

The Provincial Statutes of Canada, passed in the year 1841. Kingston: Stewart Derbishire & George Desbarats, 1841.

4 & 5 Victoria – Chapter 22

An Act to provide temporarily for the administration of Justice in the Magdalen Islands in the Gulf of Saint Lawrence. 18th September, 1841.

Whereas it is expedient to make temporary provision for the administration of Justice in the Magdalen Islands in the Gulf Saint Lawrence; 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 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 there shall be held, annually, during this Act, at the periods hereinafter mentioned, at the Magdalen Islands, by any one Commissioner to be specially appointed for the purpose, annually, by the Governor, Lieutenant Governor, or person administering the Government of the Province, a Court for the trial of all causes arising in the said Islands of a personal nature only, (those purely of Admiralty jurisdiction excepted,) where the sum demanded or matter in dispute shall not exceed twenty five pounds, currency: Provided always, that the Commissioner to be appointed under this Act shall not be an inhabitant of or resident upon, any of the said Magdalen Islands, nor in anywise concerned in the fisheries or trade there carried on.

II. And be it enacted, that the said Court shall be styled "The Commissioners' Court for the Magdalen Islands," and shall sit at Amherst Harbour, on the principal Island of the said Magdalen Islands, from the twentieth to the thirtieth day of June, both days inclusively, Sundays and Holidays excepted, and shall in a summary manner hear, try and determine, according to law, all cases within the cognizance of the said Commissioner under this Act, the said Commissioner keeping notes of the evidence in all cases exceeding ten pounds sterling, coming before him, and causing a Register to be kept by the Clerk to be appointed as hereinafter mentioned, of all cases tried and determined before him, that reference in case of need may be thereunto had.

III. And be it enacted, that it shall and may be lawful for the Governor, Lieutenant Governor or Person administering the Government of the Province, for the time being, to nominate and appoint by a Commission under his hand and seal, a fit and proper person, being resident on the said Islands, to act as Clerk of the said Commissioners' Court, which said Clerk, before entering upon the duties of his office, shall make and execute before the Senior Justice of the Peace, resident on the said Islands, a bond jointly and severally, with sureties to be approved of by such Justice of the Peace, in the sum of fifty pounds, currency, that he will faithfully discharge the duties of his said office, and truly transcribe and keep a correct record of all proceedings, entries and judgments of the said Court, and further shall take and subscribe an oath before the said Justice of the Peace, (which said oath the said Justice of the Peace is hereby authorized and required to administer,) in the words following, to wit: "I, A. B., do promise and swear, that I will faithfully,

diligently and justly serve and perform the office and duties of Clerk of the Commissioner's Court for the Magdalen Islands, according to the best of my ability—So help me God;" which said oath shall be filed and kept among the records of the said Court.

IV. And be it enacted, that in no case shall execution issue pursuant to any judgment by such Commissioner, before the expiration of twenty days next after the day in which judgment shall have been given, and that the said Commissioner may, in cases where he shall see fit, suspend execution for any term not exceeding twelve months after judgment.

V. And be it enacted, that it shall be the duty of the said Clerk, in conformity with any judgment rendered by the said Commissioner, to issue such writs of execution against the goods and chattels of any party against whom such Judgment has been pronounced after the expiration of the delay allowed by this Act, or specially granted by the Commissioner under the provisions of this Act, which said writs of execution shall have been previously signed and sealed by the Commissioner aforesaid, and kept in the custody of the said Clerk.

VI. And be it enacted, that in ease any opposition is entered to the sale of any goods and chattels seized under and by virtue of any writ of execution, issuing as aforesaid, it shall and may be lawful for the said Clerk to administer an oath to the party opposing such execution, to the truth of the allegations contained in such opposition, and thereupon to direct that all further proceedings be suspended under such writ of execution, until the return of such opposition before the next ensuing Session of the said Court, when the several parties may be heard on the merits of the said opposition.

VII. Provided always, that an appeal shall lie in all causes exceeding ten pounds, sterling, from the decision of the said Commissioner to Her Majesty's Court of King's Bench, or Common Pleas at Quebec, the party aggrieved giving notice within twenty days after judgment to the Commissioner, by whom the Judgment shall have been given, or to the Clerk, together with security for the amount of Judgment and costs, in case he shall fail to prosecute his appeal within six months next after date of the Judgment, and the said Clerk shall after such notice shall have been given, and such security been entered forthwith, and with all convenient speed, at the instance and request of the party appealing, transmit a true and certified copy of the record of the cause so appealed to the said Court of King's Bench, or Court of Common pleas at Quebec, the party appealing paying for the copy of such record to the said Clerk, at the rate of six pence for every hundred words and no more.

VIII. And be it enacted, that no other or greater fees shall be exacted nor taken by the Clerk of the said Commissioner, than the following, that is to say: for a Writ of Summons, one shilling and six pence; for a copy thereof, one shilling; for a Subpoena, one shilling; for every copy thereof, six pence; for an Execution, one shilling and six pence; for every Rule or Order of Court, six pence; for entering a Judgment, nine pence; for every copy of a Judgment (when such copy is required) six pence; for every entry of an opposition, nine pence.

IX. And be it enacted, that the said Commissioner shall have power and authority to nominate and appoint such number of Bailiffs as he may deem fit and necessary, for the service and execution of all writs, orders, or rules of the said Court, and every such Bailiff, before entering upon the duties of his office, shall give security in such amount as the said Commissioner shall deem fit and proper, for the faithful discharge of his duties, and for the duly paying and accounting for of all monies that shall come into his hands.

X. And be it enacted, that between the service and the return of any summons issuing pursuant to this Act, there shall intervene at least three days, and that an additional day shall be allowed for every three leagues between the place of the Defendant's domicile and that whereat the Court is held, and that for every service of such Summons or Subpoena in any cause, one shilling, currency, shall be allowed to the Bailiff, Constable or Officer serving the same, and for mileage one shilling per league, (the distance in returning not counted,) from the place of residence of such Bailiff, Constable, or Officer, to the Defendant's domicile.

XI. And be it enacted, that for levying monies under any execution issuing from the said Court, no other or greater costs or charges shall be allowed nor taken than the following, that is to say: for the seizure and inventory one shilling and sixpence, currency; for the publication of the time and place of sale of the moveables seized one shilling and six pence, and on the amount seized a poundage at the rate of two and a half per cent.

XII. And be it enacted, that in case of the death, sickness, or absence of the Clerk, the Senior Justice of the Peace, resident on the said Islands, shall forthwith and with all convenient speed notify such death, sickness, or absence to the Governor, Lieutenant Governor, or person administering the Government of this Province, for the time being, and it shall and may be lawful for the said Senior Justice of the Peace to nominate and appoint, by a warrant under his Hand and Seal, any lit and competent person resident on the said Islands to act as Clerk to the said Court, until another Clerk shall have been appointed by the Governor, Lieutenant Governor, or Person administering the Government of this Province for the time being, and such acting Clerk shall hold, enjoy and possess all the powers, authorities, privileges, and remuneration allowed to the Clerk to be appointed as aforesaid.

XIII. And be it enacted, that any Summons, Subpoena, or Execution which the said Commissioner shall issue, under and for the purposes of this Act, may be in the form prescribed in the Appendix hereunto annexed.

XIV. And be it enacted, that in case there shall at any time be no Justice of the Peace residing on the said Islands, all the powers, authorities and duties hereby conferred upon or required from such Justice of the Peace shall be held, possessed, enjoyed or performed by the Senior Missionary resident on the said Islands.

XV. And be it enacted, that this Act shall be and remain in force until the first day of May, one thousand eight hundred and forty-four, and thence until the end of the then next ensuing Session of the Legislature, and no longer.

XVI. And be it enacted, that any Laws in force in that part of the Province called Lower Canada, repugnant to this Act, shall, in so far as they relate to the Magdalen Islands, be suspended during this Act and no longer.

Appendix.

(Form of Summary.)

Province of Canada, }
Magdalen Islands. } Commissioner's Court.

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland. Queen,
Defender of the Faith, &c. &c. &c.

To all and every the Bailiffs, Constables, and other Officers within the Magdalen Islands,

Greeting:

In Her Majesty's name, you are hereby commanded to summon _____ of the Magdalen Islands, if he may be found therein, to be and appear, at Amherst. Harbour, at the domicile of _____ before _____ our Commissioner for the trial of certain causes or actions of a personal nature arising in the said Magdalen Islands, on the _____ day of _____ at _____ of the clock _____ noon, then and there to answer _____ of _____ in a demand for the sum of _____ and whereof an account in detail is hereunto annexed, and do you make your return of this Summons with your doings thereon, on or before the said day.

Witness, _____ our said Commissioner at this _____ day of _____ in the _____ year of our Reign, and in the year of our Lord one thousand eight hundred and _____

[L. S.]
Commissioner.

(Form of Subpoena.)

Province of Canada, }
Magdalen Islands. } Commissioner's Court.

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, Her Majesty's Commissioner for the Magdalen Islands, at Amherst Harbour, at the domicile of _____ on _____ the _____ day of _____ at _____ o'clock in the _____ noon, 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 said 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, at _____ this _____

[L. S.]
Commissioner.

(Form of a Warrant of Execution.)

Province of Canada, }
Magdalen Islands. } Commissioner's Court.

To all and every the Bailiffs, Constables, and other Officers within the Magdalen Islands:

Whereas A. B. of _____ did, on the _____ day of _____ before me, Her Majesty's Commissioner for the trial of certain causes or actions of a personal nature, arising in the said Magdalen Islands, recover Judgment against _____ of the said Islands, for the sum of _____ for his debt, and _____ for his costs, of which (or of so much as may remain due), execution remains to be done: You are therefore hereby commanded in Her Majesty's name to levy of the goods and chattels of the said _____ (except his beast of the plough, his implements of husbandry, the tools of his trade, his fishing gear and tackle, unless the other goods and chattels shall prove insufficient, and not in any case the bed and bedding, nor the necessary wearing apparel of him or his family, nor any cow, sheep, or hog, or any stove or firewood exempted by law from seizure,) the aforesaid sum and costs, together with _____ for the expenses of this execution, returning to the said _____ the overplus, if any there be, after having fully satisfied the aforesaid sum of _____

Witness my hand and seal this _____ day of _____ in the _____ year of Her Majesty's Reign, and in the year of our Lord, one thousand eight hundred and _____

[L. S.]
Commissioner.