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4th Session, 3d Parliament, 14 & 15 Victoria, 1851.

BILL.

An Act to explain and amend the Act of the twelfth year of Her Majesty's Reign, relative to the Courts of original civil jurisdiction in Lower Canada.

Received and read a first time, Thursday, 26th
June, 1851.

Second reading, Wednesday, 9th July, 1851.

Colonel GUGY.

BILL.

An Act to explain and amend the Act of the twelfth year of Her Majesty's reign relative to the Courts of original civil jurisdiction in Lower Canada.

WHEREAS it is expedient to explain and amend the Act passed in twelfth year of Her Majesty's Reign and intituled "*An Act to amend the Laws relative to the Courts of Original Jurisdiction in Lower Canada,*" and the Law of Lower Canada in certain matters relative to the practice in the said Courts; Be it therefore enacted, &c.

Preamble.

12 Vict. c. 38.

That it shall and may be lawful for any one or more of the Judges of the Circuit Court, or of the Superior Court, in vacation as well as in term, to entertain any Petition for the removal (*destitution*) of any Tutor or Curator, and in vacation as well as in term summarily to inquire into, and, according to law, to determine upon such petition, either by dismissing the same in whole or in part, or by removing any Tutor or Curator, or by naming or appointing another Tutor and Curator, in the lieu and stead of the person so removed, as to law and justice may appertain.

Any one Judge may receive and act upon petition for removal of a Tutor, &c.

II. And be it enacted, That whenever in any suit or complaint instituted or to be instituted against any Tutor or Curator in which the Plaintiff shall make the oath by law prescribed and required for the arrest of any Defendant, or for the suing out of a writ of attachment against the person, or against property, and shall moreover swear that such Tutor or Curator is in possession of the property or assets of the person or persons whom as such Tutor or Curator he may represent, and that such Tutor or Curator hath no immovable property, whereby or out of which the rights and claims of the person or persons instituting the suit might be secured, then and in such case such Tutor or Curator may be arrested and imprisoned and held to bail, or a writ of attachment may be sued out, in every respect as if such Tutor or Curator were personally and individually indebted.

Tutor, &c. may be held to bail in certain cases.

III. And be it enacted, That whensoever it shall be suggested to any Judge, that any person without known heirs, having any property, has departed this life within the jurisdiction of the Court whereof such Judge shall

Judge may name a person to take care of the property of a party deceased leav-

ing no legal
representa-
tions.

be a member, it shall and may be lawful for such Judge forthwith to name and appoint some person known to him, to be of integrity and capacity to secure and protect for the benefit of all the parties who may be interested, all the property and assets of the person so deceased. 5

Property to be
delivered up to
Curator.

IV. Provided always, That such property and assets of the person so deceased shall be delivered over to the Curator, or other person duly authorised under and by virtue of an order of such Judge; and provided further, that no Judge shall in any case, confirm or homologate 10 the advice of any number of persons, for the nomination of a Tutor or Curator, without fully inquiring into the facts, and ascertaining the true relation in which each of the persons offering their advice may stand to the deceased, or person whose property may be in question. 15

Proviso: as to
appointment
of Curator.

Compensation
to Sequestre
or Curator.

V. And be it enacted, That such Judge shall, in every case, assign and tax a proper compensation to be paid to such person or persons whom he may select and appoint, as *Sequestre* or Curator, payment whereof shall be made with a due regard to the estate of the deceased, and the 20 interest of his representatives.

Certain things
relative to
Trials of Jury
may be done
at weekly
sittings.

VI. And be it enacted, That it shall and may be lawful for the Judges of the Superior Court, in their weekly sittings, to determine according to law upon the option and choice of either party to have and obtain a trial by 25 Jury, and in the event of their granting such application, forthwith to assign a day for the trial, and also to receive and adjudicate upon all motions consequent upon the recording of the verdict, and to grant new trials, or to pronounce the judgment of the court upon verdict, as fully 30 to all intents and purposes as it has been usual to do in term.

Articulation de
faits to be
fyled.

Its effects.

Proviso

Proviso.

VII. And be it enacted, That whensoever the issue shall be joined, each of the parties to any suit shall be held and bound to prepare and fyle a statement of facts (*arti- 35 culation de faits*), containing a full and precise detail of every fact, admitted or denied, and that the adduction of evidence (*enquête*) shall be narrowed and restricted to such facts only as are expressly denied: Provided always, that every fact not expressly denied shall be taken 40 to have been admitted, and that the mode of procedure in this case shall be regulated by the rules of practice of the Court, so as to prevent any evasion of this statute: Provided further, whatever the issue of the suit, the cost of inquiry and making proof, as well as reasonable fees 45 to the counsel and attorney engaged therein, shall be taxed against the party who shall have failed to prove what he alleged, or whose adversary shall have proved what such party denied.

VIII. And be it enacted, That on every trial by Jury, upon the suggestion or at the desire of any of the parties interested, every Court of Justice in Lower Canada shall name and appoint an officer, who shall be styled the
 5 Translator, and who shall have a competent knowledge both of the English and of the French tongue, and shall upon oath translate evidence in an intelligible manner, and in like manner a translator of every foreign language shall be named whenever an occasion therefor shall
 10 occur: Provided always, that such Court shall assign and tax to such Translator a reasonable compensation for his services, to be included in the costs of trial.

Translator to be appointed on trials by Jury.

Allowance to him.

IX. And be it enacted, That the delay for fying any exception as to form or declinatory, or dilatory exception,
 15 shall hereafter be of two days instead of eight, and that the delay to plead to the merits shall not begin to run until after the disposal of the said preliminary pleas.

Delay for fying certain pleas.