

Provincial Statutes of Canada, passed in the year 1845. Montreal: Stewart Derbishire & George Desbarats, 1845.

8 Victoria – Chapter 37

An Act to amend an Act passed in the fourth and fifth years of the reign of Her Majesty, intituled, “An Act to repeal the laws now in force in that part of this Province formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor.” (29th March, 1845.)

Whereas an Act, passed in the fourth and fifth years of Her Majesty’s reign, intituled, “An Act to repeal the laws now in force in that part of this Province formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor,” requires amendment: 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, from and after the passing of this Act, so much of the said Act as relates to the payment of salaries to any Clerks of the several Division Courts, shall be and the same is hereby repealed; and that hereafter such Clerks shall be paid by Fees, to be collected and received according to the Schedule to this Act annexed, in lieu of the salary and emoluments by the said Act allowed and provided, and in lieu of all other emolument or allowance whatsoever, and that no person who is an articled clerk or a practising attorney shall hereafter be appointed to fill such office.

II. And be it enacted, That it shall be the duty of the respective Judges of the said Courts to inspect and examine the Quarterly Accounts of the several Clerks, within the district of every such Judge, of the Fees and Monies received by them, and to compare such accounts with the Book required to be kept by the Clerk, and with the accounts, papers and minutes of proceedings; and such Judge shall certify on each such account that he has examined the same and believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and the Clerk shall thereupon forward the account with such certificate to the Treasurer of his district.

III. And be it enacted, That notwithstanding anything in the said recited Act contained, it shall be lawful for the Justices of the Peace of any district in General Quarter Sessions assembled, to appoint the limits and extent of not less than three nor more than nine divisions within their respective districts, and from time to time, but subject to the foregoing restrictions, in like manner to alter the number, limits and extent of such divisions: Provided always, that there shall be one Division Court held in every city and district town.

IV. And be it enacted, That the proviso to the forty-first section of the said recited Act shall be and the same is hereby repealed; and that 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 or to examine the defendant on oath, and to give judgment thereupon accordingly.

V. And be it enacted, That when a defendant hath any claim or demand against a plaintiff exceeding the sum of ten pounds, he may abandon the excess, and on proving such demand he shall be entitled to set off the same in like manner as he is now by law enabled to do in cases where the demand of such defendant does not exceed the sum of ten pounds; and the judgment of the Court on such set off shall be a full discharge, as well of the amount allowed to be set off, as the amount by which such claim of the defendant exceeded ten pounds, and such judgment shall be so entered accordingly.

VI. And be it enacted, That unless the Jury summoned to attend at any Division Court, and sworn to try the merits of any cause that shall be submitted to them, shall be unanimous, their verdict shall not be received or recorded.

VII. And be it enacted, That whenever the Judge holding any Division Court shall be satisfied that a Jury sworn in any cause before him cannot agree upon their verdict, after having been out a reasonable time, he may discharge them, and shall then order the Clerk to summon a new Jury for the next sitting of the Court to be held in that Division, unless the parties shall have consented that the Judge may render judgment on the evidence, already taken before him, in which case he is hereby authorized to give judgment accordingly.

VIII. And be it enacted, That every decision of the Judge in any case heard before him, shall be openly pronounced in Court as soon as may be after the hearing thereof.

IX. And be it enacted, That every Summons and Writ of Execution issued by a Clerk of any Division Court, shall be entirely filled up, and shall have no blank either in the date or otherwise, at the time of its delivery, to a Bailiff or any other person to be executed; and every such Summons or Execution which shall be issued and delivered to any person to be executed, contrary to the foregoing provision, shall be void.

X. And be it enacted, That it shall and may be lawful for any Bailiff or Clerk of the said Courts to accept and take a confession or acknowledgment of debt from the defendant or defendants in any suit hereafter to be brought in any Division Court, who may be desirous of making the same, and such confession or acknowledgment shall be in writing and witnessed by the Bailiff or Clerk at the time of the taking thereof, and upon the production of such confession or acknowledgment to the Judge, and its being proved by the oath of the said Bailiff or Clerk, judgment may be entered thereon, and such oath or affidavit shall state that he has not and is not to receive anything from the plaintiff or defendant, or any other person, for taking such acknowledgment, and that he has no interest in the demand sought to be recovered.

XI. And be it enacted, That if any person against whom a judgment may have been entered up in any Division Court in any District subject to the operation of this Act, shall remove to another District without satisfying the said judgment, it shall be lawful for the Judge of the Division Court of the District to which the said party has removed to order an Execution for the debt and costs, for which judgment has been rendered in another District, against such party, to issue against such party upon the production of a copy of such judgment duly certified by the Judge of the District for which the judgment has been entered.

XII. And be it enacted, That every Writ of Execution issued by the Clerk of any Division Court shall be dated on the day when it shall actually issue, and shall be returnable within thirty days from the date thereof.

XIII. And be it enacted, That if any Bailiff shall neglect to return any Writ of Execution within three days after the return day thereof, or shall make a false return thereto, the party having sued out such Writ may maintain an action of debt against such Bailiff and his bail in the same Court, and shall recover therein the amount for which the Execution issued, with interest from the date of the judgment upon which such Execution was issued; and if a judgment be obtained in such suit against the Bailiff and his bail, Execution shall immediately issue thereon; any thing in this Act or in any other Act or Law to the contrary notwithstanding.

XIV. And be it enacted, That no sale of any goods which shall be taken in execution shall be had until after the end of eight days at least next following the day on which such goods shall have been so taken, unless upon the request in writing, under the hand of the party whose goods shall have been taken; and the Bailiff, after taking goods and chattels into his custody by virtue of a Writ of Execution, shall indorse thereon the date of the seizure; and shall immediately give public notice by advertisement signed by himself, and put up at three of the most public places in the division where such goods and chattels shall be taken, of the time and place within such division when and where they will be exposed to sale, which notice shall describe the goods and chattels taken, and shall be so put up at least eight days before the time appointed for the sale.

XV. And be it enacted, That no Bailiff, or other Officer of any Division Court, shall, directly or indirectly, purchase any goods or chattels at any sale made by him under execution, and every purchase made in contravention of this enactment shall be absolutely void.

XVI. And be it enacted, That when any Clerk or Bailiff of any Division Court, either by himself, or jointly with any other person or persons, is liable to be sued, or may sue any other person or persons, for a debt or demand, within the jurisdiction of the Division Court of which he shall be Clerk or Bailiff, then, and in every such case, such Clerk or Bailiff may sue, and shall be liable to be sued for any debt due to or by him, separately, or jointly with any other person or persons, in the next adjoining Division Court for the same District, in the same manner to all intents and purposes as if the cause of action for which any such suit shall be brought had arisen within such next adjoining Division, or the defendant or defendants were resident therein.

XVII. And be it enacted, That it shall and may be lawful for the Judge of the said Court, at any time after the giving and recording of any judgment, upon application being made to him by the party in whose favour such judgment shall be given, upon oath or other sufficient testimony, to the satisfaction of the said Judge, that the party will be in danger of losing the amount of such judgment, if he be compelled to wait till the day of payment thereof before any Execution can issue thereon, to order the issue of an Execution at such time as he shall think fit.

XVIII. And be it enacted, That in lieu of the Schedule of Fees to the said re-cited Act annexed, there shall be payable on every proceeding in the said Division Courts, and to the Clerks and Bailiffs of the said Courts respectively, the Fees which are set down in the Schedule to this Act annexed, and no other; which said last mentioned Schedule shall, for all intents and purposes, be substituted for, and shall in all respects be observed, as the Schedule of Fees to the said recited Act is therein directed to be observed; and the Fees to be received under this Act for the Fee-Fund, shall be taken to be, and the same are hereby declared to be the Fees for which the several Clerks and Bailiffs, and their sureties, respectively, now are or hereafter shall be accountable, by virtue of any bonds or securities by them given or entered into, or to be given and entered into, in pursuance of the said recited Act.

XIX. And be it enacted, That nothing in the said Act, passed in the fourth and fifth years of Her Majesty's Reign, intituled, "An Act to repeal the law now in force in that part of this Province formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor," contained, shall be held to require the service upon any defendant of any Order for payment made under the provisions of the said Act."

XX. And be it enacted, That the forty-ninth and sixty-third clauses of the said above recited Act, and so much of the ninth section, or of any other part of the said Act, as provides for the payment of any salary or emolument to the Judge be, and the same are hereby repealed.

XXI. And be it enacted, That in any case when the Judge of the District Court shall remove any Clerk of a Division Court and appoint another in his place, and in all cases of appointment of a Clerk by any Judge, the said Judge shall and may direct that the Books, Papers, and all Documents relating to the business or matters of the Division Court, be delivered over to the newly appointed Clerk, and if any person or persons in whose custody, such Books, Papers or Documents may be, shall refuse to obey such order, it shall and may be lawful for Her Majesty's Court of Queen's Bench in Canada West, or for any Judge thereof in vacation, upon proof of service of the order of the Judge of the District Court, upon such person or persons as shall have the custody or possession of such Books, Papers or Documents, to make, a Rule or Summons to shew cause why such Books, Papers or Documents should not be delivered in conformity with the order of the Judge of the District Court, and upon proper proof of the service of such Rule or Summons, or on hearing the parties, it shall and may be lawful for the said Court of Queen's Bench or Judge thereof, to order the issue of an Attachment against such person or persons, and in default of the delivering up of the said Books, Papers or Documents to make such Order for the imprisonment or such other punishment of the parties respectively, as the justice of the case to the said Court or Judge shall seem to require.

XXII. And whereas under the former Act relative to the Court of Requests, various Clerks were appointed for townships and other localities under the Commissioners; and whereas when the Division Court Act was passed, no provisions were therein contained for the delivering up of the Books, Papers and Documents connected with the business and with the claims of suitors; and whereas it has been found inconvenient that such Books, Papers and Documents should remain elsewhere than with the Clerks of the different Division Courts: Be it therefore enacted, That it shall and may be lawful for the Judge of the District Court, by writing under his hand, to require any person or persons in whose possession or custody any such Books, Papers or Documents, shall or may be, to deliver the same, or all, or any, or either thereof as he shall see fit, over to such Division Court Clerk as he shall name, and in the event of the same not being delivered in compliance with such order or requisition, it shall and may be lawful for Her said Majesty's Court of Queen's Bench, or for any Judge thereof in vacation, to proceed against such person or persons in the like manner as provided for in the clause respecting new appointments of Clerks.

XXIII. And be it enacted, That any person who shall be summoned according to law to give evidence in any Division Court, and who shall neglect or refuse to attend and give evidence accordingly, or to produce any Books or Papers required by such Summons to be produced at such Court, and any person who being in Court and called upon by order of the Court to give evidence, shall neglect or refuse to give evidence with sufficient cause, shall, in addition to the fine now imposed by law, be liable to be imprisoned by order of the said Court for a term not exceeding ten days.

SCHEDULE OF FEES

FEE-FUND.	Not exceeding two pounds.		Not exceeding five pounds.		Exceeding five pounds.	
	S.	D.	S.	D.	S.	D.
Entering Account and issuing Summons.....	0	4	0	6	1	3
Hearing an undefended cause.....	0	6	0	9	1	3
Hearing a defended cause.....	1	0	2	0	3	9
Every Order for payment (not to be charged where the defendant gives a confession of judgement)	0	3	0	6	0	9
TO THE CLERK						
Entering Account and issuing Summons.....	0	8	0	9	1	3
Summons to Witness to attend.....	0	6	0	6	0	6
Taking Cognovit.....	0	6	0	6	0	6
Entering Judgement.....	0	6	0	6	1	0
Every Execution.....	0	6	0	6	1	6
Every Search.....	0	6	0	6	0	6
Deposit to be applied by the Clerk to pay Jurors and Bailiff for Summoning Jury and for calling Jury.....	5	0	5	0	5	0
Every Notice of Trial when there is a Jury.....	0	6	0	6	0	6

TO THE BAILIFF	S.	D.
For the Service of every Summons, Order or other Proceedings, on each person.....	0	6
For taking confession.....	0	3
For taking goods in execution.....	2	0
For every Mile travelled, more than two, from the Clerk's Office, to serve Summons or execute Warrant.....	0	4
For every Mile travelled in taking any person committed for contempt, to Gaol.....	0	6
For every Jury sworn, to be paid by the Clerk out of the deposits made.....	1	0