

*Laws of Her Majesty's Province of United Canada*, passed in the year 1851. Quebec: Stewart Derbyshire and George Desbarts, 1852.

16 Victoria – Chapter 203

**An Act to regulate the proceedings in cases of Voluntary Licitation. Assented to 14th June, 1853.**

Whereas the formalities required in cases of voluntary licitations cause inconvenience, delay and expense to parties interested: 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 whenever it shall be intended to sell or otherwise alienate the real estate of minors or of any other person whose real estate can only be sold or otherwise alienated according to the formalities by law required for the sale or other alienation of the real estate of minors, the Notary, before calling a meeting of the relations and friends for that purpose, in conformity with the Act passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, chapter fifty-eight, shall cause two *experts* to be appointed who shall not be related to any of the parties or to their legal representatives, or interested in the matter in question, (mention whereof shall be made in the Deed of *Expertise*,) one of which *experts* shall be appointed by the tutor, and the other by the *subrogé* tutor of the minors, (or in the case of the real estate of any other person, subject to the same formalities as provided by law for the real estate of minors, one expert shall be appointed by the curator to such person, and the other by one of the relations nearest of kin to, or appearing to be most interested in such person,) of which appointment an *Acte* shall be drawn up before Notaries in the form of Schedule A; to which *experts* any Notary shall, by this Act, be authorized to administer the oath according to law, which oath shall be taken (in the form of Schedule B) by the said *experts*, before entering upon their duties; it shall then be the duty of the said *experts* to proceed to ascertain the value of the real estate in question, and if the sale thereof shall be required on account of indivisibility, they shall also proceed to ascertain whether it cannot be conveniently divided, and shall make their report thereon by *Acte* before Notaries, delivered *en Brevet*, in the form of Schedule C; it shall thereupon be lawful for any Notary to summon before him the relations and friends who are to compose the said meeting; he shall administer the usual oath to the persons present at such meeting, and shall read to them the contents of the *Acte* of declaration of the persons requiring such meeting, and the contents of the *Acte of Expertise* aforesaid, and shall take their advice, and prepare an *Acte* in the form of Schedule D, mentioning therein the names and the age of the minors, the degrees of relationship, the quality and residences of the persons composing such meeting, and giving therein a description of the real estate.

II. The Petitioner shall transmit to the Judges of the Superior Court, or the Judges of the Circuit Court, all the originals of the proceedings above mentioned and submit them with a Petition (which every Notary is hereby authorized to certify in the usual manner) setting forth succinctly the object and purpose of the said proceedings without any special designation whatever, in order

that the same may be homologated, if they ought so to be, which Petition shall be in the form of Schedule E: if the Judge to whom such proceedings shall be submitted, homologates the *avis de parents*, he shall place his *Acte* of homologation and ordinance in the form heretofore made use of in like cases, at the foot of the *Acte* containing the *avis de parents*, and the whole shall be deposited with the other proceedings in the Archives of the office of the Court, in order that copies thereof may be given to parties entitled thereto; and if the Judge to whom the proceedings in question are referred shall think proper to refuse to homologate them, he shall state his reasons for so doing at the foot of the Petition, and shall affix his signature thereto.

III. This Act shall apply to Lower Canada only.

#### Schedule A.

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_, at o'clock in the \_\_\_\_\_ noon, before the undersigned Public Notaries for Lower Canada, residing in the District of \_\_\_\_\_ came and appeared A, residing \_\_\_\_\_ of the one part, and B, residing \_\_\_\_\_ of the other part, who have appointed, that is to say, the said A \_\_\_\_\_ the person of \_\_\_\_\_ and the said B \_\_\_\_\_ that of \_\_\_\_\_ as *Experts* for the purpose of proceeding to the inspection of the real estate belonging to \_\_\_\_\_ described in the declaration made \_\_\_\_\_ by the said by *Acte* before *Mtre.* \_\_\_\_\_, Notary, (or one of the undersigned Notaries,) to ascertain the value thereof, (and if the sale is demanded on account of indivisibility) and whether or not it can conveniently be divided.

#### Schedule B.

I, \_\_\_\_\_ and I, \_\_\_\_\_, do make oath and swear that I will faithfully proceed to the performance of what is required of me by the *Acte* of my appointment, executed before *Mtre.* \_\_\_\_\_, Notary, and his Colleague, on the and that I will make a true report of my opinion on the whole matter, without favor or partiality for any of the parties interested in the matter in question. So help me God.

Sworn before us the undersigned Notaries.

#### Schedule C.

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, before me the undersigned Public Notary for Lower Canada, residing in the District of \_\_\_\_\_ came and appeared \_\_\_\_\_ the *experts* appointed by the *Acte* above executed by the undersigned Notaries, on \_\_\_\_\_ who declare that having previously made oath as appears by the Certificate hereunto annexed, they proceeded on the \_\_\_\_\_ day of \_\_\_\_\_ to the inspection of the real estate, appurtenances and dependencies mentioned and described in the declaration of \_\_\_\_\_ received by *Mtre.* \_\_\_\_\_, Notary, the \_\_\_\_\_, and after due examination and obtaining every information necessary for the purposes mentioned in their said *Acte* of appointment, they value and estimate

the said real estate, \_\_\_\_\_ (if there be several immovables, they should be valued separately,) and further, (if the sale is made on account of indivisibility) they declare that it cannot conveniently be divided.)

The said *experts* further declare that they are not related to the parties interested in the matter in question, nor to their legal representatives.

*Acte* whereof is delivered en Brevet at \_\_\_\_\_

Schedule D.

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year one thousand eight hundred and \_\_\_\_\_ at \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon, before me, the undersigned Notary Public for Lower Canada, residing in the District of \_\_\_\_\_, came and appeared \_\_\_\_\_, who affirms that in conformity with the declaration made by *Acte* before *Mtre.* \_\_\_\_\_, Notary, bearing date the \_\_\_\_\_, for the purpose of obtaining authority to sell, for the reasons therein set forth, the real estate belonging to \_\_\_\_\_, therein designated and described as follows, to wit: (here describe the real estate) he did for the said purpose cause to be summoned before us, to wit: \_\_\_\_\_ in default of relations, requiring- us, they being present, to receive their advice as to the contents of the *Acte* of declaration aforesaid, and the parties above named having appeared, we have caused to be read the said *Acte* of declaration, the report of the *experts* made before *Mtre.* \_\_\_\_\_, Notary, and his colleague, and have taken and received from them the necessary oath, and such oath having been made, they have all unanimously declared that they are of opinion that \_\_\_\_\_ (Should there be a division of opinion, mention the same, and give the reasons therefor.)

Schedule E.

Province of Lower Canada, }  
District of \_\_\_\_\_ }

To the Honorable the Judges of the Superior Court (or the Judge of the Circuit Court,) & c., &c., &c.

A. (addition and place of residence) humbly represents, that he has caused the relations and friends to be consulted by *Mtre.* \_\_\_\_\_, Notary, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, and has caused to be fulfilled all the proceedings by law required to be had in order to \_\_\_\_\_ and submitted for your approval. And he therefore prays that your honors will take these proceedings into consideration and homologate them, if they ought to be so homologated, and you will do justice.

At \_\_\_\_\_ the \_\_\_\_\_ one thousand eight hundred \_\_\_\_\_