

Laws of His Majesty's Province of Upper Canada, passed in the year 1837. Toronto: Robert Stanton, 1837.

7 William IV – Chapter 2

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 appointed by Proclamation of the Governor, Lieutenant Governor, or Person Administering the Government of the Province.

II. And be it further enacted by the authority aforesaid, That the said Court shall have jurisdiction, and possess the like power and authority as, by the Laws of England, are possessed by the Court of Chancery in England, in respect of the matters hereinafter enumerated; that is to say; In all cases of Fraud; In all matters relating to Trusts; In all matters relating to Executors and Administrators; In all matters relating to Mortgages; In Dower; In all matters relating to Infants, Ideots and Lunatics, and their Estates, except where special provision hath been or may hereafter be made with respect to them or either of them by any law of this Province; In all matters relating to Awards; To compel the Specific Performance of Agreements; To compel the discovery of concealed papers or evidence, or such as may be wrongfully withheld from the party claiming the benefit of the same; To prevent multiplicity of Suits and to stay proceedings in a Court of Law, prosecuted against Equity and good conscience; To decree the issue of Letters Patent from the Crown to rightful Claimants; To institute proceedings for the repeal of Letters Patent erroneously or improvidently issued; To stay Waste; In all cases of Accident; All cases of Account; And all cases relating to Co-Partnership: Provided always nevertheless, that nothing in this Act contained shall extend to supersede or interfere with the authority of the Commissioners appointed under the Laws of this Province for ascertaining the titles of any person claiming Lands as the Heir, Devisee or Assignee, of the original nominee of the Crown, in

cases where no Patent has issued for such Lands, or claiming title under such Heir, Devisee, or Assignee.

III. And be it further enacted by the authority aforesaid, That the said Court of Chancery shall have the like power, authority and jurisdiction, in all cases of claim for Alimony that is exercised and possessed by any Ecclesiastical or other Court in England.

IV. And be it further enacted by the authority aforesaid, That the Vice-Chancellor of the said Court of Chancery hereby constituted and established, shall have full power and authority from time to time, to settle and declare the form of Process, and to define the Practice and Proceedings to be observed in the said Court of Chancery, in prosecuting or defending suits therein; to regulate the amount of Fees and Disbursements to be taxed to parties, their Counsel and Solicitors, and to the Officers of the said Court; and make such other Rules and Regulations respecting the practice of the said Court, as in his opinion shall be necessary to facilitate the despatch of business and occasion the least expense.

V. Provided always, and be it further enacted by the authority aforesaid, That all Witnesses in any matter pending before the said Court of Chancery, or before any or either of the Masters thereof, shall deliver in their testimony *vivâ voce*, and be subject to examination by Counsel, in the presence of the Vice Chancellor, or of the said Masters, unless it be otherwise specially ordered by the said Vice Chancellor, or by consent of parties in the suit or controversy to which the testimony of such Witness or Witnesses relates.

VI. And be it further enacted by the authority aforesaid, That the Rules of Decision, in the Court of Chancery hereby constituted and established, shall be the same as govern the Court of Chancery in England; and it shall possess full power and authority to enforce and compell obedience to its Orders, Judgments and Decrees, to the same extent as is possessed by the Court of Chancery in England, in respect of all matters within its Jurisdiction, except when otherwise provided by the Laws of this Province.

VII. And be it further enacted by the authority aforesaid, That all monies that shall or may from time to time become subject to the control and distribution of the said Court of Chancery, shall be paid into the hands of such person or persons, Bodies Corporate or Politic, as the said Vice Chancellor shall from time to time direct, or be vested in the Public Funds of the Province, or in such other Securities as the said Vice Chancellor shall direct, in the name of the Accountant General of the said Court; and all Interest arising from such sums, so deposited or vested, shall be added to the principal sum, and be distributed therewith to the persons entitled to receive the same.

VIII. And be it further enacted by the authority aforesaid, That in the event of the temporary absence or illness of the said Vice Chancellor, or if from any cause he shall be unable to perform the duties of his Office, it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government, from time to time, during pleasure, to appoint another fit and proper person to execute the duties of Vice Chancellor.

IX. 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, under the Great Seal of the Province, to appoint during pleasure, one Register, two Masters, one Accountant, and a Sergeant-at-Arms, to the said Court of Chancery, who, when appointed, shall, in addition to the duties usually performed by the like Officers in England, be liable to perform such other duties as shall be assigned to them by the Vice Chancellor of Upper Canada.

X. And be it further enacted by the authority aforesaid, That the Vice Chancellor of the said Court, for the time being, shall and may, by one or more Commission or Commissions, under the Seal of the said Court, from time to time as need shall require, empower as many persons as he shall think fit and necessary, in the several Districts of this Province, to be Masters Extraordinary and Examiners, to take and receive all and every such affidavit and affidavits, deposition and depositions, as any person or persons shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter or thing, depending or in anywise concerning any proceedings in the said Court of Chancery.

XI. And whereas, the Law of England was at an early period introduced into this Province, and has continued to be the rule of decision in all matters of controversy relative to Property and Civil Rights, while at the same time, from the want of an equitable jurisdiction, it has not been in the power of Mortgagees to foreclose, and Mortgagors being out of possession have been unable to avail themselves of their equity of redemption, and in consequence of the want of these remedies, the rights of the respective Parties, or of their Heirs, Executors, Administrators or Assigns, may be found to be attended with peculiar equitable considerations, as well in regard to compensation for improvements, as in respect to the right to redeem, depending on the circumstances of each case, and a strict application of the Rules established in England, might be attended with injustice: Be it therefore enacted by the authority aforesaid, That the Vice Chancellor of the said Court, shall have power and authority in all cases of Mortgage, where before the passing of this Act the estate has become absolute in Law, by failure in performing the condition, to make such order and decree in respect to Foreclosure or Redemption, and with regard to Compensation for Improvements, and generally, with respect to the rights and claims of the Mortgagor and Mortgagee, and their respective Heirs, Executors, Administrators or Assigns, as may appear to him just and reasonable under all the circumstances of the case, subject however to the appeal provided by this Act.

XII. And be it further enacted by the authority aforesaid, That all Barristers and Attornies admitted to practise in the Courts of Common Law in this Province, shall be permitted and have full power and authority to practise in the Court of Chancery in this Province, as Counsel or Solicitor, respectively.

XIII. And be it further enacted by the authority aforesaid, That the Vice Chancellor of Upper Canada shall be, and he is hereby declared to be, a Member of the Court of Appeals in this Province.

XIV. And be it further enacted by the authority aforesaid, That His Majesty's Common Gaols in the several Districts of this Province, as well as all other Gaols which may be erected in any District now existing, or which may hereafter be constituted and set apart, shall be Prisons of the said Court of Chancery; and that all Sheriffs, Deputy Sheriffs, Gaolers, Constables and other Peace Officers, shall be aiding, assisting and obeying the said Court, in the exercise of its jurisdiction, whenever required so to do by the said Vice Chancellor.

XV. And be it further enacted by the authority aforesaid, That if any person or persons shall wilfully swear falsely, or make false affirmation, in writing or by parole, in any proceeding pending in the said Court of Chancery, or in any matter in which an Oath or Affirmation is required by this Act, every such person, being lawfully convicted thereof, shall be deemed guilty of wilful and corrupt perjury, and shall suffer the like punishment as by Law may now be inflicted on persons convicted of the crime of perjury.

XVI. And be it further enacted by the authority aforesaid, That Appeals shall lie from the Judgments and Decrees of the said Vice Chancellor of the said Court of Chancery, to the Governor and Council of the Province of Upper Canada, and from the Judgments of the said Governor and Council, to the King in Council in England, in like manner as Appeals now lie from the Judgments of the Court of King's Bench in this Province: Provided that security be given upon such Appeal to the satisfaction of the Vice Chancellor, in like manner as is provided with respect to Appeals from Judgments of the Court of King's Bench.

XVII. And be it further enacted by the authority aforesaid, That the Puisne Judges of the Court of King's Bench, shall be Members of the Court of Appeals in this Province, in all cases of Appeal from the Judgments and Decrees of the said Vice Chancellor, in like manner as the Chief Justice is now by Law a Member of the Court of Appeals.

XVIII. 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, by and with the advice and consent of the Executive Council, to determine and declare the Seal to be used in the said Court of Chancery, and by which its Judgments and Proceedings shall be certified and authenticated.

XIX. And be it further enacted by the authority aforesaid, That the Vice Chancellor aforesaid shall have full power and authority from time to time, to make such further and other regulations as to him shall appear necessary and expedient, to secure the safe and due performance of the duties required, or to be required of the several Officers of the said Court of Chancery, appointed under and by virtue of this Act.

XX. And be it further enacted by the authority aforesaid, That the said Vice Chancellor, and the other Officers created or to be created under or by virtue of this Act, shall take and subscribe the following Oath, before they enter upon the duties of their respective Offices, which Oath shall be administered to the Vice Chancellor by the Lieutenant Governor in Council,

for the time being, and afterwards by the said Vice Chancellor to the other Officers in open Court:—

“I, A.B. of ____, do hereby solemnly swear, that I will, according to the best of my skill, learning, ability, and judgment, well and faithfully execute and fulfil the duties of the office of Vice Chancellor of Upper Canada, (or of Master, &c. as the case may be,) without favour or affection, prejudice, or partiality, to any person or persons whomsoever—So help me God.”

XXI. And be it further enacted by the authority aforesaid, That if at any time the Honorable the Legislative Council, and House of Assembly of this Province, shall unite in an Address to His Majesty, or his Successors, to remove the Vice Chancellor of this Province from his office, it shall and may be lawful for His Majesty, or his Successors, to revoke the Commission of such Vice Chancellor, and to appoint another fit and proper person to fill the said Office: Provided always, that the Vice Chancellor shall have the same right of appeal to His Majesty, in His Privy Council, against such removal, as is by law given to the Judges of His Majesty’s Court of King’s Bench in this Province.

XXII. And whereas, it may be beneficial to facilitate the admission of a limited number of persons experienced in the practice of Courts of Equity in the United Kingdom, to practice as Solicitors in this Province: Be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the Vice Chancellor to admit persons to be Solicitors of the said Court, (not exceeding six in number,) upon their producing evidence to his satisfaction, of their having been respectively admitted and sworn as Solicitors of the High Court of Chancery in England or Ireland, and of their having been in actual practice in such Court as Solicitors: Provided always, that the Vice Chancellor shall not admit any such person to be a Solicitor, until he shall have satisfied himself in respect to his competent knowledge of the law, and practice of the High Court of Chancery in England or Ireland, and also in respect to his moral character.

XXIII. And be it further enacted by the authority aforesaid, That no higher fees shall be charged for the services hereinafter mentioned than are set down in the following table, nor shall higher fees be charged for any similar services rendered in other cases.

Plaintiff’s Costs.

In a Suit for a Specific Performance of an Agreement, attending, advising on case, and taking instructions to file Bill, Five Shillings; Letter of Notice to Defendant before filing Bill, Two Shillings and Sixpence; Instructions for Bill, Seven Shillings and Sixpence; Drawing same, One Shilling per folio; Engrossing Bill, Sixpence per folio; Paid filing Bill, Two Shillings and Sixpence; Drawing Precipe for Subpoena, and attending the same, Two Shillings; Paid for Subpoena, Four Shillings and Threepence; Service thereof, (exclusive of mileage, at the rate of Sixpence per mile,) Two Shillings; Paid for Office Copy of Answer, folio _____, Sixpence per folio; Attending for same, One Shilling and Threepence; Perusing and considering same, to see if bill fully answered by Defendant, Five Shillings; Paid for Certificate of Pleadings being filed, Two Shillings; Paid setting down Cause for hearing, Five Shillings; Drawing Precipe for Subpoena, to

hear Judgment, and attendance for same, Two Shillings; Paid for Subpoena, Four Shillings and Threepence; Service, (inclusive of mileage, at the rate of Sixpence per mile,) Two Shillings; Instructions for Brief, Five Shillings; Drawing Brief and Fair Copy, at One Shilling per folio; Counsel's Fee thereon, Two Pounds Two Shillings; Making Copy Title of Cause and Prayer of Bill for the Vice-Chancellor, Two Shillings; Attending Court when Cause heard and decree made for Plaintiff, Five Shillings; Paid Court Fees and Officers, Five Shillings; Paid for Copy Minutes of Decree, Two Shillings and Sixpence; Perusing and Examining the same, One Shilling and Threepence; Attending the Registrar with same, and to draw up Decree, One Shilling and Threepence; Paid for Decree, per folio, One Shilling; Perusing and Examining the same, One Shilling and Threepence; Attending passing, Decree with Registrar, and leaving same to be entered, Five Shillings; Paid entering same, Sixpence per folio; Postage of Letters, Ten Shillings.