

Reign of His late Majesty King William the Fourth, intituled, *An Act to establish a Standard Weight for the different kinds of Grain and Pulse, in this Province*, be and the same is hereby repealed.

II. And be it enacted, That from and after the passing of this Act, the following rates shall be, and the same are hereby declared to be the Standard Weight, which in all cases shall be allowed to be equal to the Winchester Bushel, namely :

Standard Weight of different kinds of Grain, &c., established for U. C.

Wheat,.....	Sixty pounds,
Indian Corn,.....	Fifty-six pounds,
Rye,.....	Fifty-six pounds,
Peas,.....	Sixty pounds,
Barley,.....	Forty-eight pounds,
Oats,.....	Thirty-four pounds,
Beans,.....	Sixty pounds,
Clover Seed,.....	Sixty pounds,
Timothy Seed,.....	Forty-eight pounds,
Buck-Wheat,.....	Forty-eight pounds.

Provided always, That the effect of any contract made before the passing of this Act shall not be varied by any thing herein contained.

Existing contracts not affected.

III. And be it enacted, That upon any sale and delivery of any description of Grain, Pulse or Seeds mentioned in this Act, and in every contract which shall be made after the passing of this Act for the sale or delivery of any such Grain, Pulse or Seeds, the Bushel shall be taken and intended to mean the Weight of a Bushel as regulated by this Act, and not a Bushel in Measure, or according to any greater or less Weight, unless the contrary shall appear to have been agreed upon by the parties.

Effect of this Act upon future contracts.

IV. And be it enacted, That this Act shall apply only to Upper Canada.

Extent of Act.

C A P . C X C I V .

An Act to amend the Act to amend the Laws relative to the Courts of original Civil Jurisdiction in Lower Canada.

[Assented to 14th June, 1853.]

WHEREAS it is expedient to amend the Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act to amend the Laws relative to the Courts of original Civil Jurisdiction in Lower Canada*, in the manner hereinafter provided : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of

Preamble.

12 V. c. 38.

Sect. 17 of the said Act repealed, and weekly sittings of S. C. abolished.

Proviso:

Court may sit out of Term for giving judgments.

Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the seventeenth section of the Act cited in the Preamble to this Act, and any other enactment in the said Act or of any other Act which requires the Superior Court or any *quorum* thereof to hold sittings out of Term in the Districts of Quebec and Montreal, on the first two juridical days in each week in every month except August, shall be and the said Section and enactments are hereby repealed; and all things which under the said section or any such enactments as aforesaid, the said Court or any *quorum* thereof is required or authorized to do at any such sitting, shall and may be done by the said Court in Term: Provided always, that the said Court or any *quorum* thereof may, in any District, and on any day or days which shall have been appointed for the purpose by the Court during the then last Term at the same place, hold a sitting or sittings out of Term, for the purpose of giving judgment in cases theretofore heard and taken *en délibéré*, whatever be the nature of the judgment or of the case in which it is given.

Sect. 16 of the said Act repealed in part, and Terms of S. C. in Quebec and Montreal to be those in Schedule A.

Proviso:

Court may prolong any Term.

II. And be it enacted, That so much of the sixteenth section of the Act cited in the Preamble to this Act, as fixes the times of holding the terms of the said Superior Court in the Districts of Quebec and Montreal respectively, at any time or times other than the time or times appointed by this Act for holding such Term or Terms, shall be and is hereby repealed; and the Terms of the said Court shall be held in the said Districts respectively at the times and places mentioned in the Schedule A to this Act, and the days from and to which any Term is in the said Schedule directed to be held, shall in all cases be included in such Term: Provided always, that the said Court shall have full power to continue any such Term, beyond the time fixed in the said Schedule for its continuance, by any order or orders to be made for that purpose during such Term.

Part of s. 77 of the said Act repealed, and Terms of Circuit Court in Quebec and Montreal to be as in Schedule B.

III. And be it enacted, That so much of the seventy-seventh section of the said Act as prescribes the times at which the Circuit Court shall be holden in and for the Quebec Circuit and the Montreal Circuit respectively, shall be and is hereby repealed; and the said Circuit Court shall be holden in the said Circuits respectively at the times mentioned in the Schedule B to this Act.

Power of Governor in Council to alter Terms, not to be affected.

IV. Provided always, and be it enacted, That nothing in the preceding sections contained shall be construed to repeal the first and second provisos of the seventy-seventh section of the said Act or any other provision thereof by which the Governor in Council is empowered from time to time to alter the times of

of holding the terms of the said Superior Court, or of the said Circuit Court, but the said provisos and provisions shall extend and apply as fully to the terms of the said Courts mentioned in this Act and the Schedules hereunto annexed, as to the terms mentioned in the said Act ; And provided also, that notwithstanding any thing contained in the said provisos and provisions, it shall be lawful for the Governor, as circumstances shall require it, by Proclamation, to increase the number of terms in any Circuit to any number not exceeding four in each year, and to fix the days for holding such additional terms and the number of days to be included in such terms.

Proviso : Governor may increase terms in any Circuit.

V. And be it enacted, That notwithstanding any thing in the twenty-ninth section of the said Act contained, the Judges of the Superior Court sitting in Term in any District, shall have full power and authority, by a Rule of Practice promulgated in open Court, to limit the number of days on which evidence may be adduced in such District, and may fix any number of days certain for *Enquête* days, which they may deem proper, and shall have full power and authority to alter or repeal any such Rule of Practice ; Provided always, that not less than six days in the Districts of Quebec and Montreal, and not less than three days in either of the other Judicial Districts, shall be fixed by any such Rule of Practice as such *Enquête* days in any month in the year except the months of July and August.

Superior Court may limit and fix the *Enquête* days : *non obstante* s. 29 of the said Act.

Proviso : *Enquête* days not to be less than a certain number.

VI. And be it enacted, That no day in any of the Terms of the Superior Court to be holden at Montreal and Quebec as aforesaid, shall be an *Enquête* day, either for the Superior or for the Circuit Court, unless in respect of Default or *Ex parte* causes or proceedings, as hereinafter is provided, or in respect of any proceeding of a summary nature, wherein the Court, Judges or Judge having cognizance thereof, may have specially so ordered.

Days in Term to be *Enquête* days for certain matters only.

VII. And be it enacted, That every Juridical day in Term and out of Term, except from the Ninth day of July until the First day of September both exclusive, in each year, shall hereafter be an *Enquête* day for all Default or *Ex parte* causes and proceedings in the Superior Court ; and all witnesses produced for examination therein may be sworn, and their examinations taken and acknowledged, before the Prothonotary of the said Court, appointed for the District, and such examinations so taken shall serve to all intents as though taken at an *Enquête* sitting in the ordinary course.

All juridical days (except from 9th July to 1st Sept.) to be *Enquête* days in default and *Ex parte* cases.

Prothonotary may swear witnesses, &c.

VIII. And whereas in such causes and proceedings *Ex parte* it is required by law that notice of the inscription thereof for *Enquête* be given to the party foreclosed from pleading, and doubts may be entertained as to the extent of the rights of such party at the *Enquête*, Be it enacted, that such party shall not be entitled to adduce evidence thereat, but may cross-examine all witnesses brought

Recital.

Rights of foreclosed party

attending an *Enquête*, defined.

brought up against him, and resist the taking of any evidence in any wise illegal or inadmissible; and if such *Enquête* be proceeding, as hereinbefore is provided, before a Prothonotary only, all objections taken by either party shall by such Prothonotary be taken down in writing and kept of record in such cause or proceeding for adjudication by the Court at the final hearing thereof.

*Enquête* days to be fixed out of term for appealable cases in C. Court.

IX. And be it enacted, That it shall be lawful for any Circuit Judge or any Judge of the Superior Court holding a Circuit Court, to fix in term any days out of term as *Enquete* days for all appealable cases before such Circuit Court; and all witnesses produced for examination therein, may be sworn and their examination taken and acknowledged before the Clerk of the said Court, and such examinations so taken shall serve to all intents as though taken at an *Enquête* in term; but all objections taken by either party, shall by such Clerk be taken down in writing, and kept of record in such cause or proceeding for adjudication by the Court at the final hearing thereof; Provided always, that no such *Enquête* shall be proceeded with on any such day out of term, unless notice of the intended holding of such *Enquête* be given to the opposite party at least ten days previous to the day fixed for such *Enquête*.

Objections to be reserved, &c.

Proviso.  
Notice.

No party bound to proceed in any cause from the 10th July to 31st August inclusive in the Superior Court.

X. And be it enacted, That for and notwithstanding any thing in the said Act or in any other Act or law, no party to any suit or case in or before the said Superior Court, sitting at Quebec or Montreal, shall be compellible to file any plea or answer, or take any step, or otherwise to proceed therein, between the tenth day of July and the last day of August both inclusive, in any year, or shall incur any forfeiture, penalty or disadvantage by refraining from so doing between the said days, unless he shall be commanded so to do by some express order of the Court or of some Judge thereof made in such suit or case (which order the Court or any Judge thereof may always make) and in the absence of such order, no day from the tenth of July to the last day of August, both inclusive, shall be reckoned in computing the delay or time allowed for filing any plea or answer, or taking any step or otherwise proceeding in any suit or case before the said Court, but for the purpose of computing such time or delay the first day of September shall be taken to be the day next following the ninth day of July, and such time or delay shall be computed by reckoning only the days before the tenth day of July and after the last day of August: Provided always, that nothing in this section shall extend to prevent or excuse any Prothonotary, Sheriff, Bailiff or other Officer from returning any Writ or doing any other thing on the day when he would otherwise be bound to return or do the same, or to prevent or excuse any party or person from obeying any process or order of the Court issued or made in or with reference to any particular suit or case, or from doing the thing which

Proviso :  
Exceptions as to things expressly ordered by the Court to be done.

which he may thereby be commanded to do, at the time mentioned in such process or order.

XI. And be it enacted, That the foregoing enactments shall come into force upon, from and after the ninth day of July, one thousand eight hundred and fifty-three, and not before, but their coming into force on the said day shall, from and after the passing of this Act, be taken notice of by the said Superior Court and by all Judges and Officers thereof and all parties to or concerned in any suit, action or proceeding before the said Court, and they shall govern themselves accordingly in fixing the return days of Writs and Process which ought to be returnable in term, and the time at which any thing is to be required or allowed to be done in any such suit, action or proceeding, and in all other respects whatsoever; and any Writ or Process which is only returnable in Term, or any thing which can only be done in Term, and which shall before or after the passing of this Act have been made returnable or ordered to be done on some day which, under the foregoing enactments, will not be a day in Term, shall be returnable on the return day in Term next after the day on which it was made returnable, or shall be done on that day in Term on which such thing can be done next after that on which it shall have been ordered to be done; and any application for a judgment of ratification of a title to immoveables of which notice may have been given for some day which under the foregoing enactments will not be a day in term, shall be made or filed on the day in term next after that on which such application should have been made, had this Act not been passed.

When the foregoing provisions shall come into force: but they shall be taken notice of before.

As to things which can only be done in Term and appointed before this Act takes effect, to be done on a day which will not be a day in Term.

XII. And be it enacted, That in addition to the places at which the Circuit Court is directed to be holden by the seventy-seventh section of the said Act, the said Court shall also be holden in every year at the places and times hereinafter appointed; and the local extent and limits of the jurisdiction of the said Circuit Court, sitting at such places respectively, shall be as follows, that is to say:

New Circuits established and described.

### IN THE DISTRICT OF QUEBEC.

At Tadoussac, in the County of Saguenay, in and for the Circuit to be called the Tadoussac Circuit, from the nineteenth to the twenty-eighth of June, both days included, and from the twelfth to the twenty-first of October, both days included, in each and every year, which said Circuit shall include and consist of all that part of this Province lying on the North shore of the River St. Lawrence and on the East side of the River Saguenay.

Tadoussac Circuit.

### IN THE DISTRICT OF THREE-RIVERS.

1. In the parish of *St. Antoine de la Baie du Febvre*, in and for the Circuit to be called the Circuit of Yamaska, from the seventh

Yamaska Circuit.

seventh to the twelfth day, both days included, of the months of January, July and October; which said Circuit shall include the County of Yamaska, the Seigniorie of Nicolet and Augmentation in the County of Nicolet, the Townships of Wendover, Wickham and Grantham, and the first, second, third, fourth, fifth, sixth, seventh and eighth ranges of the Township of Upton, in the County of Drummond.

Arthabaska  
Circuit.

2. In the parish of *Saint Norbert d'Arthabaska*, in and for the Circuit to be called the Circuit of Arthabaska, from the fifteenth to the twentieth, both days included, of the months of January, July and October, which said Circuit shall include the Townships of Warwick, Arthabaska, Stanfold, Blandford, Maddington, Bulstrode, Horton, Aston and Augmentation, and Simpson.

#### IN THE DISTRICT OF KAMOURASKA.

Green Island  
Circuit.

In the parish of *St. Jean Baptiste de l'Isle Verte*, in and for the Circuit to be called the Circuit of Isle Verte, from the first to the tenth of March, July and December, both days included, in each and every year, which said Circuit shall include and consist of the Parishes of Trois-Pistoles, St. Eloi, Isle Verte, St. Arsène, St. George de Cacouna, in the County of Rimouski, and all the lands in the said County, lying between the said Parishes and the Province line, and between a line prolonged directly in continuation of the line separating the Parishes of St. Simon and Trois-Pistoles, and a prolongation of the eastern boundary of the Parish of *Rivière-du-Loup*.

#### IN THE DISTRICT OF GASPÉ.

Fox River  
Circuit.

At Fox River, in and for the Circuit to be called Fox River Circuit, from the first to the tenth day of August both days included, in each and every year after the present year one thousand eight hundred and fifty-three; and the said Circuit shall be called The Fox River Circuit, and shall comprise all the settlements on the coast of the River or Gulf of St. Lawrence, from St. Anne des Monts, exclusively, to Cap Rosiers, inclusively.

Places in-  
cluded in any  
Circuit de-  
tached from  
all others.

Proviso: not  
to affect pending  
cases.

And so much of any Circuit established by the said Act as lies within the limits of either of the said Circuits established by this Act, shall be and is hereby detached from the Circuit in which it is now included, and shall no longer form part thereof: Provided always, that no change made by this section in the limits of any Circuit, shall affect any action, suit or proceeding commenced in any Circuit before this section shall come into effect, but the same and all proceedings and matters incident thereto, whether before or after execution, shall be continued and dealt with as if the limits of the Circuit in which such action, suit or proceeding shall have been commenced, had not been changed or affected by this Act.

XIII. And be it enacted, That the next preceding section shall come into force upon the first day of October next, upon, from and after which day, and not before, the Circuits therein mentioned shall be held to be established : Provided always, that any Clerk or Officer of the Circuit Court in and for either of the said Circuits, may be appointed at any time after the passing of this Act, to enter upon and perform the functions and duties of his Office upon the said day, although the Circuit Court may not on the said day have met or sat in the Circuit for which he shall be appointed.

When the next preceding section shall come into force.

Proviso : as to appointment of Officers.

XIV. And be it enacted, That so much of the thirteenth section of the said Act or of any other part thereof, as prevents any Circuit Judge, when in the District of Ottawa or in the District of Kamouraska, from exercising the powers of a Judge of the Superior Court during any Term of the Superior Court in such District, shall be and is hereby repealed ; and from and after the passing of this Act, each of the Circuit Judges for Lower Canada, when in the District of Ottawa or in the District of Kamouraska, shall, at all times in Term or out of Term of the said Superior Court, have and exercise all the powers vested in any one Judge of the said Superior Court.

Circuit Judges may exercise powers of Judge of Superior Court at all times in Ottawa and Kamouraska.

XV. And be it enacted, That on such days in vacation as shall have been appointed for the purpose either by any Rule of Practice to be made by the Superior Court or by any order to be made by the said Court sitting in Term in the District to which such order shall relate, the Judge of the Superior Court resident in any District in Lower Canada, except the Districts of Quebec and Montreal, shall and may hear and give judgment in any case or matter which the said Court sitting in Term in the same District could hear and give judgment in, and such judgment shall have in all respects the same effect as a judgment of the said Court in Term, unless the party deeming himself aggrieved thereby shall, on or before the third juridical day after that on which such judgment shall have been given, file in the Office of the Prothonotary of the said Court for such District his exception to such judgment and the reasons of such exception, and shall at the same time pay into the hands of the said Prothonotary the sum of Two Pounds Ten Shillings currency, or such other sum as shall be fixed by any Rule of Practice of the said Court, to secure the costs on the rehearing of the case upon such exception, in which case the judgment shall not be executed against such party, but the case or matter shall be reheard by the Court in Term in the same District, after which such judgment shall be given therein and such order made as to the costs of the rehearing as the Court shall think right ; and the Resident Judge shall not be precluded from sitting as a member of the Court at such rehearing by reason of his having given the judgment excepted to : Provided always, that Rules of Practice may be made for regulating the proceedings under this section,

The resident Judge of Superior Court in other districts than Quebec or Montreal may hear and give judgment in any case out of Term, subject to rehearing in Term at the instance of either party.

Security for costs to be given.

Proviso : as to practice in such cases.

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in like manner as for regulating other proceedings in the said Court, but in the absence of such Rules the Judge or Court shall govern themselves and regulate the proceedings in each case, in such manner as they may deem best adapted to ensure justice to the parties concerned with the least possible expense and delay.

Two Circuit Judges in Gaspé may hold Superior Court.  
12 V. c. 40.

Provision in cases where they differ in opinion.

Hearing at Quebec, &c.

Re-transmission of record to Gaspé, &c.

Proviso : as to practice under this section.

Provision with respect to Writs of Attachment to attach mo-

XVI. And be it enacted, That for and notwithstanding any thing in the said Act or in the Act passed in the same session, and intituled, *An Act to amend the Law relative to the administration of Justice in Gaspé*, the two Circuit Judges resident in the District of Gaspé may hold the Terms of the Superior Court therein, without its being necessary that any other Judge should be present at such term, and with the same powers and authority as if the Court were held by three Judges as provided by the said Act; excepting always, that whenever the said Court shall be held by the said two Circuit Judges alone, and they shall differ in opinion as to the judgment or order which ought to be made in any case, the record in such case or so much thereof as the two Circuit Judges shall agree upon as sufficient, shall be transmitted by mail by the Prothonotary having the custody thereof to the Prothonotary of the Superior Court at Quebec, so soon as the parties or any of them shall have paid to such first mentioned Prothonotary the sum necessary to pay the postage of the said record, and being so transmitted, the case shall, at the diligence of either of the parties, be heard in a summary manner by the Superior Court at Quebec in term, and such judgment or order made therein as to law may appertain, and the record with such judgment or order shall be transmitted by mail by the Prothonotary at Quebec so soon as the sum necessary to pay the postage thereon shall have been paid to him by any of the parties concerned, to the Prothonotary in the District of Gaspé by whom it was transmitted to Quebec, and such judgment or order shall then be obeyed and executed or may be appealed from and otherwise dealt with as the judgment or order of the Superior Court sitting in term in the District of Gaspé; and the costs attending such transmission of the Record and the rehearing at Quebec shall be in the discretion of the Court at that place: Provided always, that Rules of Practice may be made for regulating the proceedings under this section, in like manner as for regulating other proceedings in the said Court, but in the absence of such Rules, the Judge or Court shall govern themselves and regulate the proceedings in each case in such manner as they may deem best adapted to ensure justice to the parties concerned with the least possible expense and delay.

XVII. And be it enacted, That whenever a Writ of Attachment, *Saisie-Arrêt*, either before or after judgment, shall issue from the Superior Court for Lower Canada or the Circuit Court for Lower Canada, to attach moneys, goods or effects in  
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the hands of any person resident in any District other than the one from which such Writ issues, the *Tiers-Saisi* upon whom such Writ of Attachment shall have been served or executed by the Sheriff of such other District, shall (subject to the provision hereinafter made,) be bound to answer and make his declaration to such Writ according to the exigency thereof at the place where the same issues, and default duly obtained against such *Tiers-Saisi* shall have the same effect as if he were summoned to answer in the District where he is domiciliated and had made default to appear and answer there; and in the event of a contestation of the declaration of the *Tiers-Saisi*, the same may be had in the District where the action has originated, and the *Tiers-Saisi* upon service on him of such contestation shall be bound to answer and plead thereto in such last mentioned District, and the Superior Court and Circuit Court holden within the said District, shall have jurisdiction to hear and adjudge upon the merits of such contestation and upon all matters connected with and relating thereto; Provided nevertheless, that such *Tiers-Saisi* may on or before the return day of the Writ of Attachment, *Saisie-Arrêt*, so served upon him or them as aforesaid, appear at the office of the Prothonotary of the Superior Court within the District where he resides, and make his declaration before such Prothonotary or a Judge of the Superior Court, either of whom is hereby empowered to administer the requisite oath or affirmation, or to receive such declaration, which shall have the same effect as if it were made at the place where the Writ of Attachment is returnable.

neys, &c., in the hands of a party in a district other than that in which the Writ issues.

Proviso:  
*Tiers-Saisi* may appear in such other District.

XVIII. And be it enacted, That whenever any declaration of a *Tiers-Saisi* shall be made (as provided for in the next preceding Section) at the office of the Prothonotary of the Superior Court in a district other than the one from which the Writ of Attachment issues, it shall be the duty of the Prothonotary where such declaration is made, forthwith to transmit the same to the Prothonotary or Clerk of the Court at the place where the Writ has issued, and subsequent proceedings may be had thereon against the *Tiers-Saisi* or defendant in the cause, in the same manner as if the declaration of the *Tiers-Saisi* were made before the Court, Judge, Clerk or Prothonotary at the place where the Writ of Attachment issued; and where the *Tiers-Saisi* has made default to answer on the return day of the Writ at the place where the Writ is returnable, the Certificate of the Prothonotary of the Superior Court in the district where the *Tiers-Saisi* is or are resident, to the effect that the *Tiers-Saisi* has made default to appear and make declaration to such Writ on or before the return day thereof, shall be sufficient to enable the Plaintiff to obtain the benefit of default against such *Tiers-Saisi*.

Declaration of *Tiers Saisi* to be transmitted to the Clerk of the Court at the place where the Writ issued; Default, &c. of *Tiers-Saisi*.

XIX. And be it enacted, That the exigency of all Writs of *Saisie-Arrêt*, whether before or after Judgment, to be issued out of the Superior Court, or out of the Circuit Court in appealable cases,

What shall be the exigency of Writs of

*Saisie Arrêt* in the Superior Court or in the Circuit Court in appealable cases, &c.

Default of *Tiers-Saisi*.

*Tiers-Saisi* may appear in District in which he resides.

Proviso: as to declarations made before the day of Return.

Delay for pleading and between pleadings in appealable cases before Circuit Court reduced.

Within what delay certain pleas must be filed.

Proviso: not to preclude the subsequent filing of other pleas.

Sect 92 of the said Act amended, and other provision made as

cases, shall in effect be, as regards every *Tiers-Saisi* therein named, to require such *Tiers-Saisi* to appear and make the declaration required of him, at the Office of the proper Prothonotary or Clerk of the Court before which he shall be summoned, during Office hours, on or before the Return day of such Writ, or on the juridical day next thereafter; and if, after due return of such Writ into such Office, any *Tiers-Saisi* thereby summoned shall fail to appear and make such declaration within the time so enjoined, his default shall on the next following juridical day be recorded, and shall thereupon have the same effect to all intents as though ascertained and recorded in open Court, saving always the right of such *Tiers-Saisi* to appear in the District in which he may reside, as hereinbefore provided; and the Prothonotary or Clerk shall have power to administer the proper oath to every such *Tiers-Saisi*; Provided always, that no such declaration made by a *Tiers-Saisi* before the day of the return of the Writ, shall be received by the Prothonotary or Clerk unless it be accompanied by a Bailiff's Certificate, shewing that notice has been given to the Plaintiff or his Attorney, at least twenty-four hours previously, of the intention of the *Tiers-Saisi* to make such declaration before the return of the Writ.

XX. And be it enacted, That notwithstanding any thing in the fifty-ninth and twenty-fifth sections of the Act cited in the preamble to this Act, the delay for pleading and between the several pleadings in appealable cases before any Circuit Court shall be five clear days only, and not eight days, as in and by the said sections provided; but that all the provisions of the twenty-fifth and twenty-sixth sections of the said Act shall apply to the said delay of five days, in the same manner as they now apply to the several delays of eight days.

XXI. Provided always, and be it enacted, That notwithstanding any thing in the twenty-fifth section of the said Act or in this Act or in any other law contained, no *Exception à la forme*, *Exception Déclinatoire*, *Exception Dilatoire*, or other preliminary plea, shall be received, unless the same be filed within four days from the day of the return of the Writ or of the filing of the pleading to which such preliminary Exception or plea is opposed: But the fact of his having filed any such preliminary plea or Exception shall not preclude any party from filing afterwards a plea or pleas to the merits of the cause within the delay allowed by law for the filing of such pleas; and such delay shall be reckoned from the day of the date of the interlocutory judgment on the preliminary plea or of the withdrawal of the same.

XXII. And be it enacted, That so much of the ninety-second section, or of any other part of the said Act, as directs that the mere filing of a *Demande* in intervention in any case, shall stay proceedings in such case during three days, shall be and is hereby

hereby repealed ; and that from and after the passing of this Act, the *Demande* in intervention may be filed as at present without being allowed by any Court or Judge, but shall not stay proceedings in the case or otherwise affect the same until it shall have been allowed by the Court upon motion in Term or by one of the Judges of the Court upon petition in vacation ; and that after any such *Demande* in intervention shall have been allowed by the Court, the proceedings in the case shall be stayed during three days, and the provisions of the said ninety-second section shall apply after such allowance of the *Demande* in intervention as they now do after the filing of the same : And every such motion or petition may be made or presented at any time before Judgment.

regards *Demands* in intervention.

XXIII. And whereas the Courts of Lower Canada are not by law invested with sufficient authority to guard against the fraudulent arrangements of debtors with the bidders, at the sale of real property seized by authority of Justice : Be it therefore enacted, That whenever it shall appear to the Court out of which any *Writ de Terris* shall have issued, by the return of the Sheriff, or of any other officer of the Court duly authorized to act in such seizure, that the purchaser of real property taken in execution, has neglected to pay the price of his adjudication according to the conditions of the sale, the Court, at the instance of the plaintiff or of the defendant, or of any opposing party, shall order the Sheriff or other officer of the Court, as above mentioned, to proceed anew with the sale of the said real property at the *folle enchère* of the purchaser after notices given in the manner prescribed by law ; and shall direct the said Sheriff or such officer of the Court to require every bidder presenting himself at the time of such second sale, before receiving his first bidding, to deposit and pay a sum equal to the amount of the costs then due to the plaintiff for costs of judgment and seizure.

Recital.

When the purchaser of real property at Sheriff's sale does not pay : Court shall order Sheriff to sell it again : and that every bidder deposit a certain sum before his bidding is received.

XXIV. That if any bidder refuse to pay such sum, such Sheriff or officer of the Court shall go on with the said second sale, starting from the next preceding bidding, as if such bidder had not offered any bidding.

Otherwise he shall disregard such bidding.

XXV. That in case of a third sale and adjudication in consequence of the neglect of the second purchaser to deposit the price of his purchase, it shall be lawful for the Court, if thereto required by any interested party, to order such Sheriff or officer of the Court to require every bidder, before bidding, to deposit and pay into his hands a sum equal to one third of the debt due the plaintiff, including capital, interest and costs ; but such sum shall in no case exceed One Hundred Pounds currency.

Larger deposit may be required in case of a third sale.

XXVI. That when the plaintiff or his Attorney, *ad litem*, or any person duly authorized to act on behalf of the plaintiff, shall authorize such Sheriff or officer of the Court either in writing

Plaintiff may authorize Sheriff to receive

or

a bidding without deposit.

or in the presence of two competent witnesses, whose names such officer shall enter in his return of proceedings, to receive the bidding of a bidder without requiring the deposit of moneys in the cases above mentioned, such Sheriff or officer of the Court shall receive such bidding, and shall proceed to the sale and adjudication of the real property seized, without requiring the deposit and payment of the sums aforesaid or of any sum whatsoever.

If the Plaintiff swear that he believes Defendant will cause property to be adjudged to insolvent persons, deposit may be ordered in first instance.

XXVII. That if after the issue of the Writ *de terris* and before the first adjudication, the plaintiff or his Attorney in the cause shall declare on oath before one of the Judges of the Court, that he is credibly informed and believes that the defendant, with a view to retard the sale of the real property seized, will cause the real property to be adjudged to insolvent or unknown purchasers, the Court shall have power to order such Sheriff or officer of the Court, who is hereby required to obey such order to require every bidder at the sale of any real property to deposit and pay into his hands a sum equal to that due for costs up to the day of sale before receiving such bidding, unless such Sheriff or officer of the Court shall, at the time of the sale, be authorized by the plaintiff, or by his Attorney, *ad litem*, or by some party duly authorized, to attend to his interests, to receive such bidding without requiring such deposit or payment.

Deposit to be returned to bidders not becoming purchasers, &c.

XXVIII. That such Sheriff or other officer shall, immediately after the adjudication, return to the bidders to whom such property shall not have been adjudged, the moneys deposited by them respectively in virtue of this Act, and the amount deposited by the person to whom the property shall be adjudged shall be considered as part payment of the purchase money.

*Fol adjudicataire* liable for all damages, and subject to *contrainte par corps*.

XXIX. That in every case the *fol enchérissenr et adjudicataire* shall, in addition, be required to pay all other damages and interest accruing to the judgment creditor, and *contrainte par corps* may issue against such bidder for the recovery of the difference between the amount bid by him and that of the resale on *folle enchère*, without his being entitled to claim any overplus that might exist. Such overplus shall be paid to the other creditors in their order, or in the absence of other creditors, then to the judgment debtor.

How such *contrainte* shall be ordered

XXX. That such *contrainte par corps* shall be ordered by the Court at the instance of the plaintiff, or of the defendant, or of any opposant not collocated for the full amount of his debt, who shall make it appear by production before the Court of the Record and of the proceedings on the seizure of the real property, that such bidder has not paid in and deposited the purchase money, and that a difference exists between the price of such bidder and that of the second sale; and such *contrainte* shall be ordered and shall last until such pretended bidder shall

Its duration.

shall have paid the amount of such difference, and of all costs incurred in the obtaining of such *contrainte par corps*.

XXXI. And whereas much inconvenience, expense and delay arise from the present Rule of Law under which the purchaser of any real property can, in case of eviction or other *trouble*, call only upon his immediate *garant*, who, in his turn, may call upon his *garant*, and so on until the last party responsible be brought into Court—For remedy thereof, Be it enacted, That in any such case it shall be lawful for the purchaser evicted or troubled, to bring his action *en garantie* in the first instance against any party who might under the present Law be eventually brought into Court in the manner aforesaid as *garant*; and in like manner any person called into Court as *garant* in any such case may call into Court as his *garant* any party who might under the present law be eventually brought into Court as *garant* in such case, in the manner aforesaid; but nothing herein shall prevent any such party as aforesaid from suing or calling into Court his immediate *garant* if he think proper so to do.

Recital.

Any party who might be eventually called into Court as *garant* respecting real property, may be so called in the first instance.

XXXII. And be it declared and enacted, That in the absence of any one of the Judges, who have sat and been present at the hearing of any cause or proceeding argued or hereafter to be argued before the said Superior Court, it is and shall be lawful for the other Judges to pronounce Judgment in such cause or proceeding, provided they constitute a majority of the Judges who heard the same argued, and agree in opinion in relation to such Judgment.

Judgment may in certain cases be given in the absence of a Judge who was present at the hearing.

XXXIII. That in all proceedings commenced and carried on in vacation, in virtue of any law now or hereafter to be in force, before any one or more of the Judges of the Superior Court, it is and shall be competent, in case of the illness or absence of any one of the said Judges, for any other Judge of the said Court to sit in the place of the Judge so ill or absent, and to exercise the power and authority which would have been exercised by the Judge so ill or absent, had he continued to sit.

One judge may continue proceedings commenced in vacation by another.

XXXIV. That whenever there exists a difference of opinion between any two of the Judges before whom such proceedings have been commenced and carried on, the said Judges have and shall continue to have a right to order that the cause be argued before them and one other Judge of the said Court.

Provision where a case is heard before two Judges and they differ.

XXXV. And be it enacted, That from and after the passing of this Act, the Township of Acton, and so much of the Township of Upton not comprised within the first, second, third, fourth, fifth, sixth, seventh and eighth ranges thereof, in the County of Drummond, in the District of Three-Rivers, shall be annexed to and be included within the County of St. Hyacinthe, for Judicial, Municipal and all other purposes, as if the said Township

Action and part of Upton annexed to County of St. Hyacinthe.

Township and part of Township had always formed part of the said County, and shall form part of the Circuit of St. Hyacinthe.

Commence-  
ment of Act.

XXXVI. That this Act shall, except in so far as is otherwise specially provided for, come into force on the first day of August next.

#### SCHEDULE A.

*Times at which the Terms of the Superior Court shall be holden in the Districts of Quebec and Montreal.*

At the City of Quebec, in and for the District of Quebec, from the first to the fifth, both days included, of the months of February, March, April, May, September, October and December, and from the twentieth to the twenty-fifth, both days included, of the months of June and November, in each and every year.

At the City of Montreal, in and for the District of Montreal, from the seventeenth to the twenty-seventh both days included, of each of the months of February, March, April, May, June, September, October, November and December, in each year.

#### SCHEDULE B.

*Times at which the terms of the Circuit Court shall be holden in the Quebec and Montreal Circuits.*

At the City of Quebec, in and for the Quebec Circuit, from the twentieth to the twenty-fifth, both days included, of the months of January, February, March, April, May, June, September, October, November and December, of each and every year.

At the City of Montreal, in and for the Montreal Circuit, from the tenth to the fifteenth, both days included, of each of the months of February, March, April, May, June, September, October, November and December, of each year.

#### C A P . C X C V .

An Act to amend the Lower Canada Judicature Act, and to provide for the service of Circuit Court Writs by Bailiffs in certain cases.

[Assented to 14th June, 1853.]

Preamble.

12 V. c. 38.

WHEREAS it is expedient and necessary to amend certain Sections of the Act passed in the twelfth year of Her Majesty's Reign, and intituled, *An Act to amend the Laws relative to the Courts of original Civil Jurisdiction in Lower Canada,*