

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

20 Victoria – Chapter 58

**An Act to alter and amend the Law in relation to the Upper Canada County Courts. Assented to 10th June, 1857.**

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

With respect to the proceedings for the revival of Judgments:

I. The two hundred and second section of the Common Law Procedure Act of 1856, shall not extend to the County Courts in Upper Canada; and during the lives of the parties to a Judgment, or those of them during whose lives execution may at present issue within a year and a day without scire facias and within six years from the recovery of the Judgment, execution may issue without renewal thereof.

And with respect to equitable defences, Be it enacted as follows:

II. The two hundred and eighty-seventh section of the Common Law Procedure Act, 1856, and the words placed between that and the next preceding section shall not apply or extend to the County Courts in Upper Canada; and after this Act shall come into force, it shall be lawful for the Defendant or the Plaintiff in replevin in any cause in any of the said County Courts, in which if Judgment were obtained he would be entitled to relief against such Judgment on equitable grounds to plead the facts which entitle him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea, provided that such plea shall begin with the words "for defence on equitable grounds," or words to the like effect.

And with reference to Arbitration ordered at the trial, Be it enacted as follows:

III. That the Judge of every County Court at the sittings of the said Court for the trial of issues in fact, directing any reference under the enactments contained in the one hundred and fifty-sixth section of the Common Law Procedure Act, 1856, may direct such reference, if he shall see fit to do so in like manner as he has power to do under the enactments contained in the tenth and eleventh sections of the County Courts Procedure Act, 1856, and every Arbitrator so appointed at such sittings, shall be subject to the provisions of the said sections, and shall have the power expressed in the twelfth section of the last mentioned Act, and be subject to the same regulations as are mentioned and provided in regard to Arbitrators in and by the thirteenth section of the said Act.

And as to proceedings against garnishees, Be it enacted as follows:

IV. When the amount claimed as due from any garnishee shall be within the Jurisdiction of any Division Court, the order to be made in actions in the said County Courts under the enactments

contained in the one hundred and ninety-fourth section of the Common Law Procedure Act, 1856, (applied to County Courts) shall be for the garnishee to appear before the Clerk of the Division Court within whose Division the garnishee resides, at his office, at some day to be appointed in the said order by the Judge of the County Court; and the said order shall be served on such garnishee, and if the garnishee do not forthwith pay the amount due by him or an amount equal to the judgment debt, and do not dispute the debt due or claimed to be due from him to the judgment debtor, or if he do not appear before the Division Court Clerk named in the order at his office at the day appointed by such Judge, then such Judge may, on proof of the, service of the order having been made four days previous, make an order directing execution to issue out of the Division Court of the Division in which such garnishee resides, according to the amount due, and which order shall be sufficient authority for the Clerk of the said Division Court to issue execution without any previous summons or process, to levy the amount due from such garnishee, and the bailiff to whom such writ, of execution shall be directed shall be thereby authorized to levy and shall levy the amount mentioned in the said execution towards satisfaction of the judgment debt together with the costs of the proceeding to be taxed, and his own lawful fees; but if the garnishee dispute his liability, such Judge may order that the judgment creditor in the said County Court shall be at liberty to proceed against the garnishee, according to the practice of the said Division Courts, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit; and payment by or execution levied upon the garnishee in any such case, shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although the proceeding may be set aside or the judgment reversed.

And with respect to Commissions for the examination of witnesses, Be it enacted as follows:

V. When the plaintiff or defendant in any action now pending or hereafter to be brought: in any of the said County Courts, shall be desirous of procuring the testimony of any aged or infirm person resident within Upper Canada, or any person who is about to withdraw himself or herself out of the same, or who is residing without the limits of Upper Canada, it shall and may be lawful to and for any of Her Majesty's County Courts or for any Judge thereof, in vacation, upon hearing the parties upon the motion of such plaintiff or defendant, to issue one or more Commissions under the seal of any such County Court in one or more Commissioners to take the examination of such person, due notice being given to the adverse party to the end that he may cause such witnesses to be cross-examined.

VI. In case of witnesses residing without the limits of Upper Canada, such Commission or Commissions, with the examination of the witness or witnesses taken pursuant thereto returned to such County Court, with an affidavit of the due taking thereof thereto annexed sworn before and certified by the Mayor or Chief Magistrate of the City or place where the same shall or may be taken, close under the hand and seal or hands and seals of one or more such Commissioners, shall be taken *primâ facie* to have been duly executed and returned and shall be received as evidence in the said cause: Provided always, that such examination or examinations shall not be read or given in evidence in the said cause in case the deponent or deponents respectively shall be living within Upper Canada, and of sound mind, memory and understanding at the time such examination or examinations shall be offered to be given in evidence, and provided it is made to appear to the Court before which such examination or examinations is or are put in, that the same has or have not been duly taken.

VII. The several County Courts in Upper Canada may issue writs of *subpoena ad testificandum* to enforce and secure the attendance of witnesses resident within tipper Canada, and also writs of *subpœna duces tecum* to enforce the attendance of witnesses and the production of deeds and papers, and may proceed against persons who having been duly served with a subpoena shall disregard or disobey the same, with the same powers, in like manner, and by the same mode of proceeding, as belongs to and as is practised in the Superior Courts of Common Law at Toronto; Provided always that every witness shall be entitled to the same allowance as if attending under subpoena from either of the said Superior Courts.

VIII. It shall be lawful for the Judges of the Superior Courts of Common Law at Toronto, or any three of them (of whom one of the Chief Justices shall be one,) and they are hereby required to frame a table of costs for the several County Courts in Upper Canada, and from time to time to ascertain, determine, declare and adjudge all and singular the fees which shall and may be allowed to be taken by Counsel and Attorney, Sheriffs Coroners and Officers of the said Courts respectively in respect of any business to be hereafter done or transacted in the said County Courts, as well in all matters, causes and proceedings depending in the said Courts as before the Judges thereof, in all actions and proceedings within the jurisdiction of such County Courts or of the Judges thereof; and the costs and fees authorized by such table or by any amended table from time to time made, and no other or greater, shall be taken or received by any Counsel or Attorney, Sheriffs, Coroners and Officers of the said Courts, for any business by them respectively done in the said County Courts or before the Judges thereof; and the said Judges so framing or altering such table of costs may, if they shall think fit, associate with them in framing or altering such table any one of the County Court Judges already appointed or who may hereafter be appointed under and in pursuance of the power and provision contained and set forth in the tenth section of the Upper Canada Division Courts Extension Act of 1853.

IX. The Judges of the Superior Courts of Common Law at Toronto, or any three of them (of whom one of the Chief Justices shall be one) shall have power to extend and apply to the several County Courts in Upper Canada, all or any of the rules and orders made or to be made under any Statute now in force in Upper Canada, with and under any modifications they may deem necessary, and shall also have power to make such rules and orders for and specially applicable to the said County Courts as may appear to them expedient for carrying into beneficial effect the laws applicable to the said County Courts; and all rules and orders of the said Superior Courts that may hereafter be made, shall (unless the contrary be expressed therein) be in force in and apply and extend to the several County Courts in Upper Canada, and actions and proceedings therein respectively, subject to the modifications expressed in the second section of the "County Courts Procedure Act, 1856."

X. The Judges of the several County Courts in Upper Canada now holding office, as well as the Judges to be hereafter appointed, shall hold their offices during their good behaviour; Provided always that it shall be lawful for the Governor to remove any such Judge, for inability or misbehaviour when such inability or misbehaviour shall have been established to the satisfaction of the Court by the next section constituted.

XI. There is hereby constituted and established a Court which shall possess all the incidents, powers and privileges of a Superior Court of Record, and be called the Court of Impeachment, and such Court

shall be composed of the Chief Justice of Upper Canada, the Chancellor of Upper Canada, and the Chief Justice of the Court of Common Pleas, and shall hold its sittings at the City of Toronto as occasion may require; and the said Court may make such rules and orders as shall from time to time be deemed necessary

XII. In case any complaint for inability or misbehaviour in office shall be preferred against any County Judge, if the Governor shall find the same to be so sufficiently sustained and of such moment as to demand judicial investigation by the said Court of Impeachment, he shall direct such complaint and all papers and documents therewith connected, to be transmitted to the Chief Justice of Upper Canada as President of the said Court; and thereupon the said Court shall appoint a day for the meeting of the said Court, and at such sittings or at any adjournment thereof the Judges of the said Court shall proceed to the trial of the charges laid and set forth in the said complaint, and to the hearing of the parties complainant and accused, or their counsel, witnesses and proofs respectively, and shall adjudicate upon such complaint and charges, and, if such complaint be for inability, shall determine if such inability has been proved, and if it has, shall, state in the judgment of the Court the nature of the inability established, and if the same be, in the opinion of the Court, of such a character as to render it expedient to remove such judge, and if such complaint shall be for misbehaviour in office, shall determine whether such Judge be guilty or not guilty of such misbehaviour, and if not guilty, still, has the conduct of such Judge been censurable or unbecoming; and the judgment of the said Court shall be certified to the Governor in Council, and shall be final and conclusive to all intents and purposes whatsoever.

And the said Court shall have power to award reasonable costs to be paid by one party to the other, according to the nature of the adjudication, viz: If the complaint be adjudged to be false or vexatious, the accused shall be entitled to his costs of defence, if the conduct of the Judge complained against (whether he be found guilty or not guilty) be adjudged to be censurable and unbecoming, the complainant shall be entitled to his costs of prosecution.

XIII. In case of the illness or unavoidable absence of any one of the said Judges of the said Court, the Senior Puisne Judge of the Superior Courts of Common Law, at Toronto, may act instead of such Judge so ill or absent, and with the like powers as aforesaid.

XIV. In and for each of the several Counties in Upper Canada, where there shall be only one Judge in discharge of the functions of Judge in the County Court, and it shall not be deemed necessary to appoint a second or junior Judge for such County, it shall be lawful for the Governor of this Province, from time to time, to appoint during pleasure some Barrister at Law of at least three years' standing at the Bar of Upper Canada, as Deputy Judge to execute and perform the duties of Judge of the County Court in and for the County to which he is appointed at any time or times during such appointment when it may be necessary so to do by reason of the illness, unavoidable absence, or absence on leave of such Judge (or upon his demise until his successor shall be appointed,) and such Deputy Judge during such illness or absence (or vacancy by death) as aforesaid, shall and may perform and discharge all the ordinary duties and functions of the Judge so ill, absent or deceased as aforesaid, and all other acts and duties incident to the office of County Judge, as fully and effectually as the Judge of the County Court in whose place he may act might or could do; and such Deputy Judge shall have all the powers of the

Judge so ill or absent as aforesaid; and such Junior Judge and Deputy Judge need not be Justices of the Peace to entitle them respectively to preside as Chairman at the General Quarter Sessions of the Peace during the illness or absence of the Senior Judge of the County Court as aforesaid, and in case the Judge of the County Court so ill or absent as aforesaid, shall also be the Judge of the Surrogate Court for the County, such Deputy Judge shall likewise during such illness or absence as aforesaid, have all the powers and privileges and perform all the duties of such Judge, as Judge of the Surrogate Court.

XV. And every Deputy Judge so to be appointed as aforesaid, before he shall act as such, shall take an oath before some one authorized to administer the same, to the effect that he will as occasion may require, truly and faithfully according to his skill and knowledge, execute the several duties, power and trusts of the office without fear or favor; but no such Deputy Judge shall be held to be disabled from practising or carrying on the profession of the Law, whilst holding such appointment as Deputy Judge.

And whereas it is expedient to alter the periods of holding the several Courts of Quarter Sessions of the Peace and County Courts in and for the several Counties and Unions of Counties in Upper Canada, Be it enacted:

XVI. The Act passed in the seventh year of the reign of Her Majesty, intituled, *An Act to fix the period for holding the Courts of General Quarter Sessions of the Peace and District Courts in that part of the Province formerly Upper Canada*, is hereby repealed from and after the First day of August next after the passing of this Act; and from and after that day the Courts of General Quarter Sessions of the Peace in and for the several Counties and Unions of Counties in Upper Canada, and the sittings of the said County Courts for the trial of issues in fact, shall be and are hereby directed to be held on the second Tuesday in the months of March, June, September and December in each year, respectively, any law or usage to the contrary thereof in anywise notwithstanding; and it shall be lawful for the said Courts at their sittings in the month of March in each year to nominate and appoint a High Constable and a sufficient number of persons to serve the office of constable for their several Counties.

XVII. From and after the First day of August next, the third section of the Act passed in the ninth year of Her Majesty's Reign, intituled, *An Act to amend an Act parsed during the last Session of this Parliament, intituled, An Act to amend, consolidate and reduce into one Act the several Laws now in force, establishing or regulating the practice of District Courts in the several Districts in that part of this Province formerly Upper Canada*, is hereby repealed, and after the said first day of August next, the several County Courts in Upper Canada, shall respectively hold Four Terms in each year, which shall severally commence on the First Monday in January, April, July and October in each year, and shall end on the Saturday of the same week.

XVIII. It shall be lawful for each of the Judges of the several County Courts during each Term, to appoint one or more days within a fortnight next ensuing the last day of such Term, on which he will give Judgment; and the said Judges respectively, on the days appointed, may sit as of Term, for the purpose only of giving Judgment and of making rules and orders in matters which have been moved and argued in such Courts; and all Judgments, Rules and Orders which shall be pronounced and made on such days in pursuance of the authority hereby given, shall have the same effect to all intents and purposes as if they had been pronounced or made in term time.

XIX. From the time when this Act shall commence and; take effect, the ninth, thirty-third, thirty-fourth, forty-fourth, fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-fifth and fifty-sixth sections of an Act of the Parliament of this Province passed in the eighth year of Her Majesty's Reign, intituled, *An Act to amend, consolidate and reduce into one Act the several laws now in force establishing or regulating the practice of District Courts in the several Districts in that part of this Province formerly Upper Canada*, also so much of the Schedule of fees annexed to the said Act as applies to "fees to the Attorney," and the whole of an Act of the Parliament of this Province passed in the ninth year of Her Majesty's Reign, chaptered 36 and intituled, *An Act to amend an Act passed in the last sessional this Parliament, intituled, An Act to amend, consolidate and reduce into one Act the several laws now in force establishing or regulating the practice of District Courts in the several Districts of that part of this Province formerly Upper Canada*, together with all other Acts or parts of Acts of the Parliament of Upper Canada or of this Province, at variance or inconsistent with the provisions of this Act, shall be and the same are hereby repealed, except so far as the said Acts or any of them, or any thing therein contained, repeal any former Act or Acts or any part thereof, all which last mentioned Act or Acts shall remain and continue so repealed, and excepting also so far as the said Acts or parts of Acts hereby repealed, and the provisions thereof or oi any of them, shall and may be necessary for supporting, continuing and upholding any writs that shall have been issued or proceedings that shall have been had or taken before the commencement of this Act, and any further proceedings taken or to be taken thereon.

XX. The provisions of this Act shall come into operation on the first day of July in the year of Our Lord one thousand eight hundred and fifty-seven, except the provisions contained in the eighth and ninth sections which shall come into operation on the passing of this Act.

XXI. In citing this Act in any instrument, document or proceeding, it shall be sufficient to use the expression "the County Courts Amendment Act 1857."