

No. 37.

2nd Session, 3rd Parliament, 12 Victoria, 1849.

BILL.

**An Act to amend the Act providing for
the organization of the Notarial Pro-
fession in Lower Canada.**

Received and Read a first time, Tuesday, 30th
January, 1849.

Second Reading, Monday, 5th February, 1849.

Mr. JOBIN.

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BILL.

An Act to amend the Act providing for the organization of the Notarial Profession in Lower Canada.

WHEREAS it is expedient to amend in Preamble.
the manner hereinafter provided,
the Act passed in the Session held in the
tenth and eleventh years of Her Majesty's
5 Reign, and intituled "*An Act for the or-* Act 10 and 11
ganization of the Notarial Profession in Vict., ch. 21,
that part of this Province called Lower cited.
Canada;" Be it therefore enacted, &c.

And it is hereby enacted by the authority of
10 the same, That the fifth section of the Act Section 5 of
cited in the preamble to this Act, shall be the said Act
and is hereby so amended that it shall, with amended, so as
regard to things to be done by any Board of to read as fol-
Notaries after the passing of this Act, be lows:
15 read and construed as if it were in the words
following, that is to say :

"And be it enacted, That each of the Powers of the
Boards of Notaries established by or under Boards of
the said Act shall have power and authority,— Notaries.

20. 1st. To maintain internal discipline among Discipline.
the Notaries within their jurisdiction, to
award censure and enforce discipline.

2ndly. To prevent or reconcile all differ- Arranging
ences between Notaries, and all complaints differences.
25 and claims by third persons against Notaries
concerning their functions, to express their
opinion respecting the damages thence aris-
ing, and to repress by censure or other
means of discipline, whatever offence may
30 be the subject thereof, without prejudice to

any right of action, if any such doth accrue.

- Granting certificates.** 3rdly. To grant or refuse after public examinations, all certificates of Qualification required by applicants for admission, either as Students or Notaries. 5
- Keeping Records.** 4thly. To receive and keep the Records of Notaries deceased or removed from office, as hereinafter provided.
- Summoning Notaries before them.** 5thly. To summon before it when need shall be, any Notaries within its jurisdiction. 10
- Punishing Notaries for malversation, &c.** 6thly. To cause any such Notary to be punished according to the nature of his offence, by removal or suspension from office, or by depriving him of his vote at General Meetings, or by excluding him from the Board for a time not exceeding three years for the first offence, nor six years for a second or subsequent offence; Provided always, that if the charge brought before the Board against any Notary shall appear sufficiently serious to call for his suspension from the exercise of his functions, or his removal from office in cases of fraud or corruption, the Board shall associate with it by lot, a number of Notaries equal to the number of Members of the Board, from among those within its jurisdiction, who shall be bound to serve, under a penalty of *five pounds* currency; and the Board thus composed may by a majority of the whole, pronounce its opinion as to such suspension and the duration thereof, or as to such removal from office, but no opinion shall be pronounced unless two thirds at least of all those summoned to attend the meeting be present; and in any such case the opinion so pronounced shall be submitted to the Court of Queen's Bench for Judgment thereon, in the manner provided by the twenty-second section of this Act; Provided also, that nothing in this section shall deprive the party injured of 35
- Proviso ; touching grave cases.**
- Sentence, how pronounced.** 30
- Proviso.** 40

any remedy which he may have against the Notary."

II. And be it enacted, That the seventeenth section of the said Act shall be and is hereby so amended that it shall, with regard to things to be done after the passing of this Act, be read and construed as if it were in the words following, that is to say: "And be it enacted, that from and after the passing of this Act no person shall be admitted as a Student with any Notary, unless he shall previously have passed a public examination before one of the Boards of Notaries as to his qualifications and abilities, and have made proof of having pursued for five years a regular course of study in some one or more of the Seminaries or Colleges named in the fourteenth section of this Act, or shall otherwise have received a classical education, and shall prove the same by a certificate thereof, which shall be annexed to his Articles, or by his examination before the said Board; and such classical education shall comprise a knowledge of the Grammar of either the English or French language, as far as and including Composition, (*méthode*) Arithmetic to the Rule of three inclusive, and the Elements of Geography; and a copy of such Articles and of every assignment thereof shall be filed in the office of the Secretary of such Board, within thirty days from the date thereof on pain of nullity: Provided always, that nothing in this Act shall be construed to apply to any Student whose Articles shall have been passed before the passing of this Act, nor to affect the right of any such Student to obtain his admission as a Notary at the expiration of the term of such Articles, subject to the requirements of the law in force at the time such Articles were executed; excepting always that every such Student shall cause an authentic copy of his Articles to be filed in the Office of the Secretary of the Board of Notaries within whose jurisdiction his Patron shall reside, within three months after the passing of this Act."

Section 17 of the said Act amended to read as follows:

Qualification of a Student.

Proviso. As to Students under Articles before the passing of this Act.

Exception.

Section 21 of
the said Act
amended so as
to read as fol-
lows :

III. And be it enacted, That the twenty-
first section of the said Act shall be and is
hereby so amended that it shall, with regard
to things to be done after the passing of this
Act, be read and construed as if it were in 5
the words following, that is to say :

Penalty on
Notaries con-
travening this
Act or the law
in certain par-
ticulars.

“ And be it enacted, That any Notary
who shall be convicted of having passed any
contract or other instrument, without men-
tioning therein its number, and the year, day 10
and place in, on and at which it was passed,
or who shall neglect to mention the Christian
and Surnames, and the qualities and resi-
dence, of the parties and witnesses, or who
shall use abbreviations not allowed by law, 15
or shall neglect to set forth in words at
length all sums and dates, or to read over
the instrument to the parties and to make
mention of his having done so, and of their
having signed or declared themselves unable 20
to sign and from what cause, or to cause all
marginal notes and references to be properly
initialled, or to state the number of words
struck out and of marginal notes, or shall make
any additions or interlineations in the body 25
of the instrument, or shall leave any blanks,
intervals or void spaces therein, or shall
fail to observe or shall contravene any of the
other formalities prescribed by law with
regard to Notarial Instruments, or shall ne- 30
glect to keep his Minutes and Register in
proper order and in good preservation, or
shall pass any instrument to which any inter-
dicted person shall be a party without the
intervention of his Curator, when such inter- 35
diction shall have been duly notified,—shall
for every such offence or contravention in-
cur a penalty not exceeding *five pounds*,
currency, over and above all damages which
may be recovered by the party injured ; and 40
any Notary who shall disposes himself of
any Minute, except in cases where the same
is allowed by law, or upon the order of a
Judge or of some other competent authority,
or shall neglect to sign any Minute, or to 45

complete and sign it in the presence of the parties, shall thereby become liable to a penalty of not less than *five pounds*, nor exceeding *twenty-five pounds*, currency, or
 5 to suspension from office for a period of from three months to one year, according to the circumstances of the case, or even to be removed from office in cases of forgery, fraud or corruption, over and above all
 10 damages (if any) for which he may be liable to the parties interested."

IV. And be it enacted, That no Notary who under the provisions of the twenty-seventh section of the Act hereby amended,
 15 shall have made and transmitted to the Board of Notaries, a declaration of his option to follow another profession or calling than that of a Notary, shall, either personally or by the intervention of any other Notary, keep in
 20 his house or elsewhere any Notarial Office or *Etude* for any other purpose than that of delivering copies of the minutes of Instruments passed by him; and any Notary con-
 25 travening the provisions of this section shall be deemed to have exercised the functions of a Notary contrary to the provisions of the twenty-seventh section of the said Act, and shall be liable accordingly to punishment
 30 by forfeiture, suspension or removal from office as by the said section it is provided.

As to Notaries having made option of another profession under Sect. 27 of the said Act.

Penalty for contravention.

V. And be it enacted, That every Board of Notaries shall elect, from among the members thereof or from among the other
 35 Notaries of the District, Notaries properly qualified to fill the office of Censors, who shall be three in number for the jurisdiction of the Board of Notaries for the District of Montreal, two for that of the Board for the District of Quebec, and
 40 one for that of the Board for the District of Three Rivers; and such Censors after having received sufficient notice of their appointment, and after they shall have been sworn at some sitting of a Court of Civil Ju-

Each Board of Notaries to elect Censors.

Duties of Censors.

jurisdiction to the faithful and impartial discharge of the duties imposed on them by this Act, and which they shall be bound to undertake under a penalty of *ten pounds* currency, which shall make part of the common fund of the Board of Notaries for the District, shall visit within the limits respectively assigned to them within their District, the Offices, Records and Registers of the Notaries therein, for the purpose of ascertaining whether such Notaries have conformed to the laws of this Province and to the requirements of this Act and of the Act hereby amended, and shall obtain information on all matters and things mentioned in the instructions which they shall receive from the Board of Notaries, to whom they shall make faithful and circumstantial report; and every Notary who shall refuse either to permit the visit of the Censor or to grant him access to his papers, shall for every refusal incur a penalty of *ten pounds* currency, to be recovered in a summary manner before the nearest Justice of the Peace: Provided always, that the said office of Censor shall be held during three years, and that during each of the said three years one visit shall be so made; Provided also, that during the ten years next after the passing of this Act, it shall be lawful for the Governor of this Province to appoint the said Censors by instruments under his hand and seal, and with the advice and consent of the Executive Council of this Province; and the Censors so appointed shall have the same powers and duties as if they had been elected by the Board of Notaries; Provided also, that every Censor so appointed shall be entitled to receive out of the unappropriated monies in the hands of Her Majesty's Receiver General, such sum as shall be deemed sufficient by the Board to indemnify him for his expenses and disbursements during such visit as aforesaid, provided the said sum shall not exceed the amount of such expenses and disbursements, and also *twenty* *skillings* currency for every day necessarily

Penalty on Notaries obstructing Censors in their duties.

Term of office.

Proviso: during ten years the Governor in Council shall appoint the Censors.

Proviso: allowance to ten Censors to be paid by the Province.

employed in such visit and in making such report.

VI. And be it enacted, That the twenty-fourth section of the said Act shall be and is hereby so amended, that it shall with regard to things to be done after the passing of this Act, be read and construed as if it was in the words following, that is to say :

Section 24 of the said Act amended so as to read as follows :

“ And whereas it is necessary to make more effectual legislative provision with regard to the keeping, transmission, and preservation of Notarial Records, Papers, and Registers : Be it therefore enacted,

1. That every Notary who shall remove out of the District in which he resides, for the purpose of residing elsewhere, shall, as shall also his heirs or legal representatives, within fifteen days after such change of domicile, transmit to and deposit the Records and Registers of all Instruments executed before him during his residence in the District he is about to leave, in the hands of one of the Notaries of the same District, or with the Board of Notaries for such District.

Deposit of papers of Notaries removing from the district.

2. That in like manner the Records and Registers of any Notary who shall die or shall cease to practise, or who shall have been interdicted, dismissed, or be for ever removed from office, or who shall have been absent from the Province for more than ten years, shall, by him or by the person in whose hands they shall be, his heirs and legal representatives, be deposited in the hands of one of the Notaries in the County of the said Notary, or with the Board of Notaries for the District.

Or dying, &c., or otherwise ceasing to practice.

3. That it shall be lawful for any Notary who may wish to retire from the practice of his profession, in like manner to deposit in the hands of a Notary residing in

Or wishing to retire.

the same County, or with the Board of Notaries for the District.

Certain Notaries to have a preference as Depositees.

4. That in every case the Notary with whom such deposit shall be made, shall be preferably chosen from among those who shall be landholders, and shall reside in the same Parish, Seignior, or Township, in the County of the Notary who shall be deceased or absent, or shall have resigned, or have been removed from office, 5 or shall be a Notary who shall have a fire-proof vault or place in which to keep the minutes so deposited; according to the order to be made by a Judge of the District, upon the opinion to be given, with the reasons on 15 which it is grounded, by the Board of Notaries.

Penalty on Notaries, &c., contravening this section.

5. That any Notary who shall remove from one District to another, or shall voluntarily cease to practise, or the heirs and legal representatives of every Notary deceased, interdicted, or absent from the Province, or having otherwise ceased to practice, who shall fail or delay to comply with the requirements of this Act, shall be condemned to 25 pay a fine of *ten pounds* currency for every month during which they shall so delay, reckoning from the day on which he or they shall be called upon to make such deposit:

Proviso; if the depositor resumes his practice.

Provided, that when any Notary so interdicted, absent, or ceasing to practise, for whatsoever reason, shall be re-admitted to practise, it shall be lawful for him to resume possession of his Records; and that every Notary who shall have voluntarily 35 ceased to practise, shall have the like right:

Proviso, for 32, re-examination in certain cases.

Provided also, that any Notary, who shall have been absent from the Province more than ten years, without having, during that time resided within the same two years at least, 40 shall not upon his return, resume his practice until he shall have undergone an examination respecting his moral character and ability, to the satisfaction of the Board of Notaries for the District in which he intends to reside. 45

6. That in all cases of deposit, a list shall be prepared of the records so deposited, and the Board, or the Notary receiving the same, shall in writing at the foot of the list undertake the safe keeping of them, and such list and undertaking shall be enregistered with the Board of Notaries for the District.

List of papers deposited to be made, &c.

7. That every Notary removing out of the District, or ceasing to practise, or the heirs and representatives of Notaries deceased, absent, interdicted or removed from office, shall endeavour to enter into an agreement respecting dues for instruments upon which the fees are unpaid, and respecting the fees for authentic copies, and if they cannot come to an agreement, the amount shall be estimated by two Notaries to be named by the parties, or who shall be named officially by the Board of Notaries for the District.

As to fees arising out of minutes deposited.

8. That in case of the decease or absence of any Notary, or of his refusal to deliver copies of any instrument passed by him, any Judge of the District may, upon petition to him and according to circumstances, order the records and registers of the Notary deceased, absent or refusing as aforesaid, to be placed under the seal of the Court, and may order that they may be deposited provisionally, until further order be made in the manner hereinbefore prescribed.

Judge may order papers to be put under the seal of the Court in certain cases.

9. That all copies of minutes so deposited, signed by the Notary, or by the Secretary of the Board of Notaries with whom they are so deposited, shall be deemed authentic, and shall avail in evidence in the same manner as the Copies signed by the Notary by whom the minute shall have been passed.

How copies of minutes deposited shall be certified.

10. That all minutes heretofore deposited in the hands of any Notary or Prothonotary, shall continue in the hands of their

Deposits heretofore made to remain.

present holders until it shall be otherwise ordered by competent authority.

Minutes now deposited in the Court-houses to be deposited with the Boards of Notaries under certain circumstances.

VII. And be it enacted, That whenever the Legislature shall have granted for one or more of the Districts of Quebec, 5 Montreal and Three Rivers, a sum sufficient for paying the rent, the purchase money of a lot, or for the erection of a building with proper vaults for the keeping of the Notarial Records now in the vaults of the Court Houses 10 money sufficient to defray the expenses necessary for arranging the said papers, then the Boards of Notaries shall respectively be invested with the possession and keeping of the said Records and Registers, 15 and also with the possession and keeping of all such Records and Registers as shall be transmitted to them in the cases hereinbefore provided for; and the Secretary of each Board of Notaries shall be the especial keeper of the said papers under the 20 inspection and superintendence of the Board; he shall take care that they be preserved in the best possible order; shall give all required communications, authentic copies and extracts, and shall be entitled to receive *one shilling* for every communication, and at the rate of *six-pence* for every hundred words in every copy or extract, and no more: Provided always, that the said Secretary shall keep his office open from the hour 30 of nine in the forenoon to that of four in the afternoon, every day, Sundays and holidays excepted.

Accounting clause.

VIII. And be it enacted, That every person 35 to whom shall be entrusted the expenditure of any portion of the public monies of the Province hereby appropriated, shall make up detailed accounts of such expenditure, showing the sum advanced to the accountant, 40 the sum actually expended, the balance (if any) remaining in his hands, and the amount of the monies hereby appropriated to the purpose for which such advance shall have

been made, remaining unexpended in the hands of the Receiver General; and that every such amount shall be supported by vouchers therein distinctly referred to by numbers corresponding to the numbering of the items in such account; and shall be made up to, and closed on the 10th day of April and 10th day of October in each year, during which such expenditure shall be made, and shall be attested before a Justice of the Court of Queen's Bench, or a Justice of the Peace; and shall be transmitted to the officer whose duty it shall be to receive such accounts, within fifteen days next after the expiration of the said periods, respectively.

IX. And be it enacted, That the due application of the public monies appropriated by this Act, shall be accounted for to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of Her Majesty's Treasury, for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall direct; and that a statement of the said money, and a detailed account of the expenditure of all such monies, shall be laid before the several branches of the Provincial Legislature within the first fifteen days of the next Session thereof.

X. And be it enacted, That so much of the Act hereby amended as may be inconsistent with the provisions of this Act shall be and is hereby repealed.

Due application clause.

Repeal of enactments inconsistent with this Act.