

The Provincial Statutes of Lower-Canada, Being the first session of the eleventh Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1821.

1 George IV – Chapter 2

An Act for the summary Trial of certain small causes in the Country Parishes of this Province. (17th March, 1821.)

Whereas an easy and expeditious method for the recovery of small debts of the nature herein-after specified, within the Parishes and Townships of this Province, would be of great advantage to the inhabitants residing within the same; 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 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 from and after the first day of May next, it shall and may be lawful for the Governor, Lieutenant-Governor or Person administering the Government of this Province, for the time being, by any commission or commissions, to be by him issued, to appoint such and so many persons as to him shall seem meet, in any Parishes or Townships within this Province, to take cognizance of such causes and suits as are herein-after specified, arising in the Parish or Township in which such Commissioner or Commissioners may reside, (the Counties of Quebec and Montreal, and the Town and Parish of Three Rivers [Trois-Rivières] excepted) and for that purpose it shall and may be lawful, to and for such Commissioner or Commissioners, upon request or application to them or any of them made, to grant and issue, or cause to be granted or issued, a summons or summonses, to one or more person or persons, as the case may require, (which summons shall be in the form herein-after-mentioned) and shall not be returnable in less than two days in cases where the Defendant or Defendants shall reside within less than two days in cases where the Defendant or Defendants shall reside within two leagues distance from the residence of the Commissioner or Commissioners, before whom he or they may be summoned, allowing one day more between the service and return of every such summoned, allowing one day more between the service and return of every such summons for every five leagues distance over and above the said two leagues, and which the Defendant or Defendants may reside, from the residence of such commissioner or commissioners, and to hear, try and determine, in a summary manner, agreeable to law and the evidence before them, all causes and complaints which shall be brought before him or them, and arising within the Parish or Township in which such commissioner or commissioners may reside, concerning the recovery of debts, not exceeding in amount, the sum of four pounds three shillings and four pence, current money of this Province, of the following nature; that is to say, for goods, cattle, or other moveables, sold and delivered, stipulated and agreed upon, either for houses, or other immoveable property; horses, cattle, or other immoveable effects, work and labour done, money lent and advanced, money paid, laid out or expended, to or for the use of any person or persons, and for house rent or on acknowledgments, commonly called or known under the description of Bons, or on such note or notes of hand, (only) in which the party or parties to whom such note or notes shall have

been made payable, shall sue the maker or makers thereof, but not in cases in which any party or parties, so suing, shall claim as indorsee or otherwise than as aforesaid. Provided always, that in case there shall not be a commissioner appointed, or resident at the Parish or the Township in which the debtor may reside, or in case such commissioner should be absent, or should be legally objected to by such debtor, may be sued before the commissioner for the nearest Parish or Township in the same County.

II. And be it further enacted by the authority aforesaid, that the several commissioners to be appointed in virtue of this Act, shall hold their respective Courts on the first and third Saturday of every month, and on such other days to which they may then find it necessary to adjourn, for hearing witnesses and for determining suits.

III. And be it further enacted by the authority aforesaid, that in cases where either of the parties, Plaintiff or Defendant in any suit or suits to be instituted under this Act, may require the benefit of a decision by arbitrator on the subject in dispute, it shall be the duty of such commissioner or commissioners, before whom the same shall have been instituted, to present to the parties a list of nine disinterested persons who shall be in no wise related to the parties within the degree as by law prohibited for arbitrators, which list shall be taken from a general table, to be kept by such commissioner or commissioners, containing the names of all freeholders being of age, living within the Parish or Township where shall reside such commissioner or commissioners, before whom the complaint shall be carried (which list of nine persons shall be taken in rotation, in order that the same persons be not chosen a second time until their turn) and from which list so presented, the Plaintiff and Defendant shall each have the liberty of objecting to three, leaving three arbitrators who shall decide in a summary manner, and return an arbitrament according to the proofs made before them, and which arbitration shall be final and conclusive and so soon as the aforesaid arbitrators shall have been selected, such commissioner or commissioners shall grant a written order to that effect, to be served on such arbitrators by some Peace Officer or serjeant of Militia, nearest to the residence of the said arbitrators; which arbitrators so summoned, shall, and they are hereby required to appear before such commissioner or commissioners under the Penalty of five shillings, current money of this Province, for every neglect or refusal so to do, and it shall be the duty of such commissioner or commissioners before the matter in dispute shall have been discussed, to administer an oath to each of the said arbitrators, well and truly to determine the matters at issue according to the evidence, and the aforesaid three arbitrators shall be entitled to receive for their attendance and arbitrament, one shilling and six pence, current money of this Province, and no more.

IV. And be it further enacted by the authority aforesaid, that it shall be lawful for such commissioner or commissioners, before whom any such suit or action shall have been instituted, on the application of either party, to issue Writs of Subpoena, to compel the appearance of witnesses before him or them, or before the said Arbitrators, under a penalty of ten shillings, current money of this Province, for each it shall be lawful to and for such commissioner or commissioners to administer to such witnesses an oath in the usual manner.

V. And whereas it is proper to fix the costs of such causes as shall be adjudged under and in virtue of this Act by such commissioner or commissioners, be it further enacted by the authority aforesaid, that

it shall be lawful to and for such commissioner or commissioners, to allow to the Clerk or other person doing the duty of Clerk under the immediate direction of such commissioner or commissioners, for every summons which such Clerk or other person doing the duty of Clerk as aforesaid, shall make and deliver to a suitor or suitors, one shilling currency, for every copy of a summons, six-pence currency, for every subpoena, one shilling currency, for every copy of a subpoena, six pence currency, for every judgment and copy thereof, one shilling and three pence currency, for every warrant of distress, one shilling and three-pence currency, and that the Peace Officer or Serjeant of Militia, for every service and signification of the same, shall have the sum of one shilling currency, for his service, signification and certificate thereof, and at the rate of one shilling currency per league, for the distance he shall have gone to perform such service, the distance in returning from the place where such service shall have been made not entitling him to any allowance. And it is hereby expressly declared and provided, that no commissioner or commissioners shall be entitled to nor receive any recompense or remuneration whatever for any thing which shall by them or any of them be done, under and in virtue of this Act, as commissioner or commissioners as aforesaid, nor shall the Clerk or other person doing the duty of Clerk to any commissioner or commissioners as aforesaid, be allowed to serve or signify any summons, subpoena, or other writ by him made as aforesaid, and any such service or signification and certificate thereof, by such Clerk or other person doing the duty of Clerk, shall to all intents and purposes be held and considered as null and void; and every such commissioner or commissioners, clerk or clerks, or other person or persons doing the duty of a clerk or clerks who, in the execution of the trusts imposed in him or them by this Act, shall misdemean himself or themselves, or shall deliver to any Bailiff, Peace Officer, Serjeant of Militia or other person, any black summons, subpoena or other writ or writs, to be distributed, sold, or disposed of by such Bailiff, Peace Officer, Serjeant of Militia or other person, as occasion may offer, shall, for every such offence, incur a penalty and forfeiture of five pounds, currency, (one half of which shall go to his Majesty, and the other half to the prosecutor or informer,) and be thereafter disabled from acting as commissioner or clerk as aforesaid, it being hereby also expressly declared and provided, that no such summons, subpoena or other writ, shall, in any case, be issued by such commissioner or commissioners, until application be made to him or them by the person or persons requiring the same, or by some person on his or their part and behalf.

VI. And be it further enacted by the authority aforesaid, that such commissioner or commissioners shall keep a register of all suits which shall have been brought before them respectively, in virtue of this Act, and shall give copies thereof to such person as shall demand the same, and may for such copies allow to the clerk or other person doing the duty of clerk, at the rate of six-pence, currency, for every hundred words, under a penalty of ten pounds, current money of this Province, on such commissioner or commissioners, for refusing to give a copy thereof, to be recovered by the party to whom the said copy shall have been refused, one half of which penalty shall belong to His Majesty, and the other half to the party complaining.

VII. Provided always, and be it further enacted by the authority aforesaid, that the commissioners, to be appointed under and in virtue of this Act, when exercising the authority hereby vested in them respectively, in determining causes to the amount above-mentioned, shall hold their Courts publicly, in some suitable room or place, not being in any Tavern or place of Public entertainment, nor in any house, out-house, or other place thereunto appertaining.

VIII. And be it further enacted by the authority aforesaid, that if any person or persons shall refuse or neglect to pay and satisfy such sum or sums of money, within eight days after judgment obtained, together with such costs as upon such complaint as aforesaid shall be adjudged, the same being previously demanded, such commissioner or commissioners shall, by warrant or seizure and sale, under his or their hand and seal, or hands and seals, (which warrant of seizure and sale shall be in the form herein-after-mentioned) cause the same to be levied by distress and sale of the goods of the party or parties so refusing or neglecting as aforesaid, together with all costs and charges attending such distress and sale, but which shall not, in any case exceed the sum of seven shillings and three-pence, current money of this Province.

IX. And be it further enacted by the authority aforesaid, that all causes which shall or may have been instituted under and in virtue of an Act, passed in the fifty-ninth year of the reign of his late Majesty George the Third, intituled, "An Act to facilitate the recovery of small debts in certain parts of this Province," and that shall be pending and undetermined on or after the first day of May next; and all questions and controversies, with respect to the same, or relating to or concerning any Writ of Execution issued in any cause under and in virtue of the said Act, shall, by any Commissioner who may be appointed in virtue of this Act, residing in the Parish or Township where such cause shall be pending, or question and controversy as aforesaid may occur, be heard and determined in as full and ample a manner, to all intents and purposes, as if the same had been regularly instituted before him, and such commissioner, appointed in virtue of this Act, may issue a Writ of Execution on any judgment rendered in virtue of the Act above-recited, in as full and ample a manner as if such judgment had been rendered by such commissioners in virtue of this Act.

X. Provided always, and be it further enacted by the authority aforesaid, that no commissioner shall be authorized to act as such until he shall have made oath before some Justice of the Peace, well and duly, to the best of his judgment and capacity, to perform the duty of commissioner, as required by this Act, of which oath such Justice of the Peace shall give a copy and certificate to the commissioner having made oath, who shall annex the same to his register; and the clerk or other person doing the duty of clerk to such commissioner, shall, in like manner, before entering upon the duties of his office, make oath before such commissioner faithfully to execute, to the best of his ability, to the duties of his Office under this Act, of which oath a certificate shall, by such commissioner, be entered upon his register aforesaid.

XI. And be it further enacted by the authority aforesaid, that the penalties imposed by the third and fourth sections of this Act, shall be levied by distress and sale of the goods and chattels of the offender, by warrant or warrants under the hand and seal of such commissioner or commissioners, and all other penalties incurred under this Act, shall be sued for by bill, plaint, or information in any of His Majesty's Courts of competent jurisdiction in this Province; and the same shall, when levied, be paid into the hands of the Receiver-General of the Province, for the time being, for the use of His Majesty, his heirs and successors, for the public uses of this Province, and for the support of the Government of the same, and shall be accounted for to His Majesty, his heirs and successors, through the Lords Commissioners of His Majesty's Treasury, for the time being in such manner and form, as His Majesty, his heirs and successors shall direct.

XII. And be it further enacted by the authority aforesaid, that this Act shall continue and be in force until the first day of May, which will be in the year of our Lord one thousand eight hundred and twenty-three, and no longer.

Form of Summons.

Parish (or Township) of _____

To all and every the Bailiffs, (Huissiers) Constables and other officers, within the Parish (or Township) of _____ Greeting:

In His Majesty's name you are hereby commanded to summon A. B. of _____ if he may be found within the Parish or Township of _____ to be and appear before _____ His Majesty's Commissioners, for the summary Trial of certain Actions, residing in the said Parish or Township, at the dwelling house of _____ on the _____ day of _____ at _____ of the clock, in the _____ noon, then and there to answer C. D. of _____ who demands of the said A. B. the sum of _____ for _____ and do you make due return of this Summons, with your doings thereon, _____ on or before the said day. Witness _____ hand and seal, this _____ day of _____ in the _____ year of His Majesty's reign, and in the year of our Lord _____.

Form of a Warrant of Execution.

Parish (or Township) of _____

To all and every the Bailiffs, (Huissiers) Constables and other officers, within the said Parish (or Township) of _____

Whereas A. B. of _____ did on the _____ day of _____ before _____ of His Majesty's Commissioners, for the summary Trial of certain Actions, residing at _____ recover judgment against C. D. of _____ for the sum of _____ for his debt, and _____ for his costs, of which _____ execution remains to be done; you are therefore hereby commanded, in His Majesty's name, to levy of the goods and chattels and effects of the said C. D. (except his beasts of the plough, his implements of husbandry, the tools of his trade, and one bed and bedding, unless the other goods and chattels shall prove insufficient, but not in any case the bed and bedding,) the aforesaid sum and costs, together with _____ for the expenses of this execution, returning to the said C. D. the overplus, if any there be, after having fully satisfied the aforesaid sum of _____

Witness _____ hand and seal, this _____ day of _____ in the _____ year of His Majesty's reign, and in the year of our Lord _____.

Form of a Subpoena

Province of Lower Canada

County of _____

To _____ Greeting.

I command you, that, laying aside all and singular business and excuses, you and each of you be and appear in your proper person before me, a commissioner for the summary trial of certain actions at the _____ in the Parish (or Township) of _____ in the County of _____ the ____ day of _____ at _____ o'clock, in the _____ noon of the same day, then and there to testify all and singular those things which you or either of you know, in a certain cause, between _____ Plaintiff, and _____ Defendant, before me, the undersigned Commissioner; and this you or either of you shall by no means omit, under the penalties of the Law. Given under my hand and seal, this _____.