

If the money has been made but not paid over, it shall be paid to Appellant.

II. If, at the time of the receipt by such Sheriff of such *fiat* or a copy thereof, the money shall have been made or received by him under any execution in such original cause as aforesaid, but not paid over by him to the party who issued the execution, his Attorney or Agent, it shall be lawful for the party or parties so appealing and desiring to stay such execution, to demand back from such Sheriff the amount he may have made or received under such execution, or so much thereof as may be in his hands not paid over as aforesaid, and in default of payment by the said Sheriff upon such demand, to recover the same from him in an action for money had and received.

Commencement of Act: It shall not affect suits now pending.

III. This Act shall take effect from and after the first day of June next after its passing, and shall not in any manner affect any suit at Law or in Equity instituted before its passing.

C A P . C X X I V .

An Act to amend the law as to Dormant Equities.

[Assented to 30th May, 1855.]

Preamble.

WHEREAS by the Act to establish a Court of Chancery in Upper Canada, it was provided that the rules of decision in the said Court should be the same as governed the Court of Chancery in England; And whereas in regard to Mortgages under which, before the passing of the said Act, the estate had become absolute in law by failure in performing the condition, the said Act, after reciting that from the want of an equitable jurisdiction, a strict application to such cases of the rules established in England might be attended with injustice, did in effect enact that the Court so established should have power and authority to make such Order and Decree as to the said Court might appear just and reasonable under all the circumstances of the case, subject to the appeal thereby provided; And whereas in regard to claims upon or interests in real estate, arising before the passing of the said Act, it is just to restrict the future application of the said rules of decision to cases of fraud, and in regard to other cases, it is expedient to extend thereto in manner hereinafter provided, the power and authority so given as aforesaid to the said Court in cases of Mortgages: 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, as follows:

Title, &c., at Law without

I. No title to or interest in real estate which is valid at law, shall henceforward be disturbed or otherwise affected in Equity by

by reason of any matter or upon any ground which arose before the passing of the said Act, or for the purpose of giving effect to any equitable claim, interest or estate, which arose before the passing of the said Act, unless there has been actual and positive fraud in the party whose title is sought to be disturbed or affected.

fraud not to be disturbed by equitable claims which arose before the establishment of the Court of Chancery.

II. In regard to any other equitable claim or right, which may have arisen before the passing of the said Act, the said Court shall have power and authority (subject to appeal) to make such Order and Decree as may appear to the said Court just and reasonable, under all the circumstances of the particular case, provided that the suit is brought within twenty years from the time when the right or claim arose; and no further time shall be allowed for bringing any such suit, notwithstanding any disability of the claimant or of any one through whom his right accrued.

Court may make orders in other cases of claims arising.

Proviso.

III. This Act shall not apply to any such claims or rights as aforesaid for which suits may now be pending in the said Court.

Act not to affect pending suits.

C A P . C X X V .

An Act to extend the Jurisdiction of the Division Courts of Upper Canada.

[Assented to 30th May, 1855.]

WHEREAS it is expedient to extend the Jurisdiction of the several Division Courts in Upper Canada, so as to enable those Courts to try causes and pronounce Judgment therein, within the Jurisdiction of such Courts as to amount, when the defendant does not reside in the Division or County where the cause of action arose: 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, as follows:

Preamble.

I. Any suit or cause of action cognizable in a Division Court in amount, may be entered and tried in the Court holden in the Division in which the cause of action arose, or in the Court holden in the Division in which the defendant, or either of them when there are more than one, shall reside or carry on his business at the time the action is brought, notwithstanding that the defendant or defendants may at such time reside in a different County or Division, or different Counties or Divisions, from that in which the cause of action arose: and all such proceedings shall be taken for the obtaining Judgment and the recovery

Cases may hereafter be brought and tried in the division in which the cause of action arose or in which any Defendant resides, although it be not the division or with-