof, by such Clerk or other person doing the duty of Clerk, shall, to all intents and purposes, be held and considered as null and void, and every such Commissioner or Commissioners, Clerk or Clerks, or other person or persons doing the duty of a Clerk or Clerks, who, in the execution of the trusts reposed in him or them by this Act, shall misdemean himself or themselves, or shall deliver to any Bailiff, Peace Officer, Sergeant of Militia, or other person, any blank Summons, Subpoena, or other Writ or Writs, to be distributed, sold, or disposed of by such Bailiff, Peace Officer, Sergeant of Militia, or other person, as occasion may offer, shall, for every such offence, incur a penalty and forfeiture of five pounds, currency, (one half of which shall go to His Majesty, and the other half to the prosecutor or informer,) and be thereafter disabled from acting as Commissioner or Clerk, as aforesaid; it being hereby also expressly declared and provided, that no such Summons,

Subpoena, or other Writ or Order, shall, in any case be issued by such Commissioner or Commissioners, until application be made to him or them by the person or persons requiring the same, or by some person on his or their part and behalf, and that no Writ, Summons or Order, of any kind, shall be given or issued by any person acting as Clerk or Greffier to such Commissioner or Commissioners, without the express directions of such Commissioner or Commissioners, upon application to him or them made by the party or parties, as aforesaid.

VI. And be it declared and further enacted by the authority aforesaid, that in any one Parish, Township or Seignior, as aforesaid, no more than one Clerk, or person doing the duty of Clerk, shall be employed, or in any way act as such Clerk, although two or more Commissioners may have been or may hereafter be appointed in such Parish, Township or Seignior, as aforesaid, in virtue of this Act, and that the person first appointed to be or act as such Clerk, shall be and act as such Clerk, to the exclusion of all others subsequently appointed as such in the same Parish, Township or Seignior, until he shall be removed in the manner herein-after mentioned, and when it may hereafter be necessary to appoint a Clerk or person to act as such under this Act, the appointment shall be vested in a majority of the Commissioners where there are more than two Commissioners in the same Parish, Township, or Seignior, as aforesaid; and when there are no more than two Commissioners in such Parish, Township or Seignior, as aforesaid, then the appointment of such Clerk or person to act as such, shall be vested in the Commissioner whose appointment shall have been oldest or first in date; provided always, that any Clerk or Clerks, or person or persons acting as such, that may have been or that may hereafter be appointed under and in virtue of this Act, shall and may be removeable from his office by the Commissioner by whom he may have been appointed or by the Commissioners of the same Parish, Township, or Seignior, as aforesaid, or a majority of them, such removal being sanctioned by the Governor, Lieutenant-Governor, or person administering the Government of the Province for the time being, and another Clerk or person to act as such appointed in his stead, in the same manner as by this act it is herein-before provided.

VII. And be it further enacted by the authority aforesaid, that such Commissioner or Commissioners shall keep a Register of all Suits which shall have been brought before them respectively, in virtue of this Act, and shall give copies thereof to such person as shall demand the same, and may for such copies allow to the Clerk, or other person doing the duty of Clerk, at the rate of six pence currency, for every hundred words, under a penalty of ten pounds, current money of this Province, on such Commissioner or Commissioners, for refusing to give a copy thereof, to be recovered by the party to whom the said copy shall have been refused, one half of which penalty shall belong to His Majesty, and the other half to the party complaining.

VIII. Provided always, and be it further enacted by the authority aforesaid, that no more than one court shall be held in any Parish, Township or Seignior in this Province, under and in virtue of this Act, although two or more Commissioners may have been appointed for the same Parish, Township or Seignior, it being nevertheless competent for all the Commissioners appointed under and in virtue of this Act, in the same Parish, Township or

Seignior [seigneurie], to be present, and to assist at such Court if need be, or if they, so think fit, and the place where the Court shall be held in such Parish, Township or Seignior, shall be fixed by the majority of the Commissioners where there are more than two Commissioners in the same Parish, Township or Seignior, and when there are no more than two Commissioners in the same Parish, Township or Seignior, then the senior Commissioner shall fix the place where such Court shall be held, and in every Writ or Summons to issue under this Act, the place where the Court is to be held shall be mentioned in the Writ.

IX. And be it further enacted by the authority aforesaid, that if any person or persons shall refuse or neglect to pay and satisfy such sum or sums of money, within eight days after judgment obtained, together with such costs as upon such complaint, as aforesaid, shall be adjudged, the same being previously demanded, such Commissioner or Commissioners shall, by warrant of seizure and sale under his or their hand and seal, or hands and seals, (which warrant of seizure and sale shall be in the form herein-after mentioned,) cause the same to be levied by distress and sale of the goods of the party or parties so refusing or neglecting, as aforesaid, together with all costs and charges attending such distress and sale, but which shall not, in any case, exceed the sum of seven shillings and three pence current money of this Province.

X. And be it further enacted by the authority aforesaid, that in case any proprietors of Land, in any Parish, Seignior, Township or Place, being at least thirty in number, shall by Petition to the Governor, Lieutenant-Governor or Person administering the Government of this Province, represent that, there does not reside in such Parish, Seignior, Township or Place, any person fit and qualified to Act as Commissioner therein, and shall pray that some person or persons may be appointed to be Commissioner or Commissioners for such Parish, Seignior, Township or Place, it shall be lawful for the Governor, Lieutenant-Governor or Person administering the Government, to nominate and appoint any person or persons otherwise duly qualified according to the requirements of this Act, to be Commissioner or Commissioners for such Parish, Seignior, Township or place, for the purposes of this Act, though such person or persons be not resident or have no real property in the Parish, Seignior, Township or Place for which he or they shall be so nominated and appointed, which Commissioners may appoint a Clerk not residing and not having real property in the same Parish, Seignior, Township or Place, but having real property within the Province, of the value herein-before stated.

XI. Provided always and be it further enacted by the authority aforesaid, that no Commissioner shall be authorized to act as such until he shall have made Oath before some Justice of the Peace, well and duly to the best of his judgment and capacity to perform the duty of Commissioner, as required by this Act, of which Oath such Justice of the Peace shall give a Copy and Certificate to the Commissioner having made Oath, who shall annex the same to his Register; and the Clerk or other person doing the duty of Clerk to such Commissioner, shall in like manner before entering upon the duties of his office, make Oath before such Commissioner faithfully to execute to the best of his ability the duties of his

office under this Act, of which Oath a Certificate shall by such Commissioner be entered upon his Register aforesaid. Provided always that no Bailiff, Serjeant of Militia, or person keeping a house of entertainment or vending spirituous liquors, shall act as such Commissioner or Clerk to any such Commissioner; and provided also, that the person who shall act as Clerk or Greffier to any such Commissioner or Commissioners shall be of lawful age of majority, and no person being the Brother, Son, Son-in-law, the Clerk or Agent of such Commissioner or of any of the Commissioners in his or their private concerns, shall act as Greffier or Clerk to any Commissioner whose Brother, Son, Son-in-Law, Clerk or Agent as aforesaid he may be.

XII. Provided always and be it further enacted by the authority aforesaid, that no Bailiff or Serjeant of Militia shall act as Attorney before such Commissioner or Commissioners, nor shall any other person than an Attorney or Barrister, duly commissioned to Practice the Law in this Province, so act without a power of Attorney in writing or in presence of the parties and with their consent; and every person not duly commissioned to practice the Law as aforesaid, who shall act or practice before the said Commissioners or any of them as Attorney or Agent (Procureur ou Porteur de pieces) of the Parties, Plaintiff or Defendant, shall be bound so to do gratis, without demanding or receiving any fee, perquisite or remuneration whatsoever, and every person acting or practising as an Attorney or Agent, (Procureur ou Porteur de Pieces) of the Parties, Plaintiff or Defendant before the said Commissioners or any of them, without being duly commissioned to practise the Law as aforesaid, and who shall directly or indirectly receive in consideration of such services any fee, emolument or remuneration whatsoever, shall for every such offence incur the pains and penalties of the crime of extortion and shall for ever be incapable of acting or practising as an Attorney or Agent (Procureur ou Porteur de Pieces) before the said Commissioners or any of them.

XIII. And be it further enacted by the authority aforesaid, that all opposition shall be heard and decided summarily before the Commissioner or Commissioners, in the same manner as the causes originally instituted before such Commissioner or Commissioners.

XIV. And be it further enacted by the authority aforesaid, that, from and after the passing of this Act, no Writ of Summons, Subpoena or Execution shall be directed to be served or executed by any person other than a Bailiff or a Serjeant of Militia, residing in the Parish, Seigniorship or Township wherein the Defendant, or Witnesses, as the case may be, may respectively reside. Provided always, that whenever it may appear to any Commissioner, by Certificate from a Captain of Militia, that there is no Bailiff, and that none of the Serjeants of Militia residing in the Parish, Seigniorship or Township, for which he is such Captain, are qualified to make a return in writing, it shall be lawful for the Commissioner or Commissioners to address such Writ of Summons, Subpoena or Execution, as may require to be served or executed in such place, to any other person resident therein, to be named in the said Writ, who shall make Oath to the due service and execution of such Writ.

XV. And be it further enacted by the authority aforesaid, that it shall be the duty of the parties, Plaintiff and Defendant, in any suit which shall be instituted before such Commissioner or Commissioners, to summon all such Witnesses as they may have to produce respectively, on the return day of the Writ of Summons, to the end that the suit or cause of action may be then and there forthwith heard and determined in a summary way; and in case of the necessary absence of any one or more of the Witnesses, who may have been duly subpoena'd as aforesaid, it shall and may be lawful for such Commissioner or Commissioners, to continue the cause over to such convenient day as he shall then and there publicly and openly appoint, for the hearing of such Witnesses subpoena'd as aforesaid, and who may not have appeared on the return day of the summons, and for none other, nor shall more than one adjournment be allowed in any such suit or action before the said Commissioner or Commissioners, and in all cases where a Defendant shall or may appear on the return of the Writ of Summons, and the Plaintiff doth not enter and prosecute his suit, the Defendant shall and may enter the summons, and obtain a dismissal of the said suit or conge de default, against the said Plaintiff with costs.

XVI. And be it further enacted by the authority aforesaid, that, every Writ of Execution shall be made returnable and returned with the proceedings thereon certified, on the day therein named for the return of the same, not being less than fourteen nor more than thirty days from the date of such Writ.

XVII. Provided always and it is declared and enacted by the authority aforesaid, that nothing herein contained shall be construed in any manner to derogate from the rights of the Crown, to erect, constitute and appoint Courts of Civil or Criminal Jurisdiction within this Province, and to appoint from time to time the Judges and Officers thereof, as His Majesty, His Heirs or Successors shall think necessary or proper for the circumstances of this Province, or to derogate from any other right or prerogative of the Crown whatsoever.

XVIII. And be it further enacted by the authority aforesaid, that this act shall continue to be in force until the first day of May, one thousand eight hundred and twenty-nine and no longer.

#### FORM OF SUMMONS.

Parish, (Seigniorship or Township) of \_\_\_\_\_

Greeting:

In His Majesty's name you are hereby commanded to summon A.B. of \_\_\_\_\_ if he may be found within the Parish, (Seigniorship or Township) of \_\_\_\_\_ to be and appear before \_\_\_\_\_ His Majesty's Commissioners for the summary trial of certain actions, residing in the said Parish, (Seigniorship or Township) at the dwelling house of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ of the clock in the \_\_\_\_\_ noon, then and there to answer C.D. of \_\_\_\_\_ who demands of the

said A.B. the sum of \_\_\_\_\_ for \_\_\_\_\_ and do you make your return of this summons with your doings thereon \_\_\_\_\_ on or before the said day.  
Witness \_\_\_\_\_ hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of His Majesty's reign and in the year of our Lord

FORM OF A WARRANT OF EXECUTION.

Parish (Seigniori or Township) of \_\_\_\_\_

To all and every the Bailiffs (Huissiers) Constables and other Officers within the said Parish, (Seigniori or Township) of \_\_\_\_\_

Whereas A.B. of \_\_\_\_\_ did on the \_\_\_\_\_ day of \_\_\_\_\_ before \_\_\_\_\_ of his Majesty's Commissioners for the summary trial of certain Actions, residing at \_\_\_\_\_ recover Judgement against C.D. of \_\_\_\_\_ for the sum of \_\_\_\_\_ for his debt and \_\_\_\_\_ for his costs, of which \_\_\_\_\_ execution remains to be done. You are therefore hereby commanded, in His Majesty's name, to levy of the goods and chattels, and effects of the said C.D. (except his beasts of the plough, his implements of husbandry, the tools of his trade, and one bed and bedding, unless other goods and chattels shall prove insufficient, but not in any case the bed and bedding,) the aforesaid sum and costs, together with \_\_\_\_\_ for the expenses of this execution, returning to the said C.D. the overplus, if any there be, after having fully satisfied the aforesaid sum of \_\_\_\_\_

Witness \_\_\_\_\_ hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of His Majesty's Reign, and in the year of our Lord

FORM OF A SUBPOENA.

Province of Lower Canada }  
County of }  
}

To \_\_\_\_\_

Greeting:

I command you, that laying aside all and singular business and excuses, you and each of you be and appear, in your proper person, before me, a Commissioner, for the summary of certain Actions, at the \_\_\_\_\_ in the Parish, (Seigniori or Township) of in the County of \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the noon of the same day, then and there to testify, all and singular, those things which you or either of you know in a certain cause, between \_\_\_\_\_ Plaintiff, and \_\_\_\_\_ Defendant, before me the undersigned Commissioner, and this you or either of you shall by no means omit under the penalties of the Law.

Given under my hand and seal this \_\_\_\_\_