

The Provincial Statutes of Lower-Canada, Being the third session of the eleventh Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1823.

3 George IV – Chapter 17

An Act to erect certain Townships therein-mentioned into an Inferior District, to be called the Inferior District of Saint Francis, and to establish Courts of Judicature therein. (22d. March, 1823.)

Whereas until a general alteration in the system of Judicature established in this Province can be effected, it is expedient to make temporary provision for the administration of Justice in certain of the Eastern Townships; and whereas from the great extent of the Districts of Montreal and Three Rivers [Trois-Rivières] and the increased population of late years in those parts of the said Districts, included in the Counties of Buckinghamshire and Richelieu, it hath become an object of serious inconvenience to the Inhabitants residing in the Townships included within the said Counties, to attend the Courts of Justice; 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 passing of this Act, such parts and so much of the Townships of Stanstead, Barnston, Barford, Hatley, Compton, Oxford, Brompton, and of the seventeenth, eighteenth, nineteenth, twentieth, or twenty-first and twenty-second ranges of Bolton, as are comprised within the limits of the District of Montreal, together with the remaining parts of the Townships of Barnston, Barford, Hatley, Compton, Oxford, Ascot and Brompton, in the District of Three Rivers, and the Townships of Hereford, Drayton, Emberton, Auckland, Clifton, Eaton, Newport, Ditton, Chesham, Clinton, Marston, Hampden, Stratford, Lingwick, Bury, Dudswell, Westbury, Stoke, Melbourne, Durham, Kingsey, Shipton, Windsor, Watton [Wotton], Weedon, Garth, Wolfstown [Wolfestown], Tingwick, Chester and Ham, shall be formed into, constitute and compose, for the purposes herein after mentioned, an Inferior District, which Inferior District so composed, constituted and formed shall be called the Inferior District of Saint Francis.

II. And be it further enacted by the authority aforesaid, that there shall be appointed a Judge in and for the said Inferior District of Saint Francis, who shall hold a Provincial Court for the said Inferior District of Saint Francis, as herein-after mentioned, which shall have cognizance of, and have power to hear, try and determine during the terms, and in the manner herein-after mentioned, in the first instance, exclusively of every Court, Judge or Tribunal whatsoever, every suit or action purely personal, wherein the amount claimed may not exceed twenty pounds, sterling, any law or statute heretofore in force in this Province to the contrary notwithstanding.

III. And it is further enacted by the authority aforesaid, that there shall be appointed a Clerk to the said Court for the said Inferior District, who shall be entitled to receive, for his services, such fees, as by Law appertain to his situation, and no others.

IV. And be it further enacted by the authority aforesaid, that in causes in which the sum in litigation shall exceed ten pounds, sterling, an appeal from the final judgment of the Court of the said Inferior District of Saint Francis shall lie to the Superior Term of the Courts of King's Bench of that District, either of Montreal or of Three-Rivers, in which the defendant shall be domiciliated, or shall have received service of the summons, upon the party appealing giving security before the judge of the said Inferior District, that he will effectually prosecute his appeal, and in case of failure so to do, such appeal shall be held, deemed and considered to be abandoned, and the Appellant shall be foreclosed from his right of appeal, and Appellant to the judgment of the Court of the said Inferior District shall operate as a final adjudication in the last resort.

V. Provided always, and be it further enacted by the authority aforesaid, that no such appeal shall lie nor be granted, unless the same be notified and applied for to the Judge of the said Inferior District of Saint Francis, within fifteen days after judgment shall have been rendered. Provided also, that the said Term of fifteen days shall, in no wise, affect absentees or persons incapable of exercising their rights, who shall be receivable to appeal within the fifteen days next after the day of return of the absentee, and after the day on which the persons incapable of exercising their rights shall have ceased to be incapable to exercise them.

VI. And be it further enacted by the authority aforesaid, that when, and as often as any person or persons may appeal from any judgment of the Court of the said Inferior District of Saint Francis, a true and certified copy of the Record of the cause appealed, shall, at the instance or request of the party appealing, be immediately transmitted by the said judge to the Court of King's Bench of Montreal or Three-Rivers, as the case shall be, the party appealing paying for the copy of clerk's Fees, such record to the clerk of the Court of the said District, at the rate of six pence for every one hundred words, and no more.

VII. Provided always, and be it further enacted by the authority aforesaid, that when any suit or action instituted in the said Inferior Court, shall relate to any fee of office, duty, or rent, revenue, or any sum or sums of money payable to His Majesty, titles to lands or tenements, annual rents, or such like matters or things where the rights in future may be bound, the defendant or defendants shall be at liberty, before entry of a plea or defense to the merits of such demand, to form an exception to the Jurisdiction of the said Inferior Court, and to require that the said suit or action may be removed and brought into hearing, trial and judgment in the Superior Term of the Court of King's Bench of that of the two Districts in which shall be situated the real property or right which shall be the subject of the action and with respect to actions merely personal liable to evocation, to the Court of King's Bench of the District in which the Defendant shall be domiciliated or shall have received service of summons, and all and every such exception so made as above-said, shall be entered of record, and the process, suit and demand, and all things thereto relating, shall be removed into the Superior Term of the said Court which shall proceed to hear and determine in a summary manner, whether the exception is well founded; and if the said Court shall sustain the exception, it shall proceed to trial and judgment, but if the said Court shall dismiss the exception, the process and all things, relating thereto shall be remitted to the said Inferior Court to be there heard, tried and finally determined. Provided also, that where legal objection shall be made to the Judge of the said Inferior Court, every such objection shall be

entered of record, and the process, suit and demand, and all things thereto relating shall be removed into the next Term of the Court of King's Bench of the District in which the Defendant shall be domiciliated; or in which he shall have been summoned, which shall proceed to hear and determine in a summary way, whether the said objection is well founded; and if the said Court shall sustain the objection, it shall proceed to trial and judgment of the suit in a summary manner, but if the said Court shall dismiss the objection, the process and all things relating thereto, shall be remitted to the said Inferior Court, to be there heard, tried and finally determined.

VIII. And be it further enacted by the authority aforesaid, that the said Judge shall have power and authority, in all cases in which Writ of attachment against the body, or against moveable effects can now by Law be issued before judgment, to issue Writs of Capias or attachments against the body or moveable effects, or monies, according to Law, and the same to make returnable to His Majesty's Court of King's Bench for that of the two Districts of Montreal and Three-Rivers, in which such Writ shall have been executed.

IX. Provided always, and be it further enacted by the authority aforesaid, that in cases where such Writ of Capias or attachment against the body or effects may issue as aforesaid, the defendant or defendants shall be entitled to such relief, on giving security or otherwise to the Sheriff of the District in which such Writ shall have been executed, as he or they would or might be entitled to by Law, if the same had issued from any of His Majesty's Court of King's Bench in this Province; and in case security be not given, the Defendant and Defendants may be committed to prison in that of the two Districts in which he shall have been attached, until the cause be duly heard and determined, or otherwise settled, or disposed of by the parties concerned.

X. And be it further enacted by the authority aforesaid, that in cases over Ten pounds, sterling, there shall be at least fifteen intermediate days between judgment and issuing of execution, and in cases of Ten pounds sterling and under them shall be also at least eight intermediate days between judgment and execution.

XI. And be it further enacted by the authority aforesaid, that when a return of Nulla bona shall be made by the Sheriff to any Writ of Execution, issuing from the said Inferior Court, or when the proceeds of sale of the moveables of the Defendant pursuant to such Writ of Execution, may not be sufficient to satisfy the amount of judgment and costs, the plaintiff shall, if the balance or sum remaining, due upon such judgment, exclusive of costs, exceed Ten pounds, sterling, be entitled to, and shall have a Writ of Execution against the real or immoveable property or estate of the Defendant, and such Writ may, on application to the Judge, accordingly issue from the said Inferior Court, directed to the Sheriff of that of the two Districts in which such real property shall be situated, or his Deputy. Provided always, that when the Defendant shall not have sufficient goods, chattels, lands or tenements in the said Inferior District to satisfy the judgment, another Writ of Execution may issue from the said Inferior Court, addressed to the Sheriff of any other District of this Province, in the same manner as a Writ of Execution might issue from any of His Majesty's Courts of King's Bench in this Province, into any other District and be therein executed.

XII. And be it further enacted by the authority aforesaid, that the said Inferior Court shall be held at the Village of Sherbrooke, and that the terms thereof shall be as follows, that is to say: From the twentieth to the thirtieth day of January; From the twentieth to the thirtieth day of March; From the twentieth to the thirtieth day of June; From the twentieth to the thirtieth day of September, and From the twentieth to the thirtieth day of November, both days included, Sundays excepted.

XIII. And be it further enacted by the authority aforesaid, that there shall be held at Sherbrooke aforesaid, for the said Inferior District of Saint Francis, twice in every year, a General Session of the Peace, by the Justices of the Peace, or any three of them, whereof one shall be of the quorum, who shall hear and determine, all matters relating to the conservation of the Peace, and whatsoever is or may be by them cognizable, according to the Criminal Laws in force in this Province, and the Terms of the said Court of General Session of the Peace shall be as follows, that is to say: From the first to the Seventh day of February, and from the first to the seventh day of October, both days included, Sundays excepted; Provided also, that no Term of General Session of the Peace shall be held, until a legal gaol be established at Sherbrook aforesaid.

XIV. And be it further enacted by the authority aforesaid, that the judge of the Inferior Court of Saint Francis shall have authority, either in or out of Court, or out of Term, to proceed to the interdiction of Insane persons, the election of Tutors, or Guardians, Curators and other Counsels of relations or friends, closing of inventories, attestations of accounts, insinuations, affixing and taking off seals of safe custody, and other Acts of the same nature, which ought not to suffer any delay; And shall have the same power and authority as is given by Law to all or any of the Judges of the Courts of King's Bench of the Districts of Quebec or of Montreal to appoint a notary, or some other fit person, upon application of parties, to receive the advice and counsels of relations, or friends, and he shall proceed on such matters in the manner and form prescribed by Law.

XV. Provided always, and be it further enacted by the authority aforesaid, that in all cases of appointment of Tuteurs or Tutrices, Curateur or Curatrices, either to the person or the estate, ad hoc, homologated by the said Judge of the said Inferior District of Saint Francis, an appeal shall lie to the Judges of the Court of King's Bench for the District of Montreal or Three-Rivers, as the case may be, in Superior Term, in favor of all persons to whom such right may by Law appertain, and in the manner and form prescribed by the eighteenth section of an Act of the Legislature of this Province, passed in the forty-first year of the Reign of His Majesty George the Third, chapter seven.

XVI. Provided always, and it is declared and enacted by the authority aforesaid, that nothing herein contained shall be construed in any manner to derogate from the rights of the Crown, to erect, constitute and appoint Courts of Civil or Criminal Jurisdiction within this Province, and to appoint from time to time, the Judges and officers thereof, as His Majesty, His Heirs or Successors shall think necessary or proper for the circumstances of this Province, nor to derogate from any other right or prerogative of the Crown whatsoever.

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