

which any such person may be committed as aforesaid, to receive such person and him safely to keep and detain in such Common Gaol under his custody until discharged in due course of law, or bailed in cases in which bail may by law be taken.

Certain Buildings to be deemed Gaols of such Provisional Districts.

X. And be it enacted, That all such buildings and erections as may be provided by the Commissioners of Public works by direction of the Governor in Council for the holding of Courts and for the safe custody of Prisoners in such Provisional Judicial Districts as aforesaid, shall for the time being be deemed the Court Houses and Gaols of each of such Provisional Districts respectively.

Any persons may be returned as Jurors in the said Provisional Districts.

XI. And be it enacted, That any Sheriff or other officer of any kind, whose duty it is or who may be legally required to summon and return Jurors or persons to serve as Jurors, within any of the said Provisional Districts, shall and may select, choose and return for such Jurors any of the inhabitants of such Provisional Districts respectively, without reference to the mode prescribed for selecting, balloting or returning such Jurors by the Upper Canada Jurors Acts, or any other Act or law which limits the choice of such officer or person in the selection of Jurors ; Provided always, that Juries *de medietate lingue*, and Juries of a like nature, may be ordered by the Court before which any cause or prosecution in any of the said Provisional Districts may be pending.

Proviso.

Public Act.

XII. And be it enacted, That this Act shall be a Public Act.

## C A P . C L X X V I I .

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.]

Preamble.

Act 13 & 14 V. c. 53, cited. Short title assigned to said Act.

WHEREAS by an 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*, and in this Act called "The Upper Canada Division Courts Act of 1850," 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 chattels, 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

the manner hereinafter mentioned: 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, That the jurisdiction of the several Division Courts in Upper Canada shall extend to, and the Judges of such Courts shall (in addition to the powers and jurisdiction conferred upon them by the said Act,) have power, jurisdiction and authority to hold plea of, all personal actions where the debt or damages claimed is not more than Ten Pounds; Provided always, that the said Division Courts shall not have cognizance of any action for any gambling debt, nor for spirituous or malt liquors drunk in a tavern or ale house, or of any action brought on any Note of Hand the consideration of which was any such debt, or for liquors drunk as aforesaid; or of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, custom or franchise shall be in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, or of any action for malicious prosecution, or for any libel or slander, or for criminal conversation or seduction, or breach of promise of marriage; and the several powers and provisions of the said Upper Canada Division Courts Act of 1850, and all Rules, Orders and Regulations which have been or shall be made in pursuance of the same or of this Act, shall extend to all debts, damages and demands which may be sued for in the said Courts under the extended jurisdiction given by this Act, and to all proceedings and judgments for the recovery of the same, or otherwise in relation thereto, respectively, as fully and effectually to all intents and purposes as the same respectively are now, or may be applicable to the claims and demands within the present jurisdiction of the said Courts.

Additional powers conferred on Division Courts.

Proviso: Division Courts not to have cognizance of certain actions.

Powers and provisions of 13 & 14 V. c. 53, extended to all cases cognizable by Division Courts.

II. And be it enacted, That this Act and the said recited Act shall be read and construed as one Act, as if the several provisions in the said recited Act, not inconsistent with the provisions of this Act, were repeated and re-enacted in this Act.

The said Act and this Act to be construed as one.

III. And be it enacted, That there shall be payable on every proceeding in the said Division Courts, and to the Clerks and Bailiffs of the Courts, such fees as are set down in the Schedule to the said recited Act, marked A: and if the fees on such proceedings shall not be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, the payment thereof may be enforced by order of the Judge by such ways and means as any debt or damages ordered to be paid by the Court can be recovered:

Fees payable to be those in Schedule to 13 & 14 V. c. 53.

Payment how enforced.

Provided

Proviso :  
Judge may in-  
crease the fee  
in certain  
cases.

Provided always, that it shall be lawful for the Judge of every Division Court, at the trial of any cause in the said Court, to increase the fee for hearing any defended cause to a sum not exceeding Ten Shillings, whether the debt, damages or subject matter of the action is for a sum under or over Ten Pounds, or for the sum of Ten Pounds.

Judge may,  
with consent  
of parties,  
refer any case  
to arbitration ;  
Award to be  
entered as a  
judgment.

IV. And whereas it is desirable to extend the law of Arbitration to Division Courts, Be it therefore enacted, That the Judge holding any Division Court may, in any case, with the consent of both parties to the suit, or of their agents, order the same, with or without other matters within the jurisdiction of the Court, in dispute between such parties, to be referred to arbitration to such person or persons, and in such manner and on such terms as he shall think reasonable and just ; and such reference shall not be revocable by either party, except by consent of the Judge ; and the award of the Arbitrator or Arbitrators or Umpire, shall be entered as the judgment in the cause, and shall be as binding and effectual, to all intents and purposes, as if given by the Judge : Provided that the Judge may, if he shall think fit, on application to him within fourteen days after the entry of such award, set aside such award so given as aforesaid, or may with the consent of both parties, as aforesaid, revoke the said reference and order another reference to be made in the manner aforesaid.

Proviso :  
Award may  
be set aside by  
the Judge, for  
cause.

How wit-  
nesses may  
be compelled  
to appear be-  
fore Arbitra-  
tors and give  
evidence.

V. And be it enacted, That when any reference shall have been made by any such order as aforesaid, either of the parties to the suit may obtain from the Clerk of any Division Court a Summons requiring the attendance before the said Arbitrator or Arbitrators, of any witness resident within the County, or served with Subpœna therein, with or without a clause requiring the production of books, papers and writings in his possession or control, and that the method of compelling the attendance of a witness before the Arbitrator or Arbitrators or Umpire upon such reference, shall be in the manner prescribed by the forty-eighth Section of the said Upper Canada Division Courts Act of 1850 ; and parties making default in attendance, or refusing or neglecting without sufficient cause, to produce any books, papers or writings required by such Summons to be produced, may be proceeded against and punished, in the manner provided for 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.

Punishment of  
witnesses  
making de-  
fault.

Arbitrators  
may adminis-  
ter oath to par-  
ties or wit-  
nesses.

False swear-  
ing to be per-  
jury.

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 tenement 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 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.

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.

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,

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.

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 costs 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 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 his 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

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

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.

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.

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

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

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.

Fee.

Proviso:

Jurisdiction of Judge not affected.

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.

XII. And whereas there is no provision in the said Upper Canada Division Courts Act of 1850, requiring 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.

Clerks of Division Courts to make out, yearly, lists 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.

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

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.

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 any thing 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 acting 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.

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 Defendant.

XV. And be it enacted, That in construing this Act, the word "landlord" shall be understood to include the person entitled

Interpretation Clause.



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 separation of United Counties, Division Courts of Junior County to remain Division Courts thereof until it be otherwise 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.

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

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 Courts within such County, all proceedings and judgments had and taken in any Division Court before the day when 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 in which such alteration is made shall order and direct; and all proceedings and judgments which shall be continued and prosecuted in any such Division Court, by the order or direction of the Judge of the County Court 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.

All papers and documents in any suit transferred from one Court to

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

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.

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 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 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.

Case of a Division being partly in a Senior and partly in a Junior County when they are separated, provided for.

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.

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

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

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,

Penalty on Collector neglecting to furnish List of

persons liable to serve as Jurors at Division Courts, and how enforced.

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 said 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.

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

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.

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

XXIII. And be it enacted, That for and notwithstanding any thing 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 of Justice, that such examination should be so had and taken.

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.

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

Proviso.

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 all times 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: 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 allowance 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.

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

Proviso: considerations upon which such allowance shall be fixed.

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 so to do, 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

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

payment of costs and admission of evidence or other equitable terms as to him may seem meet.

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

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 cause, 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 favor of the Plaintiff, the full 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.

Proceedings if the Plaintiff do not accept such tender.

Plaintiff's & Defendant's Books admissible evidence.

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.

New trials.

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 be required 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."

Sec. 87 of 13 & 14 V. c. 53, repealed, and other provisions substituted.

Service of Process out of the Division.

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.

Where the summons under s. 91 of 13 & 14 V. c. 53, may be obtained.

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.

Clerks of Division Courts to prepare 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, intitled, *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 be hereafter passed, touching or concerning or in any wise relating

Short Titles of the several Acts relative to Division Courts;

Of 13 & 14 V. c. 53.

Of this Act.

Of such Acts generally.

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.

Before whom affidavits used in Division Courts may be sworn.

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.

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.

### C A P. C L X X V I I I .

An Act to facilitate the performance of the duties of Justices of the Peace, out of Sessions, in Upper Canada, with respect to Summary Convictions and Orders.

[Assented to 14th June, 1853.]

Preamble.

Where an information is laid or a complaint made before a Justice of the Peace that a party has committed an offence, such Justice may issue a Summons to such party.

WHEREAS it would conduce much to the improvement of the administration of justice within that part of this Province called Upper Canada, so far as respects Summary Convictions and Orders to be made by Her Majesty's Justices of the Peace therein, if the several Statutes and parts of Statutes relating to the duties of such Justices in respect of such Summary Convictions and Orders were consolidated, with such additions and alterations as may be deemed necessary, and that such duties should be clearly defined by positive enactment: 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, That in all cases where an Information shall be laid before one or more of Her Majesty's Justices of the Peace for any Territorial Division in Upper Canada, that any person has committed or is suspected to have committed any offence or act within the jurisdiction of such Justice or Justices of the Peace, for which he is liable by law upon a Summary Conviction for the same before a Justice or Justices of the Peace, to be imprisoned or fined or otherwise punished; and also in all cases where a complaint shall be made to any such Justice or Justices, upon which he or they have or shall have authority by law to make any Order for the payment of money