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4th Session, 6th Parliament, 24 Vic., 1861.

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**BILL.**

An Act to amend and consolidate the laws respecting the Recorder's Court for the City of Quebec.

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Received and read, first time; Wednesday,  
24th April, 1861.

Second Reading, Friday, 26th April, 1861.

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Hon. Mr. ALLEYN.

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**QUEBEC:**

PRINTED BY THOMPSON, HUNTER & CO.,  
ST. URSULH STREET.

An Act to amend and consolidate the laws respecting the Recorder's Court of the city of Quebec.

**W**HEREAS it is necessary to amend and consolidate the Acts relating to the Recorder's Court of the city of Quebec: Her Majesty, &c., enacts as follows: Preamble.

I. There shall be a Court of Record in the said city of Quebec, to be called the "Recorder's Court of the city of Quebec." Court established.

II. The said Court shall be held by the Recorder as hereinafter mentioned, or in case of his absence or inability to act through any cause whatever, or in case there be no Recorder, by the Mayor of the said city with one Councillor or by two Councillors of the said city. To be held by Recorder.

III. The said Court shall have original jurisdiction over, and shall hear and decide summarily: its jurisdiction.

1. Any action brought by the Corporation of the said city for the recovery of any sum or sums of money due to the said Corporation for any tax, assessment, impost or duty whatsoever legally imposed by any By-law now in force in the said city, or that may hereafter be passed by the Council of the said city. 15

2. Any action for the recovery of any sum or sums of money due to the said Corporation for the rent, use or occupation of any butcher's or huckster's stall, or other stall or stand whatsoever, in or upon any of the public markets in the said city, in virtue of any By-law now in force or to be hereafter passed by the Council of the said city. 20

3. Any action for the recovery of any sum, tax, assessment, impost or duty now imposed or to be hereafter imposed or levied in and upon the said markets

4. Any action for the recovery of any sum of money or revenue whatsoever which may be due and payable to the said Corporation for any supply of water given or furnished by the Québec Water Works to any house, buildings or dependencies, or given or furnished to or for the use of any person or persons in the said city. 25

5. Any action for the recovery of the costs of introducing any pipe or pipes from the said Water Works, into any house, building or dependency in the said city, and at the instance or for the use and benefit of any person or persons in the said city; and 30

6. Any action for enlarging, maintaining, and repairing, altering, or removing any such pipe in any such house, building, or dependency. 35

IV. The said Court may take cognizance of and determine in a summary manner, all offences against the provisions of the Act chapter 102 of the Consolidated Statutes for Lower Canada, in so far as the provisions of the said Act are applicable to the said city, and also all offences Take cognizance of certain offences.

against the provisions of the Act 20 Vic., cap. 123, intituled *An Act to authorize the Corporation of the city of Quebec to establish a Police Force for the said city* ;

2. Any suit for the recovery of any fine or penalty imposed in virtue of any Act or By-law, rule or order now in force, or to be hereinafter in force in the said city concerning the Markets in the said city—any suit for the recovery of any fine or penalty imposed by any other Act or By-law whatsoever, now in force or to be hereinafter in force in the said city and incurred for any infraction or contradiction by any person whatsoever of the provisions of the said Acts, By-laws, rules or orders.

Where the Court shall be held.

V. The said Court shall for the purposes aforesaid, be held daily in the Town Hall of the said city, or in such other building or place as shall be set apart for the purpose by the Council of the said city.

Qualification of Recorder.

VI. The Recorder of the City of Quebec shall be a Barrister of Lower Canada of at least five years standing, and shall be appointed by the Crown during pleasure. He shall be *ex-officio* a Justice of the Peace in and for the City and District of Quebec.

His salary.

2. His salary shall not be less than three hundred pounds nor more than five hundred pounds per annum, payable monthly out of the funds of the said City.

Deputy.

3. In case of the sickness or absence of the Recorder, the Crown, on the application of the Council of the said City, shall appoint a Deputy-Recorder, who shall also be a Barrister of Lower Canada of at least five years standing.

His purposes.

4. The said Deputy while acting as such shall have and possess in all respects, all the powers and authority conferred upon the Recorder by this Act.

Form of Writs, etc.

VII. Every summons, order, writ or warrant of any nature whatsoever, issued out of or by the said Court shall run and be in the name and style of Her Majesty, Her heirs or successors ; they shall be sealed with the seal of the said Court and be signed by the Clerk of the said Court.

Summoning of offenders.

VIII. The said Court may by writ as aforesaid summons any person accused of any offence against the provisions of any Act or By-law as aforesaid, or from whom any sum of money is claimed for any one or more of the causes aforesaid, and such writ of summons shall set out the grounds of the action or complaint, in a succinct and explicit manner, and shall be served upon the Defendant by a Bailiff or Constable as hereinafter provided, by leaving a certified copy of such writ either with the Defendant personally or at his domicile, speaking to some grown member of the family of the said Defendant, but no service shall be valid after five of the clock in the afternoon.

Delay.

IX. In any civil action there shall be an interval of at least two clear days between the service of the writ of summons and the day of its return into Court.

Default to appear.

X. If any person summoned to appear before the said Court, either for any debt or claim, or for the commission of any offence as mentioned in section eight, does not appear either in person or by his Attorney,

then upon proof of the service of the writ of summons, proceedings by default shall be taken against such person, and upon proof by the Plaintiff of the allegations of the action or complaint, the Court shall render the proper judgment in the matter with costs.

5 2. If the Defendant appears, the Court shall cause the plea put in by him to the action or complaint to be entered; he shall hear the witnesses produced by the parties, and shall decide in conformity to law and justice, awarding costs to the successful party. If Defendant appears.

10 3. If the Defendant confesses judgment either in person or by Attorney, the Court, if the confession of judgment is accepted by the Plaintiff, shall cause judgment to be entered in conformity with such confession, in case of prosecution or complaint for any offence against the provisions of any Act or By-Law as aforesaid; if the Defendant pleads guilty the Court shall declare the Defendant convicted. Confession of Judgment,

15 4. The said Court may grant a delay of not less than one month nor more than three months to any Defendant who confesses judgment after the return of the action brought against him. Delay on confession.

20 XI. The said Court shall have power to compel witnesses to appear in any action, prosecution or complaint, pending before the said Court, and answer all legal questions put to them. Witnesses,

XII. The Court may permit and require interrogatories on *faits et articles* or the *serment décisoire* or *judiciaire* to be put to any party to a cause in all cases in which such interrogatories or oath are allowed by law in the ordinary Courts of civil jurisdiction in Lower Canada. *Faits et articles, etc.*

25 2. The Court shall have power to compel the execution of and to force obedience to any writ, order, warrant, or summons issued as aforesaid by the said Court and to that end it shall be invested with all the powers and authorities enjoyed in that respect by the ordinary Courts of civil and criminal jurisdiction in Lower Canada. Executive powers.

30 XIII. In any civil action the said Court shall, as regards the admissibility of oral testimony and the competency and the number of witnesses, follow the rules prescribed in that respect by the law in relation to civil matters, unless it be otherwise provided by this Act. Evidence.

40 XIV. In any civil action or proceeding, or in any prosecution or complaint for any offence committed against any By-law of the said city, or against the provisions of the Act hereinbefore cited, any Councillor of the said city, (excepting the Mayor or Councillors sitting in the said Court,) and any employee, officer or servant of the said Corporation shall be a competent witness, provided he has no direct interest in the result of such action, prosecution or complaint, or is not incompetent from any other cause. Who may be a Witness.

50 2. Any assessment, tax, duty or sum of money due to the said Corporation as aforesaid, and any penalty or fine which may be claimed or sued for in the said Court shall be recoverable on the oath of one competent witness, and any person accused in the said Court of any offence within the cognizance of the said Court may also be condemned on the oath of one credible witness. One Witness in certain cases.

55 3. Any person examined before the said Court as a witness or as a party, who shall wilfully and knowingly give false testimony, or make a declaration knowing it to be false, in any cause pending in the said Court or in any proceeding whatsoever had in the said Court, shall be False swearing.

guilty of perjury, and shall be liable to the pains and penalties of wilful and corrupt perjury.

- Notes of evidence. XV. The depositions of the parties or of the witnesses, both in civil cases and in cases of complaint or prosecution for offences as aforesaid, shall not be reduced to writing, but the said Court shall take such notes of the said depositions as he shall consider requisite and necessary. 5
- Maintenance of order. XVI. The said Court shall cause order to be maintained during its sittings, and may punish by fine or imprisonment, or by both, any person guilty of contempt of the said Court during the sittings and in the presence of the said Court. 10
- Recover of Fines. XVII. All fines and penalties which by law belong to the said Corporation shall be sued for and recovered in the name of the *Mayor, Councillors and citizens of the city of Quebec*. 15
- Their remission. 2. The Council of the said city may remit the whole or any part of any fine or penalty incurred, whether there shall have been a prosecution or not. 15
- Appointment, &c, of Clerk. XVII. The Clerk of the said Recorder's Court shall be appointed by the Council of the said city during pleasure. 20
2. The person so appointed shall be a barrister of Lower Canada.
3. The said Clerk shall appoint a deputy whom he may dismiss and replace at pleasure, and such deputy shall be a person competent to act as such. 20
4. So long as he holds office the said deputy shall fulfil all the duties, and shall be invested with all the powers imposed or conferred by this Act on the Clerk of the said Court. 25
5. The writing containing the appointment of such deputy shall be acknowledged before the Recorder or before the Mayor of the said city, and shall be deposited and remain of record in the office of the Clerk of said Court.
- Duties of the Clerk. XIX. The Clerk of the said Court shall prepare and make out all the summonses, orders, writs and warrants whatsoever, which shall be issued out of or by the said Court; 30
- Register of proceedings. 2. He shall enter daily, and in a succinct manner, in a Register which shall be kept for that purpose, the proceedings had in each cause or complaint brought in the said Court, and he shall register at length the judgments, orders and convictions rendered and pronounced by the said Court. 35
- Bailiffs: XX. The Council of the said City shall appoint from time to time, by resolution, a sufficient number of persons competent to fulfil the duties of Bailiffs of the said Recorder's Court, and the said Council may dismiss such persons at any time, and appoint others in their stead. 40
- Their commission: 2. Upon such appointment being made, the Mayor of the said City shall issue commissions appointing such persons Bailiffs of the said Court, under the seal of the City, and signed by himself and by the Clerk of the said City. 45
- Oath. 3. Every Bailiff shall take an oath of office in the said Recorder's Court.
- Returns by Bailiff. 4. Every Bailiff, the bearer of a writ of summons, or writ of execution, or of any other writ issued out of the said Court, shall make a return under his oath of office of all proceedings taken by him in relation to such writ, and such return shall suffice for all purposes whatsoever. 50

XXI. The service of any summons in cases of prosecutions for offences as above mentioned, shall be proved in open Court, by the oath of the Bailiff, Constable, or Peace Officer who shall have made such service; and the service of summonses to witnesses, or of any other order of the said Court requiring to be served, shall be served in the same manner.

Proof of service.

XXII. The execution of any judgment rendered in any civil action as above mentioned, shall be levied by the seizure and sale of the goods, moveables and effects of the Defendant.

Execution of judgments.

2. The Bailiff the bearer of the writ of execution shall proceed to the seizure and sale in the manner prescribed and practised in cases of seizure and sale under execution issued by any ordinary Court of civil jurisdiction in Lower Canada.

3. The sale of the moveables and effects seized shall only take place on the Thursday next after the Sunday on which public notice of such sale shall have been posted up at the door of the Church of the parish in which the Defendant has his domicile, and in which the moveables and effects shall have been seized.

XXIII. If the property of the Defendant is already under seizure in virtue of any writ of execution issued by any other Court, in such case, the Bailiff the bearer of the writ of execution issued by the said Recorder's Court shall not make any seizure, and upon production to him of the *procès verbal* of the said seizure, he shall hand over the writ issued by the said Recorder's Court to the Sheriff of the District, or to the Bailiff who shall have made the seizure (as the case may be).

If there be a previous seizure.

2. The delivery of the said writ of execution shall have the effect of an opposition *afin de conserver*, and shall be sufficient to secure to the said Corporation, by privilege, (in cases in which such privilege exists) the payment of the sum due, including principal, interest and costs.

XXIV. In case the Defendant does not possess any goods or chattels within the District of Quebec, or in case they are not sufficient to satisfy the amount of the judgment obtained, or in case after the sale of the said goods and chattels of the Defendant, a balance on such judgment still remains due to the said Corporation, in all such cases, if the sum due exceeds forty dollars, and the Defendant possesses any immoveable property, lands or tenements within any district in Lower Canada, then the said Recorder's Court may issue a writ *de terris*, sealed and signed as aforesaid, and addressed to the Sheriff of the District in which the said immoveables are situated.

In case defendant has no moveables.

Writ de terris.

2. The said writ shall be returnable into the Superior Court for the District of Quebec, setting in the said City of Quebec.

Where returnable.

3. Upon the receipt of the writ, the Sheriff to whom it is directed shall act and proceed in all respects as regards the said writ as if it had been issued by the Court, and he shall make a return thereon, and of his proceedings in respect of its execution to the said Superior Court at Quebec as above provided.

Duty of Sheriff.

4. And all ulterior proceedings of what kind soever, consequent upon the issuing of such writ, or necessary to the execution thereof, as well with regard to the plaintiff and defendant, as with regard to other parties who, in due course of law, may intervene, by opposition or otherwise, shall be had in the said Superior Court, in the same manner as if the said action had been originally brought and determined in the said Superior Court.

Ulterior proceedings.

*Saisie arrêt* after judgment.

XXV. The said Recorder's Court may issue writs of *saisie arrêt* after judgment, in the same manner as the ordinary Courts of civil jurisdiction; and shall follow in relation thereto the rules and procedure prescribed in such Courts in relation to the issuing, return, and judgment, in matters of *saisie arrêt*.

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Recovery of fines.

XXVI. The recovery of all fines adjudged in the said Recorder's Court shall be proceeded with in pursuance of the by-law, rule, regulation or order imposing such fine, by writ of *saisie exécution*, against the goods and chattels of the defendant, or by the imprisonment of the defendant, as the case may be, and such writ and warrant shall be issued in the manner above stated.

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Special Act need not be cited.

XXVII. In any suit, action or prosecution brought by the said Corporation, it shall not be necessary to specify or recite the act or by-law under which such suit, action or prosecution shall be brought.

Authority of By-laws.

2. The by-laws, rules, regulations or orders now in force in the said City, and those which shall hereafter be made by the Council of the said City, shall be held and taken to be public laws within the limits of the said City; and as such shall be judicially taken notice of by all Judges, Justices and other persons whomsoever, without being specially pleaded.

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Punishment of offences.

XXVIII. The said Recorder's Court shall have the power of proportioning the punishment to the gravity or frequency of the offence, within the limitations mentioned in the Acts for the government of the said City.

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Tariff of fees.

XXIX. The Council of the said City may make and settle a tariff of the fees which may be exacted by the Clerk, Bailiffs, and other officers of the said Court, and change the said tariff from time to time; but neither the said tariff nor any changes made therein shall have force and effect until the same shall be approved by the Governor in Council.

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Sittings of the Court.

XXX. The said Recorder's Court may be held and may sit daily and may sit as many times as it may be necessary each day, without previous notice, and may fix any time for the summary hearing and determination of offences committed by any person, against the provisions of Chapter 102 of the Consolidated Statutes for Lower Canada, hereinbefore mentioned, or the provisions of any Act or By-law now in force, or that may hereafter be in force in the said City; and to summarily hear and determine the case of any vagrant, loose, idle or disorderly person, and other offenders arrested by or in charge of the Police of the said City; and the cases of persons arrested on view or immediately after the commission of any offence as aforesaid, or by warrant issued out of the said Court, or by the said Recorder, or by any Justice of the Peace for the said District of Quebec.

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Powers of Police.

2. The Police of the said City, or any other Peace Officer or Constable, may bring before the said Court, or before the said Recorder, or his Deputy, in the absence of the Recorder, and if he has no Deputy, before the Mayor, or the Councillor discharging the duties of Mayor of the said City, any person offending as aforesaid against any of the provisions or of the By-laws aforesaid, and any vagrant, loose, idle or disorderly person, and any person arrested as aforesaid, to be then and there dealt with according to law, as the said Recorder's Court, the said Recorder, or his Deputy, respectively, or the Mayor or Councillor aforesaid, may adjudge and determine.

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XXXI. Nothing in this Act contained shall in any manner derogate from or affect, or be construed to derogate from or affect the rights of Her Majesty, Her Heirs and Successors, except in so far as the same may be specially derogated from or affected by the provisions of this 5 Act. Rights of Her Majesty.

XXXII. The Act passed in the 19-20 years of Her Majesty's reign, Chapter 106, intituled, "An Act to establish a Recorder's Court in the City of Quebec," is hereby repealed; but any appointment or proceeding made, or had in virtue of the provisions of that Act shall be and 10 remain in full force and effect, in the same manner as if this Act had not been passed; and all Acts or parts of Acts containing, in relation to the said Recorder's Court any provisions incompatible with, or in any way contrary to the provisions of this Act, are also hereby repealed, 19, 20 Vic, cap. 106 repealed.

XXXIII. Chapter 5 of the Consolidated Statutes of Canada, in so 15 far as it relates to interpretation, shall apply to this City. Interpretation

2. The words *Councillor* and *Councillors* shall signify any or all the Members of Council of the City of Quebec, unless the context should clearly indicate another word.

3. The words *Corporation of the City of Quebec, the said Corporation,* 20 *and the Corporation of the said City,* shall mean the Corporation of the Mayor and Councillors of the City of Quebec.

XXXIV. And for the avoidance of all doubt, it is declared and enacted, that the Recorder shall not be held to be a stipendiary Magistrate within the intent and meaning of the Act of the Parliament of the 25 United Kingdom, passed in the session held in the seventeenth and eighteenth years of Her Majesty's reign, and known as "The Merchant Shipping Act, 1854," and he shall not be charged with the performance of any of the duties imposed on Stipendiary Magistrates by that Act,— but the Inspector and Superintendent of Police of or at the City of Quebec, has been, is, and shall be a Stipendiary Magistrate within the intent 30 and meaning of "The Merchant Shipping Act, 1854" aforesaid, and shall have and exercise the powers and duties conferred upon or assigned to any Stipendiary Magistrate by that Act. Who shall be deemed a Stipendiary Magistrate under "The Merchant Shipping Act."

XXXIV. This Act shall be deemed to be a public Act.

Public Act,