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No. 74.

3rd Session, 5th Parliament, 20 Victoria, 1857.

B I L L .

**An Act to provide for the codification of
the Law and Procedure in Civil Matters
in Lower Canada.**

Received and read first time, Tuesday, 10th
March, 1857.

Second reading, Friday, 13th March, 1857.

Hon. Atty. Genl. **CARTIER.**

S. Derbshire & G. Desbarats, Queen's Printer.

An Act to provide for the Codification of the Laws of Lower Canada relative to Civil matters and Procedure.

WHEREAS the Laws of Lower Canada in Civil Matters, Preamble.
 are mainly those which at the time of the cession of the country to the British Crown, were in force in that part of France then governed by the Custom of Paris, modified by Provincial Statutes, or by the introduction of portions of the Law of England in peculiar cases ; and it therefore happens, that the great body of the Laws in that division of the Province, exist only in a language which is not the mother tongue of the inhabitants thereof of British origin, while other portions are not to be found in the mother tongue of those of French origin ; And whereas the Laws and Customs in force in France at the period above mentioned, have there been altered and reduced to one general Code, so that the old laws still in force in Lower Canada are no longer re-printed or commented upon in France, and it is becoming more and more difficult to obtain copies of them, or of the commentaries upon them ; And whereas the reasons aforesaid, and the great advantages which have resulted from Codification, as well in France as in the State of Louisiana, and other places, render it manifestly expedient to provide for the Codification of the Civil Laws of Lower Canada : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

I. The Governor is hereby authorized to appoint three fit and proper persons, Barristers of Lower Canada, to be Commissioners for Codifying the Laws of that division of the Province in Civil Matters, and two fit and proper persons, being also such Barristers, to be Secretaries to the Commission, one of whom shall be a person whose mother tongue is English but who is well versed in the French language, and the other a person whose mother tongue is French but who is well versed in the English language. Governor to appoint three Commissioners—
And two Secretaries.

II. The said Commissioners and Secretaries shall hold their offices during pleasure, and in case of vacancy, the Governor may appoint another or others to fill the same, and so on until the work is completed. To hold office during pleasure.

III. The said Commissioners shall reduce into one Code to be called the *Civil Code of Lower Canada*, those provisions of the Laws of Lower Canada which relate to Civil Matters and are of a general and permanent character, whether they relate to commercial cases or to those of any other nature ; but they shall not include in the said Code, any of the Laws relating to the Seignorial or Feudal Tenure. Civil Code to be framed.

And a Code of
Civil Procedure.

IV. The said Commissioners shall reduce into another Code, to be called the *Code of Civil Procedure of Lower Canada*, those provisions of the Laws of Lower Canada, which relate to Procedure in Civil Matters and Cases, and are of a general and permanent character.

Codes must
contain the
actual Law.

V. In framing the said Codes, the said Commissioners shall embody therein such provisions only as they shall hold to be then actually in force, and they shall give the authorities on which they believe them to be so; they may suggest such amendments as they shall think desirable, but shall state such amendments separately and distinctly, with the reasons on which they are founded.

As to amend-
ments.

Form and
extent of the
Codes.

VI. The said Codes shall be framed upon the same general plan and shall contain, as nearly as may be found convenient, the like amount of detail upon each subject, as the French Codes known as the *Code Civil*, the *Code de Commerce*, and the *Code de Procédure Civile*.

Commission-
ers to report
to the Go-
vernor, and to
act under his
instructions.

VII. The Commissioners shall from time to time, report to the Governor their proceedings and the progress of the work entrusted to them, and shall in all matters not expressly provided for by this Act, be guided by the instructions they shall receive from the Governor; and whenever they shall think any section or division of the work sufficiently advanced for the purpose, they shall cause the same to be printed, and transmit a sufficient number of printed copies thereof with their Report to the Governor; and if the Governor in Council shall think it advisable, he shall cause one or more of such copies to be transmitted to each of the Judges of the Court of Queen's Bench and Superior Court for Lower Canada, with a request that he will return the same, with his remarks thereon, by a day to be named in the letter containing such request.

Copies of the
work may be
submitted to
the Judges.

Judges to ex-
amine the work
when submit-
ted, and to re-
port thereon.

VIII. It shall be the duty of each of the said Judges to examine the portion of the Commissioners' work so submitted to him, and to return the same by the day named as aforesaid, with his remarks, and more especially to examine carefully that part of the work purporting to state the Law then in force, and to report distinctly his opinion, whether the Law as it then stands is correctly stated therein, and in what paragraph or paragraphs (if any) it is incorrectly stated, with his reasons and authorities, and a draft of the amendments which ought in his opinion to be made in such paragraph or paragraphs, in order that the Law may be correctly stated therein.

Judges may
suggest amend-
ments.

IX. The Judges or any of them may, in their Report on any portion of the said work referred to them, make suggestions for the amendment of the Law contained in such portion, with the reasons on which such suggestions are founded.

Judges may
confer with
the Commis-
sioners before
reporting.

X. At any time when any portion of the said work is before the Judges for their report, they or any of them may confer with the Commissioners or any of them, touching the same: and the Commissioners shall in any such conference give all such information and explanation as it may be in their power to

afford and as the Judges may require, relative to any statement of the Law as it then stands, or any suggestion for its amendment, which the Commissioners may have made in such portion of their work as aforesaid.

5 XI. The reports of the Judges shall be communicated to the Commissioners, who shall make such corrections in their work as they may find advisable after having taken into consideration the reports and suggestions of the Judges, but if any of the Judges shall not send in their reports by the day named for that
10 purpose, this shall not prevent the Codes from being completed and submitted to the Legislature as hereinafter provided.

Judges' reports to be communicated to Commissioners.

XII. The Commissioners shall from time to time incorporate with the proper portions of the said Codes, such amendments of the actual Law, as the Governor in Council shall think it right to
15 recommend for adoption by the Legislature, after considering the Reports of the Commissioners, and those of the Judges, if any, but such amendments shall be carefully distinguished from the actual Law.

Commissioners to incorporate amendments adopted by Governor in Council.

XIII. When the said Codes or either of them, shall be completed, with such amendments as last mentioned, printed copies thereof and of the Reports of the Commissioners, and of the Judges if any, shall be laid before the Legislature, in order that such Code or Codes may be made Law by enactment, and if it be found advisable that either of the said Codes be completed
20 and submitted to the Legislature before the other, the *Civil Code of Lower Canada* shall be the first so completed and submitted: Either House may propose any amendments to either Code, but such amendments shall be proposed by resolutions which may be passed by one House and sent to the other for
25 its concurrence, and shall be subject to amendment by the other, and to be otherwise dealt with as a Bill might be until finally agreed to by both Houses, and shall then be communicated to the Commissioners, who shall with all possible despatch incorporate the substance of the amendments so agreed
30 to, with the proper Code, which may then be passed as a Bill, at the same or any future session.

Code completed to be laid before the Legislature: proceedings thereon.

Amendments how made.

XIV. The said Codes and the Reports of the Commissioners, shall be framed and made in the French and English languages, and the two texts when printed, shall stand side by side.

Form of printing, &c.

40 XV. Any two of the Commissioners may make any report or do any other thing which the Commissioners are hereby empowered to do; saving the right of the third Commissioner, if so advised, to make a separate report or enter his dissent and the reasons thereof in the minutes of the proceedings of the Com-
45 mission.

Two Commissioners may report, &c.

XVI. The Commissioners shall be remunerated for their services at such rate as the Governor in Council shall determine,

Remuneration of Commissioners—

not exceeding *Three Pound Ten Shillings per diem* to each Commissioner while employed in the performance of his duties, nor *One Thousand Pounds per annum*, to any Commissioner; and the said Secretaries shall be remunerated for their services at such rate not exceeding *Seven Hundred and Fifty Pounds per annum*, as the Governor in Council shall determine, but the said Secretaries shall give their whole time to the duties of their office. 5

Place of Meeting, &c. XVII. The Commissioners shall hold their meetings at such place as shall be appointed by the Governor, and the Secretaries shall keep minutes of the proceedings at such meetings. 10

Payment of remuneration, &c. XVIII. The remuneration to the Commissioners and Secretaries, with such expenses as may be incurred by them for travelling expenses, printing, stationery and other things necessary to the due performance of their duties under this Act, shall be paid by warrant of the Governor, out of the Consolidated Revenue Fund, as shall also the rent of their place of meeting, if such place be not in any Public Building. 15

Accounting clause. XIX. All moneys expended under this Act shall be accounted for to Her Majesty, and to the Legislature in the manner provided by Law. 20