

The Provincial Statutes of Lower-Canada, Being the first session of the ninth Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1817.

57 George III – Chapter 14

An Act to facilitate the Administration of Justice in certain small matters therein mentioned, in the Country Parishes. (22d March, 1817.)

Whereas it is necessary and proper to enable persons occupied in agriculture to continue the pursuit thereof, with the least possible interruption, by establishing a mode of administering Justice to them, with celerity, in the County to which they may belong, in certain cases, not relating to the right of property; Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and content 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 after the passing of this Act, in all matters concerning the works of Fences on the line of division, or of Ditches on the line of division between neighbours, and in all matters concerning Damage done by beasts of any description, it shall be lawful to and for every person to make application to any one of the nearest Justices of the Peace within the County, who is authorised and required to cause to come before him by summons under his hand and seal, in the form hereunto annexed, marked A, the person or persons against whom such summons shall be applied for, in the cases herein-before mentioned; and such Justice of the Peace after hearing the Parties or after hearing the Plaintiff only, in case of the non appearance of the Defendant, shall refer them to four Experts, of whom two shall be named by the Plaintiff, and two by the Defendant, and which Experts in case of contrariety of opinion, among themselves shall name a fifth Expert, and if in the nomination of such fifth Expert, they shall not agree, the Justice of the Peace shall name him, and in case of the non-appearance of the Defendant or of his refusal to name such Experts, then such Justice of the Peace shall name them, on behalf of the Defendant, and upon the report of the said Experts, the Justice of the Peace, in the cases of works upon Fences and Ditches, herein before mentioned, shall either condemn the party in fault to perform the works upon the Fences or Ditches according to such report, or to pay as damages a sum which shall not exceed three Pounds, currency: and also, to pay the damages which may antecedently have resulted from his neglect or refusal to perform such works before the institution of such action; which damages last mentioned, shall not exceed the sum of three Pounds, currency, with costs of suit; and in the case of damage, done by beasts as aforesaid, he shall award the damages ascertained according to such report: Provided, that such damages do not exceed three Pounds, currency, with costs. And if by the said Reports of the said Experts, it appear that the plaintiff has no ground of Action, the Justice of the Peace shall dismiss the action with costs; which damages and costs, in case of refusal to pay the same, shall be levied by warrant, under the hand and seal of the said Justice of the Peace by whom the matter shall have been adjudged; and in case of absence of such Justice of the Peace, after the adjudication of the Master by reason of death, sickness or other cause, then the same shall be levied by warrant under the hand and seal of any other Justice

of the Peace, upon inspection, of the said judgment, and by seizure and sale of the goods and chattels of the party condemned; Provided always, that the said Experts, before proceeding, shall make oath before the said Justice of the Peace, or before any other Justice of the Peace, well and fully to enquire into the matters and things referred, and a faithful report to make, according to the best of their understanding and knowledge; which oath such Justice of the Peace is hereby authorized to administer.

II. Provided always and be it further enacted by the authority aforesaid, that in every question relative to the boundary lines between neighbours, the said Justices of the Peace shall, upon such Report order, that the works upon fences and ditches be done according to such lines as may have been fixed by judgment of a Court of Justice, by proces verbaux of Surveyors, or by agreement between the parties by an authentic instrument; and if no such judgment, proces verbaux or agreement exist, then, according to such apparent line, or continuation of such apparent line between the parties as shall then exist; and that nothing herein contained, shall extend to prevent any person from proceeding by action of homage in any Court of Justice; and from thereafter compelling the making of the fences and ditches, according to the line which by the judgment rendered in such action of bornage, shall be fixed.

III. And be it further enacted by the authority aforesaid, that until judgment be rendered, in such action of bornage, the works of the fences and ditches shall be done according to the judgment of such Justices of the Peace, rendered in the manner herein prescribed; And provided always, that nothing herein contained, shall extend to take away the jurisdiction in any respect of any Court of Justice in this Province.

IV. And be it further enacted by the authority aforesaid, that it shall be lawful to and for such Justice of the Peace, on the application of either party, to issue writs of subpoena to compel the attendance of witnesses before him, or before the experts; and that such witnesses shall be held to appear under the like penalties as are by Law incurred by witnesses making default to appear in Courts of Justice; and that it shall be lawful to and for such Justice of the Peace to administer to such witnesses an oath in the usual manner.

V. And be it further enacted by the authority aforesaid, that the said Justices of the Peace shall keep a Register of all proceedings which shall have been taken before them respectively, in virtue of this Act, and shall give copy thereof to such persons as shall demand the same, and may for such copies claim, and have at the rate of sixpence currency for every hundred words.

VI. And whereas it is proper to fix the costs of such causes as shall be tried before the said Justices of the Peace, be it further enacted by the authority aforesaid, that it shall be lawful to and for the said Justices of the Peace, to demand and have for every Summons, one shilling currency; for every copy of a Summons, sixpence, currency; for every original subpoena one shilling currency; for every copy of a subpoena sixpence, currency; for every judgment and copy thereof one fluffing and threepence currency; for every warrant of distress, one shilling and three pence, currency; and that the Bailiffs shall have for the service of the same, one shilling, currency; and for their travelling expences for each and every league, one shilling, currency; that every expert shall have for his attendance, exclusive of the

cost of the Report, two shillings currency; and for their travelling expences for each and every league, one shilling, currency.

VII. And be it further enacted by the authority aforesaid, that every person or persons who shall be convicted of having wilfully taken a false oath, in any case in which an oath is hereby required, shall incur the like pains and penalties as are incurred by persons convicted of wilful and corrupt perjury.

VIII. And be it further enabled by the authority aforesaid, that this Act shall continue and be in force, until the first day of May, one thousand eight hundred and nineteen, and no longer.

SCHEDULE to which this Act refers:

A

E. F. one of His Majesty's Justices of the Peace for the District of A. B. of the Parish of _____ yeoman, _____ plaintiff, _____ against _____ C. D. of the Parish aforesaid, _____ Defendant.

A. B. the Plaintiff, sues you C. D. for the sum of _____ Pounds, being the amount of damage done him, by having _____ You are hereby ordered to pay the amount of the said Damages, together with the sum of _____ shillings for costs, hitherto incurred. In default whereof, you are required personally, or by Attorney, to be and appear before me on _____ the _____ day of _____ at the house of _____ to make answer to the present demand; and in case of your non-appearance, you will be proceeded against by default, and according to Law. Given under my hand and seal at the Parish of _____ on the day of _____ in the year _____.

E.F.

J. P.