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No. 47.

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1st Session, 8th Parliament, 27 Victoria, 1863.

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**BILL.**

An Act to extend and increase the jurisdiction of Division Courts in Upper Canada.

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Received and read, first time, Thursday, 8rd  
September, 1863.

Second reading, Monday, 7th September,  
1863.

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Mr. SCOTCHBOD.

QUEBEC:

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PRINTED FOR THE CONTRACTORS, BY HUNTER,  
ROSE & LEMIEUX, 26 ST. URSULE STREET.

An Act to extend and increase the Jurisdiction of Division Courts in Upper Canada.

**H**ER Majesty, by and with the advice and consent of the Legislative Preamble. Council and Assembly of Canada, enacts as follows :

*Jurisdiction.*

**1.** The Judge of every Division Court may hold plea of and may hear and determine in a summary way, for or against persons, bodies corporate, or otherwise,—all actions on Promissory Notes or Bills of Exchange, where the debt or damages claimed do not exceed Two hundred dollars. On Promissory Notes and Bills.

*Examination of Debtors--Attachment of debts and proceedings against Garnishees.*

**2.** The sections of the Common Law Procedure Act of Upper Canada, numbered from two hundred and eighty-seven to two hundred and ninety-nine, (both inclusive) are hereby extended to the Division Courts, and also to judgments and parties, and debtors and judgment creditors and judgment debtors, and to those indebted to judgment debtors, and to the debts due by them, and also to Garnishees in the several Division Courts of Upper Canada, in so far as the same can be made applicable for affording satisfaction and facilitating the recovery of debts and judgments in the said Division Courts by attachment. Sects. 287 to 299 of cap. 22 Con. Stat. U. C. extended to Division Courts.

**3.** All proceedings and matters under this Act, had in the Division Courts, shall be disposed of after the practice of the said Courts without formal pleadings, and the powers of the Courts and officers, and the proceedings generally thereunder shall be as nearly as may be, the same as in other cases which are within the jurisdiction of the said Division Courts. Practice in cases under this Act.

*Commissioners to Examine Witnesses.*

**4.** The Sections of the Consolidated Statutes for Upper Canada, chapter thirty-two, numbered from nineteen to twenty-one, both inclusive, are hereby extended to the Division Courts, and also to suits and complaints, and evidence, parties and witnesses therein, so far as the same can be made applicable. Sects. 19 to 21 of Cap. 32, Con. Stat. U. C. extended.

**5.** The same costs shall be allowed for commissions issued under this Act and proceedings connected therewith, as may be allowed from time to time for Commissions issued in the County Courts in Upper Canada, subject to such reduction as the Judge before whom the cause is tried may think reasonable, and such Judge shall also have the power to apportion the costs between the parties as he may think proper; Costs on Commissions.

**Proviso.** provided always that hereafter it shall be no ground for granting a certificate for County Court or Superior Court costs in any suit within the jurisdiction of a Division Court, that it was necessary to issue a Commission in such suit.

### *Absconding Debtors.*

**Sects. 23 to 28 of cap. 25 Con. Stat. U. C. extended.** **6.** In order to facilitate the recovery of debts and judgments in the Division Courts by attachment against absconding debtors. The sections of the Consolidated Statutes for Upper Canada, chapter twenty-five, numbered from twenty-three to twenty-eight, both inclusive, are hereby extended to the Division Courts. 5

**Suits by Bailiffs.** **7.** When a Bailiff of a Division Court sues to recover the outstanding debts of an absconding debtor, the action or suit may be brought in any Court of competent jurisdiction. 10

**Sect. 199 of cap 19 of Con. Stat. U. C. extended.** **8.** The one hundred and ninety-ninth section of the Division Court Act is hereby extended to any debt or demand within the jurisdiction of the Division Courts, as increased by this Act, and to any person or persons so indebted. 15

### *Executions.*

**Renewal of writs of execution.** **9.** Every writ of Execution (if unexecuted) may at any time, and from time to time before its expiration be renewed by the party issuing it for thirty days from the date of such renewal, by being marked in the margin with a memorandum to the effect following: Renewed for thirty days from the day of A. D., 18—, signed by the clerk of the Division Court, who issued such writ, or by his successor in office; and a writ of execution so renewed shall have the effect and be entitled to priority according to the time of the original delivery thereof to the Bailiff. 22 Vic., c. 22, s. 249, Con. Stat. U. C. 20

**Evidence of renewal.** **10.** The production of a writ of execution, marked as renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed. 22 Vic., c. 22, s. 250, Con. Stat. U. C.

**Costs.** **11.** The cost of a renewal of an execution shall be the same as for the original writ of execution. 30

### *New Trials.*

**New trials may be granted, except in certain cases.** **12.** Except in cases of appeal under the Municipal Assessment Act, the Judge, upon the application of either party, within fourteen days after the trial, and upon good grounds being shewn, may grant a new trial upon such terms as he thinks reasonable, in all matters, plaints, suits, controversies, or questions which shall have been or may be tried before him, and may in the mean time stay proceedings therein. 35

### *Jury in Interpleader and other cases.*

**Jury trial may be granted or ordered in certain cases.** **13.** Either party may require a jury to try any fact controverted in any case under the one hundred and seventy-fifth section of the Act respecting Division Courts, or any fact controverted in any action of Replevin brought in a Division Court, or any fact arising under any proceeding under this Act, or the Judge before whom any such fact is controverted may, if he thinks proper, order the same to be tried by a jury. 40

**14.** If either of the parties require such jury he shall proceed in the manner pointed out by the one hundred and twentieth section of the Act respecting Division Courts, or may make a request to have a jury impanelled, at any sittings of the Court, and if the judge requires a jury, such jury shall be summoned under the one hundred and thirty-second section of the said Act respecting Division Courts.

Mode of requiring or ordering a Jury trial.

**15.** Any jury summoned and returned to try any controverted fact under this Act, or under the said one hundred and thirty-second section of the said Act respecting Division Courts, shall be sworn or affirmed (in cases where affirmation is allowed by law instead of an oath) "Well and truly to try such controverted fact or facts as may be in dispute or issue between the parties, and to give a true verdict according to the evidence," and such jury shall not be sworn under the one hundred and thirty-first section of the said Act.

How the Jury shall be sworn or affirmed.

#### *Affidavit.*

**15 16.** The affidavit or affirmation referred to in the one hundred and third section of the Act respecting Division Courts may, if made out of Upper Canada, be taken before the Judge of any Court of Record, or before the Mayor of any City or Town, or before a Notary Public.

As to affidavit, &c., made out of U. C.

#### *Appeals.*

**17.** Appeals shall be allowed from the Division Courts to a Superior Court of Common Law in all actions or suits brought on Promissory Notes or Bills of Exchange, where the debt or damages claimed exceed one hundred dollars.

Allowed in cases on Notes over \$100.

**18.** The sections of the Consolidated Statutes for Upper Canada, chapter fifteen, numbered sixty-seven and sixty-eight are hereby extended to the Division Courts, and also to actions or suits therein, and to parties thereto (within the meaning of the preceding section) in so far as the same can be made applicable.

Sects. 67, 68 of Con. Stat. U. C., c. 19, extended.

**19.** Whenever the words "Superior Court" or "County Court," or "Superior" or "County," or "Sheriff" or "Court," are or is made use of and occurs in either of the said sections of the Common Law Procedure Act, or in either of the said sections of the Consolidated Statutes for Upper Canada, enumerated in this Act, they shall be taken to mean "Division Court," or "Division" or "Bailiff of Division Court," as may best suit the context so as to apply the provisions of the said sections to the purposes of this Act, and the objects contemplated hereby.

Interpretation clause for provisions hereby extended to Division Courts.

**20.** This Act and the said Division Courts Act, and the several sections of the Common Law Procedure Act, and the several sections of the Consolidated Statutes for Upper Canada, chapter fifteen, chapter twenty-five and chapter thirty-two enumerated in this Act, in so far as any suit, plaint or proceeding authorised by this Act, is concerned shall be read as if they formed one Act, or part of the said Division Courts Act.

The extended provisions to form one Act with this and the Division Courts Act.

**21.** This Act shall apply to Upper Canada only, and shall come into force on the first day of January, A.D., 1864, and not before.

Commencement of this Act.