

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 26 (Session 6)

An Ordinance to facilitate the Dispatch of the Business now before the Court of King's Bench for the District of Montreal.

Whereas it is necessary to make further and temporary provision to facilitate the Dispatch of the great accumulation of business now before the Court of King's Bench for the District of Montreal:—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 the authority of the said Acts of Parliament, that it shall be lawful for the Governor, Lieutenant Governor or person administering the government of this Province, to appoint by commission under the great seal of this Province, a fit and proper person to be Commissioner of the Inferior Term of the Court of King's Bench for the District of Montreal, and to have, hold and exercise the powers and to perform the duties hereinafter assigned to such Commissioner.

II. And be it further Ordained and Enacted, that the said Commissioner shall and may sit and act as a Judge of the said Court in any Inferior Term thereof, or in any Circuit Court thereof, and shall, in and with regard to all causes and proceedings of any kind lawfully brought or to be brought before or pending in the said Court in any Inferior Term thereof, or in or before any such Circuit Court as aforesaid, have in Court and out of Court, in Term or in vacation, all the powers, authority and jurisdiction by law vested in any Judge or Justice of the said Court with regard to any such causes or proceedings as aforesaid; but the said Commissioner shall have no power whatever in or with regard to any cause or proceeding of any kind brought or to be brought before or pending in the said Court of King's Bench at or in any Superior term thereof except only such powers as are hereinafter expressly vested in such Commissioner.

III. And be it further Ordained and Enacted, that the said Commissioner shall have all the powers of a Justice or Judge of the said Court, with regard to elections of tutors or guardians, curators, and other counsels of relations and friends, closing of inventories, attestations of accounts, insinuations, the affixing and taking off seals of safe custody and other acts of a like nature which ought not to suffer any delay, and to the appointment of a Notary or some other fit person upon application of the parties to receive the counsels and opinions of relations or friends, and shall have the same power as any Justice or Judge of the said Court to grant a fiat to enable any party to obtain a writ of saisie gagerie, or a writ of saisie arret, before or after judgment, or a writ of saisi revendication, in any cause brought or to be brought in any Superior Term of the said Court, and to take any affidavit to be used in any cause, brought or to be brought in any such term and to preside at and take the enquete in any cause, brought or to be brought in any such Term, and to administer all necessary oaths to any witness produced at such enquete, and to decide all questions arising at any such enquete touching the competency or admissibility of any witness or evidence or of any question proposed to any witness, or the closing or continuance of such enquete, or any other matter relative to such enquete and the evidence given or offered at the-same, such decision being subject to revision by the said Court on motion and rule to that effect, and to reversal or modification if found, on such revision, to be wholly or in part erroneous.

IV. And be it further Ordained and Enacted, that it shall be lawful for the Governor, Lieutenant Governor, or person administering the Government of this Province, by warrant under his hand, to authorize the payment to the said Commissioner out of any unappropriated monies in the hands of the Receiver General, of such sum or sums as may be necessary to defray the salary of the said Commissioner during the time this Ordinance shall remain in force, at the rate of nine hundred pounds sterling per annum.

V. And be it further Ordained and Enacted, that the due application of all public monies of which the expenditure is hereby authorized, shall be accounted for to Her Majesty, her heirs and successors, through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner and form as Her Majesty, her Heirs and Successors shall be pleased to direct.

VI. And be it further Ordained and Enacted, that so much of a certain Act of the Legislature of this Province, passed in the thirty fourth-year of the reign of His Majesty King George the Third, and intituled, "An Act for the division of the Province of Lower-Canada, for amending the judicature thereof, and for repealing certain laws therein mentioned," and of any other Act, Ordinance or Law whatsoever, as shall be repugnant to or inconsistent with the express enactments of this Ordinance, shall be and is hereby repealed.

VII. Provided always, and be it further Ordained and Enacted, that nothing in this Ordinance contained shall enlarge, diminish or in any wise affect the extent of jurisdiction possessed by the said Court of King's Bench, for the said district of Montreal, or by any Judge or Justice thereof, when sitting in Inferior Term, or to repeal or affect any provision of the act last above cited or of any other law not repugnant to or inconsistent with the express

enactments of this Ordinance, or to diminish or affect any right or prerogative of the crown in any manner or way whatsoever,

VIII. And be it further Ordained and Enacted, that this Ordinance shall be and remain in full force until the thirty first day of December, in the present year of our Lord, one thousand eight hundred and forty-one, and no longer. Provided always, that if a certain Ordinance passed in the fourth year of Her Majesty's Reign, and intituled "An Ordinance to establish new Territorial Divisions of Lower-Canada, and to alter and amend the Judicature, and to provide for the better and more efficient administration of Justice throughout this Province," shall in the manner by law provided, be brought into force and effect before the day last mentioned, then this Ordinance shall expire on the day on which the said Ordinance shall be so brought into force and effect as aforesaid.

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 Sixth day of February, 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-one.

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