

The Provincial Statutes of Canada, passed in the year 1843. Kingston: Stewart Derbishire & George Desbarats, 1843.

7 Victoria – Chapter 65

An Act for better securing the Independence of the Legislative Assembly of this Province.

9th December, 1843. — Presented for Her Majesty's Assent, and reserved "for the signification of Her Majesty's pleasure thereon."

17th April, 1844. — Assented by Her Majesty, in Privy Council.

25th May, 1844. — The Royal Assent signified by the Proclamation of His Excellency Sir Charles Theophilus Metcalfe, Governor General.

Whereas it is expedient to provide by legislative enactments for better securing the independence of the Legislative Assembly of this Province; 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, 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 from and after the end of the present Parliament, all and every the persons, or public officers hereafter mentioned and described in this section, shall be incapable of and disqualified from being elected or returned to be members of the Legislative Assembly of this Province, nor shall any such person or persons, or public officer or officers be competent to sit or vote in the said Legislative Assembly, that is to say, all Justices or Judges of any Court of Queen's Bench, or of King's Bench, the Vice Chancellor of Upper Canada, the Judge of the Court of Vice Admiralty in Lower Canada, the Judge of the Court of Escheats, all District Judges or Circuit Judges, all Commissioners of Bankrupts, the Official Principal of the Court of Probate in Upper Canada, the Surrogates of the several Surrogate Courts of Probate in the same, all Recorders of Cities; all Sheriffs, all Prothonotaries or Clerks of any Court of Queen's Bench or of King's Bench, or of any District or Circuit Court, the Clerks of the Courts of Appeals, all Clerks of the Peace, the Registrar of the Court of Vice Admiralty in Lower Canada, all Clerks of the Crown, all Clerks of Commissioners of Bankrupts, the Register, Master or Accountant of the Court of Chancery in Upper Canada, the Register of the Court of Probate in the same, the Clerk of the Heir and Devisee Commissioners in the same; all Registrars of Deeds and Titles to or claims and incumbrances upon real property, either in Upper or Lower Canada) all Officers of the Customs and Excise, and all other Officers or persons employed in the collection of the Revenue arising from duties or from tolls for the use of public works, including the Naval Officer at the Port of Quebec; the Commissioner for the management of the Jesuits' estates, the resident Agents for the sale of Public Lands, and the Agents for the sale of Timber Licences; the Adjutants General of Militia, and all Clerks employed under them, and receiving annual salaries; the Clerk of the Executive Council, and all subordinate Clerks or Officers of the said Council receiving annual salaries; all Clerks in the Office of the Provincial Registrar receiving annual salaries; all subordinate Clerks receiving annual salaries, in the Offices of the Secretaries for Upper or Lower Canada, of the Commissioner of Crown Lands, of the Receiver General, or of the Inspector General of Public

Provincial Accounts; (excepting always the Assistant Secretaries for Upper and Lower Canada, respectively, the Assistant Commissioner of Crown Lands and the Assistant Inspector General of Public Provincial Accounts;) all subordinate Clerks receiving annual salaries in the Office of the Surveyor General; all Officers of the Board of Works, or persons employed by the said Board while so employed; all Contractors with the said Board or with any other Department of the Provincial Government for performing any work, or supplying any thing required for the Public Provincial service, or to be paid for out of the public moneys of the Province, during the subsistence of such contracts; the Postmasters at Quebec, Montreal and Three Rivers and Sherbrooke, and at any City or Town in Upper Canada incorporated or to be hereafter incorporated, and divided into wards; all Physicians, Officers and persons employed in the Quarantine service at Quebec or at Grosse-Isle, and paid out of the public moneys of the Province, while so employed; all Physicians or Surgeons attending any common Gaol, Penitentiary, Lunatic Asylum, Hospital or other Public Institution, and receiving annual salaries or allowances out of the public moneys of the Province; all Harbour Masters, or Deputy Harbour Masters, and the Master and Registrar of the Trinity House of Quebec or Montreal, and all persons employed under either of the said Trinity Houses and receiving annual salaries or allowances; Her Majesty's Printer and Law Printer, in and for this Province; the Translator of the Laws: Provided always, that nothing in the foregoing enactment shall extend or be construed to extend to any person who being a Member of the Executive Council, shall also fill any of the following offices, that is to say, of Receiver General, Inspector General, Secretary of the Province, Commissioner of Crown Lands, Attorney General, Advocate General, Solicitor General, Chairman of the Board of Works, Registrar of the Province or Surveyor General.

II. And be it enacted, that if after the passing of this Act, any one of the persons or public officers mentioned and described in the foregoing section, and thereby disabled from sitting or voting, or declared to be incompetent to sit or vote in the Legislative Assembly of this Province, shall nevertheless be elected or returned as a member to serve in the said Legislative Assembly, either in the present Parliament or in any Parliament hereafter to be holden, his election and return shall be and the same are hereby enacted and declared to be null and void to all intents and purposes whatsoever; and if any such person or public officer, disabled from, sitting or voting, or declared by this Act to be incompetent to sit or vote in the said Legislative Assembly, who shall or may be elected after the passing of this Act, shall presume to sit or vote in the said Legislative Assembly, as a member thereof, either in the present Parliament, or in any Parliament to be hereafter holden, such person or public officer, so sitting or voting, shall forfeit the sum of five hundred pounds, currency, for each and every day that he shall have been so sitting or voting in the said Legislative Assembly; the said sum to be recovered by any person who shall sue for the same, by action of debt, bill, plaint or information in and before any Court of competent civil jurisdiction in this Province.

III. And be it enacted, that from and after the passing of this Act, all and every the persons or public officers hereinafter mentioned and described, that is to say, all Justices or Judges of any Court of Queen's Bench or of King's Bench, the Vice Chancellor of Upper Canada, the Judge of the Court of Vice Admiralty for Lower Canada, the Judge of the Court of Escheats, all District Judges or Circuit Judges, and all Clergymen of the Church of England or Scotland, and all Priests and Ministers, either according to the rites of the Church of Rome, or under any other form or

profession of religious faith or worship, all Commissioners of Bankrupts, the Official Principal of the Court of Probate in Upper Canada, and the Surrogates of the several Surrogate Courts of Probate in the same, and all Recorders of Cities, all Officers of the Customs, and all Officers employed in the collection of any duties payable to Her Majesty in the nature of duties of Excise, shall be incapable and incompetent to vote at any Election of a member or members to serve in the said Legislative Assembly, either in the present Parliament or in any Parliament to be hereafter holden; and if after the passing of this Act, any such person or public officer mentioned and described in this section, shall vote at any such election, he shall forfeit thereby the sum of five hundred pounds, current money of this Province; the said sum to be recovered by such person as shall sue for the same, by action of debt, bill, plaint or information, in and before any Court of competent civil jurisdiction in this Province, and his vote shall be null to all intents and purposes whatsoever.

IV. And whereas it is expedient, in certain cases, to avoid the election, and to vacate the seats of persons elected or to be elected to serve as members in the said Legislative Assembly of this Province; Be it therefore enacted, that if any person who, before the passing of this Act, shall have been, or shall be after the passing of this Act, elected and returned as a member to serve in the said Legislative Assembly, either in the present Parliament or in any Parliament hereafter to be holden, shall accept from the Crown any office of profit to which an annual salary or any allowance, fees or emoluments in lieu of an annual salary, are attached, his election shall thereby become void, and the seat of such member in the said Legislative Assembly shall thereafter become and be vacant, and a writ shall forthwith issue for a new election, as if such person so accepting such office were naturally dead: Provided always, that such person shall nevertheless be as capable of being re-elected to serve as a member of the said Legislative Assembly during the same or any ensuing Parliament, as if his election had not been made void and his seat become vacant as aforesaid, provided the office he shall hold be not one of those by holding which he shall, under the foregoing enactments of this Act, be disqualified or rendered incompetent to sit or vote in the said Legislative Assembly as a member thereof.

V. Provided always, and be it enacted, that nothing in the next preceding section of this Act contained, shall extend or be construed to extend to any member of the said Legislative Assembly, being an Officer in Her Majesty's Navy or Army, or in the Militia of this Province, who shall be appointed or receive any new Commission in Her Majesty's Navy or Army, or in the Militia of this Province, respectively, excepting only Officers on the Staff of the Militia receiving permanent salaries.

VI. And whereas it is expedient, that members of the said Legislative Assembly should be enabled to vacate their seats in certain cases; Be it therefore enacted, that from and after the passing of this Act, it shall be lawful for any member of the said Legislative Assembly, legally elected, or who shall hereafter be so, who shall wish to abstain from the performance of the duties imposed on him by his election, to resign and vacate his seat in the manner hereinafter provided.

VII. And be it enacted, that if any such member shall wish so to resign, it shall be lawful for him so to do, either by giving in his place in the said Legislative Assembly, notice of his intention of resigning his seat, in which case, and immediately after such notice shall have been entered by the

Clerk of the said Legislative Assembly, on their Journals, it shall be lawful for the Speaker, and he is hereby required, to issue his warrant in the usual form for the election of a new member in the room of the member who shall have so resigned; or by addressing and causing to be delivered to the Speaker, a declaration to that effect made under his hand and seal before two witnesses, which declaration may be so made either during a Session of the Parliament, or in the interval between two Sessions of the same, and an entry of any such declaration shall be thereafter made in the Journals, in which case it shall be lawful for the Speaker, upon receiving such declaration, forthwith to give notice thereof, by a warrant under his hand and seal, to the Clerk of the Crown in Chancery, that a new writ may issue for the election of a member, in the room of the member who shall have so resigned, and a new writ shall issue accordingly.

VIII. Provided always, that the member so tendering his resignation, shall be and be held and considered as being to all intents and purposes, the representative for the place for which he was elected, until the return of the election of a member to serve in his room shall have been duly made.

IX. And be it enacted, that no member, shall so resign and vacate his seat during the Session of any Parliament next after his election, before the expiration of the first fifteen days of the said Session; and that no member whose election shall, be contested shall so resign and vacate his seat until after such contest shall have been decided.

X. And be it enacted, that in the case of any member of the said Legislative Assembly resigning his seat therein, in the interval between two Sessions of any Parliament, if there be then no Speaker of the said Legislative Assembly, or if the Speaker be then absent from this Province, or if the member resigning his seat be himself the Speaker, it shall be lawful for the person so resigning his seat, to address and cause the declaration hereby required in such case to be delivered to any two members of the said Legislative Assembly; in which case it shall be lawful for the said two members, upon receiving such declaration, forthwith to give notice thereof, by a warrant under their hands and seals, to the Clerk of the Crown in Chancery, that a new writ may issue for the election of a member, in the room of the member who shall have so resigned, and a new writ shall issue accordingly.

XI. And be it enacted, that from and after the passing of this Act, in the case of any vacancy which shall happen in the said Legislative Assembly, by the death of the person chosen, or by reason of his being summoned to the Legislative Council, or by his accepting from the Crown any office by the acceptance of which his seat shall be vacated under the provisions of this Act, it shall be the duty of the Speaker on information thereof being given to him by any member in his place in the said Legislative Assembly, or in writing under the hands and seals of any two members of the said Legislative Assembly, to give notice thereof, by a warrant under his hand and seal, to the Clerk of the Crown in Chancery that a new writ may issue for the election of a member to fill up such vacancy, and a new writ shall issue accordingly; and if after any such vacancy shall have so happened, there be no Speaker, or if the Speaker be then absent from this Province, or if the member whose seat shall be vacated as aforesaid, be himself the Speaker, it shall be lawful for any two members of the said Legislative Assembly to give notice thereof, by a warrant under their

hands and seals, to the Clerk of the Crown in Chancery, that a new writ may issue as above required, and a new writ shall issue accordingly; and such notice so given to the Clerk of the Crown in Chancery, either by the Speaker or by any two members as aforesaid, in the case of any such vacancy which shall happen from and after the passing of this Act, by the death of the person chosen, or by reason of his being summoned to the said Legislative Council, shall be, to all intents and purposes, deemed and considered to be the notice thereof, which, by the twenty fourth section of the before cited Act, passed in the Parliament of the United Kingdom of Great Britain and Ireland, is required to be delivered to or left at the office of the proper officer for issuing writs of election.

XII. And be it enacted, that the Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to enable Members of the Legislative Assembly, for places within that part of the Province formerly constituting the Province of Upper Canada, to vacate their seats in certain cases, and for other purposes*; and the Act of the said Legislature, passed in the sixth year of Her Majesty's Reign, and intituled, *An Act to make the law for vacating the seats of Members of the Legislative Assembly, accepting office, uniform throughout this Province*; and the Act of the Legislature of the late Province of Lower Canada, passed in the fifty-first year of the Reign of His late Majesty King George the Third, and intituled, *An Act for declaring Judges to be disabled and disqualifying them from being elected or from sitting and voting in the House of Assembly*: and the Act of the said Legislature, passed in the first year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act to allow Members of the House of Assembly to vacate their seats in certain cases, and for other purposes*; and the Act of the said Legislature, passed in the fourth year of the same Reign, and intituled, *An Act for vacating the seats of Members of the Assembly in certain cases therein mentioned*; and the thirty-first section of the Act of the said Legislature, passed in the fifth year of the Reign of His late Majesty King George the Fourth, and intituled, *An Act to repeal certain Acts therein mentioned, and to consolidate the laws relating to the election of Members to serve in the Assembly of this Province, and to the duties of Returning Officers, and for other purposes*; and the Act of the Legislature of the late Province of Upper Canada, passed in the thirty-ninth year of the Reign of His late Majesty King George the Third, and intituled, *An Act to enable the persons holding the Office of Register, to be elected Members of the House of Assembly*; and the Act of the said Legislature, passed in the seventh year of the Reign of His late Majesty King William the Fourth, and intituled, *An Act better to secure the Independence of the Commons House of Assembly of this Province, and for other purposes therein mentioned*, and all other Acts or provisions of Law in force in this Province, or in any part thereof, and inconsistent with or repugnant to the provisions of this Act, shall be and the same are hereby repealed: Provided always, that the Acts or provisions of Law repealed by those hereby repealed, or by any of them, shall not revive, but shall be and remain repealed.