

## An Act to amend the Division Court Acts of Upper Canada.

Whereas it is necessary to amend the laws at present in force, establishing Division Courts in Upper Canada, for the recovery of Small Debts; Therefore, Her Majesty, &c., enacts as follows:

I. When the plaintiff or defendant in any action now pending, or hereafter to be brought in any of the said Division Courts, shall be desirous of procuring the testimony of any aged or infirm person resident within Upper Canada, or of any person who is about to withdraw himself or herself out of the same, or who is residing without the limits of Upper Canada, or without the limits of the Province, it shall and may be lawful to and for any of Her Majesty's Division Courts, or for any Judge thereof in vacation, upon hearing the parties, upon the motion of such plaintiff or defendant, to issue one or more commissions under the seal of any such Judge to one or more Commissioners to take the examination of such persons, due notice being given to the adverse party to the end that he may cause such witness to be cross-examined.

II. In case of witnesses residing without the limits of Upper Canada, such Commission or Commissions, with the examination of the witness or witnesses taken pursuant thereto, shall be returned to the said Judge, with an affidavit of the due taking thereof thereto annexed, sworn before and certified by the Mayor or Chief Magistrate of the city or place where the same shall or may be taken, close under the hand and seal or hands and seals of one or more of such Commissioners, and shall be taken *prima facie* to have been duly executed and returned, and shall be received as evidence in the said cause: Provided always, that such examination or examinations shall not be read or given in evidence in the said cause, in case the deponent or deponents respectively shall be living within Upper Canada, and of sound mind, memory, and understanding, at the time such examination or examinations shall be offered to be given in evidence, and provided it is made to appear to the Court before which such examination or examinations is or are put in, that the same have not been duly taken.

III. And whereas it is necessary more definitely to declare the duties of Division Court Clerks in certain cases, therefore it is declared that the several Clerks who may have received summonses or other process from an adjoining or distant County or Division, and have placed the same in the hands of the proper Bailiff for service or execution, shall demand the return thereof from the Bailiff in a reasonable time after delivery to him, and shall urge such return to be made to him in order that the same may be sent back to the County or Division from whence the same may have issued, in due time for the Court at which the same is returnable (if the same, being a summons, has been served), and if any other process, then according to its exigency: And in case of omission or default by the Bailiff to make such return, it shall be the duty of the Clerk to submit a com-