

*Acts of the General Assembly of His Majesty's Province of Lower Canada passed in the year 1795.* Quebec: William Vondenvelden, Printer to the King's Most Excellent Majesty, 1795.

35 George III – Chapter 1

**An Act to explain and amend an Act made in the thirty-fourth year of the reign of his present Majesty, intituled "*An Act for the division of the Province of Lower-Canada, for amending the Judicature thereof and for repealing certain Laws therein mentioned.*"**

Whereas by an Act passed by the Legislative Council and by the House of Assembly in the last Session of the Legislature of this Province, intituled, "*An Act for the division of the Province of Lower-Canada, for amending the Judicature thereof, and for repealing certain laws therein mentioned,*" which said Act was reserved by the Governor, for the signification of his Majesty's pleasure thereon, and his Majesty hath been graciously pleased to grant his assent to the same, and it was therein enacted, that the county of Gaspé should be erected into an inferior district; and that in the same district there should be appointed a Provincial Judge, who should hold a provincial court within and for the said district, with full cognizance of and hear, try and determine in a summary manner, without appeal, every writ, suit or action, and where the King is a party, (those purely of Admiralty jurisdiction excepted,) wherein the amount claimed shall not exceed the sum of twenty pounds sterling: and whereas it is expedient that further provision be made regarding the said inferior district of Gaspé, be it therefore enabled by the King's most excellent Majesty, by and with the advice and consent 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;"*" that it shall and may be lawful to and for all and every person having rights, claims or demands for any fee of office, duty, rent, revenue or any sum or sums of money payable to his Majesty, or titles to lands or tenements, annual rents or such like matter or thing, where rights in future may be bound, arising in the district of Gaspé aforesaid; to institute his, her or their suit and demand by summons from the Provincial Judge at Gaspé returnable into the court of King's Bench at Quebec, in the same manner as if the demand exceeded the sum of twenty pounds sterling, any law to the contrary notwithstanding.

II. And whereas by the aforesaid Act passed in the last Session of the Legislature, it was enacted that all records, registers and proceedings in custody of or belonging to the court of King's Bench of this Province, should be taken and considered to belong to and be in custody of the court of King's Bench to be established under the said Act, for the district of Quebec; and whereas it is expedient that all and every the records of the said court of King's Bench, which have been formed upon proceedings had in causes moved and prosecuted in the district of Montreal, or in the inferior district of Three Rivers, should be lodged and deposited with some proper and sufficient Officer in the several courts of King's Bench of the said district of Montreal and Three Rivers respectively; be it therefore further enacted, that all and every the indictments, recognizances, registers, papers, proceedings and records of what nature soever, which during the establishment

of the court of King's Bench, prior to the passing the above mentioned Act, shall have been possessed by the said court or any Officer or person holding custody of the same for the said court, or that may now be possessed by the court of King's Bench of the district of Quebec, or any Officer or person holding custody of the same for the said court, relating to any suit or prosecution moved or heard in the said court of King's Bench, for the province of Quebec or Lower-Canada, sitting at the city of Montreal, for the district of Montreal; and at the town of Three Rivers, for the district of Three Rivers, shall be forthwith transmitted to the said district of Montreal and Three Rivers respectively, and into the office of the Clerk of the Crown or proper Officer of the court of King's Bench of the said several districts, and by the said Clerk of the Crown or other proper Officer of the said court shall be received, held and preserved as making part of the records of the said courts respectively, and to all legal intents and effects whatsoever, as if the same records and proceedings had been originally formed in the said courts of King's Bench of the district of Montreal and Three Rivers, established since the passing of the Act before mentioned; and that the said court of King's Bench of the district of Montreal and Three Rivers respectively, shall have full power and authority, from time to time, to order and compel such person and persons as are in possession of any of the records before mentioned, to transmit and deliver over the same in manner aforesaid, and every refusal so to do, shall be deemed a contempt of the respective court issuing such order therefor, and the person or persons so refusing may be proceeded against as in cases of contempt and adjudged accordingly.

III. And whereas by the aforesaid Act passed in the last Session of the Legislature, it was enacted, that the courts of King's Bench to be held in and for the district of Quebec and Montreal, for the trial of Civil Pleas, as well as the superior Terms as inferior thereof, should be held at certain days and times, as in the said Act specified: and which days and times may be more conveniently appointed for the administration of justice; be it therefore further enacted, that the superior Terms of the courts of King's Bench for the district of Quebec and Montreal respectively, shall sit and be held at stated times for the trial of suits and actions of a civil nature, that is to say, on the first twenty days in the months of February, April, June and October, in every year; and shall sit and be held every of the said twenty days during the Terms aforesaid, (Sundays and holy-days excepted,) any thing to the contrary notwithstanding.

IV. And be it further enacted, that it shall and may be lawful for any Justice of the Peace or other Magistrate having jurisdiction in the district in which any offender may be found, to cause such offender for any crime or offence committed within the limits of this Province to be arrested and imprisoned, or in cases where it may be lawful to be holden to bail in order for his or her trial, before such court of this said Province, which by the Laws, Statutes and Ordinances thereof has cognizance of such crime or offence, and the examination of such offender, and the depositions of the witnesses taken before such Justice of the Peace or other Magistrate as aforesaid, upon the arrest of such offender, shall be by them respectively returned with all convenient speed into the office of the Clerk of such court, together with the recognizances of such witnesses for their appearance at the then next Session or Term of such court, to testify and give evidence in such case, which recognizances the Justice of the Peace or other Magistrate as aforesaid, before whom the examination of such offender shall be had, is hereby authorized to require on pain of imprisonment.

V. Provided always and it is hereby enacted, that in all cases where such recognizances shall by law be forfeited, it shall be lawful for the court to which such recognizances shall so as aforesaid be returned, to proceed thereon in like manner as if the said recognizances had been taken in the district in which such court hath compleat jurisdiction; and if such commitment of such offender shall be in a district other than that in which the offence is to be tried, the Justices of the court of King's Bench of that district in which such offender shall be so imprisoned, or any or either of them, upon application of his Majesty's Attorney or Sollicitor General, and in default of such application, upon the application of such offender, shall issue a writ of Habeas Corpus commanding the keeper of the gaol in which such offender shall be so imprisoned, to have the body of such offender before them or either of them, at a convenient time and place to be specified in such writ, together with the true cause of his commitment and detainer; and if thereon it shall appear that such offender is detained upon such commitment as aforesaid, for any crime or offence committed in another district, the Justices of the said court of King's Bench, or any or either of them, before whom such writ of Habeas Corpus shall be so made returnable, shall take course for the im-mediate removal of such offender to the common gaol of the district in which the trial of such offender for such crime or offence is to be had, by warrants under their hands and seals, directed to the keeper of the gaol and to the Sheriff of the district in which such offender shall be so imprisoned, and to the keeper of the gaol of the district in which the trial of such offender is to be had, authorizing the delivrance of the body of such offender from the goal of the district in which such offender shall be so imprisoned, and commanding the Sheriff of the district in which the offender shall be so imprisoned to remove the body of such offender forthwith, with all care and diligence, to the gaol of the district in which the trial of such offender is to be had, and commanding the keeper of the gaol of the district in which the trial of such offender is to be had, to receive such offender, charged with such crime or offence, into his custody in the gaol of the said district, there to remain till he be thence delivered in due course of law, which warrants the Sheriff of such district and the keepers of such goals as aforesaid, are hereby required to execute.

VI. And be it further enacted, that if any witness or witnesses in any criminal case cognizable in the courts of King' Bench for the district of Quebec, Montreal or Three Rivers, shall reside in any part of this Province, without the jurisdiction of that court of King's Bench in which such criminal case is cognizable, it shall and may be lawful for the court of King's Bench in which such criminal case is cognizable, to issue a writ or writs of sub poenâ, directed to such witnesses, in like manner as if such witnesses were resident within the jurisdiction of such court of King's Bench, and in case such witnesses shall not obey such writ or writs of sub poenâ, it shall be lawful for the court of King's Bench from whence such writ or writs of sub poenâ issued, to proceed thereon against such witnesses so contempt or otherwise, in like manner as if such witnesses were resident within the jurisdiction of such court, any law, usage or custom to the contrary thereof in any wise notwithstanding.