

STATUTES,

OF

Upper Canada,

PASSED IN THE FIRST SESSION OF THE THIRTEENTH PROVINCIAL
PARLIAMENT:

MET AT TORONTO ON THE EIGHTH DAY OF NOVEMBER, 1836, AND PROROGUED ON THE
FOURTH DAY OF MARCH, 1837, IN THE SEVENTH YEAR OF THE REIGN OF
WILLIAM IV.

SIR FRANCIS BOND HEAD, K. C. H.

LIEUTENANT GOVERNOR.

ANNO DOMINI 1837.

CHAP. I.

AN ACT to increase the present number of the Judges of His Majesty's Court of King's Bench in this Province; to alter the Terms for the sitting of the said Court; and for other purposes therein mentioned.

[Passed 4th March, 1837.]

WHEREAS an addition to the number of Judges of the Court of King's Bench in this Province has become indispensable from the great Preamble. increase of the Population, the formation of new Districts, and the necessity of providing for the more frequent Delivery of the Gaols: *Be it therefore enacted* by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the au-

thority of an Act passed in the Parliament of Great Britain, entitled “An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty’s reign, entitled ‘An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,” and by the authority of the same, That notwithstanding any thing contained in a certain Act of the Parliament of this Province, passed in the thirty-fourth year of the Reign of His late Majesty King George the Third, entitled “An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal;” His Majesty’s Court of King’s Bench for the Province of Upper Canada, shall consist of the Chief Justice of the said Province, and of Four Puisne Judges, and that the two additional Puisne Judges to be appointed by His Majesty under the authority of this Act shall hold their Offices during their good behaviour, and subject to the same conditions as the present Judges of the said Court.

34 Geo. 3, c. 2, recited.

Two additional Judges to be appointed.

The Lieutenant Governor to appoint;

until the King’s pleasure be known.

Salaries.

To be paid by warrants on Receiver General.

Puisne Judges to sit in rotation;

II. *And be it further enacted by the authority aforesaid,* That the Governor, Lieutenant Governor, or Person Administering the Government of this Province, shall, as soon as it may be convenient after the passing of this Act, appoint two fit and proper persons to be Judges of the said Court, to hold the said Office until His Majesty’s pleasure shall be made known.

III. *And be it further enacted by the authority aforesaid,* That from and out of the Rates and Duties now levied and collected, or which hereafter may be raised, levied and collected, and remaining in the hands of the Receiver General, there be granted to His Majesty, His Heirs and Successors, the sum of Two Thousand Pounds annually, to provide for the payment of the Salaries of the said two additional Judges, the Salary of each to be One Thousand Pounds.

IV. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, from time to time, to issue his Warrant or Warrants to the Receiver General of this Province for the said sums of money by this Act granted, half yearly: and the said Receiver General shall account to His Majesty, His Heirs and Successors, for the same, through the Lords Commissioners of His Majesty’s Treasury, in such manner and form as His Majesty, His Heirs and Successors, shall be graciously pleased to direct.

V. *And be it further enacted by the authority aforesaid,* That after such appointments shall be made, the Puisne Judges of the said Court

shall sit by rotation in each Term, or otherwise as they shall agree among themselves, so that no greater number than three of such Puisne Judges shall sit at the same time in Banc for the transaction of business in Term, unless in the absence of the Chief Justice; and that it shall be lawful for any one of the said Judges, when occasion shall require, while the other Judges of the said Courts are sitting in Banc, to sit apart from them for the business of adding and justifying Special Bail; discharging Insolvent Debtors; administering Oaths; hearing and deciding upon matters on motion; and making Rules and orders in causes, and business depending in the Court, in the same manner and with the same force and validity as may be done by the Court sitting in Banc.

not exceeding three; unless in the absence of the Chief Justice.

One of the Judges to sit apart for the purposes of special bail, discharging insolvents, &c.

VI. *And whereas* it is necessary to make a new arrangement of the Terms of sitting of the Court of King's Bench, in order to admit more conveniently of two Circuits in each year; *be it therefore enacted by the authority aforesaid*, That so much of a certain Act of the Parliament of this Province, passed in the sixth year of the Reign of His late Majesty King George the Fourth, entitled "An Act to remove certain doubts with respect to the commencement of the Terms of Michaelmas in the last year, and of Hilary in this present year, and to appoint the periods of holding the several Law Terms;" and of a certain other Act of the Parliament of this Province, passed in the second year of the Reign of His present Majesty, entitled "An Act respecting the time and place of sitting of the Court of King's Bench," as appoints the Terms of sitting of the said Court, shall be and the same is hereby repealed: *Provided*, that such repeal shall not take effect until after the termination of next Easter Term, which shall commence and be holden at the same time and in the same manner, as if this Act had not been passed.

Law regulating the Terms in part repealed.

VII. *And be it further enacted by the authority aforesaid*, That from and after the termination of next Easter Term, the times of sitting of the said Court of King's Bench shall be as follows, that is to say:—Trinity Term shall begin on the second Monday in June, and end on the Saturday of the following week; Michaelmas Term shall begin on the first Monday in August, and end on Saturday of the following week; Hilary Term shall begin on the first Monday in December, and end on Saturday of the following week; and Easter Term shall begin on the first Monday in February, and end on the Saturday of the following week.

New arrangement of Terms.

Trinity Term to commence on second Monday in June.

Michaelmas Term, first Monday in August.

Hilary Term, first Monday in December.

Easter Term, first Monday in February.

VIII. *And be it further enacted by the authority aforesaid*, That the Twenty-seventh Clause of an Act of the Parliament of this Province, passed in the second year of the Reign of His late Majesty King George the Fourth, entitled "An Act to repeal part of and amend the Laws now

Section 27 of 2, Geo. 4 c. —, repealed.

Commissions of Assize and Nisi Prius may issue twice in each year.

Special Commissions may issue when necessary.

Provision in case Courts of Assize cannot be opened on the day appointed in Commission.

in force respecting the practise of His Majesty's Court of King's Bench in this Province," shall be and the same is hereby repealed; and that after the end of Trinity Term next, as appointed by this Act, it shall be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, to issue yearly and every year, in the vacation between Easter and Trinity Terms, and also in the vacation between Michaelmas and Hilary Terms, such Commissions of Assize and Nisi Prius into the several Districts, as may be necessary for the purpose of trying all Issues joined in the said Court in any suit or action, which according to the practise of the Court ought to be tried in such Districts respectively; and that in like manner Commissions of Oyer and Terminer and General Gaol Delivery, shall be issued into the several Districts of this Province, twice in the year, within the periods aforesaid: *Provided always nevertheless*, that it shall be in the power of the Governor, Lieutenant Governor, or Person Administering the Government of this Province, to issue a Special Commission, or Special Commissions, for the trial of one or more offender or offenders upon extraordinary occasions, when he shall deem it requisite or expedient that such Commission should issue: *And provided also*, that nothing contained in this Act shall render it necessary to hold any Court in any new District of this Province lately organized, or hereafter to be organized, at an earlier period than is or may be provided in the Act erecting such new District.

IX. *And whereas* it may happen that from some unforeseen casualty it may be impracticable to open a Court of Assize and Nisi Prius, or of Oyer and Terminer or General Gaol Delivery, on the very day appointed in the Commission or Precept for the opening of the same, and it would be attended with great Public inconvenience if such Court could on that account not be opened until Juries were again summoned, and a new day appointed for holding such Court: *be it further enacted by the authority aforesaid*, That whenever from illness of the Judge, or from unavoidable detention at the last Assize town, or from other casualty, it may happen that the Judge appointed to hold any Court of Assize and Nisi Prius, Oyer and Terminer or General Gaol Delivery, shall not arrive in time, or shall not be able to open such Court on the day appointed for that purpose, it shall and may be lawful for the Sheriff of the District in which such Court should be holden, or in his absence for his Deputy, after the hour of eight of the clock in the afternoon of such day, to adjourn by Proclamation all and every the Courts which shall be appointed to be opened on that day, to an hour on the following day to be by him named, and so from day to day until the Judge shall arrive to open such Court or Courts, or until he shall receive other direction from the Judge in that behalf.

X. *And be it further enacted by the authority aforesaid,* That from and out of the said rates and duties, there be granted to His said Majesty, His Heirs and Successors, a sufficient sum annually to enable His Majesty to pay to the Judges of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, the sum of Twenty-five Pounds for each time that they shall hold any such Court or Courts in any District of this Province, except the Home District, for the purpose of defraying their travelling expenses; and also a sum sufficient to enable His Majesty to pay the Clerks of Assize their usual and accustomed Fees, for the duties performed by them as Officers of the Courts of Oyer and Terminer, and General Gaol Delivery; and also to pay the Sheriff of the Home District, the sum of Eleven Shillings and eight pence per day, for attending the Terms of the Court of King's Bench at the Seat of Government.

Judges travelling expenses allowed at the rate of £25 for each District, except the Home District.

Fees of Clerks of Assize.

Sheriff of Home District to be paid for attending in Court of King's Bench during Term.

CHAP. II.

AN ACT to Establish a Court of Chancery in this Province.

[Passed 4th March, 1837.]

FOR the more perfect Administration of Justice in this Province: *Be it enacted* by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That there be constituted and established, and there is hereby constituted and established a Court of Chancery, to be called and known by the name and style of "The Court of Chancery for the Province of Upper Canada," of which Court, the Governor, Lieutenant Governor, or Person Administering the Government of this Province, shall be Chancellor. And that for the better administration of Justice in the said Court, the Judicial powers thereof, both legal and equitable, shall be exercised by a Judge, to be appointed by His Majesty under the Great Seal of the Province, and to be called and known as "the Vice Chancellor of Upper Canada;" and who shall hold his Office during good behaviour; which said Court shall be holden at the Seat of Government in the said Province, or in such other place as shall be ap-

Preamble.

Constitution of the Court of Chancery.

Judicial powers to be exercised by a Vice Chancellor.

Court to be held at Seat of Government.