

The Provincial Statutes of Lower-Canada, Being the first session of the Third Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1801.

41 George III – Chapter 7

An Act to amend certain Forms of Proceeding in the Courts of Civil Jurisdiction in this Province and to facilitate the Administration of Justice. (8th April, 1801)

Whereas it is necessary to alter certain forms of Proceeding in the Courts of Civil judicature, in order to facilitate the Administration of Justice, and that the same may be rendered with greater expedition and advantage to His Majesty's subjects. Be it therefore enacted 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 palled 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,'" and it is hereby enacted by the authority of the same, that so much of an Ordinance passed in the twenty fifth year of His Majesty's Reign, intituled, "An Ordinance to regulate the Proceedings in the Courts of Civil Judicature and to establish Trials by Juries in Actions of a Commercial nature and Personal Wrongs to be compensated in Damages" as directs any of His Majesty's Judges to grant an Order, whereby a Plaintiff may have and obtain from the Clerk of the Court, a Writ of Summons in the language of the Defendant, to be issued in His Majesty's name, and tested by the name of such Judge, for the purposes therein set forth, shall be, and the same is hereby repealed; and that from and after the passing of this Act, it shall and may be lawful, for all and every Person or Persons having a Suit of a Civil nature, to institute in any of His Majesty's Courts in this Province, to sue out and as of right to obtain, from the Office of the Clerks or Prothonotaries of such Courts, respectively, a Writ or Summons in His Majesty's name, against the party or parties Defendant; and that such Process, when returnable in any of the Superior Terms, shall be tested in the name of the Chief Justice of the Court, out of which such Process shall issue, or in his absence, in the name of the Senior Puisne Justice of such Court, and in the District of Three Rivers [Trois-Rivières], in the name of the Provincial Judge, and signed by the Clerk or Prothonotary, and sealed with the Seal of such Court, and that all Process returnable into the inferior Terms of the said Courts, shall be made out and obtained in like manner, and be tested in the name of the Senior Buisne Judge of such Court: and in the District of Three Rivers in the name of the Provincial judge thereof, any Law, Usage or Custom to the contrary notwithstanding.

II. And be it further enacted by the authority aforesaid, that in all Actions, Oppositions and Suits prosecuted before the Courts of Civil Jurisdiction in this Province, by any Person or Persons, residing without the Province, whether such Person or Persons be subjects of His Majesty or not, the Defendant or Defendants, or others concerned, may demand and obtain good and sufficient security, at the discretion of the said Court, for payment of their Costs, in

case the Plaintiffs or Prosecutors should fail in such their said Actions, oppositions or other Suits; and all proceedings shall be staid and suspended, until such security shall have been offered and received.

III. And be it further enacted by the authority aforesaid, that in all causes exceeding Ten Pounds Sterling, where the Defendant shall not appear in Person or by his Attorney, on the day of the return in Court, of the Writ of Summons sued out against him, upon proof being made of the Service of such Writ of Summons, the Plaintiff shall obtain a Default against the Defendant. And in case such Defendant, upon being called on the third day afterwards, shall neglect or refuse to appear, the Court may order such Suit to be set down for hearing, *ex parte*, on such day as they shall deem convenient, and after having heard and received sufficient proof of the Plaintiff's demand, shall cause Judgment to be entered against the Defendant, with such reasonable Costs as they shall think fit, and shall award such execution thereon, as the Law prescribes in like cases.

IV. Provided always and be it further enacted, that where such Defendant shall appear within the term of three days, as aforesaid. The default shall be taken off, on the Defendant's paying the Costs, and the said Defendant be held to plead within the delay of three Days.

V. And be it further enacted by the authority aforesaid, that in every case, where Judgment may be given, upon the default or non appearance of a Defendant, and when the Writ of Summons hath not been personally served upon the said Defendant, then and in such case, the said Defendant shall have the benefit of a re-hearing of the cause, in the same manner, as is provided with regard to absentees in remote parts of the Province, by the second Section of the said Ordinance of the twenty fifth year of his present Majesty's Reign, Chapter second, upon the said Defendants making it appear, that the place where the said Process may have been served, is not is real Domicile or usual or actual residence.

VI. And be it further enacted by the authority aforesaid, that in every case of Garantie, as well of Garantie formelle as of Garantie simple, where the Garant lives out of the District of that Court, in which the original Action or Suit was instituted, there may issue a Writ from the Court where such Suitor Action was instituted, which Writ being first indorsed by the Signature of any of His Majesty's Judges for such District, may be directed to the Sheriff of the District, where such Garant lives, to summon the said Garant, to appear before the Court where the Suit was instituted, to answer to the Demande en Garantie of said Defendant in such original Action, and to await the Judgment of the said Court, and the service of such Writ upon the return of the Sheriff of the District, where the Garant resides, to the Court where the Suit was instituted, shall have the same force and effect, as if the said service had been made upon the said Garant in the District of the said Court, where the Suit was instituted. And in all Causes or Suits, the Plaintiff may, in like manner, summon his Garant, if any such he has, to intervene, and the Court give Judgment, as well against the Garant of the Plaintiff, as against that of the Defendant, as the case may require.

VII. And be further enabled by the authority aforesaid, that in every case, where it is necessary to examine Witnesses, whose testimony by Law, ought to be reduced to writing, it shall be lawful to examine the said Witnesses in the Court-House, out of Term time, before two Judges of the Court of Civil Jurisdiction.

VIII. And be it further enacted by the authority aforesaid, that in every case, where a Debtor may be imprisoned, under a Writ of Capias ad Respondendum, the said Debtor shall be intitled to obtain an alimentary pension from his Creditor, as prescribed by the Ordinance, passed in the twenty fifth year of the Reign of his present Majesty, Chapter second, as well before, as after Judgment rendered, against him, upon his Petition to any one of the Judges of the Courts of Civil Jurisdiction in this Province, if out of Term time, or to the said Courts, if in Term time; the said Debtor nevertheless making it appear, that he is not worth Ten Pounds sterling, in the manner and form prescribed by the said Ordinance.

IX. And it is enacted, that every Debtor imprisoned under a Writ of Capias ad Satisfaciendum, may obtain the allowance fixed by the laid Ordinance, as well out of Term time as during Term, by an application to any one or more of the Judges of the Court, conformably to Law.

X. And be it further enacted by the authority aforesaid, that whenever a Plaintiff prosecuting for the payment of any Cedule, Note or Promise or the execution of any other Act or private Agreement, such Plaintiff, may by the conclusions of his Declarations, pray, that the Defendant do appear in Court, to confess or deny the signature to the said Cedule, Note, promise or other Act or private Agreement, and that such Cedule, Note or Promise or other Act or private Agreement, shall have been exhibited, and a copy thereof duly signified to the said Defendant, with the copy of the Declaration, that then and in that case, if the Defendant shall fail to appear, conformable to the Writ of Summons, in person or by his Attorney, within the three days allowed him to take up his default, the said signature to the Cedule, Note or Promise, or other Act or private Agreement, shall be considered as acknowledged, and the said Court shall proceed to adjudge thereon. Provided always, that the exhibition and signification of the said Cedule, Note or Promise, or other Act or private Agreement, shall be made and served on the Defendant, personally, and that the Bailiff or Officer serving the same shall make oath thereof, before one of the judges of the said Court.

XI. And be it further enacted by the authority aforesaid, that no opposition to the sale of any immoveable property, seized by the Sheriff by virtue of a Writ of Execution. whether such opposition be, a fin d'annuler or afin de distraire the whole or a part of the property so seized, or a fin de charge of servitudes on the same, shall be lodged in the hands of the Sheriff or received by him, except previous to the fifteen day next before the day fixed for the sale and adjudication thereof; and that no such opposition shall be received by the Sheriff, to the sale of any immoveable property, which may be had by virtue of any Writ of Vendition exponas, when all the previous Notices and Advertisements of the sale, by virtue of the first execution, shall have been made and published, according to Law. Provided, that the Sheriff shall have made known in his publication of the sale of said immoveable

property, that such opposition shall not be received, during the fifteen days previous to the sale of the same as above enacted. Provided nevertheless, that the person who shall neglect to make such opposition, before the fifteen days above mentioned, appointed for the sale of the said immoveable property, as aforesaid, shall still have the power of converting his right, to such opposition, to an opposition a fin de conserver on the proceeds of the sale of the said property, which he may always file, within the time fixed for lodging such opposition a fin de conserver.

XII. And be it further enacted by the authority aforesaid, that in all cases of opposition, whether a fin d'annuler or a fin de charges or a fin de servitudes, it shall be the duty of the Sheriff, in the course of twenty four hours, after such opposition shall be lodged in his hands, to make his return thereof, and to deposit such opposition with his return, in the office of the Prothonotary of the Court.

XIII. And it is further enacted, that every Opposant who shall lodge his opposition, as aforesaid to the sale of any immoveable property, and shall fail in the prosecution of the same, shall be held and condemned to pay, besides the costs and charges to the Plaintiff, prosecuting the sale, or to the Defendant, all damages which may be occasioned thereby, in which damages shall be included the interest of the sum due to the Plaintiff for the time, that the said sale shall have been stopped or suspended, by virtue of such opposition. Provided always, that the Plaintiff prosecuting the sale, shall have the right to be collocated and shall be collocated, upon the proceeds of the immoveable property for the interest of the sum found due to him, according to his right of collocation. Provided also, that, at all times, when in opposition of the nature above-mentioned, shall be lodged in the hands of the Sheriff, the said Sheriff shall not delay or suspend the advertisements and publications, of the sale of the property seized, but that he shall not proceed to the sale of the same, until such opposition shall be adjudged and decided on.

XIV. And be it further enacted by the authority aforesaid, that whenever it shall appear to the Court, by the return of the Sheriff, that the Purchaser or Adjudicataire of any real property seized and sold by the Sheriff, shall refuse or neglect to pay the amount of his said purchase, in conformity to the terms and conditions of sale, the said Court is hereby authorised, upon motion of Plaintiff prosecuting the sale, or of the Defendant, or of any Opposant, to order and adjudge, that the Sheriff do proceed de noto, to sell the said real property, at the folle Enchere or Costs and Charges of the said Purchaser or Adjudicataire, after three Advertisements on three successive Sundays, at the Church Door of the Parish, where the said real property may be situated, and two Advertisements in a public Paper or Gazette: And the said Purchaser or Adjudicataire shall also be liable to all and whomsoever it may concern, for his, her, or their damages occasioned thereby. And if by the return of the said Sheriff, it shall equally appear to the said Court, that the Defendant refuses or neglects to deliver up to the said Sheriff, or to the Purchaser or Adjudicataire, possession of the real property so seized and sold by the Sheriff, it shall be lawful for the said Purchaser or Adjudicataire, upon a motion in Court, to obtain a Writ of possession, directed to the Sheriff, in order to enable him to enter into possession and occupation of the said real property, and

the said Defendant, shall be also liable to all Costs and Damages resulting from his said refusal or neglect.

XV. And be it further enabled by the authority aforesaid, that when any Plaintiff or Plaintiffs who has or have sued out the Writ of execution, in virtue of which any real Property has been put to sale, shall become the Purchaser or Purchasers of the whole or any part of such Property, it shall be lawful for such Plaintiff or Plaintiffs, to retain in his, her or their hands, so much of the purchase money as shall not exceed the amount of the sum remaining due and unsatisfied, on such Writ of execution, until a return thereof, shall have been made by the Sheriff and the Court from whence such Writ issued, shall have ordered a final distribution of the proceeds, on which such Purchaser or Purchasers shall be held to pay into the hands of the Sheriff, so much of his, her or their purchase money, as shall exceed the sum decreed, by such order of distribution, to be due to such Purchaser or Purchasers, and thereon the Sheriff shall execute to such Purchaser or Purchasers, a good and sufficient Deed of sale for the property, so by him, her or them purchased. Provided always, that such Plaintiff shall be held to give good and sufficient security to the Sheriff, for insuring the Damages that may result to the parties concerned, in case of non-payment of the sum, which the said Plaintiff shall be subjected to pay to the Sheriff, after the Adjudgment of Order and Distribution.

XVI. And be it further enacted by the authority aforesaid. that the different Courts of Civil Judicature in this Province, shall have power and authority to make and establish such Orders and Rules of practice in the said Courts, in all Civil matters, touching all services of process, execution and returns of all Writs, Proceedings for bringing causes to issue, as well in Term time as out of Term, and other matters of regulation within the said Courts.

XVII. And be it further enacted by the authority aforesaid, that the Courts of Criminal and Civil Judicature within this Province, shall have power and authority, within their respective Jurisdictions, to make a Table of Fees for the Officers of the said Courts, the which Table, the said Courts of Justice may alter and correct, from time to time, as they shall see necessary. And the Officers of the said Courts, reflectively, are hereby directed to conform to the same.

XVIII. And be it further enacted by the authority aforesaid, that in all cases of appointment of Tuteurs or Curateurs, either to the Person or to the Estate, or ad hoc, homologated before one or more of the Judges of the Courts of this Province, out of Court, it shall be lawful, upon Petition, (of the Relations nearest of kin) to the said Court sitting in Superior Term, in order to set aside, and annul such appointment of Tuteurs or Curateurs, for the said Court, after having taken cognizance of the Case and heard the Tuteurs or Curateurs appointed by the said Act, to set aside and annul such nomination and appointment, for the reasons as are, by Law, in such cases made and provided, and to make and order, that a new Election and appointment shall be held in the usual form and manner.

XIX. And it is further enacted, that all Acts of Emancipation may hereafter be allowed out of Court, before one or more Judges of the said Courts of this Province, subject nevertheless to

be set aside and annulled in open Court, letting in Superior Term, in manner and form, as provided for, respecting Acts of Tutelle and Curatelle.

XX. And be it further enacted by the authority aforesaid, that such parts of an Ordinance passed in the twenty fifth year of His Majesty's Reign, intituled, "An Ordinance to regulate the proceedings in the Courts of Civil Judicature, and to establish Trials by Juries in Actions of a commercial nature and personal wrongs to be compensated in damages," as are altered or amended by this Act, be repealed, and they are hereby repealed accordingly.