

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbishire & George Desbarats, 1857.

20 Victoria – Chapter 56

An Act for further increasing the efficiency and simplifying the proceedings of the Court of Chancery. Assented to 10th June, 1857.

Whereas it is desirable further to increase the efficiency and simplify the proceedings of the Court of Chancery for Upper Canada: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- I. The said Court shall hereafter possess the like power, authority and jurisdiction as the Court of Chancery in England possesses, as a Court of Equity, to administer justice in all cases in which there may be no adequate remedy at Law; Provided always, that nothing herein shall be held to impair or diminish the jurisdiction heretofore conferred by Law on the said Court.
- II. The said Court shall also have jurisdiction to decree alimony to any wife whose husband lives separate from her without any sufficient cause, and under circumstances which would entitle her, by the law of England, to a decree for restitution of conjugal rights, such alimony to continue during such separation and until the further order of the Court.
- III. In suits hereafter instituted for alimony, the said Court or a Judge thereof may, in a proper case, order a writ of *Ne Exeat Provinciâ* to issue at any time after the bill is filed, and shall, in such order fix the amount of bail to be given by the Defendant in order to procure his discharge, and the amount so fixed shall be such sum as the Court or Judge shall think reasonable.
- IV. The said Court may grant an injunction to stay waste in a proper case, notwithstanding that the party in possession claims by an adverse legal title.
- V. The said Court may, on sufficient evidence, declare a person a lunatic without the delay or expense of issuing a commission to enquire into the alleged lunacy, except in cases of reasonable doubt; and any person who might, before the passing of this Act, traverse an inquisition, may move, against the order containing such declaration, or may appeal therefrom, as the case may require; and the right so to move or appeal shall be subject to the same rules as to time as the right to traverse now is.
- VI. The Judges of the said Court, or one or more of them, shall take circuits for the transaction of such business of the Court as it may be practicable and conducive to the interests of suitors and the convenient administration of justice to dispose of on such circuits; and for that purpose, the said Court, or one or more of the Judges thereof, may hold sittings for the purposes of taking such evidence and hearing such cause and other matters, and transacting such other business, and at such periods and at such County Towns as the said Court may from time to time see fit to direct, and appoint. And such sittings may, at the discretion of the Court or of the Judge who is to hold the same, be held in the Court

House of the County Town in which the same are appointed to be held, or in such other place in the said County Town as the Judge may select; and the Judge shall in all respects have the same power and authority as a Judge at *Nisi Prius* in regard to the use of the Court House, Gaol and other buildings or apartments set apart in the County for the more convenient administration of justice. And all Sheriffs, Deputy Sheriffs, Gaolers, Constables and other Peace Officers, shall be aiding, assisting and obeying the said Judge in the exercise of his jurisdiction under this Act, and otherwise, whenever required to do so by the said Judge or by any general or other order of the said Court.

VII. The Judges of the said Court may sit separately either at the same time or at different times for the hearing and disposing of such matters and the transaction of such business as may from time to time, in that behalf, be directed by general or other orders of the said Court; and the decrees and orders made by a single Judge in such cases shall have the force and effect of, and be deemed for all purposes to be, decrees and orders of the said Court, but shall be subject to re-hearing before the full Court or otherwise, in such cases as the Court, by general orders or otherwise, may from time to time direct, or appoint; and every Judge so sitting separately, whether at Toronto or on the circuit, shall have all the powers and authorities of the full Court, subject to such general orders as may be made in that behalf.

VIII. In all cases in which the said Court now has power and authority to order the execution of any deed, conveyance, transfer or assignment of any property real or personal, the said Court shall hereafter have power and authority to make an order or decree vesting such real or personal estate in such person or persons, and in such manner, and for such estates, as according to the present practice would be done by any such deed, conveyance, assignment or transfer; and thereupon, the said order or decree shall have the same effect both at Law and in Equity as if the legal or other estate or interest in such property had been actually conveyed by Deed or otherwise, for the same estate or interest, to the person in whom the same shall be so ordered to be vested, or in the case of a *chose in action*, as if such *chose in action* had been actually assigned to such last mentioned person.

IX. When a Bill or other proceeding in Chancery is filed in the office of a Deputy Registrar of the said Court, a certificate thereof for registration under the Act intituled, *An Act to amend the Registry Laws of Upper Canada*, may be given by such Deputy Registrar, and the registration of such certificate shall have the same effect as the registration of a like certificate by the Registrar of the said Court.

X. Every decree or order of the said Court which has already been or shall hereafter be made whereby any sum of money, or any costs, charges or expenses, shall be ordered to be paid, either at one time or in several or periodical payments or sums to any person or persons, or into the said Court or to the credit of any cause in the said Court, or otherwise, may be registered in any County registry office upon delivery to the County Registrar of a certificate of the Registrar or of a Deputy Registrar of the said Court, stating the title of the cause or matter in which such decree or order shall have been made, and the date of the decree or order, and the amount of the moneys thereby or by any report made in pursuance thereof mentioned to be paid; and such certificate shall be entered and recorded by such County Registrar in the same books and in the same manner as certificates of judgments at Law are now entered and recorded, and the registry of any such certificate shall have, to all intents and

purposes, the same effect as the registry of a judgment at Law now has, and may be discharged in the same manner as a judgment at Common Law.

XI. The said Court of Chancery, upon being satisfied by proof that some specified part of the real estate of any person ordered by any decree or order of the said Court to pay any sum or sums of money, will be sufficient security for the payment of such sum or sums of money, may direct either in the same decree or order or by a subsequent decree or order, that the charge created by any such decree or order be confined to such part of the real estate of the person or persons so liable, and that the residue of the real estate of such person shall be unaffected by such registration, and in case such restriction is contained in the original decree or order, the Registrar's or Deputy Registrar's said certificate shall state the same, and if such restriction is contained in some subsequent order, the Registrar's or Deputy Registrar's certificate thereof may be registered by either party.

XII. The said Court may, in any proceedings to be taken in the same cause in which an order or decree for the payment of money shall have been made and so registered as to become a charge on real estate, order the whole or any portion of the real estate bound, to be sold for the satisfaction of the money so charged upon it with interest and costs, without the delay or expense of a new suit being instituted to procure such sale.

XIII. In any case in which the said Court shall require any issue or issues to be tried by a jury, it shall not be necessary that any feigned action shall be commenced in a Court of Law; but such issue or issues shall be tried at the Assizes or at the sittings of any County Court in Upper Canada in the same manner as issues are tried in actions brought in the Superior Courts of law or in the County Courts, upon an office copy of the decree or order directing the trial of such issue or issues being entered for trial at such sittings or assizes, in the same manner as *Nisi Prius* records are entered, and the finding of the jury shall be endorsed upon such office copy and signed by the presiding Judge, and the same shall then be transmitted to the Registrar of the Court of Chancery; or instead of directing an issue to be tried at law, the said Court of Chancery may try any such issues by a Jury without the intervention of a Court of Common Law, and for that purpose may issue a precept or order directed to the Sheriff of such County as the Court may see fit, requiring such Sheriff to strike and summon a Jury in as nearly as may be the same manner as is provided by the Jury Acts for summoning Petit Jurors for Superior Courts of Common Law, and in such case, if either party desires or the Court or Judge directs that the trial should be by a special Jury, a special Jury shall be struck and summoned in (as nearly as may be) the same manner as for the Superior Courts of Common Law; and at any such trial, whether by a Common or special Jury, one Judge or more of the said Court of Chancery may preside.

XIV. In any suit now depending or which may hereafter be instituted in the said Court of Chancery by any mortgagee or by any person having a charge on real property, or by any judgment creditor, for the foreclosure or sale of any property, and to which suit any judgment creditor or creditors of the mortgagor or of the person liable to the charge, or of the judgment debtor may be necessary or proper parties, it shall be sufficient to serve the process of the said Court, whether the same be an office copy of the bill or an office copy of the decree or decretal order, upon the attorney of such creditor in the action at Law in which such judgment shall have been recovered, and personal service upon the

judgment creditor shall not be requisite; but it shall not be obligatory upon a plaintiff in any such suit in Chancery to serve such attorney, but such plaintiff may elect to serve the judgment creditor personally.

XV. Any absent defendant may be served with a copy of any bill or proceeding in the said Court, although without the jurisdiction of the said Court, without any application being previously made to the said Court for the allowance of such service, but no such service shall be allowed except upon proof to the satisfaction of such Court that such service has been made and upon order allowing the same.

XVI. The Masters or Deputy Registrars appointed by the said Court for outer Counties shall hereafter take for their own use all the fees of office which they respectively receive, and shall not account to the Crown for any portion of such fees.

XVII. The Judges of the said Court may from time to time appoint and in their discretion remove, an officer, to be called the Usher of the said Court, whose duty it shall be to attend upon the Court and the respective Judges thereof, during, the sittings of the said Court and Judges respectively for the transaction of business, and to execute such process of the Court as may be directed to him, and to perform such other duties as the said Court shall from time to time direct and appoint,

XVIII. The Governor in Council may, from time to time appoint an additional Clerk or additional Clerks in the said Court, when the business of the Court requires, the same and the Judges of the Court apply for such appointment, and such Clerk or Clerks shall perform such duties as the said Court shall from time to time by general orders or otherwise direct.

XIX. The persons now styled "Masters Extraordinary L. Chancery" shall hereafter cease to be so styled, and they and all persons hereafter appointed by the said Court to execute the like duties, shall be designated "Commissioners for taking Affidavits in the Court of Chancery," and shall possess and exercise the powers and discharge the duties now appertaining to the office of Master Extraordinary in Chancery by virtue of any statute or order of the Court of Chancery or usage in that behalf or otherwise; and all such Commissioners shall have power and authority to administer oaths and take affidavits in the Courts of Queen's Bench and Common Pleas and County Courts of Upper Canada; and any Commissioner for taking affidavits in either of the said Courts of Queen's Bench or Common Pleas, shall have power and authority to administer oaths and take affidavits in the said Court of Chancery; and every Commissioner heretofore appointed by any or either of the said Courts shall be deemed to be an officer of all the said Courts; and any of such Courts may revoke the commission of any such person whether the commission was issued by such Court or by one of the other Courts, and such revocation shall be notified to the other Courts and shall operate as a revocation in regard to all the Courts and for all purposes.

XX. A fee of six pence shall be paid to the Registrar or Deputy Registrar, as the case may be, on the filing of every bill and of every answer or demurrer in the said Court, in addition to any other fees and charges thereon; and such fees shall be paid in to an account to be called "The Suitors' Fee Fund Account," which account shall be kept and managed as may from time to time be directed by general or other orders of the said Court, and the sums from time to time at the credit of such account shall be applied by the said Court as may be necessary for the protection of infants and other persons not mi

juris on whose behalf proceedings may be had in the said Court or may, by the said Court, be ordered to be had in other Courts.

XXI. All general orders of the said Court of Chancery now standing unrepealed by the said Court, are hereby confirmed and declared to be to all intents and purposes as effectual as if the same were hereby specially enacted; but the same may, from time to time be suspended, repealed, varied and re-enacted by the said Court, and shall, in all respects be subject to the control and direction of the said Court and the respective Judges of the said Court, as in the case of any other general orders of the said Court which may from time to time be hereafter made by the said Court under the general or other jurisdiction thereof in that behalf; and the said Court shall from time to time make such general orders as may be necessary or proper to carry out the provisions of this Act, and may from time to time repeal, vary and amend such orders according as the said Court shall find expedient.