

The Provincial Statutes of Lower-Canada, Being the sixth session of the of the Special Council, begun and holden at the City of Montreal, in the said Province of Lower Canada, fifth day of November, 1840, and ending the ninth day of February, 1841. Quebec: John Carleton Fisher & William Kemble, Law Printer to the Queen's Most Excellent Majesty, 1841.

4 Victoria – Chapter 1 (Session 6)

An Ordinance to amend a certain Ordinance of the Legislature of this Province, made and passed in the fourth year of the Reign of Her Majesty, intituled, “An Ordinance to establish new Territorial Divisions of Lower Canada, and to alter and amend the Judicature, and provide for the better and more efficient administration of Justice throughout this Province;” and also a certain other Ordinance of the same Legislature, made and passed in the same year, intituled, “An Ordinance to provide for the more easy and expeditious administration of Justice, in civil causes and matters involving small pecuniary value and interest, throughout this Province.”

Whereas a considerable accumulation of causes, undetermined since the hearing thereof, at different periods, has occurred in the Court of King's Bench for the District of Montreal, and the said causes, as well as a number of others, in a state to be heard, continue to be depending in the said Court, and it has, by reason thereof, become indispensably and urgently necessary that some special provision should be made, for the speedy determination of such causes, and for facilitating the future dispatch of business in the said Court, as well as in the Court of Common Pleas, which is about to be substituted in the place of the said Court of King's Bench:—Be it therefore Ordained and Enacted by His Excellency the Governor of this Province of Lower Canada, by and with the advice and consent of the Special Council for the affairs of this Province, constituted and assembled by virtue 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 also by virtue and under the, authority of a certain other Act of the same Parliament passed in the Session held in the second and third years of the Reign of Her present Majesty, intituled, “An Act to amend an Act of the last Session of Parliament, for making temporary provision for the Government of Lower Canada;” and also by virtue and under the authority of a certain other Act of the same Parliament, passed in the Session held in the third and fourth years of the Reign of Her present Majesty, intituled, “An Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada;” and it is hereby Ordained and Enacted by and under the authority of the said Acts of Parliament, that from and after the passing of this Ordinance, it shall be lawful for the Governor of this Province, for the time being, and he is hereby authorized, from time to time, as to him shall seem meet, by warrant under his hand and seal at arms, directed to the Judges of the said Court of King's Bench, or any two of them, while the present Acts of Judicature now in force shall continue to be in force, and after the new Ordinance of Judicature shall take effect, then to the Judges composing the second division of the Court of Common Pleas for this Province, for the time being, or any two of them, to require the said Judges of the said Court of King's Bench, or any two of

them, or the said Judges of the said second division of the said Court of Common Pleas, or any two of them, to meet at the Court House, in the City of Montreal, on such and so many days, in the vacation or interval between any terms, as to the said Governor of this Province, for the time being, shall seem fit and proper, for the dispatch of such matters, as at the end of the term mentioned in such warrant, may be depending in the said Court.

II. Provided always, and be it further Ordained and Enacted, that any such warrant that shall be issued before the first day of February next, shall be published in the Quebec Gazette proceeding from authority, and also in the Montreal Gazette, ten days at the least, before the time to be appointed for the meeting of the said Judges as aforesaid.

III. Provided also, and be it further Ordained and Enacted, that any such warrant that may be issued after the first day of February next, shall be made and issued ten days at the least, before the end of the term preceding the vacation in which the meeting of the Judges, for the dispatch of business, in pursuance of such warrant, is to be had as aforesaid; and that the issuing of such warrant shall, before the end of the said term be openly and publicly, in the said Court of King's Bench, or in the second division of the said Court of Common Pleas, notified and declared, and be afterwards published in the said Quebec Gazette, and in the said Montreal Gazette.

IV. And be it further Ordained and Enacted, that when and so often as any such warrant shall be made and directed to the said Judges of the said Court of King's Bench, or to the said Judges composing the second division of the said Court of Common Pleas, as aforesaid, it shall be lawful for the said Judges, or any two of them, and they are hereby required, unless prevented by illness, public business, or other reasonable cause, to meet in pursuance of such warrant, for the dispatch of such matters as aforesaid, or of so much and such parts thereof as may appear to such Judges chiefly to require dispatch, and as may then be most conveniently dispatched, and to hear, determine, and pronounce rules, orders and judgments thereupon, which rules, orders and judgments shall be drawn up and entered of record, either of the term last past before the pronouncing thereof, or as of the term then next ensuing, as the said Judges shall direct.

V. And be it further Ordained and Enacted, that all rules which have been or may be made or pronounced and entered of record, by or by the direction of the said Court of King's Bench, or the said second division of the said Court of Common Pleas, for shewing cause, in any term next after any of such sittings, required by such warrant as aforesaid, shall be deemed and taken to be rules to shew cause, as well at such sittings as in the term then next following, and may be heard and determined in such sittings accordingly. Provided always, that nothing herein contained shall alter or affect the return of any writ, either mesne or judicial, or require any return of such writ, or appearance thereto, before the day therein mentioned.

VI. And whereas it is expedient to provide for the continuance and determination of all such Writs of Certiorari, Mandamus, Quo Warranto, and informations in the nature of Quo

Warranto, as may be depending in any of the Courts of King's Bench, in the several districts of this Province, at the time appointed, or to be appointed, for the commencement of a certain Ordinance of the Legislature of this Province, made and passed in the fourth year of Her Majesty's Reign, intituled, "An Ordinance to establish new Territorial Divisions of Lower Canada, and to alter and amend the Judicature, and provide for the better and more efficient administration of Justice throughout this Province;"—Be it therefore Ordained and Enacted, that all Writs of Certiorari, Mandamus, Quo Warranto, and informations in the nature of a Quo Warranto, and proceedings had thereon, which shall or may be depending in any of the said Courts of King's Bench, at the time of the commencement of the said last mentioned Ordinance, shall forthwith, after the time appointed for such commencement, be by the then late Prothonotaries of the said Courts, or other officers or persons having the custody thereof, respectively, delivered or transmitted into the Office of the Clerk of the Crown in the Court of Queen's Bench for this Province, for the time being, and shall be proceeded with, and heard and determined, in the same manner as if the same had been issued from and returned into, and had, in the said Court of Queen's Bench, and every such delivery or transmission shall be made, certified, and signed, without fee or reward, by the officer delivering or transmitting the same.

VII. And be it further Ordained and Enacted, that it shall be lawful for the Governor of this Province, for the time being, in execution of the power given to him, in and by the said last mentioned Ordinance, to divide this Province into Districts, for the purposes of judicature and of the said Ordinance, to adopt as a division and divisions, for the said purposes, any District or Districts into which this Province may be divided for other purposes, and by his Proclamation in this behalf, under the Great Seal of this Province, to unite two or more of any such Districts, for the purposes of judicature and of the said Ordinance, and in any such District or United Districts, and at such place or places in such District or Districts, as to him may appear expedient, to establish a District Court, in execution of and according to the provisions in the said Ordinance contained, except in so far as the same are hereby altered, and to appoint a Sheriff for any of the said Districts, separately, or for two or more of the said United Districts, as to him may appear expedient, for the fulfilment of the provisions in the said Ordinance contained, and also where any such District Court may, by such Proclamation as aforesaid, be appointed to be held at two or more different places, in any such District, or in any two or more United Districts, to prescribe and fix the number of days in each month, on which the said Court shall be held at the said places respectively, in which cases, and in respect of which District and Districts, so much of the said Ordinance, as requires the District Courts to be held on the first six juridical days of each and every month, except in the Districts in which the Cities of Quebec and Montreal shall be situated, and to be held on the first ten juridical days in each month, in the said Cities, shall be and remain repealed.

VIII. And whereas it is expedient that no higher or greater amount of costs be allowed in the Inferior Terms of the Court of Common Pleas, than are and shall be allowed in the District Courts, in pursuance of the law in this behalf provided; Be it therefore Ordained and Enacted, that when and so soon as the said Ordinance in the next preceding section

mentioned, shall commence and take effect, no higher or greater amount of costs shall, in any case, be recovered or allowed in the said Inferior Terms of the said Court of Common Pleas, than are and shall be allowed, in like cases, in the several District Courts in this Province, under and in pursuance of the said Ordinance, according to the Tables of Fees to the said Ordinance subjoined, in which costs, nevertheless, no fee to the Judge sitting in the Inferior Term, shall be considered as included.

IX. And be it further Ordained and Enacted, that so much of the said two Ordinances of the Legislature of this Province passed in the fourth year of Her Majesty's Reign, hereinbefore amended, as provides that the said Ordinances, respectively, shall commence and have execution, from and after the first of December next, shall be, and the same is hereby repealed; and the said Ordinances respectively, shall commence and have execution and effect, at, from, and after such time, not later than the fifteenth day of May now next ensuing, as the Governor of this Province, by his Proclamation under the Great Seal of the Province, in this behalf to be issued, shall appoint.

X. And be it further Ordained and Enacted, that this Ordinance, and the provisions herein contained, shall not cease or expire on the first day of November, which will be in the year of our Lord one thousand eight hundred and forty-two, but shall be and remain a permanent law, and in full force, until the same shall be repealed or altered by competent Legislative authority.

SYDENHAM.

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 Twenty-fourth day of November, in the Fourth 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 forty.

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