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No. 407.

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

BILL.

An Act to define the mode of procedure
relative to Writs of Attachment in
Lower Canada.

Received and Read a first time, Monday, 23rd
May, 1853.

Second Reading, Wednesday, 25th May, 1853.

MR. SANBORN.

QUEBEC:

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

An Act to define the mode of procedure relative to Writs of Attachment in certain cases.

WHEREAS it is expedient to make new provision for the execution of Writs of Attachment, (saisies arrets,) in Districts other than those whence such Writs issue, and for subsequent proceedings upon the same ; Be it therefore enacted, &c.,

Preamble.

5 That whenever a Writ of Attachment, saisie arret, either before or after judgment, shall issue from the Superior Court for Lower Canada or the Circuit Court for Lower Canada, to attach monies, goods or effects in the hands of any person or persons resident in any District other than the one from which such Writ issues, the tiers saisi or tiers saisis upon whom such Writ of Attachment shall have been served or executed by the Sheriff of such other District, shall (subject to the provision hereinafter made,) be bound to answer and make his declaration to such Writ according to the exigency thereof at the place where the same issues, and default duly obtained against such tiers saisie or tiers saisis shall have the same effect as if he or they were summoned to answer in the District where he or they is or are domiciliated and had made default to appear and answer there ; and in the event of a contestation of the declaration of the tiers saisi or tiers saisis, the same may be had in the District where the action has originated, and the tiers saisi or tiers saisis upon service on him or them of such contestation shall be bound to answer and plead thereto in such last mentioned District, and the Superior Court and Circuit Court holden within the said District, shall have jurisdiction to hear and adjudge upon the merits of such contestation and upon all matters connected with and relating thereto ; Provided nevertheless, that such tiers saisi or tiers saisis, may on or before the return day of the Writ of Attachment, saisie arret, so served upon him or them as aforesaid, appear at the office of the Prothonotary of the Superior Court within the District where he or they reside, and make his or their declaration before such Prothonotary or a Judge of the Superior Court, either of whom is hereby empowered to administer the requisite oath or affirmation, or to receive such declaration, which shall have the same effect as if it were made at the place where the Writ of Attachment is returnable.

Tiers saisi residing in another District than that in which the Writ issues, must appear nevertheless in the said last mentioned District.

And his answers may be contested there.

Provided that he may appear and answer in the District in which he resides.

Prothonotary receiving such declaration in another District, to transmit it to that whence the Writ issued.

II. And be it enacted, That whenever any declaration of a *tiers saisi* or *tiers saisis* shall be made (as provided for in the next preceding Section) at the office of the Prothonotary of the Superior Court in a District other than the one from which the Writ of Attachment issues, it shall be the duty of the Prothonotary where such declaration is made, forthwith to transmit the same to the Prothonotary or Clerk of the Court of the place where the Writ has issued, and subsequent proceedings may be had thereon against the *tiers saisi* or *tiers saisis* or Defendant in the cause, in the same manner as if the declaration of the *tiers saisi* or *tiers saisis* were made before the Court, Judge, Clerk or Prothonotary at the place where the Writ of Attachment issued; and where the *tiers saisi* or *tiers saisis* has or have made default to answer on the return day of the Writ at the place where the Writ is returnable, the certificate of the Prothonotary of the Superior Court in the District where the *tiers saisi* or *tiers saisis* is or are resident, to the effect that the *tiers saisi* or *tiers saisis* has or have made default to appear and make declaration to such Writ on or before the return day thereof, shall be sufficient to enable the Plaintiff to obtain the benefit of default against such *tiers saisi* or *tiers saisis*.

His certificate of default sufficient to enable the Plaintiff to proceed for default.

Prothonotary or Clerk of Court whence Writ issued may receive declaration in vacation.

III. And be it enacted, That it shall be lawful for the Prothonotary of the Superior Court or a Clerk of the Circuit Court at the place where a Writ of Attachment, *saisie arret*, has issued, returnable in vacation, to receive the declaration of the *tiers saisi* or *tiers saisis* on the return day of the same, and such Prothonotary or Clerk or any Judge of either of the said Courts shall have full power to administer the requisite oath or affirmation to any such *tiers saisi*; and the *tiers saisi* or *tiers saisis* shall be bound to appear on the return day of the Writ at the office of the Prothonotary or Clerk out of which such Writ has issued, and make his or their declaration thereto, otherwise default shall be recorded against him or them, and the Plaintiff shall be entitled to take proceedings subsequent to such declaration or default in the same manner and shall have the same rights as if such *tiers saisi* or *tiers saisis* had been called and summoned to answer on a day during the sitting of the Court; saving always the right of such *tiers saisi* or *tiers saisis* to appear in the the District in which he or they may reside, as hereinbefore provided.

Tiers Saisi bound to appear, on pain, &c.

Saving his right to appear in his own District.