

CAP. XXVIII.

An Act to consolidate and amend the Acts respecting the
Notarial Profession.

[Assented to 1st February, 1870.]

HER MAJESTY, by and with the advice and consent
of the Legislature of Quebec, enacts as follows :

Creation of
provincial
board of
notaries.

1. There shall be in the province of Quebec one board of notaries, which shall be called "The Provincial Board of Notaries."

Board to be a
corporation
and may ac-
quire property
to the value of
\$50,000.

2. The said provincial board of notaries shall be a corporation, and, as such, shall enjoy all the privileges conferred by law upon corporate bodies generally, and shall have power to acquire and possess, and enjoy real and personal estate, provided the same do not exceed in value the sum of fifty thousand dollars.

How services
may be made.

3. Any service made upon the said board at any of its offices shall be a good and valid service.

Total number
of members for
each district.

4. The said board shall be composed of thirty-nine members, elected in the manner hereinafter prescribed, and distributed as follows : nine for the district of Montreal, eight for the district of Quebec, four for the district of Three Rivers, three for the district of St. Hyacinthe, two for the district of Richelieu, and one for each of the districts of Ottawa, Terrebonne, Joliette, Kamouraska, Montmagny, Beauce, Arthabaska, St. Francis, Bedford, Iberville and Beauharnois, one for the united districts of Saguenay and Chicoutimi, and one for the united districts of Gaspé, Bonaventure and Rimouski.

Quorum.

5. Twelve shall form a quorum for the despatch of business, and eight shall form a quorum for the examination of candidates for the study of or admission to the notarial profession.

Election of
members.

6. The members of the said board shall be elected by the notaries residing in the above-named districts, respectively, at general meetings in each of the said districts, summoned for that purpose, and the said election shall be by majority of votes, and by ballot ; each ballot containing a number of names, not greater than the number of members to be elected in the district. These general meetings shall be held every three years, to which period the functions of the members of the said board are limited ; nevertheless, the same members shall be eligible for re-election, and the members of the said board shall remain in office until they are themselves re-elected, or until others are elected or appointed in their place.

7. The first meeting for the election of members of the said provincial board shall take place on the first Wednesday of the month of August next, and shall be held in the above-named districts, at the court house of each of the districts of Montreal, Quebec, Three Rivers, St. Hyacinthe, Richelieu, Ottawa, Terrebonne, Joliette, Chicoutimi, Rimouski, Kamouraska, Montmagny, Beauce, Arthabaska, St. Francis, Bedford, Iberville and Beauharnois, at one of the clock in the afternoon.

First meetings for election of members.

8. Each such meeting shall be presided over by the prothonotary of the district in which it shall be held or by his deputy. The said prothonotary or deputy shall draw up and sign the minutes of the proceedings of such meeting and shall file the same among the records of the superior court for Lower Canada, in the said district; he shall, within fifteen days after the said meeting, deliver a true copy of such minutes to the president for the time being of the Montreal Board of Notaries, at the office of the secretary of the said board, after giving notice of their election to the members elected, and the said president shall transmit the said copy to the provincial board of notaries.

Who shall preside.

Minutes to be drawn up—deposited—and copy to be sent to president of Montreal board.

9. Subsequent triennial meetings for the election of members of the board, shall take place on the first Wednesday of the month of June, at the same place, and in the same manner as the first; but if such day be a holiday, these meetings shall be held on the next following juridical day.

Subsequent triennial meetings.

10. The first meeting of the said board shall take place in the city of Montreal, on the first Wednesday of October next; but should it happen that such meeting was not held on that day, it may be held on such other day as the lieutenant-governor, on representation, may fix for that purpose by proclamation. The second meeting of the said board shall be held in the city of Quebec, on the first Wednesday in the month of May following, and shall continue to be held alternately at Montreal and Quebec on the same days, each year; but if such day be a holiday, the meeting shall be held on the next following juridical day; and the extraordinary meeting, hereinafter provided for, shall also be held alternately at Montreal and Quebec.

First meeting of the board.

11. If at the time of the first meeting of the said board, or of any other meeting thereof, immediately following a triennial election, it appears that in any one of the aforesaid districts, there has been no election of a member or members to represent such district in the said board, the board may, on information thereof, appoint a member or members (in accordance with the number required by the fourth section of this act,) to represent such district in the said board,—and every member so appointed, shall have

Failure to elect members.

the same powers and privileges, as if he had been elected by the notaries at a general meeting.

Extraordinary general meetings may be called by the board.

12. Extraordinary general meetings of notaries may take place whenever circumstances require, and the board deems desirable; and such meetings shall be summoned by the board through advertisement, to be inserted in both languages in two newspapers published in each of the districts of Montreal and Quebec, at least fifteen days before such meeting; and all the notaries of the province of Quebec shall be invited to be present, to advise together on matters of interest to the profession; which said meetings shall be held alternately at Montreal and Quebec.

Meetings may be adjourned.

13. Every meeting of the said provincial board of notaries, as well as every general meeting of the notaries of the province of Quebec, may be adjourned by consent of the notaries present at such meeting, to such day and such hour as shall be then decided upon.

Board shall elect:
A President,

14. The said provincial board shall elect:

1. A president, who shall only vote when the votes are equally divided, shall cause special meetings of the board when he deems it expedient, or on the special requisition of two members, stating the purpose of the meeting, or on that of the syndic hereinafter mentioned, and shall preserve order at all meetings; and also a vice-president.

And a vice-president.
Two secretaries.

2. Two secretaries, one of whom shall reside in the city of Quebec, and the other in the city of Montreal, who shall draw up and enregister the proceedings of the board, shall have custody of all archives and deliver copies thereof; shall collect the facts relative to any charge brought against a notary, and report the same to the board, and each of them may, with the approbation of the board, appoint a deputy to represent him, in case of illness or of absence, and the deputy shall be so appointed by a written instrument under the hand of the secretary who shall appoint him, which shall be entered in the book of proceedings of the said board.

A treasurer.

3. A treasurer, who shall have charge of the common fund hereinafter mentioned, shall receive and pay money upon the order of the board, and shall account for the same as the board shall direct; and, as soon as possible after his appointment, he shall give notice thereof to the treasurers of the boards of notaries actually in existence at the time of the coming into force of this act; and upon

To whom former treasurers shall hand over their balances.

such notice the said treasurers shall be bound, without delay, to transmit to him all sums of money in their hands belonging to the said boards or payable thereto, and such moneys shall form part of the common fund hereinafter mentioned. And if the said treasurers refuse or neglect to pay over to the said treasurer of the said provincial board

Recovery of such balances.

of notaries, the moneys which they have in hand, they may be sued therefor, and it shall be the duty of the treasurer of the said provincial board to institute legal proceedings against them, before any court of justice competent for the recovery of the same.

4. A syndic, who shall be the prosecutor on any charge brought against a notary. A syndic.

15. When the provincial board of notaries shall hold its sessions in one or other of the cities of Montreal or Quebec, the secretary residing in such locality shall draw up and enregister the proceedings of the said board, but he shall be bound, as soon as possible, to deliver a copy of the said proceedings to the other secretary, whose duty it shall be to enter such copy, so as to form part of the book kept by him. Each secretary shall furnish a copy of his minutes to the other.

16. In addition to the special powers hereby assigned to the officers aforesaid, each of them shall, if he is a member of the board, vote as such, in the same manner as the other members, at all meetings of the board; except that with regard to any matter relating to any charge against a notary, the syndic conducting the prosecution shall not vote. Officers may vote except in certain cases.

17. In case any of the officers aforesaid are absent or prevented from acting, their place may be supplied by the appointment of others, *pro tempore*, by the majority of the members present at any meeting at which there shall be a quorum. Officers may name deputies.

18. The president and vice-president shall always be chosen from among the members of the board, but the other officers may be chosen either from among the members of the board or from among the notaries within its jurisdiction. What notaries may be officers.

The board may remove any officer at pleasure and appoint another in his stead; but no officer shall be so removed except by the vote of the absolute majority of the members of the board.

19. The election of the president and officers aforesaid shall be renewed by the members of the provincial board of notaries, every three years, the same person being, nevertheless, capable of being re-elected, and the senior in age having the preference in any case of equality of votes. Triennial election of officers.

20. Any notary refusing to accept the office of member of the board, or to perform the duties of president, secretary, syndic or treasurer, shall thereby incur a penalty of twenty dollars, unless he has already filled one of the said offices, or has attained the age of sixty years. Penalty for refusing to serve as member or officer.

21. Any notary appointed a member or elected as an officer of the board, who does not attend regularly at the meetings of the board, or who neglects to fulfil the duties Penalty for non-attendance or non-fulfilment of duties.

of his office, shall incur a penalty not exceeding ten dollars, unless he has been prevented from attending through illness or other serious causes, touching which a quorum of the board, shall decide, and, any member or officer of the board guilty of such refusal or neglect, after having been re-elected and after having accepted office, shall also incur a penalty of ten dollars; and the board may, by a by-law to be previously passed for that purpose, determine what shall be considered neglect or refusal to fulfil the duties of members or officers of the board.

How vacancies shall be filled.

22. If any vacancy occurs in the said board of notaries, whether by the death of any member thereof, or by his absence from the province of Quebec, for any time not less than one year, or by resignation or otherwise, the remaining members of the board, at the next meeting thereof, may fill such vacancy, by electing another member by the votes of a majority of the members present, forming a quorum.

POWERS OF THE PROVINCIAL BOARD OF NOTARIES.

Powers of the Board as to—
Internal discipline.

23. The board of notaries shall have power and authority:

First.—To maintain internal discipline among the notaries within its jurisdiction, to award censure, and enforce such discipline;

The prevention of differences;

Secondly.—To prevent or reconcile all differences between notaries and all complaints and claims by third persons against notaries, concerning their functions,—to express their opinion respecting the damages thence arising, and to repress by censure or means of discipline, whatever offence may be the subject thereof, without prejudice to any right of action, if any such accrues;

Admission to study or practice;

Thirdly.—To grant or refuse, after public examination, all certificates of qualification and admission required by applicants for admission, either as students or notaries, and to deliberate thereon as they think proper;

Summoning of Notaries;

Fourthly.—To summon before it, when necessary, any notary within its jurisdiction;

Altering of quorums for examination of candidates, &c.

Fifthly.—To alter, from time to time, if any such board thinks proper, the quorum for receiving complaints, claims and petitions from notaries or third parties, on the various subjects within the powers of the board of notaries, and for the despatch of other routine business of a similar nature. But such quorum shall not be made less than five; and whenever any decision is required to be taken on any matter so brought before the board, the quorum shall be the same as provided in the fifth section of this act;

Sixthly.—To punish any notary according to the nature of his offence, by removal or suspension from office, or by depriving him of his vote at general meetings, or by excluding him from the board, for a time not exceeding three years for the first offence, nor more than six years for a second or subsequent offence; Punishment of offending notaries.

Seventhly.—To make such by-laws and orders, as from time to time are found requisite, for the administration of all matters under its control, and for the due putting into execution of this act. By-laws.

24. The said board shall make a tariff of the prices which may be exacted for all notarial deeds, acts or instruments, and the fees to be allowed to notaries, for each attendance and journey; which tariff, before it shall be in force, must be homologated and confirmed by the superior court sitting in either of the cities of Quebec or Montreal, and any notary contravening such tariff by exacting more than is permitted shall be liable to pay a fine of twenty dollars, and also to be censured by the said board, and in case of a second offence, shall be liable to pay a fine of forty dollars and to be suspended from office for three months by the said board. Tariff of fees.

25. The mode of proceeding at the said board shall be as follows, that is to say: Mode of proceeding in cases of infraction of discipline.

1. The syndic shall bring before the board, all infractions of discipline, (and he shall do so either *ex officio*, if the facts be within his personal knowledge, or at the instance of the parties interested, or at that of any member of the board,) and the said complaining parties shall prove the grounds of their complaint on oath before the president or vice-president of the board of notaries, or, in their absence, before a justice of the peace, and the said president or vice-president or justice of the peace may administer such oath.

2. The syndic shall summon any notary inculpated to appear before the board within a reasonable delay, (which shall not be less than that allowed on writs of summons to appear before the superior court in the district) by a letter stating the object of the citation, to be signed by the syndic and transmitted by the secretary, who shall keep a note thereof, and shall prove the service of the letter upon the notary inculpated, either in person or at his domicile or office, and such service may be made by any bailiff of the said court. The syndic shall summon the notary inculpated to appear.

3. The board shall not proceed on any matter concerning any individual, except after having heard or duly summoned the notary inculpated or interested, and such other parties as desire to be heard, who, in all cases, may be represented or assisted by a notary or an advocate. Hearing of parties.

The minutes shall mention the reasons of the proceedings.

4. The minutes of the proceedings of the board shall mention the reasons on which the same are founded, and shall be signed by the president or vice-president and by the secretary, and shall contain the names of members present, and shall be notified, if need be, to those whom they concern, in the manner prescribed with regard to citations, and the fact of their having been so notified shall in such case be noted in the margin of the minutes by the secretary.

Citation to be made by order of majority.

No citation shall be made except by order of the majority of a quorum of the members of the board, and such order shall be entered on the register of the board.

Board may delegate notaries to visit the offices, records, &c., of inculpat notaries.

26. The said board may, as often as it thinks proper, elect from among the members thereof, or from the other notaries of the district, one or more notaries, not exceeding three, who, after receiving sufficient notice of their appointment, and being sworn before the prothonotary of the superior court to the faithful and impartial discharge of the duties imposed on them by this act, and which they shall be bound to perform under a penalty of twenty dollars, shall visit the offices, records, minutes, repertories and indexes of inculpat notaries, (when such inculpation appears so serious as to deserve to be punished by fine or by suspension or removal, in cases of forgery, fraud or corruption,) in order to establish whether such inculpat notaries have conformed to the laws of the province, and the requirements of this act, and to obtain information on all matters and things mentioned in the instructions which they shall receive from the board of notaries, to which they shall make a faithful and circumstantial report.

Penalty upon notary who refuses access to his papers.

2. Every notary who refuses either to permit the visit of the notary so delegated, or to grant him access to his papers, shall, for every refusal, incur a penalty of forty dollars, to be recovered in a summary manner before the nearest justice of the peace.

Indemnity to notary delegated.

3. But no notary so delegated to make any such visit shall be required to make more than one visit in three years; and he shall be entitled to receive, out of the common fund of the board of notaries, such sum as the said board thinks proper; provided such sum do not exceed five dollars for every day usefully employed in making the said visit, including daily expenses and disbursements, and including also the said report.

Notaries appointed for life; and bound to serve when required.

27. Notaries shall be appointed for life. They shall be bound except for reasons which justify their refusal to give their services whenever required so to do, on payment of their fees.

Mention of the names, calling, &c., of parties.

28. The names, calling, residence and identity of the parties must be either known to the notaries, or attested in the instrument by one person known to them, who shall

possess the qualities required in an attesting witness to any instrument.

29. All instruments must contain the name, and place of residence of the notary, before whom they are executed, under a penalty of twenty dollars against the notary offending. They must also contain the names of the witnesses thereto, their addition, their residence, and the place, day and year, of the passing of the instruments.

Mention of name of notary and witnesses.

30. Notarial instruments shall be written in one and the same text, they shall contain the names and surnames, additions and places of residence of the parties, as well as of the witnesses to the said instruments; they shall contain amounts and dates written at length; the powers of attorney of the contracting parties shall be annexed to the minute, unless they were executed before notaries, and are sufficiently described in the minute, which shall make mention of its having been read to the parties, under a penalty, in each case, of twenty-five dollars against the offending notary. Every notary may, however, as heretofore, avail himself of any blank form either written or printed by filling up the blank spaces by a heavy stroke of the pen.

How acts shall be written and what they shall contain; under a penalty.

31. All instruments shall be signed by the parties, by the witnesses, and by the notaries, who shall make mention thereof at the end of the instrument. The notary is bound to record, at the end of the instrument, the declarations of parties who are unable to sign, in respect thereof.

Instruments to be signed by parties.

32. Notes and additions, with the exception hereinafter mentioned, must be written in the margin; they shall be signed or paraphed as well by the notaries as by the other subscribers, under pain of the nullity of such notes and additions. If the length of the note necessitates its being carried to the end of the instrument, it must not only be signed and paraphed, in the manner of marginal notes, but be further expressly approved by the parties under pain of nullity of such note.

Marginal notes and references.

33. There shall be no words written over, nor interlineations nor additions in the body of the instruments; and such words written over, interlineations or additions, shall be null. Such words as shall be erased, shall be erased in a manner to enable the number of them to be established in the margin of the corresponding page or at the end of the instrument, and approved in the same manner as marginal notes; the whole under a penalty of twenty-five dollars against the notary, together with all damages and even removal from office in case of fraud.

Interlineations or words written over to be null.

Words erased.

Penalty.

34. Every notary shall keep exposed in his office, a roll in which shall be entered by him, so soon as notification thereof shall have been made to him by the clerk or prothonotary of the district, the names, surnames, additions,

Notary, when notified, to keep exposed a roll of names, &c., of persons interdicted.

and places of residence, of all persons who, within the limits of the district in which he resides, are either interdicted or assisted by a judicial adviser, together with a note of the judgments relating thereto; the whole under pain of damages to the parties.

Notaries shall keep minutes.

35. Notaries shall be bound to keep minutes of all acts executed by them.

Exception.

Life certificates, powers of attorney, acts of notoriety, discharges from farm rents, house-rents, wages, arrears of annuities and rents, all notes and obligations which do not create a hypothec, and other instruments, of which, according to the law now in force, the original may be delivered, when the parties require it, shall not be included in the present provision.

Who may deliver copies.

36. The right of executing copies of a minute, shall be exclusively vested in the notary or prothonotary, who is in possession thereof; nevertheless any notary may execute a copy of any act which shall have been lodged with him as a minute.

When and how minutes may be given.

37. Notaries shall not allow any minutes to go out of their possession, except in cases provided for by law and in virtue of a judgment.

Before divesting themselves of the possession of any such minute, they shall draw up and sign a fac-simile thereof, which, after having been certified by the judge of their district, or the prothonotary of the district, shall be substituted for such minute and supply the place thereof until it shall be restored, on payment of his fees.

EXECUTION OF NOTARIAL ACTS.

Deeds to be numbered.

38. Every notary in Lower Canada shall continue to number consecutively all deeds, contracts or instruments executed before him, and remaining of record in his office, and shall note the number of each and every such deed, contract or instrument, in the margin of his repertory, opposite to the entry of such deed, contract or instrument, as well as in every copy thereof.

Accessory instruments how dealt with.

39. All discharges, ratifications and all other accessory instruments, executed and entered at the end of the principal deed as being relative thereto and forming part thereof, shall be entered in the repertory according to their dates, with the other minutes, merely referring to the number of the principal deed, after the entry of such accessory instrument; and every notary shall keep, in addition to the repertory required by law, an index to all minutes of his deeds, both principal and accessory, under a penalty not exceeding twenty dollars.

40. Every notification, protest and service thereof, made by any notary at the request of a party who has not accompanied such notary nor signed the deed, shall be authentic and be evidence in themselves of their contents until called into question or disavowed by the person in whose name such notification, protest and service have been made, or any other to whom it appertains; and notaries shall continue, in the same manner as advocates and attorneys, to sign in the name of petitioning parties, and without any other special powers, memorials or petitions required for calling together meetings of relatives and friends, in cases of tutorship, curatorship, sales of real property of minors and interdicted persons, partitions or licitations, and other like matters concerning family affairs and successions.

Protests, &c.,
to be evidence.

41. Notaries may, when thereunto required, deliver extracts duly certified by them from their minutes, and the prothonotaries of the superior court may deliver extracts from the minutes lawfully in their custody and possession, and such extracts shall be authentic and shall be evidence of their contents until proceeded against by improbation; but the said extracts shall contain the date and nature of the deed, the christian and surnames, additions and place of residence of the parties, the place where the deed was passed, and the name of the notary who received the same, and shall contain at full length the clauses or parts of clauses required by the person demanding such extracts for the purpose of ascertaining and preserving his rights; and lastly, the day on which such extract is delivered, mention whereof shall be made on the minute.

Notaries may
deliver certified
extracts.

42. It shall be lawful for the lieutenant-governor in council, on application to that effect, to grant permission or not as to him may seem fit, and under the conditions hereinafter mentioned, that the minutes and repertories of any notary who has died since the twenty-fourth of February, eighteen hundred and sixty-eight, or who shall die after the passing of this act, or who has resigned, or who is desirous of retiring from practice, or who has left his judicial district, be, with the consent of such notary or of his heirs or representatives, transferred to another notary residing or who shall reside in the same place or not more than twelve miles therefrom, provided always that it be in the same district.

Lieut.-gov.
may, in certain
cases, permit
the transfer of
minutes, &c.,
of notaries.

43. Such other notary, and any successors of his who shall in the same manner have obtained such minutes and repertories may deliver copies thereof signed and certified, and such copies shall be authentic to all intents and purposes, provided that in certifying them he shall have men-

Purchasing
notary may
deliver copies.

Proviso.

tioned the date of the order in council in virtue of which the minutes passed into his hands.

Permission shall be published.

44. The permission granted under section forty-two, shall not have force and effect until published in the Quebec Official Gazette.

Conditions on which permission may be obtained.

45. The application for permission shall be made by petition, and the lieutenant-governor in council shall not grant it unless the notary who is dead, or is retiring from practice had been in practice for ten years at least, or had minutes to the number of two thousand, nor unless the notary taking his place has fulfilled the following conditions :

1. He shall produce a certificate from the board of notaries, signed by the chairman of the said board, that he is not under any censure or punishment by the said board of notaries.

2. He shall make an inventory of the said minutes and mention in the act or instrument of transmission whether the said minutes are such as they are designated in the repertory or shall note the deficiencies, and he shall make a declaration in writing at the foot of the said inventory that he accepts charge of the said minutes and a duplicate of the inventory shall be transmitted to the prothonotary of the district in which the notary who is dead or is retiring from practice resided, within one month from the date of the act or instrument of transmission, under a penalty of fifty dollars.

The purchasing notary shall give security.

3. To give to the satisfaction of the lieutenant-governor one of the securities mentioned in the third section of chapter nine of the statutes of the province of Quebec, thirty-second Victoria, and such security shall be subject to the provisions of sections four, five, six, seven, eight and nine of the above cited act. Such security shall be given by the notary to whom such transfer has been made as a pledge of his fidelity in the accomplishment of the duties, and obligations imposed upon him by this act, in his quality of notary to whom the transfer of the minutes and repertories of another notary has been made, and in the event, by reason of any condemnation, of the security given becoming insufficient, the notary who is bound to furnish it, must renew the same.

He must have fire-proof safe open to inspection.

4. He shall have provided himself with an adequate fire-proof safe, for the purpose of placing therein the said minutes and repertories, and whenever he shall be required so to do, he shall submit such safe to such inspection as the lieutenant-governor, from time to time, shall order, by a warrant under his hand and seal, or to such inspection as the provincial board of notaries may also from time to time order, and such inspection shall be made

at the costs of the person requiring the same, who shall forthwith pay them, before the permission of the lieutenant-governor be granted to him.

46. Every notary who is desirous of residing beyond the limits of the district, in which he is actually resident, and who has not made a valid disposition of his minutes and repertories, is bound to transfer his said minutes and repertories made by him during the time he resided in the district, to the office of the superior court of the district in which he resides, under a penalty of one hundred dollars and removal from office.

Notary leaving district to transfer his minutes.

DEPOSITING AND SAFE KEEPING OF NOTARIAL ACTS.

47. The notarial minutes, repertories and indexes, and all notarial documents and papers transmitted to the prothonotary of the superior court, under the one hundred and fortieth section of the act twentieth Victoria, chapter forty-four, shall remain as part of the records of the office of such prothonotary ;

Minutes, &c., transmitted to prothonotary under 20 Vic., c. 44, s. 140, to remain of record.

2. And in any cases in which the notarial minutes, repertories and indexes and other notarial documents and papers of any notary, have been transmitted by the board of notaries in whose custody they were, to the prothonotary of the superior court in a district not including the place where such notary died or resided when he ceased to practice, or practised next before he left the province, or became incapable of acting as a notary, or was interdicted or removed from office, such prothonotary was bound, within three months after the nineteenth day of May, one thousand eight hundred and sixty, to transmit all such notarial minutes, repertories and indexes and other notarial documents and papers of any such notary to the prothonotary of the superior court in the district including the place where such notary died or resided when he ceased to practice, or practised next before he left the province or became incapable of acting as a notary, or was interdicted or removed from office.

Duty of prothonotary respecting such minutes.

48. Saving the provisions of sections forty-two, forty-three, forty-four and forty-five of the present act, the minutes, repertory and index of any notary practising in any district in the province, who dies or become incapable of acting as such, or refuses to practice and to deliver copies of his notarial deeds, or who has been interdicted or removed from office, or has left his domicile in the district in which he is resident, or who wishes to withdraw from office, shall be deposited by him or by the party in whose custody he deposited them, or by his heirs or legal representatives, in the office of the prothonotary of the superior court, for the

Minutes of deceased notary to be deposited in the office of the prothonotary.

district in which such notary resides or in which he last resided.

When prothonotary may sue for recovery thereof.

49. Saving the provisions of the said sections forty-two, forty-three, forty-four and forty-five, on the refusal or neglect of any such notary, or of his legal representatives to make such deposit, the said prothonotary may sue for the recovery and possession of the said minutes and reperteries by an action of revendication before any judge of the superior court in the said district, either in term or in vacation.

Notary withdrawing from practice.

2. Any notary desirous of withdrawing from practice, may deposit his minutes and repertory in the office of the prothonotary of the superior court in the district wherein such notary resides.

Penalty for non-compliance with this section.

3. The heirs or legal representatives of any notary deceased, interdicted or absent from the province, who neglect to comply with the foregoing requirements, shall incur a penalty of forty dollars for each month, during which such neglect continues, reckoning from the day on which they have been called upon to make such deposit; without prejudice to the right of any party to recover damages for any injury by him sustained by reason of such neglect.

Notary re-admitted to practice.

4. Whenever any notary, interdicted or absent, is again admitted to practice, he shall be entitled again to obtain possession of his minutes and papers, as shall also any notary who has voluntarily ceased to practice, and has deposited his minutes, and repertory as aforesaid, and afterwards wishes again to commence practising.

To be re-examined in certain cases.

5. But any notary, who has been absent from the province for ten years, without having, during that time, resided at least two years therein, shall not again practice on his return, until he has passed an examination as to his moral character and ability, to the satisfaction of the board of notaries.

Duty of Prothonotary.

6. In all cases where, by this act or by the laws of this province, the minutes, repertory and index of the acts and instruments passed by any notary are required to be deposited as aforesaid, it shall be the duty of the prothonotary of the superior court, with whom the same ought to be deposited, to take means to compel the deposit thereof.

Rights of widow of deceased notary.

7. The widow of a deceased notary, during her lifetime, or his legal representatives during the ten years next after the decease of such notary, if his widow dies before the expiration of the said ten years, or the representatives and assigns of any absent notary, or the notary who cannot practice or who has refused to practice and to deliver copies of his acts, or who has been interdicted, removed or dismissed, or has changed his district, shall, every six months, receive from the prothonotary of the superior

court in the district in which such deposit has been made, one-half of the fees and emoluments received by the prothonotary for searching and delivering copies of any deed deposited in his custody.

8. All copies of minutes so deposited, certified as such, and signed by the prothonotary having the custody thereof, shall be deemed authentic, and shall be received in evidence in the same manner as copies signed by the notary who passed the minutes.

Copies signed by prothonotary to be authentic.

50. No practising notary shall act as prothonotary of any superior court or of the court of Queen's bench of the province of Quebec, and no notary shall practice as such while he is discharging the duties of registrar or deputy registrar of any county or division of a county; and no notary shall be entitled to practice his profession in the offices of the prothonotaries or registrars under the penalties hereinafter set forth in the fifty-second section.

Notaries not to act as clerks or registrars.

51. Every notary actually employed as registrar or deputy registrar of any county or division of a county shall be bound to select or choose one of such occupations, within four years from the date of the passing of this act, and to transmit his declaration to that effect to the provincial board of notaries, and to the office of the superior court for his district, but whenever he shall have elected to continue in the discharge of such office as registrar, or deputy registrar, he may retain his minutes and repertory in his possession, and execute copies or extracts from acts and contracts passed before him; and he may, also, so soon as he shall have ceased to fill the said office of registrar, or deputy registrar, and have transmitted a declaration to that effect, re-enter upon the practice of his profession as notary.

Notaries now acting as such, must declare their option.

Effect of their choice.

52. Any notary, who at the expiration of the said four years shall continue to practice as a notary, or shall have any part or pecuniary interest whatever in the practice of another notary, and at the same time hold the said office of prothonotary, clerk, registrar or deputy registrar, shall be dismissed from his said office, and the acts or contracts which he shall have so passed as a notary will not be authentic, and shall avail only as acts or contracts made under private signature; and it shall be lawful for the provincial board of notaries to remove any notary from his office who shall be lawfully convicted of having practised as a notary during the time he acted as such clerk, registrar or deputy registrar.

Penalty.

53. Within six months from the day when the said provincial board of notaries shall have been constituted, every notary shall be bound, under a penalty of fifty dollars, to transmit to and cause to be enregistered with the provincial board of notaries, a declaration containing his name,

Notary must transmit to board a declaration containing his name, residence, &c.

the date of his admission, the different localities in which he has resided and practised, since his admission, (setting forth the time during which he has practised in each,) together with the district in which he is then actually practising, and intends to practice; and such declaration may be transmitted to either of the secretaries of the said board.

New declaration when he changes residence.

54. From and after the passing of this act, any notary who shall leave one district for the purpose of residing in any other, shall be bound within one month from the date of his departure, to draw up a declaration containing the name of the place of his new residence, and in the same manner as hereinbefore prescribed, register the name with the said board, under a penalty of one hundred dollars, and he shall also be bound as hereinbefore set forth, unless he has otherwise validly disposed thereof, to lodge his minutes and repertories in the office of the prothonotary of the superior court for the district where he shall have practised and resided, under pain of removal from office, except in the cases provided for by the sections of this act.

COMMON FUND OF THE BOARD.

Notaries to pay a yearly contribution.

55. The board of notaries may establish a common fund, which shall not exceed the expenses established and approved of as necessary, and apportioned among the several notaries of the province; and in order to assist in forming the said fund and to meet the expenses of the board, there shall be paid in each year by each practising notary to the treasurer of the board, within one month after the appointment of the said treasurer, a fixed contribution of two dollars, for the recovery of which in default of payment, the syndic may bring an action before any court having jurisdiction to that amount.

Notary refusing to pay may be suspended.

56. Any notary, who refuses or neglects to pay his contribution, shall be liable to be censured, reprimanded, or called to order, or to be suspended from the exercise of his functions, until he has discharged the said debt, the whole according to circumstances and after the notices prescribed and given by the board.

Additional contribution.

2. The fixed contribution shall not prevent the board of notaries from submitting to the vote of the general and annual meeting of the notaries an additional contribution to meet the foreseen or unforeseen expenses during the year, which contribution shall be paid by each notary in the same manner, and under the same penalties, as the fixed contribution.

Statement of receipts and expenditures.

3. A statement of the receipts and expenditure of the board of notaries shall be submitted in each year to the board by the treasurer thereof.

ADMISSION TO STUDY OR PRACTICE.

57. No person shall be admitted as a student with any notary, unless he has previously passed a public examination before the board of notaries as to his qualifications and abilities, and has made proof of having received a liberal education, which shall comprise a complete course of classical studies, namely: latin elements, syntax, method, versification, belles-lettres, rhetoric and philosophy inclusively, or any other complete course of classical studies as taught in incorporated colleges, seminaries and universities, and unless he produces a certificate to that effect.

Qualifications
to be admitted
to study.

58. Any candidate may present himself for examination and obtain a certificate of admissibility to practice the notarial profession, at a regular and ordinary meeting of the board of notaries held at the time nearest the expiration of his articles of clerkship, whether such meeting takes place before or after the expiration of the said articles of clerkship;

When candi-
date may be
examined.

But no candidate shall, (if the board of notaries agree thereto,) be excluded from examination, or from obtaining the said certificate of admissibility to the notarial profession, at any extraordinary or special meeting of the board, which in the opinion of the said board will be the nearest in date to the expiration of the articles of clerkship, whether the said extraordinary or special meeting takes place previous to or after such expiration.

Examination.

59. Except in the case provided for in the next following section, and subject to the provisions as to the time of examination, made in the next preceding section:

Qualifications
to be admitted
to practice.

1. No person shall receive a certificate of admissibility to practice as a notary in this province, unless he proves, before the board of notaries, that he has *bonâ fide* served a regular clerkship, (under articles in writing, deposited among the minutes of some practising notary,) during five consecutive years, with a notary duly appointed and practising as such in the province; nor unless such person shall produce proof of his good conduct during his clerkship, and of his qualifications, provided that the period of clerkship, shall not have ended more than twelve months; of all which the board shall give him a certificate, which shall not be granted until after such person shall have undergone a public examination as to his knowledge of the law, and of notarial practice, to which examination he shall be bound to submit, and he shall draw up upon the spot, upon any given case, any clause, instrument or contract which may be required of him;

2. And the candidate shall give notice to one of the secretaries of the board, at least one month in advance, of

Candidate to
give notice.

his intention to undergo examination, to the end that such secretary may advertise in both languages during three weeks, by notice posted up in the offices of the board of notaries, the day and hour when the examination will take place, so that any person may then and there state any reasons he may have to urge against the admission of such candidate : and on giving the said notice to the secretary, the candidate shall pay into the hands of that officer such sum as will be requisite to defray the cost of publishing such advertisement ;

The board may
summon wit-
nesses.

3. The board of notaries may summon before it, by an order under the hand and seal of the president, and countersigned by the secretary, any person whom the candidate, or those opposing his admission, wish to call in support of their allegations concerning his life, morals and qualifications, and for this purpose the president may administer all necessary oaths ;

Certificate.

4. If the applicant has complied with all the requirements of the law and is found by the board of notaries to be duly qualified, he shall be entitled to obtain a certificate in the form of schedule A hereunto annexed, which he shall cause to be registered in the office of the registrar of the province ;

Definition of
word "conse-
cutive."

5. The word "consecutive," as applied to the clerkship required by this section, means that there shall not have been an interruption of more than three months in the service of the candidate ; and an interruption of not more than three months in the service of any candidate for admission to the notarial profession, shall not prevent his examination, or constitute in any manner an objection to his being admitted, let the interruption have occurred at what time it may.

Provisions re-
lative to stu-
dents who have
followed a
course of legal
studies.

60. But any law student who, having conformed to the other provisions of the law regulating the admission to the study of the notarial profession, has before or simultaneously with his period of service under a practising notary, pursued a complete and regular course of legal studies in any school or faculty of law, legally established, in any college or university in this province, in conformity with the statutes of such college or university, shall only be bound to serve four years of clerkship, and shall obtain a certificate of admissibility to practice the notarial profession, after he has submitted to an examination before the board of notaries, and upon production of a certificate from the rector, principal, superior, or other chief officer of such college or university, setting forth that such student has really and *bonâ fide* pursued the complete and regular course of legal study required by this section, and has suc-

cessfully passed the examinations required by the statutes of such college or university.

61. In addition to the examinations hereinabove required, the board of notaries may, by regulations made from time to time, subject the candidate for admission to practice the notarial profession to one or more examinations on the study and practice of law, during their term of service; but such additional examinations shall not be extended to notarial students, who, at the time of their examination for admission to the notarial profession, are entitled to avail themselves of the next preceding section. Additional examinations.

62. Any student who has *bonâ fide* served under articles of clerkship duly executed, with any notary practising as such in this province, and who, previous to the execution thereof, has complied with all other conditions and formalities prescribed by law in order to obtain admission to the study of the notarial profession, but has not undergone the examination required by law before admission as a student, in consequence of the want of a quorum of the members of the board for the district in which he resides, but who has, after the execution of the said articles, at the first meeting of the said board at which such a quorum for examination was present, passed the necessary examination, may obtain a certificate of admissibility to practice the notarial profession at the expiration of four or five years, as the case may be, (according to the requirements of this act in his case,) to be computed from the date of the execution of the said articles, and not from the date of the admission to the study of the profession by the notarial board; for which certificate the candidate shall pay to the provincial board of notaries the sum of twenty-five dollars. Every candidate who, at the period of the coming into force of this act, is not a notarial student admitted to study, shall not practice as a notary, unless he shall have obtained, in addition to his certificate of admissibility from the provincial board of notaries, a commission from the lieutenant-governor under the seal of the province, appointing him a notary and permitting him to practice as such in the said province, which commission shall be granted whenever the candidate who demands the same, shall have proved to the lieutenant-governor that he has fulfilled all the conditions required by law, by producing for this purpose his certificate of admissibility from the said provincial board of notaries, and by paying for the said commission to the treasurer of the province, the sum of twenty-five dollars. But every candidate who, at the time of the passing of this act, shall have been admitted to the study of the notarial profession, shall be entitled, provided that he has complied with all the conditions required by law, and is found qualified and When there is not a quorum of the board.

Commission to be required hereafter to practice as a notary.

Condition required to obtain commission.

competent by the board of notaries, to obtain a certificate of admission, in the form of schedule B, hereunto annexed, which certificate he shall cause to be enregistered in the office of the registrar of this province.

Candidates admitted to practice shall be sworn.

63. After his appointment, the candidate who has obtained a certificate of admissibility to practice as a notary, or a certificate of admission, in the form of schedule B, shall, so soon as he has been appointed by the lieutenant-governor, or by the board of notaries, be sworn before one of the judges of the superior court, to the faithful performance of the functions of his office; and he shall not be so sworn except on his producing his commission; and he shall cause the whole to be registered in the office of the board of notaries, together with his official signature, which he shall not alter thereafter, unless he be thereunto authorized by the superior court in his district with the consent of the board of notaries.

Penalty for non-compliance with this section.

2. If any person is admitted as a notary, and practices as such without having complied with the requirements of this section, he shall for such offence incur a penalty of not less than twenty dollars, nor more than one hundred dollars.

Declaration of domicile.

64. Every person obtaining a certificate of admissibility to practice as a notary, shall also, before acting as such, cause to be enregistered with the board of notaries a declaration of the place in which he intends to practice, under a penalty of fifty dollars.

FEES AND MISCELLANEOUS PROVISIONS.

Secretary of board to have a right to fees.

65. The secretaries of the board of notaries or their deputies shall be entitled to receive and demand the following fees, viz:

For the certificate of capacity and qualification which he delivers to any candidate, five dollars, besides the expenses of advertising;

For the certificate of admission, in conformity with form B, hereunto annexed, two dollars, in addition to the costs of the publication of the advertisement;

For the entry of every declaration in the cases provided for by this act, fifty cents;

For every summons, twenty-five cents.

Fees of prothonotary.

66. The prothonotary of the superior court for any district shall be entitled to receive for each copy delivered by him of any notarial deed or document in his custody, at the rate of ten cents per hundred words, and fifty cents for the certificate thereof;

And twenty cents for searching for any deed or other document, provided the year in which the same was

executed is furnished, and if the year be not given, twenty cents for every year over which the search extends; the same fees shall be payable to notaries who shall have become proprietors of minutes under sections forty-two, forty-four and forty-five of this act.

Fees of purchasing notary.

67. All penalties imposed by this act may be sued for and recovered by the syndic of the board of notaries, before any competent civil court, and being recovered shall be paid by the syndic into the hands of the treasurer of the said board, and shall make part of the common fund thereof.

Penalties how recovered.

68. The registers, books, and records now belonging to the different established boards of notaries, shall be transmitted to the said provincial board of notaries, within a delay of one month from the day of the formation of the said board, under a penalty not exceeding fifty dollars.

Registers, &c., of existing boards to be given to provincial board.

69. The members of the provincial board of notaries who reside beyond a distance of five leagues from the town where the meetings are held, shall be entitled to be paid their travelling and other expenses, for the whole time during which they shall be present at meetings to be held in virtue of this act, which expenses shall in no case exceed two dollars *per diem*, counting from the day of their departure from their residence until the day of their return, over and above the expenses of conveyance; and these expenses shall be defrayed by the treasurer out of the moneys of the common fund, on a certificate taxing such expenses, given and signed by the president of the said board.

Members of board to be paid their expenses.

70. The lieutenant-governor in council may establish a board for the examination and inspection of notarial offices and minutes, and for the purpose may appoint one or more persons to visit and inspect the minutes, repertories and safes of each notary, and every person so appointed shall make a report of his visit and inspection to the lieutenant-governor in council, in which report he shall give all the details and information which he shall have been required to give, by his instructions received for that purpose.

Lieutenant-governor may appoint board to examine notarial offices.

71. After the expiration of five years from the date of the coming into force of this act, each and every notary practising within the province of Quebec, shall be bound to preserve his minutes and repertories in a secure fire-proof safe, and to permit such inspection of the said safe as the lieutenant-governor, the provincial board of notaries, or the municipal authorities may from time to time ordain; and every notary who at the expiration of the said five years shall not have placed his minutes and repertories in such safe, shall be suspended from the exercise of his profession, until he shall have provided himself with the safe re-

Notaries shall provide safes.

quired, and placed therein his minutes and repertories ; and such safe shall be exempt from seizure under execution.

Who may vote at general meetings.

72. Every notary entitled to practice, whether or not he does practice, shall have the right to vote at general meetings of notaries, and even of being elected a member of the said board, provided he has regularly paid his subscription to the common fund of the said board of notaries. All notaries who have made choice of the office of registrar shall enjoy the same right, provided they have paid their subscription.

Previous admissions declared valid.

73. All admissions to practice the notarial profession heretofore made by the different boards of notaries are hereby declared valid notwithstanding any irregularities which may have entered into the proceedings of the said boards.

Old tariffs to subsist until new ones are made.

74. The tariffs of the different boards of notaries shall remain in force until the provincial board of notaries created by this act shall have otherwise provided.

27, 28 Vic., c. 45, and C. S. L. C., c. 73, except s. 34, repealed.

75. Chapter seventy-three of the consolidated statutes for Lower Canada, as amended by the act twenty-seventh and twenty-eighth Victoria, chapter forty-five, is repealed, save and except section thirty-four of the said chapter seventy-three.

When this act shall come into force.

76. This act shall come into force on the first day of March next.

SCHEDULE A.

FORM OF A CERTIFICATE OF ADMISSIBILITY TO PRACTICE AS A NOTARY.

This is to certify that A. B., of _____ in the district of _____, Esquire, hath duly passed his examination before the provincial board of notaries, and hath been found qualified to fulfil the office and perform the duties of a notary public in this province, he having complied with all the requirements of the law in that behalf. Wherefore the said A. B. is admissible to practice the said profession.

In witness whereof, we have signed these presents, at _____ in the district of _____ the _____ day of _____ eighteen

C. D.

(Signature of the president of the board.)

E. F.

(Signature of the secretary of the board.)

SCHEDULE B.

FORM OF A CERTIFICATE OF ADMISSION AS A NOTARY.

This is to certify to all whom it may concern, that A. B. of _____ in the district of _____, Esquire, hath duly passed his examination before the provincial board of notaries, and hath been found qualified to fill the office and perform the duties of a notary public in and for the province of Quebec, he having complied with all the requirements of the law in that behalf. Wherefore the said A. B. is admitted to the said office, and is by law authorized to practice as a notary public in the province of Quebec.

In witness whereof, we have signed this certificate, at _____, in the district of _____, in the province of Quebec, the _____ day of _____, one thousand eight hundred and _____

C. D.

(Signature of the president of the board of notaries.)

E. F.

(Signature of the secretary of the same.)

C A P . X X I X .

An Act to amend the Gold Mining Act.

[Assented to 1st February, 1870.]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. Any person having the mining right on any lands in any gold mining division shall, in the event of not making a private agreement with the owner of such land, obtain from the commissioner of crown lands, upon application to the gold mining inspector of such gold mining division, and after due notice of such application shall have been given to the owner of such land, the right to mine thereon, after indemnifying such owner of such land, for all damages sustained by him thereby with respect to his rights on such land.

Holders of mining rights may obtain permission to mine after indemnifying the proprietor.

2. Any person having the mining right on any land in any gold mining division in the province may upon application to the gold mining inspector of such division, and after due notice of such application shall have been given to the owner of such land, obtain from the commissioner of crown lands, a right of way, and may cut and ex-

And also a right of way.

