

The Provincial Statutes of Lower-Canada, Being the fourth session of the fourth Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1808.

48 George III – Chapter 22

An Act to authorise the Judges in Civil Causes, in this Province, to delegate the power of administering Oaths, in certain cases therein mentioned. (14th April, 1808.)

Whereas in a great number of Civil Causes, from time to time pending in the Courts of King's Bench for the several Districts of this Province, it becomes necessary to order views by Experts, awards by Arbiters and Arbitrators, and great delays and expence are occasioned in procuring from distant parts of the Country, the attendance of such Experts and of the Witnesses to be heard before the said Experts, or before the said Arbiters or Arbitrators, as the case may require, to make Oath before the Judges of the Court in which such causes are pending, previous to their proceeding thereon, in order therefore to remedy such inconveniencies, Be it 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 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," and it is hereby enacted by the authority of the same, that in every Civil Cause pending and undetermined in any of the Courts of King's Bench, or in any of the Provincial Courts in this Province, as well in the Superior as in the Inferior Terms thereof, when it may be necessary to order a view by Experts, in places distant more than five leagues from the usual place of holding such Court, it shall, and may be lawful for the said Court, from time to time, and as need may require, by Commission, under the Seal of the said Court, and directed by one of the Judges thereof, to nominate and empower such Justice of the Peace, Notary, or such other person residing near the place where such view is to be made, as the said Court may deem fit and proper, to administer such Experts, jointly or seperately, without the presence of the parties being in any wise necessary, the Oath number, One, hereunto annexed: which Oath shall be signed by such Experts, and certified by the person so named and empowered agreeable to the form number, Two, hereunto annexed; and in case the said Experts cannot subscribe the Oath, mention shall be made of the reason why such Experts have not been able to subscribe the same.

II. And be it further enacted by the authority aforesaid, that it shall be also lawful for any such Court by Commission as aforesaid, to empower such Justice of the Peace, Notary or other person as aforesaid, to administer to the Witnesses who are to be examined before such Experts, for their information only, as to the quality of the lands of things subject to view or valuation, the Oath Number, Three, hereunto annexed, and to reduce to writing, the testimony, and certify the depositions of such Witnesses; which depositions so certified,

shall be annexed to the Report of the said Experts, and mention shall be made in the said depositions, whether the Witnesses are related or allied to either, and which of the parties, and in what degree of consanguinity, or alliance, or whether they are servants of either or any of the Parties, or interested in the cause. Provided nevertheless, that nothing in this Act contained, shall be understood to require that the depositions of such Witnesses, shall be reduced to writing, in causes pending in the inferior terms of such Court.

III. And be it further enacted by the authority aforesaid, that in all cases, where Arbiters or Arbitrators, residing more than five leagues from the usual place of holding any of the said Courts, may have been named in any cause pending and undetermined in any such Court, with power to hear Witnesses, it shall and may be lawful for such Court, by commission as aforesaid, to empower such Justice of the Peace, Notary or such other person, as the said Court may deem fit and proper, to administer to the said Witnesses separately, without the presence of the parties being in any while necessary, the Oath of the said form Number, Three, hereunto annexed; the same to be certified by such Commissioner, agreeably to the said form, number Two, hereunto annexed.

IV. And whereas considerable expences and delays, result from causing persons who are elected Guardians, Tutors, Sub Tutors or Curators to come from distant parts of the Country to take the Oath of Office; in order therefore to remedy such inconveniences; Be it further enacted by the authority aforesaid, that the Notaries, and for want of Notaries, such other fit persons, as may be authorised by any one of the Judges of the Courts of King's Bench of Quebec, Montreal and Three Rivers [Trois-Rivières], and the Provincial Judge of Gaspé, to receive council and advice of Relations or Friends, touching the appointment of Guardians, or Tutors, Subrogé Tuteurs or Curators to absentees or to vacant Estates, and other matters, which require such council and advice, are hereby authorised, after such election, to administer the Oath of Office to the Guardians, Tutors, Sub Tutors or Curators, who shall be named by the said Relations or Friends, and the same shall set down in writing, to be transmitted to the respective Courts from which such power shall have been received.

V. And for the greater ease and benefit of all persons whatsoever, in the taking of Affidavits to be made use of and read in His Majesty's Courts of King's Bench of the several Districts in this Province, in all matters and causes whatsoever depending or to be depending in all, or any of the said Courts, or any wise concerning the proceedings of or in the same: Be it enacted by the authority aforesaid, that the Chief Justice of the Province and other the Justices of the Court of King's Bench for the District of Quebec, and in as far only as it shall respect the Inferior District of Gaspé, the Provincial Judge thereof for the time being, and the Chief Justice and other the Justices of the Court of King's Bench, in the District of Montreal for the time being, or any two of them, in the said respective Districts, and that in the District of Three Rivers, the said Chief Justices and other Justices of the said Courts of King's Bench, for the said several Districts of Quebec and Montreal, and the Provincial Judge of the District of Three Rivers for the time being or any two of them, shall and may by one or more Commissions, under the several seals of the said respective Courts, from time to time, as need shall require, empower what, and as many persons, as they shall think fit and

necessary, in their said several and respective Districts, as aforesaid, to take and receive all and every such Affidavit and Affidavits as any person or persons, shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter or thing depending or hereafter to be depending, or any wise concerning, any of the proceedings to be had in the said several and respective Courts; which said Affidavits taken as aforesaid, shall be filed in their several and respective Offices of the said Courts, the same do concern, and then be read and made use of in the said Courts, to all intents and purposes, as other Affidavits taken in the said Courts now are; and that all and every Affidavit and Affidavits taken as aforesaid, shall be of the same force as Affidavits taken in the said respective Courts now are; and all and every person or persons for swearing him, her or themselves, in such Affidavit or Affidavits, shall incur and be liable unto the same penalties, as if such Affidavit or Affidavits had been made and taken in open Court.

VI. And be it further enacted by the authority aforesaid, that this Act shall be in force to the first day of January, which will be in the year of our Lord one thousand eight hundred and twelve, and from thence to the end of the then next Session of the Provincial Parliament, and no longer.

FORM NUMBER ONE.

The Oath to be administered to Experts.

I, A. B. of the Parish of _____ in the County of _____ Habitant (if there be two or more persons to be sworn, say) I, A. B. of _____ and I, C. D. of _____ do make Oath and swear, that in the presence of E. F. the Plaintiff and G. H. the Defendant, named in an Interlocutory Sentence, pronounced in His Majesty's Court of King's Bench, for the District of _____ bearing date the _____ day of _____ or in their absence, after due notification shall have been given them, to attend at a place to be designated, and on a day and hour to be specially named to them, respectively, I will faithfully proceed as an Expert to the view and examination required by the said Interlocutory Sentence, and that I will truly report my opinion in the premises, without favor or partiality, towards either of the said parties. So help me God.

FORM NUMBER TWO.

The Certificate to be given by the Commissioner.

Sworn before me by virtue of the authority given by the annexed Commission, at _____ this _____ day of _____ in the year _____.

FORM NUMBER THREE.

The Oath to be administered to Witnesses.

I, _____ (insert the name, profession or quality and place of residence of the Witness,) do make Oath and swear, that I am not related or allied to, or a Servant or Domestick of E. F. the Plaintiff or G. H. the Defendant, and that I am not interested in the event of the cause

pending between them, (or if Witness says, he is, state in what degree he declares himself to be related or allied to either, and which of the parties, or what situation he holds in the family, of either of them,) and I do also Swear, that the Evidence which I shall give between the said parties, before the Experts, (or Arbiters or Arbitrators, as the case may be,) named in the Interlocutory Sentence, pronounced by His Majesty's Court of King's Bench in the said cause, shall be the truth, the whole truth, and nothing but the truth, So help me God.