

The Provincial Statutes of Lower-Canada, Being the fourth session of the of the Special Council, begun and holden at the City of Montreal, in the said Province of Lower Canada, fourteenth day of February, 1839. Quebec: John Carleton Fisher & William Kemble, Law Printer to the Queen's Most Excellent Majesty, 1839.

2 Victoria – Chapter 49 (Session 4)

An Ordinance to regulate the Practice of the Courts of Judicature in this Province, respecting certain proceedings.

Whereas it is expedient to alter the Laws and Practice now in force relating to the issuing of process in certain cases, and in other respects:—Be it therefore Ordained and Enacted by His Excellency the Governor of the Province of Lower Canada, 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 of the same, that from and after the passing of this Ordinance, in all cases wherein by law a Writ of *capias ad respondendum*, or attachment, may issue against the body or the estate, debts, and effects of any debtor or debtors, before trial or judgment, it shall and may be lawful for the Clerk, Prothonotary or Prothonotaries, of any Court of King's Bench or Provincial Court in this Province respectively, to take and receive the necessary oath, affidavit, or proof, in such cases by law required, and thereupon to issue, without the fiat of a Judge, the process or writ of *capias ad respondendum*, or of attachment, as the case may be, in the like manner as if the same had been granted or awarded by a Judge of any of the said Courts; Provided always, that nothing herein contained shall prevent any Judge of the said Courts from granting or awarding writs or processes of *capias ad respondendum* and of attachment, in all cases wherein they can now do so according to Law.

II. And be it further Ordained and Enacted by the authority aforesaid, that when any person or persons shall have left his or their domicile or domiciles in this Province, and in all cases where a debtor shall have had no domicile in this Province, but shall have personal or real estate in the same, it shall be lawful for his creditor or creditors to summon and implead such debtor, by a writ issued in the usual way out of any of the said Courts of King's Bench, for the District wherein such person or persons may have had his or their domicile or domiciles, or where such property may be situate, and that upon the return of the Sheriff to any writ issued in that behalf, that the defendant or defendants cannot be found in his District, it shall be lawful for the Court, into which any such writ shall be returned, to order and direct that the defendant or defendants shall, by two advertisements, to be published in the Quebec and Montreal Gazettes, be notified to appear and answer such suit and demand, within two months after the first of such advertisements, and that upon the neglect of such defendant or defendants, to appear and answer to such suit and demand, within the period

aforesaid, it shall be lawful for the plaintiff, or plaintiffs, in any such suit or action, to proceed to trial and judgment, as in a case by default.

III. And be it further Ordained and Enacted by the authority aforesaid, that in all cases of the taking of goods and chattels in execution, by virtue of a writ issuing out of the said Courts of King's Bench, wherein a lessor, claiming a privilege or lien for rent, can now, by law, prevent the sale of such goods and chattels by opposition, it shall be lawful for such lessor to deliver to, or lodge with the Sheriff of the District, who shall have seized such goods and chattels, his opposition in that behalf, but that such Sheriff shall, nevertheless proceed to the sale of the goods and chattels, in any such case by him seized, and make his return accordingly, and that upon the return of the said Sheriff to any such writ, the lessor claiming such lien or privilege for rent, shall, according to the right vested in him by law, exercise his privilege or lien, and be collocated upon the proceeds of the sale of such goods and chattels, certified, in the return of the Sheriff on any such writ, any law, usage, or custom to the contrary notwithstanding.

J. COLBORNE.

Ordained and Enacted by the authority aforesaid, and passed in Special Council, under the Great Seal of the Province, at the Government House in the City of Montreal, the Eighth day of April, 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-nine.

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