

*Laws of Her Majesty's Province of Upper Canada*, passed in the year 1849. Montreal: Stewart Derbyshire & George Desbarats, 1849.

12 Victoria – Chapter 64

**An Act for the more effectual Administration of Justice in the Court of Chancery of the late Province of Upper-Canada. 30th May, 1849.**

Whereas by an Act of the Legislature of the late Province of Upper-Canada, passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to establish a Court of Chancery in this Province*, it was amongst other things enacted, That the judicial powers of the said Court should be exercised by a single Judge, to be called “The Vice-Chancellor of Upper-Canada;” And whereas it is expedient to alter the constitution of the said Court: 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 notwithstanding any thing contained in the said Act of the Legislature of the late Province of Upper-Canada, hereinbefore recited, the said Court of Chancery shall be presided over by a Chief Judge, to be called the Chancellor of Upper-Canada, and with two additional Judges, to be called Vice-Chancellors.

II. And be it enacted, That it shall be lawful for Her Majesty to appoint by Letters Patent under the Great Seal of this Province, one person being a barrister at law of not less than ten years’ standing to be Chancellor of the said Court, and two persons being barristers of not less than ten years’ standing at the bar to be Vice-Chancellors of the same, and from time to time, to supply any vacancies in the number of the said Judges; and the Chancellor of Upper-Canada shall have rank and precedence next to the Chief Justice of the Court of Queen’s Bench.

III. And be it enacted, That the Judges to be appointed under this Act, shall hold their offices during good behaviour: Provided always, that it may be lawful for the Governor, Lieutenant-Governor, or person administering the Government of this Province, to remove any Judge or Judges of the said Court, upon the address of the two Houses of the Provincial Parliament; and in case any Judge so removed, shall think himself aggrieved thereby, it shall and may be lawful for him within six months to appeal to Her Majesty in Her Privy Council, and such a motion shall not be final until determined by Her Majesty in Her Privy Council.

IV. And be it enacted, That from and after the commencement of this Act, there shall and may be paid and payable out of the Consolidated Revenue Fund of this Province, (after paying or reserving sufficient to pay all such sums as have been directed by any former Act of the Parliament of this Province, to be paid out of the same, but with preference to all other payments which shall hereafter be charged upon the same) the yearly sums following, as and for the salaries of the said Judges, videlicet: to the Chancellor of the said Court, the sum of one thousand two hundred and

fifty pounds; to each of the other Judges, the sum of one thousand pounds; which said sums shall be paid from time to time, quarterly, free and clear from all taxes and deductions whatsoever, on the first day of January, the first day of April, the first day of July, and the first day of October, by equal portions; the first payment to be made on the first of such days respectively as shall occur after the appointment of the Judge entitled to receive the same; and that if any person hereafter appointed to any of such offices, shall die or resign the same, the executor or administrator of the person so dying, or the person so resigning, shall be entitled to receive such proportionable part of the salary aforesaid as shall have accrued during the time that such person shall have executed such office since the last payment, and that the successor of such person so dying or resigning shall be entitled to receive such portion of the salary as shall be accruing or shall accrue from the day of his appointment.

V. And be it enacted, That it shall and maybe lawful for Her Majesty, by any Letters Patent, under the Great Seal of this Province, to give and grant unto any of the Judges appointed in pursuance of this Act, an annuity equal to two-thirds of the salary assigned to such Judge under the provisions of this Act, to commence and take effect immediately after the period when the person to whom such annuity shall be granted shall resign his said office of Judge of the said Court, and to continue from thenceforth during the natural life of the person to whom the same shall be granted; and such annuity shall be issued and payable out of and charged and chargeable upon the Consolidated Revenue Fund of the Province, next in order of payment to, and after paying or reserving sufficient to pay all such sums of money as by any Act or Acts of the Parliament of this Province now in force, have been directed to be paid thereout, but with preference to all other payments which shall hereafter be charged upon or payable out of the same fund, and such annuity shall be paid quarterly, free from all taxes and deductions whatsoever on the four usual days of payment aforesaid in each year; and the first quarterly payment, or a proportionate part thereof, to be computed from the time of his resignation of such office, shall be made on such of the said days as shall next happen after the resignation of the said office; and that the executors or administrators of the person to whom the same annuity shall be granted as aforesaid, shall be paid such proportionate part of the said annuity as shall accrue from the commencement, or the last quarterly payment thereof, as the case may be, to the day of his death; Provided always, that no annuity granted to any Judge appointed under this Act shall be valid, unless such person shall have continued in the said office, or in the said office and the office of a Judge in one or more of Her Majesty's Superior Courts of Common Law in Upper-Canada, for the period of fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office which shall be recited in the said grant.

VI. And be it enacted, That every Judge to be appointed in pursuance of this Act, shall previous to his executing the duties of his office, take the following oath, which said oath shall be administered to the Chancellor of the said Court, before the Governor, Lieutenant-Governor, or person administering the Government of this Province, in Council, and to the Vice-Chancellors of the said Court, in open Court, in presence of the Chancellor thereof:

“I, \_\_\_\_\_ do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me, (as Chancellor or Vice-Chancellor). So help me God.”

VII. And be it enacted, That from and after the appointment of the Judges hereby authorized, they shall sit together in the Court of Chancery, over which Court the Chancellor shall preside, or if he be absent, then the Senior Vice-Chancellor.

VIII. And be it enacted, That from and after the appointment of such Judges, all the jurisdiction, powers, authorities and privileges of the said Court of Chancery of Upper-Canada, shall by virtue of this Act, remain vested in the said Court, and shall be exercised by the Judges hereby appointed to preside therein, or by any one, or more of them who shall have power to hear and determine all matters which may be then, depending, or shall thereafter be depending in the said Court of Chancery, which said proceedings shall be carried on and prosecuted and dealt with, and decided according to the practice of the said Court of Chancery in the same manner as the said causes and matters would have been decided if this Act had not been passed; and no decree, order, rule or act of the said Court of Chancery legally pronounced, given, had or done before this Act shall come fully into effect, shall be hereby avoided, but shall remain in full force and virtue as if this Act had not been passed, nor shall any cause, matter or thing depending in the said Court of Chancery, be abated, discontinued or annulled, but every such cause, matter or thing shall, in their then present condition, subsist and depend before the Judges whose appointment is hereby authorized to all intents and purposes as if they had been commenced and been in their then present condition after such appointment; and the Judges so appointed shall have full power and authority to proceed with all such causes and matters, and to make such decrees and orders in the same as the said Court of Chancery might but for this Act have made.

IX. And be it enacted, That all laws, orders and authorities touching the practice and manner of proceeding in the said Court of Chancery, shall continue in force and be applicable as if this Act had not been passed; and all persons now holding office or acting in the said Court of Chancery, shall continue to hold the same and perform the duties thereof under the jurisdiction hereby created, in the same manner and subject to the same regulations as they now hold the same and act therein; and all sums and fees shall continue to be payable and receivable by the like persons, and shall continue to be paid and applied to the like purposes as the same have heretofore been paid and received in respect of any matter in the said Court of Chancery; except in so far as the said matters and things in this clause contained have been altered and affected, or may be altered and affected by this present Act, or by any Act to be passed during the present Session of Parliament.

X. And be it enacted, That the said Court of Chancery shall have jurisdiction to try the validity of Last Wills and Testaments, whether the same respect real or personal estate, and to pronounce such Wills and Testaments to be void for fraud and undue influence or otherwise, in the same manner and to the same extent as the said Court has now jurisdiction to try the validity of deeds and other instruments.

XI. And whereas a Commission was issued under the Great Seal of this Province, bearing date on the Twentieth day of July, in the seventh year of Her present Majesty's Reign, whereby the Chief Justice of the Court of Queen's Bench of Upper-Canada for the time being, the Senior Puisné Judge of the Court of Queen's Bench for the time being, and Henry John Boulton, Robert Easton Burns, William Hume Blake, and James C. Palmer Esten, Esquires, were appointed Commissioners, with authority to make a diligent enquiry whether any and what alterations could be made in the practice established in the Court of Chancery for the Province of Upper-Canada, or in the offices of that Court in the different stages of the proceedings therein, from the commencement to the termination thereof, by which the expense attending such proceedings and the time during which they depend in Court might be lessened and abridged usefully and beneficially to the Suitors of the said Court, and the ends of justice be promoted: And whereas the said Commissioners by their reports respectively made on the Twentieth day of April, in the eighth year of the Reign of Her present Majesty, and on the Twenty-fifth day of January then next ensuing, recommended certain alterations to be made in the pleadings and practice of the said Court: And whereas it is desirable that the suggestions of the said Commissioners, in regard to shortening the bill and answer, and enabling the Plaintiff to obtain discovery through the medium of a *vivâ voce* examination of the Defendant, and for extending a like privilege to the Defendant in relation to the *vivâ voce* examination of the Plaintiff, should be adopted; And whereas it is believed that the adoption of the above suggestion, the abolition of all unnecessary proceedings, and enabling matters to advance uninterruptedly in the Master's Office, will greatly tend to diminish the costs of proceedings in the said Court, and to promote the ends of Justice, but it is nevertheless expedient for the purpose of more conveniently and safely carrying out these and other alterations, that power should be vested in the Judges to be appointed under this Act, to make such rules and orders respecting the pleadings and practice of the said Court, for the purpose of carrying out the aforesaid suggestion, as well as such others as to them may seem expedient for the purposes mentioned in the hereinbefore recited Commission, and for amending or modifying any of the rules or orders, which have been or may be made for that purpose, and for regulating the Offices of the Master and Registrar of the said Court of Chancery, as well as for rescinding the said rules and orders, or any of them; Be it therefore enacted, That it shall be lawful for the Judges to be appointed under this Act for the time being, to make such rules and orders as to them may seem expedient, for regulating the Offices of the Master and Registrar of the said Court of Chancery, and for carrying into effect the recommendations of the said Commissioners as aforesaid, and from time to time to make other rules and orders, amending, altering or rescinding the same or any of them, and also to make all such rules and orders as to them may seem meet, for the purpose of adapting the proceedings of the said Court of Chancery to the circumstances of this Province, as well in regard to the Process and Pleadings, as in the practice and proceedings of the said Court, and more especially the taking, publishing, using and hearing of testimony in any suit therein pending, or the examination of all, or any of the parties to any such suit upon their oaths, *vivâ voce* or otherwise, including also the power to regulate by rules or orders, the allowance and amount of costs: Provided always, that no such rule or order shall have the effect of altering the principles or rules of decision of the said Court, or any of them, or of abridging or affecting the right of any party to such remedy as, before the passing of this Act, might have been obtained in the said Court, but may in all respects extend to the manner of obtaining such remedy, by regulating the nature and form of process and pleadings, and the practice of the said Court, as regards the method of taking,

receiving, publishing, using and hearing of testimony, the examination of witnesses or parties, or any other matter or thing which may seem expedient for better attaining the ends of Justice, and advancing the remedies of Suitors in the said Court.

XII. And whereas in consequence of the changes effected by this Act, and by an Act passed during the present Session of Parliament, intituled, *An Act to wake further provision for the Administration of Justice by the establishment of an additional Superior Court of Common Law, and also a Court of Error and Appeal in Upper-Canada, and for other purposes*, it is inexpedient that the Offices of Master and Registrar of the Court of Chancery should be held by the same person; And whereas it is desirable that the said Master and Registrar of the said Court of Chancery should be paid by a fixed salary instead of by fees: Be it enacted, That it shall be lawful for Her Majesty, Her Heirs and Successors, by Letters Patent under the Great Seal of this Province, to appoint a fit and proper person to be Registrar of the said Court of Chancery, to hold office during Her Majesty's pleasure, and from time to time to supply any vacancy in the said office; which said Registrar shall, *ex officio*, be Clerk of the Court of Error and Appeal of Upper-Canada; and that it shall be lawful for the said Registrar to appoint, subject to the approval of the Judges of the said Court, one Clerk; and the said Registrar, on the like approval, may remove at pleasure such Clerk; and that from and after the passing of this Act, there shall and may be paid and payable out of the Consolidated Revenue Fund of this Province, (after paying or reserving sufficient to pay all such sums as have been directed by any former Act of the Parliament of this Province to be paid out of the same, but with preference to all other payments which shall hereafter be charged upon the same) the yearly sums following as and for the salaries of the said Master, Registrar and Clerk, that is to say: to the said Master, the sum of Five hundred pounds; to the said Registrar, the sum of Four hundred pounds; and to the said Clerk, the sum of One hundred and twenty-five pounds; which said sums shall be paid from time to time quarterly, free and clear from all taxes and deductions whatsoever, on the four usual quarterly days hereinbefore mentioned; Provided that the payment to be made in each case on the first of the said quarterly days which shall happen after the accrual of the right thereunto of the person receiving the same under this Act, shall be a rateable proportion of a Quarter's Salary, according to the time then elapsed since the accrual of such right; and in case of a vacancy in the office of such Master, Registrar or Clerk, the person making the vacancy, his executors or administrators, shall be entitled to a proportional part of his salary according to the time elapsed between the vacancy and the last quarterly payment.

XIII. And be it enacted, That neither the said Master, Registrar or Clerk shall be entitled to or take for his own use or benefit, directly or indirectly, any fee or emolument whatsoever, save the salary to which he shall be entitled by virtue of this Act: and the like sums and fees heretofore payable and receivable in the said Court of Chancery shall continue to be payable and receivable by the like persons: and all the lees, dues and emoluments, perquisites and profits received by or on account of the said Master and Registrar shall form part of the Consolidated Revenue Fund of this Province, and shall be accounted for to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall direct.

XIV. And be it enacted, That the said Master and Registrar of the said Court of Chancery respectively, shall, on the four quarterly days hereinbefore mentioned, make up and render to the Inspector-General of Public Accounts of this Province, a True Account in writing of all the fees, dues, emoluments, perquisites and profits received by or on account of the said offices respectively, in such form and with such particulars as the said Inspector-General shall from time to time require; which said accounts shall be signed by the officer rendering the same, and shall be declared before one of the Judges of the Court to which he belongs; and such officers respectively shall, within ten days after the rendering of such account, pay over the amount of all such fees, dues, emoluments, perquisites and profits to the Receiver-General of this Province; and if default shall be made in such payment, the amount due by the officer making default shall be deemed a specialty debt to Her Majesty.

XV. And be it enacted, That this Act may be amended, altered, or repealed during the present session.

XVI. And be it enacted, That this Act shall come into force on the first day of January next, or at such earlier day as shall be appointed for that purpose by Proclamation under the Great Seal of this Province.