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136 *Regles de pratiq. N^o 3*

RULES OF PRACTICE

FOR

INFERIOR TERMS

AND

CIRCUIT COURTS.



QUEBEC :
PRINTED BY G. STANLEY, 15, BUADE-STREET,
1844.

PROVINCE OF CANADA,
DISTRICT OF QUEBEC.

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IN THE QUEEN'S BENCH,  
SUPERIOR TERM,

31st May, 1844.

PRESENT :

THE HONBLE. SIR JAMES STUART, BARONET, CHIEF JUSTICE.  
THE HONBLE. EDW. BOWEN,  
THE HONBLE. PHI. PANET, and  
THE HONBLE. ELZEAR BEDARD.

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1.—IT IS ORDERED—

That the following Rules be considered as the permanent Rules for the Inferior Term of the Court of Queen's Bench and for the Circuit Courts for the District of Quebec, and that they be strictly observed under the pains and penalties of the law in case of disobedience,—and until they shall be changed or altered by this Court, when circumstances shall require it.

2.—The Gentlemen of the Bar and other Officers of the Court, shall be dressed in the costume heretofore in use in the Court of King's Bench for this District.

3.—That no writ or process *ad respondendum* shall be issued upon a *demande* founded upon a note, *cédule*, account or paper writing under the signature of any person, (*sous seing privé*) unless a copy of such note, *cédule*, account or paper writing under the signature of any person (*sous seing privé*), certified as such by the Attorney of the Plaintiff or by the

Prothonotary or Clerk, shall be annexed to such process *ad respondendum*.

5.—Parties shall be bound to proceed to evidence of the facts by them alledged upon the day which shall be fixed for such evidence, under pain of being foreclosed from the right of so doing, unless good, and sufficient cause to the contrary shall be shewn, supported by Affidavit.

6.—Any Advocate or Attorney who shall appear in Court for any Plaintiff, Opposant or Intervenent, shall subscribe his name upon the Declaration, Opposition, Intervention, or Pleading, if any there be, and in default of so doing there shall not be allowed any fee to such Advocate or Attorney;—and the Prothonotary and Clerk of each Court shall enter upon such Declaration, Opposition, Intervention or Pleading, the name of the Advocate of the Defendant.

7.—Neither of the parties to a suit can be heard upon the *Serment Décisoire* or upon *Faits et Articles*, unless the Rule to this end shall have been duly served with the Interrogatories in writing to be thereunto annexed,—the case only excepted where the party being present in Court, the Judge may permit at his discretion to propound to such party upon the *Serment Décisoire* the single question, whether the Defendant owes the sum demanded or any and what part thereof? or to the Plaintiff, whether the sum which he demands is due to him or what part thereof? or such other single decisory question of the cause of demand.

8.—In any case wherein Judgment shall have been rendered, the party having obtained such Judgment shall be at liberty to sue out of the office of the Prothonotary or Clerk, a writ of Saisie-Arret without declaration or permission of the Judge for that effect.

9.—The Bailiffs of this Court shall set forth in their *Procès*

Verbal of seizure made within the City or Suburbs, the place of residence of the person upon whom such seizure shall have been made, the name of the street, and the name of the person to whom the house belongs, under the penalty of being deprived of their salary.

10.—The returns of Bailiffs shall be written in a legible and intelligent manner and without erasures, under the same penalty as herein last above mentioned.

11.—It shall be the duty of the Bailiffs who may assist at the sittings of the Court, not to permit any one whomsoever to occupy the seats destined to the use of the Advocates and of their Clerks,—and to cause to be observed good order and silence during the sittings of the Court.

12.—Each opposition *afin d'annuler*, *afin de distraire* or *afin de conserver*, shall contain the reasons or *moyens d'opposition*,—in default of which each such opposition shall be dismissed with costs.

13.—Each opposition *afin d'annuler*, or *afin de distraire* shall be supported by an affidavit in the form following, received before one of the Judges or one of the Commissioners of this Court, sworn to by the opposant, or in his absence only, by some other person on his behalf—to wit :

“ I, A. B. having been duly sworn upon the Holy Evangelists do declare and say that the matters of facts set forth in the Opposition herein above written, are true, and that they are not made with intention of unjustly retarding the Sale of the moveable effects seized in virtue of the Writ of Execution insued in the cause above mentioned in the said Opposition, or any part of the said moveable effects.”

And each opposition *afin de conserver* shall be supported by an affidavit in the following form, sworn to in the manner herein last before mentioned.

“ I, A. B. having been duly sworn upon the Holy Evange-

“ lists, do declare and say that, the sum demanded in and by
 “ the opposition *afin de conserver* herein above written, is effec-
 “ tively due to me.”

14.— It is ordered that no Bailiff shall receive any such opposition as herein before mentioned unless the same be supported by an affidavit sworn to in the manner and form aforesaid,— and without which such Bailiff shall proceed as if no such opposition had been offered him.

15.— Each Commission Rogatoire for the examination of witnesses or of any party upon *faits et articles, serment decisoire* or the *serment judiciaire* shall be made returnable on the first day of the term next following that out of which it shall have been issued ; and in default by the party who shall have sued out such Commission, to have proceeded with all diligence thereupon if proceedings in such case shall be continued and had as if no such Commission had issued, unless good and sufficient cause shall be shewn to the contrary—And the party who shall have applied for such Commission shall be held to file at the Office of the Prothonotary or Clerk, his Interrogatories in writing which he intends to have submitted to his witnesses, and shall serve a copy of such Interrogatories on the adverse party or upon his Attorney four days previous to the filing of such Interrogatories,—which last mentioned adversary or his Attorney shall be bound, if he see fit so to do, within four days after, to file at the Office of the Prothonotary or Clerk, his Interrogatories or Cross-questions, a copy of which he shall be held to serve upon his adverse party or upon his Attorney, which said Interrogatories, of both parties shall be annexed to the said Commission : and in all cases the services herein before required, when the party shall not be represented by an Attorney, shall be considered duly made, if they shall have been made at the Office of the Prothonotary or Clerk of the Court and posted up in such Office, which office shall be considered to be the domicile of the said parties for the ends and effects above mentioned, unless such party shall have elected

his domicile at another place and shall have given notice of such election to the adverse party, in which case such services shall be made at such elected domicile.

16.—The Prothonotary or Clerk shall make out an exact list by name, and number of the cause in which Commissions Rogatoires shall have been ordered, and shall lay the same before the Court on the first day of each Term next following, to the end of establishing what may have been done with reference to such Commissions, to enable the Court to order and direct with reference thereto in furtherance of the ends of justice.

17.—It shall be the duty of the Prothonotary or Clerk to specify in the list of Causes which shall be by him laid before the Court at each of its sittings, the place of the residence of the parties in each cause, when such residence shall be of the distance of ten leagues or thirty miles from the place of the holding of such sittings.

18.—The depositions of witnesses examined under a Commission Rogatoire shall be reduced to writing in a legible manner and without erasure: the answers of witnesses to be taken at length according to the interrogatory or question put, to the end that it may be seen by such answer the sense of what the witness may have said in answer to such interrogatory, without referring to such interrogatory, the whole under pain of being deprived of salary for executing such Commission.

19.—In any case subject to Appeal or to be evoked, the parties thereto shall plead in writing.

20.—Hereafter, under the Art. 19, Title XXII, of the Ord. of 1667, when a witness shall require to be taxed, the Court shall tax such witness taking into consideration the

quality, journey and residence of the witness, in consequence of the travel of the witness shall be as follows:—

Members of the Legislature or other persons of quality, as well Ecclesiastics as Laics and those who exercise the liberal arts and professions form the 1st class, and there shall be allowed to any such person, per league	1s. 3d.
Allowance per day	7s. 6d.
Cultivators, labourers and workmen and other persons not comprised within the first class, shall form the 2nd class, and there shall be allowed to such persons per league	1s. 0d.
And for each day	3s. 0d.

There shall be allowed to married or single women the same as to their husbands or fathers.

The distance of travel shall be computed only in returning.

Ferriages and Tolls shall be allowed over and above the allowances above mentioned.

Five leagues shall be computed as one day, and allowed accordingly.

The Court reserving to itself the taxation for difficult travelling, and in unfavorable seasons as well also as for those distances exceeding ten leagues or under one-half league.

BURROUGHS & HUOT,

P. B. R.

TABLE OF FEES in the Inferior Terms of the Court of Queen's Bench, and in the Circuit Courts.

	First Class Actions, £20 or under, but above £10.			Second Class Actions, £10 or under, but above £6. 5.			Third Class Actions, £6. 5. or under.			In every case.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
On all proceedings in Actions settled before return, (except those on which additional fees are hereinafter allowed)—to the Plaintiff's Attorney . . .	1	0	0	0	5	0	0	3	4			
On all proceedings (except as aforesaid) in Actions settled after return, and before contestation, or in which judgment shall be given on confession or by default, or <i>ex parte</i> , without <i>enquête</i> (that is to say, without the examination in Court of any witness or party)—to the Plaintiff's Attorney . . .	1	5	0	0	7	6	0	5	0			
And to the Defendant's Attorney . . .	0	10	0	0	5	0	0	2	6			
On the same, if the judgment be given by default or <i>ex parte</i> , but with <i>enquête</i> —to the Plaintiff's Attorney . . .	1	10	0	0	10	0	0	7	6			
And to the Defendant's Attorney . . .	0	10	0	0	5	0	0	2	6			
On the same, in Actions discontinued after contestation—to the Plaintiff's Attorney . . .	2	0	0	0	10	0	0	5	0			
And to the Defendant's Attorney . . .	1	0	0	0	10	0	0	5	0			
On the same, when judgment shall be given after contestation—to the Plaintiff's Attorney . . .	3	10	0	0	12	6	0	7	6			
And to the Defendant's Attorney . . .	3	0	0	0	10	0	0	5	0			
In all Hypothecary Actions, mixed Actions, or Actions for personal wrongs, the same fees as in first class Actions.												
On all oppositions (except oppositions <i>à fin de conserver</i>) interventions, and <i>requêtes civiles</i> , when contested, and also on contestations of <i>saisie arrêt</i> after judgment, or of declarations made by garnishees, the same fees as in the original Actions to which the same shall be incident.												
In all incidental cross <i>demandes</i> , half the fees allowed in original actions for a like sum.												

TABLE OF FEES in the Inferior Terms of the Court of Queen's Bench, and in the Circuit Courts—Continued.

	First Class Actions, £20 or under, above £10.			Second Class Actions, £10 or under, above £6.5.			Third Class Actions, £6.5. or under.			In every case.
	£	s.	d.	£	s.	d.	£	s.	d.	
TO THE ATTORNEY.										
ADDITIONAL FEES ON CERTAIN PROCEEDINGS.										
On each opposition, <i>afin de distraire</i> , or <i>afin d'annuler</i> , intervention or <i>requête civile</i> , not contested	1	0	0	0	10	0	0	5	0	
On each opposition <i>afin de conserver</i>	1	0	0	0	10	0	0	5	0	
On a <i>saisie arrêt</i> after judgment, when there is no contestation	0	10	0	0	5	0	0	2	6	
On suing out any writ of <i>saisie gagerie</i> , <i>saisie revendication</i> , or <i>saisie arrêt</i> , before judgment, or on any special declaration required by the Court	0	7	6	0	5	0	0	2	6	
For each copy, more than one, of any declaration, petition in intervention, or opposition	0	2	6	0	2	0	0	1	3	
For each plea in writing ordered by the Court, including copy	0	0	0	0	2	6	0	0	0	
On each rule to take up the <i>instance</i> or to declare a judgment executory, or for <i>contrainte par corps</i> , or other rule of a like nature when declared absolute—to the Attorney prosecuting the same	0	15	0	0	10	0	0	5	0	
And when over-ruled to the Attorney resisting the application	0	10	0	0	5	0	0	2	6	
On a <i>commission rogatoire</i> , and all proceedings relative thereto—to the Attorney suing out the same	0	10	0	0	5	0	0	2	6	
And to the Attorney of the opposite party	0	5	0	0	2	6	0	0	0	
To the Attorney employed by either party to attend to the execution of such commission	0	10	0	0	10	0	0	10	0	
For every copy of a rule or order of Court	0	1	0	0	0	0	0	0	0	
For suing out any writ of execution	0	2	6	0	0	0	0	0	0	
For bill of costs and attendance at taxation	0	2	6	0	0	0	0	0	0	

TABLE OF FEES in the Inferior Terms of the Court of Queen's Bench, and in the Circuit Courts.—Continued.

	First Class Actions, £20 or under, above £10.	Second Class Actions, £10 or under, above £6. 5.	Third Class Actions, £6.5. or under.	In every case.
TO THE ATTORNEY,				
TO THE SHERIFF OR BAILIFFS.				
Mileage on the service or execution of a writ or of process of any kind, at the rate of six pence per mile—without any further charge for mileage on any other process to be served on the same party then in the hands of the Sheriff or Bailiff, and which shall be or might have been served at the same time, (whether such process shall have been sued out by the same party or by any other) and without any charge for mileage in returning, but exclusive of sums paid at toll gates, ferries or bridges.	0	1	0	0
For the service, certificate or return, of such writ or process	0	7	6	0
For the seizure of goods and chattels and all incidental trouble, but exclusive of mileage	0	1	8	0
For his recoers	0	7	6	0
For the sale of goods and chattels, exclusive of mileage	0	1	0	0
For publishing the notices of the sale	0	1	0	0
For the service of any notice, and the certificate and return	0	1	0	0
If the writ be returnable into the Queen's Bench in Superior Term, the fees to the Sheriff will be the same as if it had issued out of the said Court in Superior Term.	0	1	0	0