

THE
DIVISION COURTS ACTS

FOR
UPPER CANADA,

16 VICTORIA, CHAP. 177,

AND

18 VICTORIA, CHAP. 125.

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1856.

CAP. CLXXVII.

AN ACT TO AMEND THE UPPER CANADA DIVISION
COURTS ACT, OF ONE THOUSAND EIGHT HUNDRED
AND FIFTY, AND TO EXTEND THE JURISDICTION
OF THE SAID COURTS.

[Assented to 14th June, 1853.]

WHEREAS by an Act passed in the Session held Preamble.
in the thirteenth and fourteenth years of Her
Majesty's Reign, intituled, *An Act to amend and con-
solidate the several Acts now in force regulating the
practice of Division Courts in Upper Canada, and to
extend the Jurisdiction thereof*, and in this Act called
"The Upper Canada Division Courts Act of 1850," Act 13 & 14. V. c.
53, cited.
jurisdiction is given, as therein mentioned, to the Courts
holden under the said Act, to hold plea of certain claims
and demands of debt, account or breach of contract, or
covenant, or money demand, whether payable in money
or otherwise, not exceeding Twenty-five Pounds, and of
claims and demands in actions of tort to personal chat-
tels, to and including the amount of Ten Pounds; And
whereas it is expedient to extend the provisions of the
said Act to all personal actions (except as hereinafter
mentioned) not exceeding Ten Pounds, and also to
amend the said Act in the manner hereinafter men-
tioned: Be it therefore enacted by the Queen's Most
Excellent Majesty, by and with the advice and consent
of the Legislative Council and of the Legislative Assem-
bly of the Province of Canada, constituted and assembled
by virtue of and under the authority of an Act passed
in the Parliament of the United Kingdom of Great
Britain and Ireland, and intituled, *An Act to re-unite
the Provinces of Upper and Lower Canada, and for the
Government of Canada*, and it is hereby enacted by the
authority of the same, that the jurisdiction of the several
Division Courts in Upper Canada shall extend to, and Short title as-
signed to said
Act.
the Judges of such Courts shall, in addition to the Additional
powers conferred
on Division
Courts.

in the forty-eighth Section of the said recited Act, for disobedience of the Summons to a witness ; And it shall be lawful for any one of such Arbitrators to administer an oath to the parties in such suit, and to all other persons that may be examined before such Arbitrator or Arbitrators, either on behalf of the plaintiff or defendant, or to take their affirmation in cases where affirmation is allowed by law instead of an oath ; and every person who in any examination upon oath or solemn affirmation before any such Arbitrator or Arbitrators, shall wilfully or corruptly give false evidence, shall be deemed guilty of perjury, and liable to the punishment which may, by law, be applicable to the crime of perjury.

Arbitrators may administer oath to parties or witnesses.

False swearing to be perjury.

Part of Statute of Anne not to apply to goods taken in execution in Division Courts ; recourse of landlord in such case.

Duty of Bailiff distraining.

Costs to Bailiff, Act of U. C. 1 V. c. 16.

VI. And be it enacted, That so much of the Act passed in the eighth year of the Reign of Queen Anne, intituled, *An Act for the better security of rents and to prevent frauds committed by tenants*, as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Division Court, but the landlord of any tenant in which any such goods shall be so taken, shall be entitled by any writing under his hand or under the hand of his agent, to be delivered to the Bailiff making the levy, (which writing shall state the terms of holding, and the rent payable for the same) to claim any rent in arrear then due to him, not exceeding the rent of four weeks when the tenement is let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year ; and in case of any such claim being so made, the Bailiff making the levy shall distrain as well for the amount of the rent so claimed, and the cost of such additional distress, as for the amount of money and costs for which the warrant of execution issued, and shall not proceed to sell the same, or any part thereof until after the end of eight days at least next following after such distress taken ; and for every additional distress for rent in arrear, the Bailiff of the Court shall be entitled to have as the costs of the distress, instead of the fees allowed by the said Upper Canada Division Courts Act of 1850, the fees allowed by an Act of the Parliament of the late Province of Upper Canada, passed in the first year of Her Majesty's Reign, intituled, *An Act to regulate the costs of levying of distresses for small rents and*

penalties; and if any replevin be made of the goods so distrained, so much of the goods taken under the said warrant of execution shall be sold, as will satisfy the money and costs for which the said warrant issued, and the costs of the sale, and the surplus of such sale, and the goods so distrained, shall be returned as in other cases of distress for rent and replevin thereof; but no execution creditor under the said Upper Canada Division Courts Act of 1850 or this Act, shall be satisfied his debt, out of the proceeds of such execution and distress or execution only, where the tenant shall replevy, until the landlord who shall conform to the provisions of this Act shall have been paid the rent in arrear for the periods hereinbefore mentioned.

Proceedings if the goods are replevied.

Execution creditor not to be satisfied until the landlord is paid.

VII. And in amendment of the one hundred and second Section of the said Upper Canada Division Courts Act of 1850, Be it enacted, that if any claim shall be made to or in respect of any goods or chattels, property or security taken in execution or attached under process of any Division Court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such proceeding has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a Summons calling before the Court out of which such process shall have issued, or before the Court holden for the Division in which the seizure under such process shall have been made, as well the party issuing such process as the party making such claim; and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record at Toronto, or in any Local or Inferior Court, in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such Summons, and that the goods and chattels, property or security were so taken in execution, or upon attachment, may order the party bringing such action to pay the cost of all proceedings had upon such action after the issue of such Summons out of the Court, and the Judge of the Court shall adjudicate upon such claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as to him shall seem fit; and such order shall be enforced in like manner as any

Sec. 102, of 13 & 14 V. c. 53, amended.

Proceedings in case any claim to goods or chattels seized, or to the proceeds thereof, be made by any landlord or other third party.

order made in any suit brought in such Court, and such order shall be final and conclusive between the parties.

In what Division
Court any suit
may be entered
and tried.

VIII. And be it enacted, (notwithstanding any thing contained in the Upper Canada Division Courts Act of 1850,) That all suits cognizable in a Division Court may be entered and tried in the Court holden for the Division in which the cause of action arose, or in the Court holden for the Division in which the Defendant, or where there shall be more than one Defendant, wherein one of the defendants shall dwell or carry on business at the time of the action brought, or, by leave of the Judge, according to the provisions contained in the next Section, in the Court holden for any division (whether in the same or in an adjoining County) adjacent to the Division in which the defendant is resident.

Recital.

IX. And whereas in certain Divisions, the places fixed for holding the sittings of the Courts, and the offices of the Clerks thereof, may be situate at an inconvenient distance from the place of residence of certain parties residing in such Divisions, while a Division Court is held in the same or in an adjoining County more convenient for such parties, and it is desirable that procedure in the said Division Courts should be made as easy and inexpensive as may be to the suitors; Be it therefore enacted, that any suit cognizable in a Division Court may, by leave of the Judge of the Court in which such suit is to be brought, be entered and tried in any Court (whether holden for a Division in the County in which the defendant resides, or holden for a Division in an adjoining County,) in which the said Judge shall specially order such suit to be entered and tried: and upon such order made, the defendant shall be liable to be sued in accordance therewith in any adjoining Division Court, whether situate in the County in which he resides, or an adjoining County; and every such suit may be entered, tried and proceeded with in the same manner to all intents and purposes, as if the cause of action for which the same shall be brought, had arisen within the Division of the Court in which leave shall be so obtained as aforesaid to enter it, and the defendant were a resident therein.

A suit may be
entered and tried
in any Court
specially design-
ated by the
Judge of the
Court in which it
is to be brought.

The Governor
may appoint five
County Court
Judges to frame
rules of practice

X. And be it enacted, That it shall be lawful for the Governor of this Province, to appoint and authorize five of the Judges of the County Courts in Upper Canada,

to frame such general rules as to them shall seem expedient, for and concerning the practice and proceedings of the Courts holden under the authority of the said Upper Canada Division Courts Act of 1850, and for the execution of the process of such Courts, and in relation to any of the provisions of the said Act, or of this Act, or of any Act to be hereafter passed, as to which there may have arisen doubts, or may have been conflicting decisions in the said Division Courts, or as to which there may hereafter arise doubts, and also to frame forms for every proceeding for which they shall think it necessary that a form should be provided; and all such rules, orders and forms as aforesaid, shall be certified to the Chief Justice of Upper Canada, under the hands of the County Judges so appointed and authorized, or of any three of them, and shall be submitted by the said Chief Justice to the Judges of the Superior Courts of Common Law at Toronto, or to any four of them, and such Judges of the Superior Courts (of whom the said Chief Justice or the Chief Justice of the Court of Common Pleas at Toronto, shall be one) may approve or disallow, or alter or amend such rules or orders, and such of the rules as shall be so approved by such of the Judges of the Superior Courts, shall have the same force and effect as if the same had been made and included in this Act; and in any case not expressly provided for by the said Upper Canada Division Courts Act of 1850, or by this Act, or by the said rules, the general principles of practice in the Superior Courts of Common Law at Toronto may be adopted and applied in the discretion of the Judge, to actions and proceedings in the division courts; and the contingent expenses connected with the framing and approval of such rules, and the printing thereof, shall be paid out of the General Fee Fund of the Division Courts: Provided always, that all rules and forms already legally made and approved and in force, shall, as far as applicable, remain in force until it is otherwise ordered: and Provided further, that copies of all such rules made and approved of as herein provided, shall be forwarded by the Judges making the same, to the Governor of this Province, to be by him laid before each House of the Legislature.

for Division Courts; which, being approved by a Chief Justice and three Judges of the Superior Courts of Law at Toronto, shall be valid.

Rule in cases unprovided for.

Expenses of making and printing rules, how paid.

Proviso.

Proviso.

XI. And be it enacted, That in case any Judge before whom a suit shall be tried in a Division Court, shall think it proper to have any fact or facts controverted in

Jury may be had for trying any fact which the Judge shall think ought to be so tried.

the cause tried by a Jury, in such case a Jury of five persons present shall be returned instantly by the Clerk of the Court, to try such fact or facts as shall seem doubtful to such Judge, and the Judge may proceed to give judgment on the verdict of such Jury, or grant a new trial on the application of either party in the same way and under similar circumstances as new trials are granted in other cases on verdicts of Juries; and for the returning of such Jury the Clerk shall be entitled to a fee of One Shilling and Three Pence, and no more; Provided always, that nothing herein contained shall extend, or be construed to extend to affect the sole jurisdiction of the Judge in cases in which a Jury has not been legally demanded by the parties, but as heretofore in such cases, the Judge holding such Courts, shall be the sole Judge of all actions brought in the Division Courts, and shall determine all questions as well of fact as of law in relation thereto.

Recital.

Clerks and Bailiffs receiving money, to give security.

Proviso:

Covenants entered into under s. 22 of 13 & 14 V. c. 53, and bonds, &c., not invalidated.

Clerk of Division Courts to make out, yearly, lists

XII. And whereas there is no provision in the said Upper Canada Division Courts Act of 1850, requiring the Clerks and Bailiffs to give security for accounting for, and for the due payment of fees, fines and moneys received by them respectively in the performance of their several duties; Be it therefore enacted, That every Clerk and Bailiff of a Division Court who may receive any fees, fines or moneys in the execution of his duty, shall give security by entering into a bond to Her Majesty, Her Heirs and Successors, in such sums, with so many sureties and in such form as the Governor of this Province shall see reason to direct for the due accounting for and payment of all fees, fines and moneys received by them respectively, by virtue of their respective offices, under the said Act, or under this Act, or under any Act to be hereafter passed, and also for the due performance of the duties of their several offices; Provided always, that nothing herein contained shall affect or be construed to affect the validity of any covenant entered into, under the Upper Canada Division Courts Act of 1850, or the remedy given thereunder to persons suffering damages by the default, breach of duty, or misconduct of any Clerk or Bailiff, or affect or be construed to affect any bond or security heretofore legally given by any County Treasurer, or any Clerk or Bailiff of a Division Court.

XIII. And be it enacted, That the Clerk of each Division Court shall, in the month of January, in each

year, make out a correct list of all sums of money belonging to suitors in the Court, which shall have been paid into Court, and which shall have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the parties for whom or on whose account the same were so paid into Court; and a copy of such list shall be put up and remain during Court Hours in some conspicuous part of the Court House or place where the Court is held, and at all times in the Clerk's Office: and all sums of money which shall have been paid into Court to the use of any suitor or suitors thereof, and which shall have remained unclaimed for the period of six years after the same shall have been paid into Court, or to the Officers thereof, and which are now in the hands of the Clerk or Bailiff, and all further sums of money which shall hereafter be paid into Court, or to the officers thereof, to the use of any suitor or suitors, shall, if unclaimed for the period of six years after the same shall have been so paid, be applicable as part of the general Fee Fund of the Division Courts, and be carried to the account of such fund, and paid over by the Clerk or Officer holding the same, to the Treasurer of his County, and no person shall be entitled to claim any sum which shall have remained unclaimed for six years, but no time during which the person entitled to claim such sum shall have been an infant or *feme covert*, or of unsound mind, or out of the Province, shall be taken into account in estimating the six years.

of moneys paid into Court and unclaimed during a certain time;

List to be posted up and such sums unclaimed, after a certain time, to go to Fee Fund.

Provision as to infants, &c.

XIV. And be it enacted, That from and after the commencement of this Act, no action shall be brought against any Bailiff of a Division Court, or against any person acting by the order and in aid of any Bailiff, for anything done in obedience to any warrant under the hand of the Clerk of the Court and the Seal of the Court, until demand hath been made, or left at the residence of such Bailiff, by the party intending to bring such action, or by his Attorney or Agent in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by shewing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such Bailiff or other person act-

Action against Bailiff not to be brought, except after certain notice, &c.

As to action where Clerk is not made a Defendant.

And as to actions
where the Clerk
is made a De-
fendant.

ing in his aid, for any such cause as aforesaid, without making the Clerk of the Court who signed or sealed the said warrant defendant, then, on producing or proving such warrant, at the trial of such action, the Jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction or other irregularity in or appearing by the said warrant; and if such action be brought jointly against such Clerk, and also against such Bailiff or person acting in his aid as aforesaid, then, on proof of such warrant, the Jury shall find for such Bailiff, and for such person so acting as aforesaid, notwithstanding such defect or irregularity as aforesaid: and if the verdict shall be given against the said Clerk, then, in such case, the plaintiff shall recover his costs against him, to be taxed in such manner, by the proper officer, as to include the costs such plaintiff is liable to pay to the defendant for whom such verdict shall be found as aforesaid; and in any action to be brought as aforesaid, the defendant may plead the general issue, and give the special matter in evidence at any trial to be had thereupon.

Interpretation
Clause.

XV. And be it enacted, That in construing this Act, the word "landlord" shall be understood to include the person entitled to the immediate reversion of the lands, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, shall be understood to include any one of the persons entitled to such reversion; and the word "agent" shall be understood to mean any person usually employed by the landlord in letting of lands or in the collection of the rents thereof, or specially authorized to act in any particular matter, by writing under the hand of such landlord.

In case of separa-
tion of United
Counties, Divi-
sion Courts of
Junior County to
remain Division
Courts thereof,
until it be other-
wise ordered.

XVI. And be it enacted, That when a Junior County shall separate from a Senior County or Union of Counties, the Division Courts of such United Counties as were before the separation of such Junior County from such Union of Counties wholly within the territorial limits of such Junior County shall be, remain, and continue Division Courts of such Junior County, until the Justices of the Peace of such Junior County, in General Quarter Sessions assembled, shall declare and appoint the number, limits, and extent of the divisions for Division Courts within the limits of such Junior County, and all proceedings and judgments had and taken therein until the new Division shall come in force, shall be, remain, and continue proceedings and judgments of the said Division Courts

respectively; and all such Division Courts shall be known as Division Courts of such Junior County by the same numbers respectively, as they were known while the said Division Courts were Division Courts of any such Union of Counties, until they are altered by the Justices of the Peace of such Junior County as herein provided.

XVII. And be it enacted, That whenever the Justices of the Peace of any County in Upper Canada, in General Quarter Sessions assembled, shall alter the number, limits, and extent of the Division Court within such County, all proceedings and judgments had and taken in any Division Court before the day on which such alteration is to take effect, shall be continued and prosecuted in such Division Court of such County as the Judge of the County Court of the County as aforesaid, shall be considered and are hereby declared to be proceedings and judgments of the said Division Court to which they shall be so transferred, and shall be as valid and effectual to all intents and purposes as if such proceedings and judgments had been commenced, prosecuted, and obtained in the Division Court to which they shall be so transferred by the Judge.

In what Court proceedings shall be completed when the Divisions are altered in any County.

XVIII. And whenever a Junior County shall be separated from a Union of Counties, or the proceedings of any of the Division Courts of a Senior County be transferred to any other Division Court within the said County, upon the order or direction of the Judge thereof as hereinbefore provided, the Clerks or other Officers of such Division Courts, or any of them, in whose possession shall be held any writs, papers, or documents connected with or appertaining to any such Court or the business thereof, shall deliver up the said writs, papers, or documents, or any of them, to such person or persons as the Judge of the said County Court shall order and direct; and any person or persons who shall refuse to deliver up such writs, papers, or documents, or any of them, to such person or persons as the Judge of the County Court shall order or direct, shall be liable to be proceeded against in the same manner as persons wrongfully holding papers and documents, under the provisions of the thirteenth Section of the said Upper Canada Division Courts Act of 1850.

All papers and documents in any suit transferred from one Court to another to be delivered over to such person as the Judge shall direct.

XIX. And be it enacted, That whenever, after separation of any Junior County from any Union of Counties, it shall happen that the territorial limits of any of the

Case of a Division being partly in a Senior and partly in a Junior County, when

they are separated,
provided for.

Division Courts of the former Union of Counties shall be partly within the limits of the Junior County, and partly within the limits of the Senior County, then and in such case all proceedings, processes, suits, orders, and judgments which are commenced in such Division Courts of the former Union of Counties, shall and may be continued and prosecuted to completion in the Division Court where the proceedings were originally commenced, or in such other Division Court of the said Senior County, as the Judge of the said Senior County shall order and direct; and the Clerks and other Officers of the said Division Courts of the said Senior County, in whose possession may be held any writs, papers, or documents connected with or appertaining to any such Court or the business thereof, shall deliver over the same to the Clerk of such Division Court of such County as the Judge thereof shall order and direct.

Justices to divide
Junior County at
first sittings in
Q. S.

XX. And be it enacted, That at the first sittings of the General Quarter Sessions of the Peace for any Senior County, after the issue of any proclamation for separating a Junior from a Senior County, the Justices there present shall declare and appoint the number, (not less than three, nor more than twelve,) limits and extent of the several Divisions within such County or Counties, and the time when such change of Divisions shall take effect: Provided always, that if the Justices shall not or may not have made such change of Divisions at such first Sittings of the Quarter Sessions, which may have taken place after the issuing of such proclamation, it shall be lawful for them to do so at any other Sittings of such Court, but a less number of Justices shall not have power to rescind or alter any resolution or order made by a greater number under the provision of this Section.

Proviso: but
such division
may be made at a
subsequent sitting.

Penalty on Collector neglecting
to furnish List of
persons liable to
serve as Jurors
at Division
Courts, and how
enforced.

XXI. And be it enacted, That if any Collector shall neglect or refuse, for the space of six days after demand made in writing, to furnish the Clerk of the Division in which the Township, Town, City, or Ward for which he is a Collector, is wholly or in part situate, with a correct list of the names of persons liable to serve as Jurors in the Division Court, according to the provisions of the thirty-fifth Section of the Upper Canada Division Courts Act of 1850, it shall be lawful for the said Clerk to issue a Summons to be served on the said Collector, requiring him to appear at the then next sitting of the Division Court, to show cause why he hath refused or neglected

to comply with the provisions of the said Section, and which said Summons shall be personally served on the said Collector three days at least before the sitting of the said Court, and upon proof of the service of such Summons, it shall be in the power of the said Judge holding the said Division Court, to inquire into the said neglect or refusal in a summary manner, and impose such fine upon the said Collector, not exceeding Five Pounds, or give further time to the Collector as he shall deem just, and also to make such order for the payment of the costs of the proceedings by the Collector as to the said Judge may seem meet, and all orders made by the said Judge for the payment of any fine or costs shall be enforced by such ways and means against the said Collector, as is provided for enforcing Judgment in the said Courts: Provided always, and it is hereby declared and enacted, That no person shall be compelled to serve as a juror in any Division Court who is by law exempted from serving as a Petty Juror in any of the Superior Courts of Record in Upper Canada.

Proviso.

XXII. And be it enacted, That in any Division Court, from and after the passing of this Act, in any case of debt or contract brought for a demand not exceeding Forty Shillings, in which the Plaintiff shall give sufficient evidence to satisfy the Judge that the Defendant has become indebted to such Plaintiff, but the Plaintiff shall not have evidence to establish the particular amount, it shall be lawful for the Court in its discretion to examine the Plaintiff on his oath, touching the items of such account, and to give judgment thereupon accordingly, and such Judge may also, under like circumstances, examine the Defendant as to the amount of any payment or set off in any such case, and may give judgment accordingly for such Defendant.

Judge may examine Plaintiff or Defendant in proof of certain facts in cases not over 40s.

XXIII. And be it enacted, That for and notwithstanding anything contained in the Statute passed during this present Session of Parliament, intituled, *An Act to repeal the Acts therein mentioned, and to improve the Law of Evidence in Upper Canada*, it shall and may be lawful for the Judge holding any Division Court in Upper Canada, to require the Plaintiff or Defendant in any cause or proceeding brought or taken before him in such Court, to be examined under oath (or solemn affirmation) whenever such Judge may think it conducive to the ends

Notwithstanding 16 V. c. 19, Judge may cause Plaintiff or Defendant to be examined when he shall deem it right.

of Justice, that such examination should be so had and taken.

Judgments, &c.,
of former Court
of Requests, to be
dealt with as
Judgments, &c.,
of Division Courts

XXIV. And be it enacted, That the orders, decisions, and judgments of the several Courts of Requests existing in Upper Canada, in force on the thirtieth day of November, one thousand eight hundred and forty-one, and still unsatisfied, shall be, and shall be taken to have been orders, decisions, and judgments of the several Division Courts, to the Clerks of which the books, papers, and documents connected with the business of such Courts of Requests have been delivered by order of any Judge of a District or County Court in Upper Canada, and such orders, decisions, and judgments shall be carried out and enforced in the same manner as similar proceedings in such Division Courts: Provided always, that no proceedings shall hereafter be taken by any Judge of a County Court to carry out and enforce such orders, decisions, or judgments, unless he is satisfied by the oath of the party, and such other evidence as he may require (all of which to be reduced to writing), that it is just and agreeable to equity and good conscience that the same should be enforced.

Proviso.

Additional sum,
not exceeding
£50 per annum,
may be allowed
to County Judges
for travelling
expenses.

XXV. And be it enacted, That in addition to the salary which may now by law be paid to the several County Judges in Upper Canada, a further sum, not exceeding Fifty Pounds a year, may be paid to each of such Judges, as an indemnity for his travelling expenses, to be paid in the same manner and out of the same funds as the salaries of such Judges are now payable by law; and the Governor of the Province may at any time issue his Warrant in favor of the County Treasurer for an amount to make up the deficiency of the salary and indemnity for travelling expenses of the Judge of any such County, and the amount of such Warrant shall be charged upon the Consolidated Revenue Fund of this Province:

Proviso: consid-
erations upon
which such allow-
ance shall be
fixed.

Provided always, that in fixing the amount to be allowed to each of such Judges, as an indemnity for travelling expenses, due regard shall be had to the extent, population, amount of business, and other circumstances of the several Counties and Divisions, and the remuneration for the purpose aforesaid to be paid to the said Judges, not exceeding the said sum of Fifty Pounds annually, may be increased or diminished by the authority of the Governor in Council; but nothing herein contained shall be construed to make it necessary to fix any such allow-

ance for travelling expenses to the Judge of any County, unless the Governor in Council shall be satisfied that under the provisions herein contained the same ought to be made.

XXVI. And be it enacted, That the Judge holding any Division Court in Upper Canada shall have power, if he thinks it conducive to the ends of justice to do so, to adjourn the hearing of any cause, in order to permit either party to summon or produce further testimony, or to serve or give any notice which may be necessary to enable such party to enter more fully into his defence, or for any other cause which the said Judge may deem reasonable, upon such conditions as to the payment of costs and admission of evidence or other equitable terms as to him may seem meet.

Judge may adjourn the hearing of any cause in order to allow production of further evidence, &c.

XXVII. And be it enacted, That if any Defendant in any action of debt or contract brought against him in any Division Court, shall desire to plead a tender, before action brought, of a sum of money in full satisfaction of the Plaintiff's claim, he shall be at liberty so to do, on filing his plea with the Clerk of the Court, before which he is summoned to appear, at least six days before the day appointed for the trial of the case, and at the same time paying into Court the amount of the money mentioned in such plea, and notice of such plea and payment shall be forthwith communicated by the Clerk of the said Court to the Plaintiff by post (on receiving the necessary postage), or by sending the same to his usual place of abode or business, and the said sum of money shall be paid to the Plaintiff, less Five Shillings, to be paid over to the Defendant for his trouble, in case the Plaintiff do not further prosecute his suit, and all proceedings in the said action shall be stayed, unless the Plaintiff shall, within three days after the receipt of notice of such payment, signify to the Clerk of the said Court his intention to proceed for his demand, notwithstanding such plea, and in such case the action shall proceed accordingly, and if the decision thereon shall be for the Defendant, the Plaintiff shall pay the Defendant his costs, charges, and expenses, to be awarded by the Court, and the amount thereof may be paid over to him out of the money so paid in with the said plea, or may be recovered from the Plaintiff in the same manner as any other money payable by a Judgment of the said Court: Provided always, if the decision shall be in favour of the Plaintiff, the full

How Defendant shall proceed, if he desires to plead any tender.

Proceedings if the Plaintiff do not accept such tender.

amount of the money paid into Court as aforesaid shall be applied to the satisfaction of his claim, and a Judgment may be pronounced against the Defendant for the balance due and the costs of suit, according to the usual practice of the Court in other cases.

Plaintiff's and
Defendant's
books admissible
evidence.

New trials.

Sect. 87 of 13 &
14 V. c. 53, re-
pealed, and other
provisions substi-
tuted.

Service of Process
out of the
Division.

Where the Sum-
mons under s. 51
of 13 & 14 V. c.
53 may be ob-
tained.

Clerks of Division
Courts to prepare

XXVIII. And be it enacted, That the provision of the seventy-second section of the Upper Canada Division Courts Act of 1850, so far as relates to the receiving in evidence of the Plaintiff's books in certain causes in the said Courts, to the extent of Five Pounds, shall be extended and apply to any set off or plea of payment to that amount on the part of the Defendant, whose books shall, in like manner, be received in evidence on behalf of such Defendant; and the power to grant new trials, given to the Judges of such Courts by the said section, may be exercised by such Judges, although the granting of such new trials might postpone the issuing of execution against the Defendant, in the event of Judgment being finally given against him, for a longer period than fifty days from the service of the Summons.

XXIX. And be it enacted, That the eighty-seventh section of the said Act shall be and the same is hereby repealed, and the following section shall be substituted for and read instead thereof: "And be it enacted, That any Summons or other process, which, under this Act, shall require to be served out of the Division of the Court from which the same shall have issued, may be served by the Bailiff of such or any other Division Court within the County holden under this Act, and such service shall be as valid as if the same had been made by a Bailiff of the Court out of which the Summons or Process shall have been issued within the jurisdiction of the Court for which he acts."

XXX. And be it enacted, That the summons to be issued under the ninety-first section of the said Act, may be issued from the Division Court wherein the Judgment was obtained, as well as from the Division Court within the limits of which the Defendant shall dwell or carry on his business, as is provided by such Section, and thereupon such further proceedings may be had thereon as if such Summons had issued in the manner pointed out by such Section.

XXXI. And be it enacted, That the Clerks of the several Division Courts shall prepare the proper affidavit

of service of all Summons issued out of the said Courts to the Bailiffs of such Courts respectively, stating how the same was served, the day of such service, and the distance such Bailiff necessarily travelled to effect such service, which affidavit shall be annexed to or endorsed on the Summons; and for preparing such affidavit and administering the oath to such Bailiff, such Clerk shall receive to his own use and benefit, from the Plaintiff in the suit, the sum of Nine Pence, which may be taxed as costs in the cause; Provided that nothing herein contained shall prevent the Judge of such Court, if he shall think fit, from requiring such Bailiff to be sworn in his presence, and to answer such questions as may be put to him touching such service and mileage.

affidavits relative
to service of
process.

Proviso.

XXXII. And be it enacted, That in citing, pleading or otherwise referring to the said Act passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, *An Act to amend and consolidate the several Acts now in force, regulating the practice of Division Courts in Upper Canada, and to extend the Jurisdiction thereof*, it shall in all cases whatsoever be sufficient to use the expression, "*The Upper Canada Division Courts Act of 1850*," or words, or words and figures of equivalent import; and that in citing, pleading or otherwise referring to this Act, it shall in all cases whatsoever be sufficient to use the expression, "*The Upper Canada Division Courts Extension Act of 1853*," or words, or words and figures of equivalent import; and that in pleading, citing or otherwise referring to the said Acts and any other Acts that may hereafter be passed, touching or concerning or in any wise relating to the said Division Courts, it shall in all cases whatsoever be sufficient to use the expression, *The Upper Canada Division Courts Acts*, or words of equivalent import, which shall in all cases be understood to include and refer to such and so much of the said Acts as shall be then in force touching or concerning or in any wise relating to such Courts.

Short Titles of
the several Acts
relative to
Division Courts,
Of 13 & 14 V. c.
53.

Of this Act.

Of such Acts
generally.

XXXIII. And be it enacted, that all affidavits to be used in the Division Courts, or before the Judges thereof, may be sworn before any County Judge, or any Clerk of a Division Court, or Commissioner for taking affidavits in either of the Superior Courts of Common Law in Upper Canada.

Before whom
affidavits used in
Division Courts
may be sworn.

Commencement
of this Act.

XXXIV. And be it enacted, That this Act shall commence and take effect on the first day of July, one thousand eight hundred and fifty-three.

CAP. CXXV:

AN ACT TO EXTEND THE JURISDICTION OF THE
DIVISION COURTS OF UPPER CANADA.

[Assented to 30th May, 1855.]

Preamble.

WHEREAS it is expedient to extend the jurisdiction of the several Division Courts in Upper Canada, so as to enable those Courts to try causes and pronounce Judgment therein, within the Jurisdiction of such Courts as to amount, when the defendant does not reside in the Division or County where the cause of action arose: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, as follows:

Cases may here-
after be brought
and tried in the
division in which
the cause of ac-
tion arose or in
which any Defen-
dant resides, al-
though it be not
the division or
within the
County in which
the cause of ac-
tion arose.

Exception as to
execution.

I. Any suit or cause of action cognizable in a Division Court in amount, may be entered and tried in the Court holden in the Division in which the defendant, or either of them when there are more than one, shall reside or carry on his business at the time the action is brought, notwithstanding that the defendant or defendants may at such time reside in a different County or Division, or different Counties or Divisions, from that in which the cause of action arose: and all such proceedings shall be taken for the obtaining Judgment and the recovery thereof, and in the same manner to all intents and purposes as if the defendant or defendants resided, and the cause of action arose in the same Division, except that no writ in the nature of a writ of *Fieri Facias* or attachment, shall be executed out of the limits of the County or United Counties over which the Judge of the Court from which the same issued, shall have jurisdiction:

Provided that when the defendant, or when there is more than one defendant, when one of them, resides in a County adjoining the one in which the action is brought and none of the defendants resides in the last mentioned County, the summons shall be served fifteen days, and when the defendant does not, nor does either defendant where there is more than one, reside in the County where the action is brought, or an adjoining County, the summons must be served twenty days at least before the holdings of the Court at which the cause is to be tried, and if the defendant or defendants desire to make any defence mentioned in the forty-third section of the Upper Canada Division Courts Act of 1850, he, or one of them, shall give notice thereof in writing to the Clerk of the Division Court in which the action is to be tried, in the manner provided by that section, at least five days before the holdings of such court; provided that if it shall appear to the Judge that such notice had not been given, without the wilful default of the defendant or defendants, and that injustice would be done unless such defence should be allowed, he may adjourn the hearing of the cause, or such defence thereto, or any part thereof, until the next sitting of the Court, upon such terms as to payment of costs as shall appear to him to be just.

Province as to
service of sum-
mons;

And as to defen-
dants desiring to
make any defence
under sect. 43 of
13 & 14 V. c. 53.

II. The Bailiff of any Division Court in Upper Canada may, and he is hereby authorized and required to serve and execute all summonses, writs and orders of any Division Court that shall be delivered to him for service, although the same may have been issued from a Division Court of which he is not Bailiff, and to return the same to the Clerk of the Court of which he is Bailiff: Provided that he shall not be required to travel beyond the limits of the Division of which he is Bailiff, or allowed to charge mileage for any distance travelled beyond the limits of the County in which the Court of which he is Bailiff is situated, in the service or execution of such process: And provided that nothing herein contained shall be construed so as to alter the law for the issuing or execution of attachments as provided for by the said Division Courts Act of 1850,

In certain cases
Bailiff of Division
Courts may
serve Writs, &c.,
out of their
County.

III. It shall be the duty of the Clerk of any Division Court in Upper Canada, upon the application of the plaintiff or defendant, or one of them when there are more than one, having an unsatisfied Judgment in his favor in such Court, or his agent, to prepare a transcript

Proceedings
when a Plaintiff
having obtained
a judgment in a
Division Court
in one County,
wishes to enforce
it in another

County in U. C.

of the entry of such Judgment in such Court, and to send the same to the Clerk of any other Division Court, in any other County in Upper Canada, with a certificate at the foot thereof, signed by such Clerk and attested by the seal of the said Court, stating the amount unpaid upon such Judgment, and the date at which the same was recovered, which certificate shall be addressed to the Clerk of the Division Court to whom it is intended to be delivered; and it shall be his duty upon the receipt of such transcript and certificate, to enter the transcript in a book to be kept in his office for such purpose, and the amount due on such Judgment according to such certificate: and all other proceedings shall and may be had and taken for the enforcing and collecting such Judgment in such Division Court, by the officers thereof, that can be had or taken, under the Upper Canada Division Courts Acts, upon Judgments recovered in any Division Court, for the like purpose: such Clerk shall also be bound when required, to forward all summonses to the Clerk of any other Division Court for service, and to receive the same when returned, and to receive those sent to him by any other Division Court Clerk for service, and to enter them in a book to be kept for that purpose, and to hand the same to the Bailiff for service, and to receive them from the Bailiff and return them to the Clerk from whom he received them; and also to give to any party to a suit, or his agent, copies of subphœnas for his witnesses, when requested so to do.

Clerk to forward summonses to another division for service when required, and in like manner to receive and return them.

Certain provisions of 13 & 14 V. c. 59, and 16 V. c. 177 to apply to suits under this Act.

IV. All the provisions of the Upper Canada Division Courts Acts, in reference to costs in any suit brought in any Superior Court for a cause of action cognizable in a Division Court under those Acts, shall apply to any action which shall be so brought for any cause of action cognizable in the Division Courts under this Act.

Fees to Clerks and Bailiffs increased.

V. And whereas it is desirable to increase the fees of the Clerks and Bailiffs of the said Courts: Be it enacted, that from and after this Act shall come into force, the said Clerks shall be entitled to the fees enumerated in the Schedule A hereto annexed, for the services therein mentioned, instead of the fees mentioned in the said Acts; and that the Bailiffs shall be entitled to five pence per mile instead of the mileage allowed by the said Act.

Commencement of Act.

VI. This Act shall come in force on the first day of July next after the passing thereof.

SCHEDULE.

AMENDED TARIFF OF FEES AND ALLOWANCES TO BE RECEIVED BY CLERKS OF DIVISION COURTS IN UPPER CANADA.

| | Not exceeding £5. | Exceeding £5 and not £15. | Exceeding £15. |
|--|-------------------|---------------------------|----------------|
| | £ s. d. | £ s. d. | £ s. d. |
| Entering every account and issuing Summons | 0 1 0 | 0 1 6 | 0 2 0 |
| Copy of Summons, Particulars of Demand or Set Off, each | 0 0 6 | 0 0 9 | 0 1 0 |
| Every Summons to Witnesses with any number of names | 0 0 6 | 0 0 6 | 0 0 6 |
| Entering Bailiff's returns to Summons to Defendant | 0 0 3 | 0 0 3 | 0 0 2 |
| Every copy of Subpoena when made by the Clerk | 0 0 3 | 0 0 3 | 0 0 3 |
| Entering Set Off or other Defence requiring notice to Plaintiff | 0 0 9 | 0 1 0 | 0 1 0 |
| Adjournment of any Cause | 0 1 0 | 0 1 0 | 0 1 0 |
| Entering every Judgment or order made at hearing | 0 0 9 | 0 1 0 | 0 1 3 |
| Taking confession of Judgment | 0 0 9 | 0 0 9 | 0 0 9 |
| Every Warrant Attachment or Execution | 0 1 3 | 0 1 6 | 0 2 0 |
| Every copy of Judgment to another County | 0 1 3 | 0 1 3 | 0 1 3 |
| Transcript or Certificate of Judgment for Registration in the County Registry Office | 0 1 3 | 0 1 3 | 0 1 3 |
| Entering and giving notice of Jury being required | 0 1 0 | 0 1 3 | 0 1 6 |
| Making out Summons to Jury, for each Jurymen | 0 0 6 | 0 0 6 | 0 0 6 |
| For every Affidavit taken, and drawing the same | 0 1 0 | 0 1 0 | 0 1 0 |
| Returns to Treasurer, to be paid out of the Fee Fund, including attendance on the Judge to Audit the same, each, and to be retained from the Fee Fund in his hands... | 1 0 0 | 1 0 0 | 1 0 0 |
| Every search on behalf of a person not a party to a Suit, to be paid by the Applicant | 0 0 6 | 0 0 6 | 0 0 6 |
| Every search for a party to a Suit when the proceedings are over a year old | 0 0 6 | 0 0 6 | 0 0 6 |
| Transmitting papers for service to another County or Division, in addition to the necessary Postage on transmission and return | 0 1 0 | 0 1 0 | 0 1 0 |
| Receiving papers from another County or Division for service, entering same in a book, handing the same to the Bailiff, and receiving his return, to be paid when the claim is filed or defence entered... | 0 1 0 | 0 1 0 | 0 1 0 |