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No. 145.

1st Session, 5th Parliament, 18 Victoria, 1854.

BILL.

**An Act to amend the Judicature of
Lower Canada.**

Received and Read, First time, Thursday, 19th
October, 1854.

Second Reading, Thursday, 26th Oct., 1854.

MR. PAPIN.

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1854.]

BILL.

[No. 145.]

An Act to amend the Judicature of Lower Canada.

WHEREAS it is expedient to amend the Acts relating to the judicature, so as to make better provision for the expediting and administration of justice; Be it therefore enacted, &c., as follows:— Preamble.

I. The first juridical day only of each term of the Circuit Court in all the Circuits of Lower Canada, in which there is no resident Judge, shall hereafter be the return day for non-appealable cases; and the second and third juridical days only, and, if matters render it necessary, the fourth juridical day shall, to the exclusion of all other business, be *enquête* days for all causes and proceedings subject to appeal, and no other *enquête* days shall hereafter be fixed or had for the said cases, but all pleadings, proceedings, acts and documents, whatsoever, may, during any of the said *enquête* days be filed and produced, and summary cases may be fixed on later juridical days, for proof or otherwise: and provided also, that *enquêtes* may, by consent of parties, be proceeded with at any time during vacation in appealable cases, in presence of the Clerk, in the manner prescribed by the ninth Section of the Act of the Legislature of Canada, passed in the sixteenth year of her Majesty's reign, and chaptered 194. Return day for non-appealable cases fixed. Proviso.

II. In all appealable actions and suits in the Circuit Court in the Circuit of Lower Canada, in which there is no resident Judge as aforesaid, the parties shall, on the day fixed for proof by the inscription therefor, which may have been entered by any of them on the Roll *des enquêtes*, and after notice shall have been given to the opposite party by the simple service of a copy of the inscription one day previous, during term, and four days previous, in vacation, proceed to the examination of their witnesses, who shall be examined *viva voce*, and in open Court, and it shall be the duty of the presiding Judge to take, as in trials before Juries, full and complete notes of the evidence so given *viva voce*, and of all the exceptions and objections made and raised by the parties; and the said notes shall be read by the Judge, or by the Prothonotary, or Clerk of the Court, upon request made *viva voce* by any party, at any time during or immediately after the *enquête*, and they shall be always read to each witness immediately after his examination, in order to the correction and remedying of any error or omission. Witnesses in appealable cases to be examined *viva voce* in certain cases

III. A fair copy of the said notes of evidence shall be made by the Prothonotary or Clerk of the Court, and the same having been certified by the Judge, shall be deposited with the said original notes among the documents of record in the cause, for recourse thereto when necessary, and shall in case of appeal from any judgment pronounced in any such suit or cause, be transmitted to the Court of Appeal, as forming part of such record, and the said notes and such copies shall be considered as forming the authentic record of the evidence, and shall to all intents and purposes have the same force and legal effect as the depositions. Fair certified copies of notes of evidence to be deposited with record.

themselves would have had if they had been reduced to writing, as in the Superior Court, or as at present in the Circuit Court.

Witnesses to be examined separately on 1 to attend from day to day.

IV. In non-appealable cases as in appealable cases the witnesses shall be examined separately, either in the presence or in the absence of the parties, and witnesses who cannot be examined on the same day shall upon the order of the Court be held to appear from day to day until they be discharged ; but the party who shall have caused more than six witnesses to be summoned or examined touching the same fact shall not recover the costs of summons nor the taxed costs of the other witnesses.

In case of witnesses making default.

V. Whenever a witness who shall have been summoned or shall have received an order of the Court to appear, shall make default, the Circuit Court, on the verbal application of one of the parties, may summarily condemn the witness making default (with imprisonment in case of non-payment) to a fine not exceeding the sum of pounds currency, and with costs in favor of the party by whom he shall have been summoned, and any witness who shall refuse to answer to such pertinent questions as shall be put to him, may upon every refusal be forthwith condemned by the Court, (even with imprisonment in the event of non-payment) to a fine not exceeding currency, with costs in favor of the party who shall have summoned him, and imprisoned for a term not exceeding days ; but if the witness so making default shall present himself before the Court and shew that he was unable to be present on the day appointed, the Court after his deposition shall have been taken shall release him from the fine and costs.

Hearing of cause how to be fixed.

VI. After the closing of the *enquête*, the Court may, on the same day, or on any other subsequent juridical day of any Term, in appealable cases, on application made, *vivá voce*, by one of the parties, the others being present, without any inscription in writing being necessary for that purpose; by a simple entry which shall be made by the Clerk upon the roll *de droit*, fix the hearing, upon the issue joined, for some juridical day which shall not be an *enquête* day during the said Term or any other Term ; provided that at least one clear day shall intervene before that fixed for such hearing, in case the parties shall not consent to its being previously had ; and whenever a party shall be desirous of inscribing a cause, either for *enquête* or for preliminary hearing *en droit*, or final hearing on the merits, when in either of these two cases it shall not have been fixed in the manner aforesaid, it shall be sufficient for such party to give notice to the opposite party one day previous, if during Term, or four days previous in vacation, by simple service of a copy of such inscription.

Proviso.

Judgments how and by whom to be rendered, in Circuits where there are no resident Judges.

VII. Any judgment of the Circuit Court in any of the Circuits of Lower Canada, in which there is no resident Judge, may be rendered and pronounced by the Judge who shall have taken cognizance of the cause or of the matter to be adjudicated upon in any action or suit, on the last juridical day of either of the two Terms of the said Circuit Court held at the place, and for the Circuit in which he shall reside, immediately following the Term during which the matter or case shall have been submitted to him and not later ; and every such judgment shall be valid to all intents and purposes whatsoever, and shall have the same force and legal effect as if it had been rendered and pronounced at one of the Terms of the said Circuit Court in and for the Circuit in which the said action or suit respectively shall have been brought, and it shall thereupon be transmitted with the record, by the Judge who shall have so rendered or pronounced the judg-

ment, to the Prothonotary or Clerk of such Circuit; provided always, that whenever the Judge shall be prevented by sickness or any accident, arising from a *vis major* from rendering his judgment in the manner and within the delay hereinafter prescribed, such judgment may, in such cases, be rendered during the next ensuing Term, either of the Circuit Court in which the said cause is pending, or in the Circuit in which the said Judge shall reside.

Proviso.

VIII. Every opposition to the execution of a writ *de bonis*, issued out of the Circuit Court, shall hereafter only be returnable into the Circuit Court in which the cause is pending, and any Circuit Judge, or Judge authorized to hold the Circuit Court, or the Clerk of the Circuit Court, are authorized to administer all the oaths by law required in such cases; but every such opposition, and the fiat or order to suspend proceedings upon such writ *de bonis*, in virtue of such opposition, and to make the same returnable as aforesaid, shall be granted or given by a Circuit Judge only, or by any Judge authorized to hold the said Circuit Court.

Oppositions returnable only into Court where cause is pending.

IX. The fees payable upon all proceedings in appealable cases in the Circuit Court, in which the sum claimed shall not exceed fifteen pounds currency, shall be the same as those now fixed by the present tariff of the Circuit Court, for appealable cases of the third class; and the costs and fees in non-appealable cases in the Circuit Court shall be those hereby established in Schedule A., annexed to this Act in lieu of those now established by the tariff of the said Circuit Court.

Fees payable in appealable actions up to £15.

X. Hereafter no appeal shall be had to the Superior Court from judgments of the Circuit Court, but an appeal from all judgments in cases in which an appeal is at present allowed, shall lie directly to the Court of Queen's Bench, in the manner and form and subject to the same conditions and costs and under the same restrictions and regulations as those now established with respect to appeals from the said Circuit Court to the said Superior Court; provided nevertheless, that upon each and every proceeding the fee heretofore allowed to the Attorney of the parties by the present tariff of the Superior Court, shall be increased by the sum of five pounds currency.

Appeal from judgments of Circuit Court to lie to Court of Queen's Bench.

XI. The petition required in such appeals shall be presented to the said Court of Queen's Bench sitting in term upon any of the juridical days of any term of the said Court of Queen's Bench, immediately following the expiration of the delay of forty clear days after the rendering of the judgment appealed from, and the service of the said petition, notices, securities or certificates required, may be made within the thirty days after the rendering of the judgment appealed from.

Time for presenting petition in case of appeal.

XII. The Circuit Court of Lower Canada shall have concurrent jurisdiction with the Superior Court for the issuing of Writs of *Certiorari* for the purpose of revising decisions or judgments of Justices of the Peace or Commissioners' Courts, within the limits of any Circuit in Lower Canada, and the said Commissioners' Courts and Justices of the Peace shall be subject to the supervision and to the orders and control of the said Circuit Court and of the Judges thereof, both in term and in vacation in the same manner as they are to those of the said Superior Court and of the Judges thereof, all whose powers and authority are for such purpose vested in the said Circuit Court and the Judges thereof.

Circuit Court to have concurrent Jurisdiction with Superior Court in respect of Writs of Certiorari.

XIII. It shall be the duty of the Provincial Secretary, immediately after the the passing of this Act, to cause to be printed in pamphlet form,

Certain Statutes to be

printed in
pamphlet
form with
index.

in the same manner as the Provincial Statutes are at present printed, with the English and French texts facing each other, a reasonable number of copies containing such parts as are now in force of the following Acts of the Legislature of Canada passed in the twelfth year of Her Majesty's Reign, namely, all the Acts from Chapter thirty-seven, inclusive, to Chapter forty-six inclusive; also the *Interpretation Act*, and all the Acts of the Legislature of Canada, passed subsequently to the Acts above mentioned, and in any manner amending or affecting the same, with an analytical index of the matters contained in alphabetical order, and to cause them to be distributed in Lower Canada to all such persons as the Governor shall deem it expedient to order. 5 10

Contrary Laws repealed. XIV. Any part of any Act or Law, rule of practice and tariff contrary to or incompatible with the provisions of this Act, is hereby repealed.

Interpretation Act. XV. The Interpretation Act shall apply to this Act which shall extend to Lower Canada only. 15

SCHEDULE A.

TABLE of Fees and Costs in non-appealable Actions in the Circuit Court.

TO THE ATTORNEY.	1st Class. Actions of £15 and under.	2d Class. Actions of £10 and under.	3d Class. Actions of £6 5s. and under.	4th Class. Actions of £2 10s. and under.
<i>Uncontested Actions.</i>				
1.—In Actions settled before return, to the Plaintiff's Attorney.....	£ s. d. 0 17 6	£ s. d. 0 10 0	£ s. d. 0 7 6	£ s. d. 0 5 0
2.—Upon non-suit by default, to Plaintiff's Attorney if he appears to oppose.....	0 15 0	0 10 0	0 7 6	0 5 0
3.—And to Defendant's Attorney applying for the non-suit by default.....	1 0 0	0 15 0	0 10 0	0 7 6
4.—In Actions settled or discontinued after return and before contestation, or in which Judgment shall be rendered upon confession or by default, or <i>ex parte</i> , without <i>enquête</i> , that is to say, without the hearing of any witness or party, to the Plaintiff's Attorney.....	1 5 0	0 15 0	0 8 9	0 7 6
5.—And to Defendant's Attorney.....	0 12 6	0 7 6	0 6 3	0 5 0
6.—In Actions settled or discontinued after return and before contestation, or in which Judgment shall be rendered by default or <i>ex parte</i> , but after proof fixed, opened or closed, or after the summoning of any of the parties or their hearing upon oath, to the Plaintiff's Attorney.....	1 10 0	1 0 0	0 10 0	0 7 6
7.—And to Defendant's Attorney.....	0 15 0	0 10 0	0 7 6	0 6 3
<i>Actions Contested.</i>				
8.—In Actions settled, discontinued or dismissed after contestation <i>à la forme</i> , to the Plaintiff's Attorney.....	1 0 0	0 15 0	0 10 0	0 7 6
9.—And to the Defendant's Attorney.....	0 15 0	0 10 0	0 7 6	0 5 0
10.—If the exceptions <i>à la forme</i> be dismissed, to the Plaintiff's Attorney.....	0 15 0	0 10 0	0 6 3	0 5 0
11.—And to the Defendant's Attorney.....	0 10 0	0 7 0	0 5 0	0 3 9
12.—In Actions settled or discontinued, or in which Judgment shall be rendered after contestation (other than a contestation <i>à la forme</i> as aforesaid), to the Plaintiff's Attorney.....	2 0 0	1 10 0	0 12 6	0 10 0
13.—And to Defendant's Attorney.....	1 10 0	1 0 0	0 10 0	0 7 6
14.—In all Actions for damages for personal injuries (excepting those in which the damages allowed shall not exceed forty shillings sterling), the costs shall be taxed according to the class to which the amount of damages allowed shall refer, or according to the class indicated by the Judgment of the Court at its discretion.				
<i>Incidental Demands.</i>				
15.—Upon every incidental demand, the same fees as in original Actions for like amounts.				
<i>Interventions and Oppositions.</i>				
16.—Upon every opposition (except those <i>à fin de conserver</i>), intervention, <i>requête civile</i> , the same fees as in the original Actions from which they are derived.				
17.—Upon every opposition <i>à fin de conserver</i> , the same fees as in original Actions for a like amount.				
<i>Saisies-Arrêts.</i>				
18.—Upon a <i>saisie arrêt</i> after Judgment when there shall have been no contestation, one-half the costs allowed in an original demand for the same amount.				
19.—If the declaration of the <i>tiers saisie</i> or the <i>saisie arrêt</i> be contested, the same costs as in an original Action for the same amount.				
20.—In all Actions in which there are several defendants if they appear or sever their defence, or if one or more of them make default, and one or more of them appear or defend the Action conjointly or separately, the Plaintiff's Attorney shall be entitled to claim from each defendant the same fees and the same amount as as he would have had, had there been but one defendant, according to the amount and the stage of proceeding and <i>vice versa</i> as regards the Attorney of each and every such defendant in respect of the plaintiff.				

SCHEDULE A.—TABLE of Fees and Costs, &c.—(Continued.)

TO THE ATTORNEY.	1st Class. Actions of £15 and under.	2d Class. Actions of £10 and under.	3d Class. Actions of £6 5s. and under.	4th Class. Actions of £2 10s. and under.
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
21.—Upon every Special Declaration	0 10 0	0 7 6	0 5 0	0 2 6
22.—For every copy more than one, of any declaration, petition, pleading, intervention or opposition	0 3 9	0 2 6	0 1 3	0 1 0
23.—For every written or special pleading	0 10 0	0 7 6	0 5 0	0 2 6
24.—On the issue of any Writ of <i>capias ad respondendum</i> , <i>saisie-gagerie</i> , <i>saisie-revendication</i> or <i>saisie arrêt</i> before Judgment	0 7 6	0 5 0	0 3 9	0 2 6
25.—For every rule for <i>reprise d'instance</i> , or to declare a Judgment executory, or for <i>contrainte par corps</i> , or any other rule of a similar nature, one-half of the costs allowed in the original Action.				
26.—On a <i>Commission Rogatoire</i> , to the Attorney suing out the same	0 5 0	0 3 9	0 2 6	0 2 6
27.—And to the Attorney of the opposite party	0 3 9	0 2 6	0 1 3	0 1 3
28.—To the Attorney engaged by either of the parties to prosecute the execution of such Commission	0 15 0	0 15 0	0 10 0	0 10 0
29.—In all real, hypothecary, mixed Actions, and Actions <i>en garantie simple ou formelle</i> if the Action be settled after return, an additional fee of 15s. to Plaintiff's Attorney.				
30.—If the Action be settled before return, or if Judgment be rendered, an additional fee of 25s. to Plaintiff's Attorney.				
31.—On every report of Arbitrators or of <i>experts</i> if uncontested, to each Attorney	0 10 0	0 7 6	0 5 0	0 2 6
32.—If the report be contested, to the Attorney of the party contesting	0 15 0	0 12 6	0 10 0	0 5 9
33.—And to the Attorney of the opposite party	0 12 6	0 10 0	0 7 6	0 3 9
34.—For all proceedings in an Action <i>en reddition de compte</i> , if the account rendered is uncontested, to each Attorney	0 10 0	0 10 0	0 7 6	0 5 0
35.—In case the account be contested, the costs to be the same as in a contested personal Action, and the class to be determined by the amount for which the <i>rendant compte</i> shall be declared accountable beyond the amount admitted to be due by the account filed, if the costs be payable by the <i>rendant compte</i> , and by the amount claimed by the <i>debats de compte</i> if the costs be payable by the <i>ayant compte</i> .				
36.—For the nomination of a curator to a <i>délaissement</i> in a hypothecary Action	0 10 0	0 10 0	0 7 6	0 5 0
37.—For the issue of a Writ of Execution	0 2 6	0 2 0	0 1 3	0 1 0
38.—For all proceedings upon any petition, motion or rule for which nothing is specially provided	0 3 9	0 3 9	0 2 6	0 2 6
<i>Inscriptions de faux.</i>				
39.—The fees shall be the same in each case as those allowed in appealable cases.				