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No. 378.

1st Session, 4th Parliament, 16 Victoria, 1853.

BILL.

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

Received and read first time, Wednesday, 27th
April, 1853.

Second reading, Tuesday, 3d May, 1853.

(500 Copies.)

HON. MR. ATTY. GENL. DRUMMOND.

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

1852-3.

BILL.

No. 378.

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

(see also page 375)

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 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two juridical days in each week in every month except August, shall be and the said Section and enactments are hereby repealed ; and all things which under the said section or any such enactments as aforesaid, the said Court or any *quorum* thereof is required or authorized to do at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.

Preamble.
12 V. c. 38.

Sect. 17 of the said Act repealed, and weekly sittings of S. Court abolished.

Proviso : Court may sit out of Term for giving judgments.

II. And be it enacted, That so much of the sixteenth section of the Act cited in the Preamble to this Act, and of any other enactment in the said Act or in any other Act, and any part of any Proclamation issued before this Act shall be in force under the seventy-seventh section of the said Act, which requires or authorizes the holding of any Term or Terms of the said Superior Court in the Districts of Quebec, Montreal and Gaspé, respectively, at any time or times other than the time or times appointed by this Act for holding such Term or Terms, shall be

Sect. 16 of the said Act repealed in part and Terms of S. Court to be those appointed in Quebec, Montreal and Gaspé, in schedule A.

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. 5

Proviso:
Court may
prolong any
Term.

Part of Sect. 77 of the said Act repealed, and Terms of Circuit Court in Districts of 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. 10

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 proviso of the seventy-seventh section of the said Act or any other provision thereof by which the Governor in Council is, under certain restrictions, empowered from time to time to alter the times 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. 20 25

Superior Court may limit and fix the *Enquête* days: *non obstante* s. 29 of the said Act. 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. 30 35 40

Proviso:

Days in Term to be *Enquête* days for certain matters only. 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. 45

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 *Exparte* causes and proceedings in the Superior Court, and also for all Default or *Exparte* causes or proceedings of an appealable character in the Circuit Court; and all witnesses produced for examination therein may be sworn, and their examinations taken and acknowledged, before the Prothonotary or Clerk of either of the said Courts, appointed for the District or Circuit, 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 *Exparte* cases.
Prothonotary may swear witnesses, &c.

VIII. And whereas in such causes and proceedings *Exparte* 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 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 or Clerk only, all objections taken by either party shall by such Prothonotary or 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.

Recital.
Rights of fore-closed party attending an *Enquête*.

IX. 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, shall be compellable 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

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

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

issued or made in or with reference to any particular suit or case, or from doing the thing which he may thereby be commanded to do, at the time mentioned in such process or order.

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 appointed to be done on a day which will not be a day in Term.

New Circuits established and described.

X. And be it enacted, That the foregoing enactments shall come into force upon, from and after the ninth day of July 1853 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.

XI. And be it enacted, That in addition to the places at which the said Circuit Court is directed to be holden by the seventy-seventh section of the said Act, the said Court shall also be holden at the places hereinafter appointed; and the local, extent and limits of the jurisdiction of the said Circuit Court, sitting at such places respectively, shall, so far as regards the commencement of the suit, action or proceeding, be as follows, that is to say:

In the District of Three-Rivers, at _____ in the *Parish* of _____, in and for the Circuit to be called the South Circuit of Three-Rivers, which said Circuit shall include and consist of the County of Nicolet and so much of the District of Three-Rivers as lies West of the said County.

In the District of Quebec, _____ at Tadoussac, in the _____ of _____, in and for the Circuit to be called the Tadoussac Circuit, 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.

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

Proviso: not to effect pending cases.

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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.

XII. And be it enacted, That the next preceding section shall come into force upon the day of 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 appointments of Officers.

XIII. 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.

XIV. 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

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.

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

Security for cost to be given.

Proviso : as to
practice in
such cases.

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 5 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 10 justice to the parties concerned with the least possible expense and delay.

Two Circuit
Judges in
Gaspé may
hold Superior
Court.

XV. 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 adminis-* 15 *tration 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 20 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 suf- 25 ficient, 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 30 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 35 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 40 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 45 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 50

Provision in
cases where
they differ in
opinion.

Hearing at
Quebec, &c.

Proviso : as to
practice under
this section.

justice to the parties concerned with the least possible expense and delay.

XVI. 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, 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 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 ; and the Prothonotary or Clerk shall have power to administer the proper oath to every such *Tiers Saisi*.

What shall be the exigency of Writs of *Saisie Arrêt* in the Superior Court or in the Circuit Court in appealable cases, &c.

XVII. And be it enacted, That notwithstanding any thing in the Twenty fifth section of the said 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 fyled within four days from the day of the return of the Writ or of the fying of the pleading to which such preliminary Exception or plea is opposed : But the fact of his having fyled 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 fying of such pleas.

Within what delay certain pleas must be fyled.

Proviso.

XVIII. 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 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.

Sect. 92 of the said Act amended and other provision made as regards *Demandes* in intervention.

XIX. And whereas much inconvenience, expense and delay arise from the present Rule of Law under which the

Recital.

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

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 shall think proper so to do.

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

XX. 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 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.

SCHEDULE A.

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

At the City of Quebec, in and for the District of Quebec, 25
from

At the City of Montreal, in and for the District of Montreal, from the seventeenth to the twenty-seventh of each of the months of January, February, March, April, May, June, September, October and November in each year:

At , in and for the District of Gaspé, 30
from

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

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