

An Act to amend the Division Court Acts of Upper Canada, and to extend the Jurisdiction thereof.

WHEREAS it is necessary to amend the laws at present in force, establishing Division Courts in Upper Canada for the recovery of small debts, and to extend the Jurisdiction thereof; Therefore Her Majesty, &c., enacts as follows :

Preamble.

- 5 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 permanently, 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 the Judge of such Division Court, upon the application of any such plaintiff or defendant, supported by an affidavit of the facts, to issue one or more Commissions under the seal of such Judge to any Commissioner or Commissioners to be named by him, to take the examination under oath of any such persons, due notice being given personally to the adverse party forty-eight hours at the least prior thereto, to the end that he cause such witness or witnesses to be cross-examined if within Upper Canada, and similar notice seven days prior to such examination of any witness without the limits of Upper Canada or without the limits of this Province, the date, place and hour of such examinations in each case to be specified in the notice aforesaid, and in the case of witnesses as aforesaid examined within Upper Canada, such Commissioner or Commissioners with the examinations reduced to writing and returned under the signature of the Commissioner or Commissioners, sealed up and directed to the Clerk of the proper Division, shall be taken *prima facie*, to have been duly executed, and shall be used at any trial to be had of the cause as evidence thereon: Provided always, that such examinations shall not be read or given in evidence in the cause if it shall be made appear to the satisfaction of the Judge presiding at the trial, that the person or persons respectively alleged to be aged or infirm could have attended the Court without inconvenience or risk of bodily injury, and are still as sound in mind as when so examined, and that it is expedient to require a personal attendance at Court, or in case it shall be made to appear as aforesaid, that the person or persons alleged to have been about to withdraw out of Upper Canada, or without the limits of the Province, did so temporarily, at the desire or instigation of or to serve the party in the cause seeking his evidence, or is again living within Upper Canada: And in the case of witnesses as aforesaid, residing and examined without the limits of Upper Canada or of the Province, such Commission or Commissions with the examination

Commission for examination of absent or infirm witnesses may be issued by Judges of Division Courts.

Proviso: such examination not to be received in evidence if judge be of opinion that witnesses could have attended the Court.

Further proof of execution of commission if witness reside without the Province