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No. 5.

3rd Session, 5th Parliament, 20 Victoria, 1857.

BILL.

An Act to expedite the proceedings in suits
arising out of Commercial matters.

Received and read, first time, Tuesday, 3rd
March, 1857.

Second reading, Friday, 6th March, 1857.

MR. LORANGER.

TORONTO:
PRINTED BY JOHN LOVELL,

An Act to expedite the proceedings in suits arising out of Commercial Matters.

WHEREAS the Civil procedure of the tribunals of Lower Canada, from the delays which it necessitates, is not suited to actions of a mercantile nature brought before the Courts of Justice, and is productive of results prejudicial to the interests of commerce; And whereas it is expedient to modify the said procedure as regards such actions; Therefore Her Majesty, &c., enacts as follows:

Preamble.

I. The provisions of the several Acts of Judicature now in force in Lower Canada regulating the Civil Procedure followed in ordinary matters in relation to the delay in the institution, the entry, and trial of actions, and the joining of issue therein, the execution of judgments, and the appeals therefrom in certain cases, and other incidents of procedure, are hereby repealed as regards commercial matters now brought or hereafter to be brought before the Superior Court and the Circuit Court for Lower Canada, in so far as the said provisions are inconsistent with those of this Act.

Certain Acts contrary to this Act repealed as regards commercial matters.

II. The provisions and delays hereinafter mentioned shall be followed in commercial actions now brought or hereafter to be brought before the Superior Court and before the Circuit Court for Lower Canada, in all appealable actions brought before the last mentioned Court.

Certain provision in respect of commercial actions.

III. The delay between the service and the return shall be two whole days, with a further delay for every fifteen leagues of the distance from the domicile of the defendant to the seat of the Court, if the service be made at his domicile: but any distance less than fifteen leagues shall be considered as fifteen leagues, and shall give the defendant one day's additional delay for the first fifteen leagues, and so on.

Delay between service and return.

IV. In all actions for the recovery of debts, the declaration shall contain a summons to the defendant to acknowledge or deny the debt; and if on the day of return he shall not appear, or if he shall appear, and shall not deny the debt in and by his act of appearance, it shall be taken as acknowledged, and judgment shall be rendered thereon accordingly.

Defendant to be summoned by declaration to any debt.

V. When the defendant shall have denied the debt in and by his act of appearance, he shall be allowed two days to answer unto the demand, and if at the expiration of such two days he shall not have done so, the plaintiff shall be allowed to proceed *ex parte*. It shall not be necessary to call upon the defendant to plead nor to place him *en demeure*, and an act of foreclosure shall be equivalent to a motion to proceed *ex parte*.

In case of denial of debt, two days allowed to answer the demand.

- In case of non-appearance, judgment may go by default. VI. If the defendant shall not appear, or if he shall appear without denying the debt, the plaintiff may inscribe his cause for judgment by default.
- In case of admission, judgment as by confession. VII. On the appearance of the defendant and his admission of the debt, the plaintiff may inscribe the cause for judgment as on a confession of judgment. 5
- Upon denial without defence, *enquête ex parte* after foreclosure. VIII. On the appearance of the defendant and his denial of the debt without producing any defence, the plaintiff may after foreclosure, inscribe his case for *enquête ex parte* if such *enquête* be necessary.
- Two days allowed for answer to defence; in default, foreclosure without placing *en demeure*. IX. On the production of the defence, the plaintiff shall be allowed a 10 delay of two days to answer or reply; and the same delay of two days shall be allowed for the production of any pleading necessary for the joining of issue, and at the expiration of such delays the party in default shall be foreclosed without being called upon or placed *en demeure* to plead. 15
- Enquêtes* on all Juridical days. X. All juridical days of the year shall be *enquête* days in commercial matters; the *enquêtes* shall be proceeded with in the same manner as in ordinary matters, if they take place during the *enquête* terms by law established; except that such *enquêtes*, instead of being fixed or continued from one term to the other, may be continued to any juridical day; the delays 20 now allowed being followed and being at the discretion of the Judges; and if they shall take place out of the ordinary *enquête* terms they shall be proceeded with before the Clerk of the Court who shall reserve any objections which may be made.
- Inscription for *enquête*. XI. In contested or *ex parte* cases two days' notice of inscription for 25 *enquête* shall be a sufficient delay.
- In case of *enquête* out of *enquête* terms. XII. In contested cases in which the *enquête* shall be proceeded with out of the ordinary *enquête* term, the Clerk shall have the same powers as the Judges as regards the depositions of witnesses, the foreclosure of parties, the closing, fixing and continuing of *enquêtes* and all other incidents 30 relative to the holding of *enquêtes*; with the exception, however, of objections, which shall be reserved as above provided.
- Inscription on the *role de droit*. XIII. After the closing of the *enquête*, each party may inscribe the cause on the roll *de droit* for hearing upon the merits, on giving the adverse party two days' notice of such inscription. 35
- Order of hearing of commercial cases. XIV. The hearing of commercial cases shall take precedence of the hearing of cases of the same class inscribed for the same day, and being at the same stage of proceeding; and they shall be called the first in the order in which they shall have been respectively inscribed.
- In case of parties not agreeing when case is called. XV. No commercial case inscribed on the roll *de droit* shall be continued from one day to another; if, when the case is called, the parties do not argue it, it shall be struck off the roll, except in the event of incompetency on the part of the court or other similar or necessary causes, when the court may continue the case in the manner best calculated to expedite the hearing thereof. 40 45

- XVI. In commercial cases in which a jury trial shall be determined upon, the Court shall give to such trials precedence over ordinary matters as regards the fixing of the days for striking the jury and holding the trial. In case of jury trial.
- XVII. Execution may take place eight days after the rendering of final judgment. Execution after judgment.
- XVIII. The publication, on one Sunday, of the seizure of moveables shall be sufficient, and the sale may take place on the ninth day after the seizure. Publication of seizure.
- XIX. Writs of seizure both of moveables and immoveables shall be returnable without fixing any particular day, and without delay. Writs returnable without delay.
- XX. The Sheriff or Bailiff who shall have made the seizure, shall make his report to the Office of the Clerk of the Court within four days after the sale or the prevention of the sale by opposition or otherwise; and in cases in which the execution of the judgment shall require a sale, or in cases in which the judgment shall be satisfied without forced execution thereof, such report shall be made within four days after the said judgment shall have been executed or satisfied. Party making seizure to report within four days after sale.
- XXI. Sheriffs or Bailiffs who shall neglect to conform to the above requirements shall be liable to the ordinary penalties by law imposed in cases of disobedience to the orders of the Court, or of contempt of Court, without prejudice to the recourse of the aggrieved party. In case of neglect on part of Sheriffs or Bailiffs.
- XXII. Sections 17, 18, 19, 20, and 21 of this Act shall apply to non-appealable cases brought before the Circuit Courts. Certain sections to apply to non-appealed cases.
- XXIII. The procedure and delays above prescribed shall be observed and followed in all interventions, demands, oppositions, oppositions by third parties (*tierces oppositions*), and other incidents, the contestation or pleading whereof must be in writing; such interventions, demands, oppositions, third oppositions, and other incidents shall, for that purpose, be assimilated to an action in chief, and shall receive from such action in chief their commercial character for the purposes of this Act; the day of the production in Court of these several proceedings shall be assimilated to the return of the action, and the delays for contestation shall date from such day: the conclusions of such interventions, demands, oppositions, third oppositions, and other proceedings and incidents shall contain a summons to the adverse parties to admit or contest them; in default of the appearance of the parties or of their declaration that they contest such conclusions shall be considered as admitted in the same manner as when they shall be explicitly so; such tacit or expressed admission of the demand in chief, and all subsequent proceedings shall, in so far as the nature of the incident shall permit, be the same as in the action in chief; the rules and delays prescribed for the demands in chief, their institution, inscription on the roll *de droit*, precedence over other cases, striking off the rolls, and the execution of judgments, shall apply to the procedure on these several proceedings and other incidents above mentioned. Procedure before prescribed to apply to oppositions, interventions, &c.
- XXIV. The contestation of judgments of distribution shall be subject to the rules now prescribed as to the delays allowed for their contestation, but every proceeding subsequent to the filing of the grounds of contesta- Delays for contestation of judgments of distribution.

tion (*moyens et contestation*) shall be subject to the delay of two days above prescribed.

In appeals from judgments of Circuit Courts, delays for hearing, &c.

XXV. On appeals from judgments of the Circuit Court to the Superior Court, the hearing of the case upon the merits, as well as upon the incidents raised by the appeal, shall be fixed for the next juridical day after the production of the demand to appeal, unless the Court shall think proper to hear and try the incidents before the merits of the appeal; and in such case the hearing shall be fixed for the next juridical day after the production of the demand; if the Court, by its judgment upon the incident, shall throw it out and order the hearing upon the merits, such hearing shall *pleno jure* be fixed for the next juridical day after the rendering of such judgment: Provided always, that a case so fixed for hearing upon the incidents or the merits of the appeal shall not be continued from one day to another, but such case shall be subject to the rules and restrictions above established with respect to the hearing of actions in chief, and the same practice shall be followed as regards the hearing on the contestation of judgments of distribution.

Proviso.

Distinct *role de droit* to be kept for commercial cases.

XXVI. In order to give effect to the provisions of this Act which give to the hearing of Commercial cases precedence over ordinary matters, the Clerk of each Court shall keep a distinct roll *de droit*, on which such cases shall be inscribed, and such roll shall be gone through first on each day of the sitting of the Court, that is to say, that rules and default or *ex parte* cases inscribed on the commercial roll shall be called before the rules and default and *ex parte* cases inscribed on the ordinary roll; and the contested cases inscribed on the first roll shall be called and heard before those inscribed on the latter: Provided always, that the Judges shall have power to hear the cases inscribed on the commercial roll, including rules and default and *ex parte* cases as well as contested cases before taking up the ordinary roll; and with respect to the putting into execution of this section they shall have power to give such order as they shall deem expedient for maintaining the good discipline of their respective Courts while giving every possible effect to the provisions of this section.

Endorsement for commercial cases.

XXVII. The Clerk of each Court shall inscribe on the back of each case, in legible letters, the words: *Commercial case*, and the *fiat* for summons shall contain the same words in similar legible letters on the back thereof.

What shall be deemed a commercial case.

XXVIII. Each case in which the *fiat* shall contain the said words, shall, for the purposes of this Act, be considered as a commercial case, and be proceeded with accordingly: Provided, however, that if at the time of the final hearing or of the *delibéré* thereupon the Judges are of opinion that such case is not a commercial one, the *demande* shall be dismissed with costs *sauf à se pourvoir*, whether the adverse parties may have made their reservations or exceptions, or not; Provided further that nothing in this section shall deprive the Defendants from the benefit of the peremptory exception to the form.

Proviso.

Pleadings in law, not to delay proceedings on the merits.

XXIX. In simple actions for the recovery of debts, no plea in law or answer in law to any pleading shall have the effect of preventing the going into the action on the merits, but issue may be joined on the merits before judgment rendered; and the benefit of such plea or answer in law shall be reserved to the party who shall have produced the same, except in

any case in which a jury trial shall be prayed for before the *enquête*, in which case the hearing in law may be had.

XXX. Nothing in this Act contained shall deprive parties of the benefit of peremptory exceptions to the form or of any other preliminary exception which shall be produced, proceeded and adjudged upon according to the rules, in the manner and subject to the conditions in force in ordinary cases; and further they shall be subject to the delays of contestation and joining issue above established as well as enjoy the right of precedence, and be subject to the restrictions contained in this Act, relative to the hearing on the merits thereof; except that one day's notice of the inscription on the merits shall be a sufficient delay, and that in the event of the exception being dismissed, the delays for pleading to the action shall be computed from the day of the judgment dismissing the action.

Preliminary exceptions may be proceeded with as heretofore.

XXXI. In all commercial matters not being simple actions for the recovery of debts, but constituting actions generally known as *special actions*, the rules and delays above prescribed shall be followed, with the difference that the declaration shall not contain a summons to the defendant to acknowledge or deny the demand; that the defendant on appearing, shall not be required to make a declaration in that respect; and that the defence and answer in law, shall at the option of one or of all the parties entitled to a hearing in law before proceeding with the *enquête*, in which case the delays of inscription on the roll *de droit* shall be the same as in ordinary matters.

Above rules to apply to *special actions*.

XXXII. In computing the delays established by this Act, no fractions of days shall be taken.

Computation of delays.

XXXIII. Except as regards delays for summonses, the months of July and August shall not contain any juridical days; and during these months no delay of procedure shall be computed.

July and August to contain no juridical days.

XXXIV. Nothing in this Act contained shall deprive the Courts of Justice of their discretionary power to relieve a party in default from the consequences of such default, at any stage of the proceedings until final judgment; nor to extend the delays of contestation and proceedings, on sufficient cause being shewn.

Discretion of Court in respect of parties in default maintained.

XXXV. As regards the several Circuits of Lower Canada, with the exception of the Courts held at Montreal, Quebec, Three Rivers, Sherbrooke, Alymer, Kamouraska and St. Hyacinth, this Act shall only come into force on the last juridical day of the term next after the day hereinafter fixed for its going into operation, and it shall be lawful for the Circuit judges in their respective Districts, at any time before the last juridical day of such term, to make such rules of practice as they shall deem expedient for altering, modifying and increasing the several delays of procedure established by this Act for all the said Circuits or any of them; the said rules of practice shall be promulgated during the said term: if, however, during the said term the said Judges or any of them should think proper to postpone the promulgation of such rules of practice until the following term, they shall have power so to do, and in such case the operation of this Act as regards the said Circuits shall be suspended until such promulgation.

Time of application of this Act to Circuits in L. Canada.

XXXVI. All cases for which no express provision is made by this Act, shall remain subject to the rules of procedure in force in ordinary matters.

Cases unprovided for by this Act.

Courts to interpret in case of doubt as to meaning of this Act.

XXXVII. In case of doubt or ambiguity respecting any of the sections of this Act, the Courts shall give the interpretation best calculated to attain the object for which the Act was passed, to wit, to expedite the decision of actions now brought or hereafter to be brought in commercial matters, and to provide for the speedy recovery of debts on which such actions are founded.

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Application of this Act.

XXXVIII. This Act, which shall only apply to Lower Canada, with the exception of the District of Gaspé, which shall not be subject to its operation, shall come into force on the first of September, 1857.