

*Laws of Her Majesty's Province of United Canada*, passed in the year 1851. York: Stewart Derbishire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 88

**An Act to amend the Act establishing the Court of Queen's Bench for Lower Canada. 30th August, 1851.**

Whereas it is expedient to remedy the delay and inconvenience arising from the appointment of Judges ad hoc in certain cases, and to provide a more speedy mode of registering Judgments on Appeals to Her Majesty in Her Privy Council: 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 the fifteenth section of the Act passed in the twelfth year of Her Majesty's Reign, chapter thirty-seven, and intituled, *An Act to establish a Court having jurisdiction in Appeals and Criminal matters in Lower Canada*, shall be, and the same is hereby repealed: And be it enacted, That whenever leave of absence for more than two months shall have been granted, or shall be granted by the Governor to any Judge of the Court of Queen's Bench for Lower Canada, the fact shall be notified to the Clerk of Appeals by a letter to be to him addressed by the Provincial Secretary, which letter shall be deemed authentic, and shall by the said Clerk be filed among the Records of the Court and entered in the Register thereof.

II. And be it enacted, That whenever any one Judge or more of the said Court shall be lawfully recused or disqualified or rendered incompetent, either by reason of interest or otherwise, to sit in the said Court in any cause cognizable thereby, or shall be suspended from office or absent from the Province, the fact shall be recorded in the Register of the Court by the Clerk of Appeals, whenever he shall be thereunto required in writing by any of the parties, and it shall then be lawful for such number of the Judges of the Superior Court, who would not be disqualified from sitting in such cause if they were Judges of the said Court of Queen's Bench, as may be necessary to complete the said last named Court, to act as Judges thereof and to exercise the same powers and authority with regard to such cause, and to all judicial acts and proceedings required therein, either before or after the determination thereof, as a Judge of the said last named Court not disqualified or rendered incompetent.

III. And be it enacted, That whenever any cause shall have been heard by three Judges only of the said Court of Queen's Bench and taken *en délibéré* by them, and two of the Judges shall be of opinion that any Judgment appealed from in such cause ought to be reversed or altered, the Court may discharge the *délibéré* and order that the cause be re-heard; and if at the time when such cause shall come up for re-hearing, the fourth Judge shall be lawfully recused or disqualified or rendered incompetent, either by reason of interest or otherwise, to sit in such Court, or shall be absent, any Judge of the Superior Court may act as a Judge of the Court of Queen's Bench, in so far

as regards such cause, and shall have the same powers and authority with respect to the same, and to all judicial acts required therein, either before or after the determination thereof, as a Judge of the said last named Court, not disqualified or rendered incompetent.

IV. And be it enacted, That whenever, owing to the absence, disqualification, or incompetency of any of the Judges of the Court of Queen's Bench before whom any cause has been or shall be heard, or for any other reason, it becomes necessary to discharge the *délibéré* in such cause, such *délibéré* may be discharged by the remaining Judges, or by any of them, if only one Judge not disqualified or rendered incompetent be present when the discharge of *délibéré* is demanded or should be ordered.

V. And be it enacted, That the words "Judge of the Superior Court" shall include the Chief Justice; and it shall be the duty of the Judges of the Superior Court to act as Judges of the Court of Queen's Bench under this Act whenever need shall be, and whenever it shall happen that any of the Judges of the Superior Court are required so to act, the Clerk of Appeals shall, by order of one of the Judges of the Court of Queen's Bench, notify the Chief Justice (or in his absence from the Province, the senior Judge) of the Superior Court, who shall thereupon communicate with the other Judges of his Court, and arrange with them what Judge or Judges shall so act as a Judge or as Judges of the Court of Queen's Bench, in the cause or causes to which the notice relates.

VI. And be it enacted, That the return of any Judge of the Court of Queen's Bench who may have been absent, or the removal of any cause of disqualification or incompetence, shall not affect the powers of the Judge of the Superior Court acting in his stead, nor shall they be affected by the appointment of any Judge who would be competent, in the cause; and if any Judge of the Superior Court acting under this Act as a Judge of the Court of Queen's Bench should die or become disqualified or incompetent or be absent, the provisions of this Act shall in such case have the same effect to remedy the want of a sufficient number of Judges in the cause as if he had been to all intents and purposes a Judge of such last named Court.

VII. And be it enacted, That this Act shall apply to causes in which Appeals are pending at the time of the passing thereof as well as to causes in which Appeals shall thereafter be instituted.

VIII. And be it enacted, That on any appeal to Her Majesty in Her Privy Council from any Judgment heretofore rendered by the late Court of Appeals for Lower Canada, or from any Judgment heretofore rendered or that shall hereafter be rendered by the present Court of Queen's Bench, on the Appeal side thereof, it shall be the duty of the Clerk of Appeals to register an Official exemplification of the Judgment of Her Majesty in Her Privy Council, immediately on the production of the same by any party interested therein, and without requiring a previous order of the Court or of any Judge thereof for such registration; and the said Clerk of Appeals shall also, with a copy of such exemplification, and without requiring any such previous order, remit the Record of the cause to the Court below, unless the Judgment of Her Majesty in Her Privy Council require some further proceeding to be had in the said Court of Queen's Bench: Provided always, that nothing contained in this section shall extend to or affect any Judgment rendered by Her Majesty in Her Privy Council before the passing of this Act.