

The Provincial Statutes of Lower-Canada, Being the fourth session of the fourteenth Provincial Parliament of Lower-Canada. Quebec: John Carleton Fisher & William Kemble, Law Printer to the King's Most Excellent Majesty, 1834.

4 William IV – Chapter 4

An Act to amend an Act passed in the fourth year of His late Majesty's Reign, chapter seventeen, and further to facilitate the prosecutions of actions in certain cases. (18th March, 1834.)

Whereas it is expedient to amend, and render more effectual a certain Act passed in the fourth year of His late Majesty's Reign, chapter seventeen, intituled, "An Act to provide more effectual means than heretofore have been, to compel in the proper Jurisdiction, the appearance of Defendants, residing in different districts, who ought to be joined in the same cause:"—Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and con* sent 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 in any suit or action wherein the instance shall stand or be interrupted by the decease of anyone or more of the parties thereto, and the legal representative or representatives of the party or parties deceased shall be domiciliated in any district or districts of this Province, other than that wherein the original suit was pending, it shall and may be lawful for the Court having cognizance of such suit or action to issue a Writ or Writs, addressed to the Sheriff or Sheriffs of the several Districts in this Province, in which such legal representative or representatives may respectively reside, which Writ or Writs being first endorsed by the signature of any of His Majesty's Judges, for the District where such representative or representatives may reside and a copy thereof served upon such representative or representatives shall, have the same force and effect as if the service had been made upon him, her, or them within the Jurist diction of the Court wherein the original suit was so pending.

II. And be it further enacted by the authority aforesaid, that whenever a Writ of attachment shall issue out of any of the several Courts of King's Bench, for the several districts of this Province, for the attaching of monies, goods, or effects, in the hands of a person or persons, within the jurisdiction of the Court out of which such attachment shall issue; and the person or any of the persons against whom such attachment shall so issue, shall be resident in any other district of this Province, it shall and may be lawful for the Court to issue a Writ or Writs, addressed to the Sheriff or Sheriffs of the district or districts in which such person or persons shall then reside, which Writ or Writs, being first endorsed by the signature of any of His Majesty's Judges, for the district in which such person or persons shall then reside, and a copy thereof served upon such person or persons, shall have the

same force and effect as if the same had been served upon him, her or them, in the district in which such monies, goods, or effects shall have been so attached as aforesaid.

III. And be it further enacted by the authority aforesaid, that whenever the Plaintiff in any suit shall, after judgment in his favour, wish to attach monies, goods, or chattels, belonging to the Defendant in the hands of a third person, resident in any district other than that in which such suit was instituted, such Plaintiff may obtain a Writ of attachment from the Court by which the judgment was rendered, addressed to the Sheriff of the district in which such third person shall be resident, commanding such Sheriff to summon such third person to appear, either in term or in vacation, (within such delay as is prescribed by the rules of practice of the Court, for the appearance of Defendants summoned by Writ of summons ad respondendum,) at the Prothonotary's Office of the Court of King's Bench, for the district last mentioned, before one of the Judges of the said Court; and such Writ, (being endorsed by one of the Judges of the said Court,) shall be in all respects obeyed by such Sheriff, and any one of the Judges of the said Court, is hereby empowered to receive the declaration of the Tiers-Saisi, and shall forthwith transmit the same to the Justices of the Court, out of which the Writ issued.

IV. And be it further enacted by the authority aforesaid, that if the declaration made by the Tiers-Saisi, in any such case, be not contested by the Plaintiff, such Plaintiff may move for, and obtain judgment from the Court from which the Writ issued pursuant to such declaration; and may, after the expiration of fifteen days from the day on which such judgment shall be served on the Tiers-Saisi, sue out of said Court, a Writ of execution against such Tiers-Saisi, directed to the Sheriff of the district, in which the Tiers-Saisi made his declaration, and such Writ being first duly endorsed by one of the Justices of the Court of King's Bench for the said district, shall be in all respects obeyed by such Sheriff. Provided always, that if such Plaintiff shall wish to contest the declaration of the Tiers-Saisi, he may move the Court, in which the suit was instituted for leave so to do, and on obtaining such leave may file his contestation of such declaration, and the said Court, shall thereupon transmit such contestation, with a true copy of the judgment in favor of the Plaintiff, and of the Writ of attachment, and of such other proceedings in the suit as the Court may deem necessary, or as either party may require, to the Court in which the declaration of the Tiers-Saisi was made, and the said Court shall and may proceed in all respects in regard to such contestation as if the suit had been originally brought before the said Court.

V. And be it further enacted by the authority aforesaid, that from and after the passing of this Act, any action hypothecaire, may be instituted and prosecuted in the district in which the Defendant (or the Defendants) shall reside at the commencement of the suit, and it shall be lawful for the Court having cognizance of such suit, to proceed with regard to the same, in such manner in all respects as is provided in the Act herein before cited, in the several cases therein mentioned: and such Court may issue a Writ or Writs of execution, directed to the Sheriff of the district in which the property hypothecated is situate, which Writ or Writs being first endorsed by one of the Justices of the Court of King's Bench for such district, shall be obeyed by such Sheriff, and the proper return thereto shall be made to the Court out of

which such Writ or Writs shall have issued, and the monies levied under the same (if any) shall be paid by such Sheriff, according to the order or orders of such last mentioned Court, which shall with regard to such Writ or Writs have the same authority over the said Sheriff as it has over the Sheriff of the district, in and for which it is constituted.