
Act re Inquiry into Charges Connected with Timber Limits

CAP., XII.

An Act authorizing an inquiry into certain charges connected with Timber Limits.

Preamble.

Sec.

1. **Commission under Great Seal** authorized; number of **Commissioners**; by whom to be selected; scope of enquiry.
2. Power to appoint **Commissioners** in case of vacancy from any cause.
3. Powers of **Commissioners**.
4. One **Commissioner** authorized to exercise power of all; **exception**.
5. Oath of witness.
6. Form of summons.
7. Attendance of witnesses; **how enforced**.
8. **Witness refusing** to be examined, etc.; **committal of**.
9. Witness fees; how paid.
10. **Witness** making full disclosure protected by certificate of **Commissioners** in civil proceedings.
11. Examination of witness to be conducted in public.

Sec. .

12. Power of **Commissioners** to **preserve** order in **their** court.
13. **Sheriffs**, etc., to give **assistance** when **requested**; fees and how paid.
14. **Commissioners** to report findings and proceedings to **Lt.-Governor**.
15. Protection of **Commissioners** from **action**.
16. Limitation- of action against **Commissioners**.
17. Payment of **Commissioners**.
18. Publishers of true account of **evidence, etc., protected**.
19. **Penalty for** neglecting to appear in obedience to **summons**; how recovered; **disposition** of penalty.
20. Appearance before court in person **or** by counsel; terms on which same may be **allowed**.

Schedule of forms.

Passed 18th April, 1914.

Whereas, Louis Auguste Dugal, a Member of the Legislative Assembly of this Province for the County of Madawaska, has from his place in the House, formulated certain charges against the Honourable James Kidd Flemming, Premier and

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him, authorizing them to inquire into the said charges and to report whether they find the said Honourable James Kidd Flemming guilty of directing the extortion of said moneys by the said William H. Berry before the said lands were classified, and if they find that said moneys were so extorted with the knowledge and consent, and under the direction of the said Honourable James Kidd Flemming, and received by the said William H. Berry, then what disposition did he make thereof, and to whom the said sums were paid by him, as well as the ultimate destination of all said moneys.

2. As often as any vacancy occurs in the office of a Commissioner acting under this Act, by reason of such Commissioner dying, resigning or declining, or becoming incapable to act, the Lieutenant-Governor may, from time to time, fill up such vacancy.

3. The Commissioners shall have, for the purposes of such investigation or inquiry to be instituted by them in pursuance of this Act, all such powers, rights and privileges as are vested in His Majesty's Supreme Court for the Province, or in any Judge thereof, on the occasion of any action or suit in respect of the following matters:

(a) The enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise, as the Commissioners may think fit;

(b) The compelling of the production of books, papers or documents which, in the opinion of the Commissioners, are necessary to be produced;

(c) The adjourning the hearing from time to time and from place to place within the Province, as the Commissioners may deem necessary.

(d) The punishing of persons guilty of contempt.

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That the said Honourable James Kidd Flemming, through the agency of William H. Berry, Chief Superintendent of Scalers of the Crown Land Department of this Province, and under the direct control of the said Honourable James Kidd Flemming, in the year A. D. 1913, did unlawfully extort from divers large lessees of Crown Timber Limits within the Province, a sum of fifteen dollars per square mile of their said timber limits, over and above the amount of bonus paid by them respectively, as set forth in the fifty-third Annual Report of the Crown Land Department of the Province of New Brunswick for the year ending the thirty-first day of October, A. D. 1913, in pages 23 to 27 thereof, both inclusive, which said amounts so unlawfully extorted from said lessees amounted in the whole to the sum of about one hundred thousand dollars, no portion of which sum was accounted for or paid into the revenues of this Province, and said moneys were extorted from said lessees, and paid to the said William H. Berry, with the knowledge and consent and under the direction of the Honourable James Kidd Flemming, while occupying the said offices of Premier and Minister of Lands and Mines, and all of said moneys were so paid before the said lands were classified under the provisions of Chapter 11 of the Statutes of New Brunswick for the year A. D. 1913 ;

And Whereas, it is deemed proper that the said charges shall be investigated by a Royal Commission, to be appointed by His Honour the Lieutenant-Governor :

Be it therefore enacted by the Lieutenant-Governor and Legislative Assembly, as follows :

1. The Lieutenant-Governor is hereby empowered to cause a Commission or Commissions to issue under the Great Seal to not more than three persons, to be selected by

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4. Any **one** Commissioner **may** administer the oath to a witness, **may** issue summons **or** warrants for witnesses, and with the **consent** of his co-commissioner or commissioners **may**, sitting **alone**, hold investigations or inquiries for the purposes of this Act, **and exercise** all the powers which by **this** Act **may**, when the Commissioners **are sitting** together, be exercised **by all** or either **of** them, except only the power of punishing persons guilty of contempt, which power shall not be **exercised by one** Commissioner sitting alone, unless by the **order of the Attorney General**.

5. **The oath or affirmation to be administered to a witness shall be as follows:**

“I do swear that the **evidence** I shall give touching the matter of **this inquiry**, shall be the truth, the whole truth, and nothing but the **truth**, so help me,, **God**.”

6. The summons to a witness may be in Form “A” in the Schedule to this Act, and one or more witnesses **may** be included in the same summons,

The summons may be served by any person at any place within the Province.

7. **If any person summoned** as a witness neglects or refuses to appear at the time and place appointed by the summons, and no excuse which, in the opinion of the Commissioners, is sufficient, is offered for such neglect or refusal, then, after proof on oath or affirmation to the satisfaction of the Commissioners of the summons having been served upon such person, either personally or by leaving the same for him with some adult person at his last or most usual place of abode, the Commissioners may issue their warrant in Form “B” in the Schedule to this Act, to bring and have

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such person at the time and place therein mentioned before the Commissioners, then and there to be examined on oath or affirmation. Such warrant and the warrant of commitment in the next succeeding section may be executed by any sheriff or constable in the Province to whom it may have been delivered for that purpose, and the person ordered by the said warrant to be arrested and conveyed before the Commissioners, or to the gaol specified in said warrant, as the case may be, may be so arrested and conveyed by such officer, whether arrested within or without or conveyed wholly within or without, or partly within and partly without the County of which such officer is a sheriff or constable.

8. If any person, being before the Commissioners, either in obedience to the summons aforesaid, or by virtue of the warrant aforesaid, or being brought by the sheriff or gaoler, after commitment as hereinafter provided, shall refuse to be examined upon oath or affirmation concerning any matter which, in the opinion of the Commissioners, is relevant to the inquiry or investigation, or refuses to take the oath or affirmation aforesaid, or, having taken the oath or affirmation, refuses to answer all such questions as are then put to him by the Commissioners, and which in the opinion of the Commissioners are relevant to the matter to be inquired into or investigated by them, without offering any excuse for his refusal which, in the opinion, of the Commissioners, is sufficient, refuses to produce all or any books, documents and papers which he may, by the Commissioners, be required to produce either in and by the summons aforesaid, or by direction of the Commissioners upon such hearing, the Commissioners may, by warrant in Form "C" in the Schedule to this Act, commit the person so refusing to the common gaol of the County in which the Commissioners may then be holding their Court, there to remain and be im-

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prisoned for any term not exceeding thirty days, which shall be by the Commissioners adjudged and specified in said warrant, and in case any person be imprisoned under and by virtue of such last-mentioned warrant, the Commissioners shall hold their Court at some place within the same County in which such person is imprisoned on the last day of the term for which such person has been so imprisoned, and the sheriff or gaoler in whose custody such person then is, shall on such last day of the term of imprisonment, bring such person in custody before the Commissioners at such hour as the Commissioners may, verbally or in writing, direct, then and there to be further examined before the Commissioners, and if such person then and there persists in his former refusal, the Commissioners may, by warrant in Form "C" in the Schedule to this Act, recommit him to the said gaol for any further period, not exceeding thirty days, and so on, from time to time, until such person being brought before the Commissioners, ceases to persist in such refusal.

9. All persons summoned to attend and attending before the Commissioners vpon summons, shall be entitled to their reasonable expenses, and the amount thereof shall be fixed and determined by the Commissioners, and shall be paid by warrant of the Lieutenant-Governor-in-Council, on the certificate of the Commissioners.

10. Any person examined as a witness in any inquiry under this Act, who, in the opinion of the Commissioners, makes a full and true disclosure, touching all the matters in respect to which he is examined, shall receive a certificate under the hand of the Commissioners stating that the witness has, upon his examination, made a full and true disclosure' as aforesaid, and no evidence given or taken under this Act, shall be admissible against such person in any civil

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proceedings whatever, if such certificate be produced to the Court in which such proceeding is pending.

11. Every examination of witnesses under this Act shall be conducted in public.

12. The Commissioners, when holding their Court, shall have the like powers for the preservation of order therein and for the punishing of any disturbance or contempt committed in the face of the Court, as is possessed by a Judge of the Supreme Court when sitting for trial of causes at any Circuit Court.

13. All sheriffs, police-officers or constables shall, and they are required to give, when requested by the Commissioners, their aid and assistance to the Commissioners in the execution of their duties under this Act, and they shall be entitled, for their services done in compliance with such request, to the fees prescribed for similar services by Part II. of Chapter 188 of the Consolidated Statutes, 1903. The said fees shall be paid by warrant of the Lieutenant-Governor-in-Council on the certificate of the Commissioners.

14. The Commissioners shall report the evidence taken before them and their findings thereon, and the proceedings of the Commissioners to the Lieutenant-Governor.

15. No action shall be brought or maintained against the Commissioners, or either of them, by reason of any act purporting to be done by him or them in his or their capacity as such Commissioner or Commissioners, unless it shall appear that such Act was done by such Commissioner or Commissioners without reasonable cause, and with actual malice, and wholly without jurisdiction; and if any such action is brought, the defendants may plead the general issue and give the special matter of defence in evidence at the trial of such action.

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16. No action shall be brought against any Commissioner or Commissioners appointed to conduct any inquiry under this Act for anything done in the execution of his or their duty under this Act, unless such action shall be brought after one month's notice thereof, and within six calendar months after the doing of such thing.

17. The Lieutenant-Governor-in-Council is hereby empowered to pay the expenses of the Commissioners and their services, by warrant upon the Provincial Treasury, out of the public moneys of the Province.

18. No person shall be liable to any suit, action or proceeding, by reason of his publishing a true account of any report of the Commissioners or of any evidence taken by them or either of them.

19. Any person who neglects or refuses to appear before the Commissioners, in obedience to any summons under this Act duly served upon him, and offers no reasonable excuse for such neglect or refusal, shall also be liable to a penalty not exceeding four hundred dollars, to be recovered with costs under "The Summary Convictions Act" before two Justices of the Peace for the County in which such neglect or refusal takes place, and such penalty, when collected, shall be payable to the Provincial Secretary-Treasurer for the use of the Province,

20. Should any person be desirous of appearing either in person or by counsel at the said investigation or inquiry, and of examining or cross-examining the witnesses thereat, the Commissioners may permit him to do so to the extent and on the terms that they, may deem proper.

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SCHEDULE.**FORM A.****To A. B.**

You are hereby summoned to attend personally before the Commissioners appointed under the Great Seal of the Province to investigate (*stating the cause*) at on the day of at the hour of o'clock in the noon of the same day, then and there to testify the truth according to your knowledge in the matter of the inquiry now pending, and then and there to produce (*specifying the books or documents to be produced*), and this you shall by no means omit under the penalties in such case provided.

Given under my (*or our*) hand at the
in the County of this day
of A. D. 19

(Signature)

Commissioner or Commissioners.

FORM B.

To any Constable in the Province of New Brunswick, and to the Sheriff of any County in the said Province:

Whereas, a Summons was issued by me (*or us*), a Commissioner (*or the Commissioners*) duly appointed and acting under the provisions of the Act of the Legislature of New Brunswick, passed in the year 1914, intituled "An Act authorizing an Inquiry into certain charges connected with Timber Limits," to A. B., summoning him to appear before me (*or us*), under said Act, and the said A. B. has not ap-

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peared in obedience to said **Summons**, and it has been proved upon oath before me (*or us*) that said **Summons** has been duly served upon the said **A. B. personally** (*or by leaving the same for him with W. Z., an adult person at the last and most usual place of abode of the said A. B., at*

in the County of _____), and no excuse having been offered to me (*or us*) which in my (*or our*) opinion is sufficient for such neglect or refusal of the said **A. B. to attend in obedience to said summons**, I (*or we*) hereby order and direct you to arrest the said **A. B.**, wherever you may find him within the said **Province**, and to bring him in custody before me (*or us*) at in _____ the County of _____ on the day of _____ A. D. 19 _____ at _____ o'clock in the noon, or at any place or time thereafter to which I (*or we*) shall have adjourned the hearing under the said Commission.

Given under my (*or our*) hand this _____ day of _____ A. D. 19 _____, at the _____ in the County of _____

(*Signature*)

Commissioner or Commissioners.

FORM C.

A. B., being before me (*or us*), a **Commissioner** (*or the Commissioners*) duly appointed and acting under the provisions of the Act of the Legislature of New Brunswick passed in the year 1914, intituled "An Act authorizing an inquiry into certain charges connected with Timber Limits," on this _____ day of _____ A. D. 19 _____, at _____ in the County of _____, refused to take oath (*or make affirmation*) as a witness before me (*or us*) as required by said Act; (*or*) and having taken the oath or made affirmation as required by law, refused to answer the following

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question by me (*or us*) to him: (*here state question*), such question being one which in my (*or our*) opinion is relevant to the matter to be inquired into by me (*or us*); (*or*), refused to produce a certain book or document, (*as the case may be*), 'which he was required by me (*or us*) to produce; and has offered no excuse for such refusal, which in my (*or OUT*) opinion is sufficient; I (*or we*) do hereby commit the said A. B., for his said refusal, to the common gaol of the said County of at in the said County, there to be imprisoned for (*any term NOT exceeding thirty days*), and you, the gaoler of such gaol, are hereby required to receive the said A. B., and detain him in your custody in the said gaol for the term stated, and on the last day of said term to have the said A. B. in custody before me (*or us*) at in the Parish of in the County of at o'clock in the noon, then and there to be further examined before me (*or us*).

Given under my (*or our*) hand this day
of A. D. 19 , at in
the County of

(Signature)

Commissioner or Commissioners.