

The Provincial Statutes of Lower-Canada, Being the third session of the Special Council, begun and holden at the City of Montreal, in the said Province of Lower Canada, the fifth day of November, 1838. Quebec: John Carleton Fisher & William Kemble, Law Printer to the Queen's Most Excellent Majesty, 1838.

2 Victoria – Chapter 7 (Session 3)

An Ordinance for the Attainder of persons against whom sentences or judgments of Courts Martial shall be given, under and by virtue of an Ordinance passed in the second year of Her Majesty's Reign, intituled, "An Ordinance for the suppression of the Rebellion which unhappily exists within this Province of Lower Canada, and for the protection of the persons and properties of Her Majesty's faithful subjects within the same," and of another Ordinance passed in the said second year of Her Majesty's Reign, intituled, "An Ordinance to declare and define the period when the Rebellion, now unhappily existing in this Province, shall be taken and held to cease, and for other purposes."

Whereas His Excellency Sir John Colborne, the Administrator of the Government of this Province, did lawfully and by virtue of the authority in him reposed, by Proclamation under his Hand and Seat at Arms, bearing date at the Government House in the City of Montreal, the fourth day of the present month of November, declare Martial Law to be in force in the District of Montreal, in the said Province: And whereas, in and by an Ordinance of the Administrator of the Government of the said Province, authorized to execute the Commission of Governor thereof, by and with the advice and consent of the Special Council for the affairs of the said Province, passed in the second year of the Reign of our Lady the Queen, intituled, "An Ordinance for the suppression of the Rebellion which unhappily exists within this Province of Lower Canada, and for the protection of the persons and properties of Her Majesty's faithful subjects within the same," it is enacted that it shall and may be lawful for the Governor, or person administering the Government of the said Province, to arrest and detain in custody all persons before that time, or then engaged in the said Rebellion, or suspected thereof, and to cause all persons so arrested and detained in custody, to be brought to trial in a summary manner, by Courts Martial, to be assembled under such authority, and be constituted in such manner, and of such description of persons, as the said Governor or person administering the Government of the said Province, shall from time to time, direct, for all offences committed since the first day of this present month of November, or thereafter to be committed, in furtherance of the said Rebellion, whether such persons shall have been taken in open arms against Her Majesty, or shall have been otherwise concerned in the said Rebellion, or in aiding or in any manner assisting the same, and to execute the sentence of all such Courts Martial, whether of death or otherwise, and to do all other acts necessary for such several purposes. And whereas it is expedient and necessary to ascertain and declare what shall be the consequence in Law of the Sentences and Judgments of any Court or Courts Martial, to be given or passed in the behalf aforesaid:—Be it therefore Ordained and Enacted by His Excellency the Administrator of the Government of this Province, authorised to execute the Commission of the Governor thereof, by and with the advice and consent of the Special Council for the affairs of the said

Province, constituted and assembled by virtue of and under the authority of an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the first year of the Reign of Her present Majesty, intituled, "An Act to make temporary provision for the Government of Lower Canada," And it is hereby Ordained and Enacted by the authority aforesaid, that all and every the Sentences and Judgments whereby the pain of death shall be adjudged, made, given and passed by any Court Martial or Courts Martial, to be appointed and constituted by the Governor or person administering the Government of the said Province, under and by virtue of the said Ordinance, and of the Ordinance of the Administrator of the Government of the said Province, authorised to execute the Commission of Governor thereof, with the advice and consent of the Special Council for the affairs thereof, passed in the second year of the Reign of our said Lady the Queen, intituled, "An Ordinance to declare and define the period when the Rebellion now unhappily existing in this Province, shall be taken and held to cease, and for other purposes," upon or against any person or persons whomsoever, by virtue of the said Ordinances shall have the effect of an Attainder, or Attainders of the person or persons, upon and against whom such sentences or judgments shall be made, given and passed, to all intents and purposes whatsoever, in the Law; and that the lands, tenements, hereditaments, credits, rights, goods, chattels, and all other things, personal and real, of all and every such person or persons, so sentenced or adjudged, shall be and remain forfeited to the Queen's Majesty, her heirs and successors, for ever; without prejudice however to the rights of the bona fide creditors of such persons, so sentenced or adjudged to suffer the said pain of death, for all dues, charges and incumbrances existing prior to the commission of the offence for which such sentence or indictment shall have been so made, given or passed.

II. And be it further Ordained and Enacted by the authority aforesaid, that it shall be the duty of all and every the Judge Advocate, or Judge Advocates, who shall be appointed to act as such, at and during the said Court or Courts Martial, or any of them, and he or they are hereby required to transmit, to the Prothonotary of Her Majesty's Court of King's Bench, for the said District of Montreal, forthwith, after the giving and passing of any Sentences or Judgments, in the behalf aforesaid, true and correct copies of all and every such Sentences or Judgments, certified under the Hand and Seal of the President of any such Court or Courts Martial, and by the signature of any such Judge Advocate or Judge Advocates, and the Prothonotary of the said Court is hereby required to affile of record, in the said Court of King's Bench, all and every such Sentence and Sentences, Judgment and Judgments, and duly to enroll the same.

III. And it is hereby further Ordained and Enacted by the authority aforesaid, that office copies of any such Sentences or Judgments, so delivered to the said Prothonotary, and affiled of record, certified by the said Prothonotary, shall, in all Her Majesty's Courts of Judicature, and for all legal purposes whatsoever, be good and sufficient evidence of the contents of such Sentences or Judgments.

IV. And to the end that all creditors and claimants upon the property of such person or persons so sentenced or adjudged to suffer the pain of death, may have an opportunity of

establishing such claims, charges and incumbrances as may be respectively due to each, and be paid the same out of the proceeds of such property:—Be it therefore further Ordained and Enacted by the authority aforesaid, that within fifteen days after the affiling of such Judgments or Sentences of such Courts Martial with the Prothonotary of the said Court of King's Bench, it shall and may be lawful for and on behalf of Her said Majesty to sue out Writs, in virtue of such Sentences or Judgments, directed to the Sheriff of the said District, commanding him to seize and sell the moveable and immoveable property of such persons, so sentenced or adjudged to suffer the pain of death, after such advertisements, and in the same mode and manner as may now, by Law, be used, in respect to executions or judgments for debt, rendered in the said Court of King's Bench, and to make return of his doings and levyings on such Writs, to the said Court, as he is now, by Law, held and bound to do on Writs of Execution, and all persons having claims a fin de distraire, or a fin de charge, or for dower upon such immoveable property, shall be held, as is now practised, to make and file oppositions in support of the same, with the said Sheriff, accompanied by affidavits establishing the claim, fifteen days, at least, before the day fixed for the sale of such immoveable property; And all persons having claims upon the monies levied and returned by the said Sheriff before the said Court, shall be held to make and file their claim on the day after such return shall be made by the said Sheriff, and all persons failing to make such opposition within the delays herein prescribed for the same, respectively, shall be wholly and for ever precluded from so doing, and from all claims which under such oppositions, might have been established.

V. And be it further Ordained and Enacted by the authority aforesaid, that all purchasers at such Sheriff's sales, under such Writs as aforesaid, shall have a valid, absolute, and indefeasible title to such property so by them purchased, to them, their heirs and assigns for ever.

J. COLBORNE.

Ordained and Enacted by the authority aforesaid, and duly passed in Special Council, under the Great Seal of the Province, at the Government House, in the City of Montreal, the twentieth day of November, in the second year of the Reign of Our Sovereign Lady Victoria, by the Grace of God, of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, and in the Year of Our Lord, one thousand eight hundred and thirty-eight.

By His Excellency's Command
W. B. LINDSAY,
Clerk Special Council.