

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.]

**W**HEREAS 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-

in the County in which the cause of action arose.

Exception as to execution.

Proviso as to service of summons ;

And as to Defendants desiring to make any defence under sect. 43 of 13 & 14 V. c. 53.

In certain cases Bailiff of Division Courts may serve Writs, &c., out of their County.

Proceedings when a Plaintiff having obtained a judgment in a Division Court in one County, wishes to enforce it in another County in U. C.

recovery thereof, and in the same manner to all intents and purposes as if the defendant or defendants resided, and the cause of action arose in the same Division, except that no writ in the nature of a writ of *Fieri Facias* or attachment, shall be executed out of the limits of the County or United Counties over which the Judge of the Court from which the same issued, shall have jurisdiction: Provided that when the defendant, or when there is more than one defendant, when one of them, resides in a County adjoining the one in which the action is brought and none of the defendants resides in the last mentioned County, the summons shall be served fifteen days, and when the defendant does not, nor does either defendant where there is more than one, reside in the County where the action is brought, or an adjoining County, the summons must be served twenty days at least before the holding of the Court at which the cause is to be tried, and if the defendant or defendants desire to make any defence mentioned in the forty-third section of the Upper Canada Division Courts Act of 1850, he, or one of them, shall give notice thereof in writing to the Clerk of the Division Court in which the action is to be tried, in the manner provided by that section, at least five days before the holding of such Court; provided that if it shall appear to the Judge that such notice had not been given, without the wilful default of the defendant or defendants, and that injustice would be done unless such defence should be allowed, he may adjourn the hearing of the cause, or such defence thereto, or any part thereof, until the next sitting of the Court, upon such terms as to payment of costs as shall appear to him to be just.

II. The Bailiff of any Division Court in Upper Canada may, and he is hereby authorized and required to serve and execute all summonses, writs and orders of any Division Court that shall be delivered to him for service, although the same may have been issued from a Division Court of which he is not Bailiff, and to return the same to the Clerk of the Court of which he is Bailiff: Provided that he shall not be required to travel beyond the limits of the Division of which he is Bailiff, or allowed to charge mileage for any distance travelled beyond the limits of the County in which the Court of which he is Bailiff is situated, in the service or execution of such process: And provided that nothing herein contained shall be construed so as to alter the law for the issuing or execution of attachments as provided for by the said Division Courts Act of 1850.

III. It shall be the duty of the Clerk of any Division Court in Upper Canada, upon the application of the plaintiff or defendant, or one of them when there are more than one, having an unsatisfied Judgment in his favor in such Court, or his agent, to prepare a transcript of the entry of such Judgment in such Court, and to send the same to the Clerk of any other Division Court, in any other County in Upper Canada, with a certificate at the foot thereof, signed by such Clerk and attested by the

seal

seal of the said Court, stating the amount unpaid upon such Judgment, and the date at which the same was recovered, which certificate shall be addressed to the Clerk of the Division Court to whom it is intended to be delivered; and it shall be his duty upon the receipt of such transcript and certificate, to enter the transcript in a book to be kept in his office for such purpose, and the amount due on such Judgment according to such certificate; and all other proceedings shall and may be had and taken for the enforcing and collecting such Judgment in such Division Court, by the officers thereof, that can be had or taken, under the Upper Canada Division Courts Acts, upon Judgments recovered in any Division Court, for the like purpose: such Clerk shall also be bound when required, to forward all summonses to the Clerk of any other Division Court for service, and to receive the same when returned, and to receive those sent to him by any other Division Court Clerk for service, and to enter them in a book to be kept for that purpose, and to hand the same to the Bailiff for service, and to receive them from the Bailiff and return them to the Clerk from whom he received them; and also to give to any party to a suit, or his agent, copies of subpoenas for his witnesses, when requested so to do.

Clerk to forward summonses to another division for service when required, and in like manner to receive and return them.

IV. All the provisions of the Upper Canada Division Courts Acts, in reference to costs in any suit brought in any Superior Court for a cause of action cognizable in a Division Court under those Acts, shall apply to any action which shall be so brought for any cause of action cognizable in the Division Courts under this Act.

Certain provisions of 13 & 14 V. c. 53, and 16 V. c. 177 to apply to suits under this Act.

V. And whereas it is desirable to increase the fees of the Clerks and Bailiffs of the said Courts: Be it enacted, that from and after this Act shall come into force, the said Clerks shall be entitled to the fees enumerated in the Schedule A hereto annexed, for the services therein mentioned, instead of the fees mentioned in the said Acts; and that the Bailiffs shall be entitled to five pence per mile instead of the mileage allowed by the said Act.

Fees to Clerks and Bailiffs increased.

VI. This Act shall come into force on the first day of July next after the passing thereof.

Commencement of Act.

## SCHEDULE.

(A.)

AMENDED TARIFF OF FEES AND ALLOWANCES to be received by  
Clerks of Division Courts in Upper Canada.

	Not exceed- ing £5.			Exceeding £5 and not £15.			Exceeding £15.		
	£.	s.	d.	£	s.	d.	£	s.	d.
Entering every Account and issuing Summons.....	0	1	0	0	1	6	0	2	0
Copy of Summons, Particulars of Demand or Set Off, each.....	0	0	6	0	0	9	0	1	0
Every Summons to Witnesses with any number of names.....	0	0	6	0	0	6	0	0	6
Entering Bailiff's returns to Summons to Defendant.....	0	0	3	0	0	3	0	0	3
Every copy of Subpœna when made by the Clerk.....	0	0	3	0	0	3	0	0	3
Entering Set Off or other Defence requiring notice to Plaintiff.....	0	0	9	0	1	0	0	1	0
Adjournment of any Cause.....	0	1	0	0	1	0	0	1	0
Entering every Judgment or order made at hearing.....	0	0	9	0	1	0	0	1	3
Taking confession of Judgment...	0	0	9	0	0	9	0	0	9
Every Warrant, Attachment or Execution.....	0	1	3	0	1	6	0	2	0
Every copy of Judgment to another County.....	0	1	3	0	1	3	0	1	3
Transcript or Certificate of Judgment for Registration in the County Registry Office.....	0	1	3	0	1	3	0	1	3
Entering and giving notice of Jury being required.....	0	1	0	0	1	3	0	1	6
Making out Summons to Jury, for each Jurymen.....	0	0	6	0	0	6	0	0	6
For every Affidavit taken, and drawing the same.....	0	1	0	0	1	0	0	1	0
Returns to Treasurer, to be paid out of the Fee Fund, including attendance on the Judge to Audit the same, each, and to be retained from the Fee Fund in his hands..	1	0	0	1	0	0	1	0	0
Every search on behalf of a person not a party to a Suit, to be paid by the Applicant.....	0	0	6	0	0	6	0	0	6
Every search for a party to a Suit when the proceedings are over a year old.....	0	0	6	0	0	6	0	0	6
Transmitting papers for service to another County or Division, in addition to the necessary Postage on transmission and return.....	0	1	0	0	1	0	0	1	0
Receiving papers from another County or Division for service, entering same in a book, handing the same to the Bailiff, and receiving his return, to be paid when the claim is filed or defence entered.	0	1	0	0	1	0	0	1	0