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BILL.

**An Act for the more effectual Administration
of Justice in the Court of Chancery
of the late Province of Upper Canada.**

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Honble Mr.

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UPPER CANADA
CHANCERY BILL.

BILL.

An Act for the more effectual Administration of Justice in the Court of Chancery of the late Province of Upper Canada.

WHEREAS by an Act of the Legislature of the late Province of Upper Canada, passed in the seventh year of the 4 Reign of His late Majesty King William the Fourth, intituled, *An Act to establish a 6 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 10 "The Vice-Chancellor of Upper Canada"; And whereas it is expedient to alter the 12 constitution of the said Court: Be it therefore enacted, &c.

Preamble.

Act of U. C. 7
Will. 4. c. 2.

14 And it is hereby enacted by the authority of the same, That notwithstanding any thing 16 contained in the said Act of the Legislature of the late Province of Upper Canada 18 hereinbefore recited, the said Court of Chancery shall be presided over by a Chief 20 Judge, to be called the Chancellor of Upper Canada, and with two additional Judges to 22 be called Vice-Chancellors.

How the Court of Chancery shall be constituted hereafter.

II. And be it enacted, That it shall be 24 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 28 Chancellor of the said Court, and two persons being barristers of not less than ten 30 years' standing at the bar to be Vice-Chancellors of the same, and from time to time, to 32 supply any vacancies in the number of the said Judges; and the Chancellor of Upper 34 Canada, shall have rank and precedence next to the Chief Justice of the Court of 36 Queen's Bench.

Chancellor and vice-chancellors to be appointed,

Rank of the chancellor.

Tenure of office.
 Proviso: how the judges of the court may be removed.

Appeal.

Salaries of the judges, and how paid.

Provisions for the case of the death, resignation, &c of any judge of the court.

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 amotion 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 day of by equal portions; 38 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
 2 time that such person shall have executed
 such office since the last payment, and
 4 that the successor of such person so dying
 or resigning shall be entitled to receive
 6 such portion of the salary as shall be accru-
 ing or shall accrue from the day of his
 8 appointment.

V. And be it enacted, That it shall and
 10 may be lawful for Her Majesty, by any
 Letters Patent, under the Great Seal of this
 12 Province, to give and grant unto any of the
 Judges appointed in pursuance of this Act,
 14 an annuity equal to two-thirds of the salary
 assigned to such Judge under the provisions
 16 of this Act, to commence and take effect
 immediately after the period when the per-
 18 son to whom such annuity shall be granted,
 shall resign his said office of Judge of the
 20 said Court, and to continue from thence-
 forth during the natural life of the person
 22 to whom the same shall be granted; and
 such annuity shall be issued and payable
 24 out of and charged and chargeable upon the
 Consolidated Revenue Fund of this Pro-
 26 vince, next in order of payment to, and
 after paying or reserving sufficient to pay
 28 all such sums of money as by any Act or
 Acts of the Parliament of this Province
 30 now in force, have been directed to be paid
 thereout, but with preference to all other
 32 payments which shall hereafter be charged
 upon or payable out of the same fund, and
 34 such annuity shall be paid quarterly, free
 from all taxes and deductions whatsoever on
 36 the four usual days of payment aforesaid
 in each year; and the first quarterly pay-
 38 ment, or a proportionate part thereof, to be
 computed from the time of his resignation
 40 of such office, shall be made on such of the
 said days as shall next happen after the
 42 resignation of the said office; and that the
 executors or administrators of the person to
 44 whom the same annuity shall be granted as
 aforesaid, shall be paid such proportionate
 46 part of the said annuity as shall accrue from
 the commencement or the last quarterly

Her Majesty
 may grant an
 annuity to
 judges of the
 said court re-
 signing their
 office.

Annuity how
 payable, &c.

Provision for
 case of death,
 &c.

Proviso: in what cases only such annuity shall be granted.

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. 2
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Judges of the said court to take an oath of office.

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: 14
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The oath.

" 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." 26
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Sittings of the Judges: who shall preside.

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. 32
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Powers of the court to continue as heretofore.

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, who shall have power to 38
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hear and determine all matters which may
 2 be then depending, or shall thereafter be
 depending in the said Court of Chancery,
 4 which said proceedings shall be carried on
 and prosecuted and dealt with, and decided
 6 according to the practice of the said Court
 of Chancery in the same manner as the
 8 said causes and matters would have been
 decided if this Act had not been passed;
 10 and no decree, order, rule or act of the said
 Court of Chancery legally pronounced,
 12 given, had or done before this Act shall come
 fully into effect, shall be hereby avoided,
 14 but shall remain in full force and virtue as
 if this Act had not been passed, nor shall
 16 any cause, matter or thing depending in
 the said Court of Chancery, be abated, dis-
 18 continued or annulled, but the same shall,
 in their then present condition, subsist and
 20 depend before the Judges whose appointment
 is hereby authorised to all intents and pur-
 22 poses as if they had been commenced after
 such appointment; and the Judges so ap-
 24 pointed shall have full power and authority
 to proceed with all such causes and matters,
 26 and to make such decrees and orders in
 the same as the said Court of Chancery
 28 might but for this Act have made.

Continuance
of causes be-
fore the court.

IX. And be it enacted, That all laws,
 30 orders and authorities touching the practice
 and manner of proceeding in the said Court
 32 of Chancery, shall continue in force and be
 applicable as if this Act had not been pas-
 34 sed; and all persons now holding office or
 acting in the said Court of Chancery, shall
 36 continue to hold the same and perform the
 duties thereof under the jurisdiction hereby
 38 created, in the same manner and subject to
 the same regulations as they now hold
 40 the same and act therein; and all sums
 and fees shall continue to be payable and
 42 receivable by the like persons, and shall
 continue to be paid and applied to the like
 44 purposes as the same have heretofore been
 paid and received in respect of any matter
 46 in the said Court of Chancery; except in
 so far as the said matters and things in this

What laws
shall apply to
the said court.

Who shall be
its officers:

Monies pay-
able or receiv-
able.

clause contained have been altered and
 affected, or may be altered and affected by 2
 this present Act, or by any Act to be passed
 during the present session of Parliament. 4

Court may try
 the validity of
 wills.

X. And be it enacted, That the said
 Court of Chancery shall have jurisdiction 6
 to try the validity of last wills and testa- 8
 ments, whether the same respect real or 8
 personal estate, and to pronounce such 10
 wills and testaments to be void for fraud and 10
 undue influence or otherwise, in the same 12
 manner and to the same extent as the said 12
 Court has now jurisdiction to try the vali-
 dity of deeds and other instruments. 14

Recital.

XI. And whereas a commission was
 issued under the Great Seal of this Pro- 16
 vince, bearing date on the twentieth day of
 July, in the seventh year of Her present 18
 Majesty's Reign, whereby the Chief Justice
 of the Court of Queen's Bench of Upper 20
 Canada for the time being, the Senior
 Puisné Judge of the Court of Queen's 22
 Bench for the time being, and Henry John
 Boulton, Robert Easton Burns, William 24
 Hume Blake and James C. Palmer Esten,
 Esquires, were appointed Commissioners 26
 with authority to make a diligent enquiry
 whether any and what alterations could be 28
 made in the practice established in the
 Court of Chancery for the Province of 30
 Upper Canada, or in the offices of that
 Court in the different stages of the proceed- 32
 ings therein, from the commencement to
 the termination thereof by which the ex- 34
 pense attending such proceedings, and the
 time during which they depend in Court 36
 might be lessened and abridged usefully
 and beneficially to the Suitors of the said 38
 Court and the ends of justice be pro-
 moted: And whereas the said Commis- 40
 sioners by their reports respectively made on
 the twentieth day of April, in the eighth 42
 year of the Reign of Her present Majesty,
 and on the twenty-fifth day of January 44
 then next ensuing, recommended certain
 alterations to be made in the pleadings and 46

practice of the said Court : And whereas
 2 it is desirable that the suggestions of
 the said Commissioners in regard to
 4 shortening the bill and answer and
 enabling the plaintiff to obtain discovery
 6 through the medium of a *viva voce* exami-
 nation of the Defendant, and for extending
 8 a like privilege to the Defendant in relation
 to the examination of the plaintiff should be
 10 adopted; and whereas it is believed that the
 adoption of the above suggestion, the
 12 abolition of all unnecessary proceedings, and
 enabling matters to advance uninterruptedly
 14 in the Master's office, will greatly tend to
 diminish the costs of proceedings in the
 16 said Court, and to promote the ends of
 Justice, but it is nevertheless expedient for
 18 the purpose of more conveniently and safely
 carrying out these and other alterations, that
 20 power should be vested in the Judges to
 be appointed under this Act, to make such
 22 rules and orders respecting the pleadings
 and practice of the said Court, for the pur-
 24 pose of carrying out the aforesaid suggestion,
 as well as such others as to them may seem
 26 expedient for the purposes mentioned in
 the hereinbefore recited Commission, and for
 28 amending or modifying any of the rules or
 orders, which may be made for that purpose
 30 and for regulating the Offices of the Master
 and Registrar of the said Court of Chancery,
 32 as well as for rescinding the said rules and
 orders, or any of them: Be it therefore
 34 enacted, That it shall be lawful for the
 Judges to be appointed under this Act for the
 36 time being, to make such rules and orders, as
 to them may seem expedient, for regulating
 38 the Offices of the Master and Registrar of the
 said Court of Chancery, and for carrying
 40 into effect the recommendations of the
 said Commissioners as aforesaid, and from
 42 time to time, to make other rules and
 orders amending, altering or rescinding the
 44 same or any of them; and also to make all
 such rules and orders as to them may seem
 46 meet, for the purpose of adapting the said
 Court of Chancery to the circumstances of
 48 this Province, as well in regard to the Pro-

Judges to
 make rules for
 certain purpo-
 ses.

cess 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, 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.

Costs.
Proviso as to what may or may not be done by such rules.

Recital.

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 make further provision for the Administration of Justice, by the establishment of an additional Superior Court of Common Law, and also a Court of Appeal in Upper Canada, and for other purposes*, it is in expedient 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

Registrar of the court to be appointed.

from time to time to supply any vacancy in
 2 the said office, which said Registrar shall,
ex officio, be Clerk of the Court of Error
 4 and Appeal of Upper Canada; and that it
 shall be lawful for the said Registrar to ap-
 6 point, subject to the approval of the Judges
 of the said Court, one clerk; and the said
 8 Registrar, on the like approval, may re-
 move at pleasure such clerk; and that from
 10 and after the passing of this Act, there shall
 and may be paid and payable out of the
 12 Consolidated Revenue Fund of this Province,
 (after paying or reserving sufficient to pay
 14 all such sums as have been directed by any
 former Act of the Parliament of this Pro-
 16 vince to be paid out of the same, but with
 preference to all other payments which shall
 18 hereafter be charged upon the same) the
 yearly sums following as and for the salaries
 20 of the said Master, Registrar and Clerk, that
 is to say: to the said Master, the sum of
 22 *five hundred pounds*; to the said Registrar
 the sum of *four hundred pounds*; and to
 24 the said Clerk the sum of *one hundred and*
twenty-five pounds; which said sums shall be
 26 paid from time to time quarterly; free and
 clear from all taxes and deductions whatso-
 28 ever, on the four usual quarterly days herein-
 before mentioned; provided that the payment
 30 to be made in each case on the first of the
 said quarterly days which shall happen after
 32 the accrual of the right thereunto of the per-
 son receiving the same under this Act, shall
 34 be a rateable proportion of a Quarter's
 Salary, according to the time then elapsed
 36 since the accrual of such right; and in case
 of a vacancy in the office of such Master,
 38 Registrar or Clerk, the person making the
 vacancy, his executors or administrators,
 40 shall be entitled to a proportional part of
 his salary according to the time elapsed
 42 between the vacancy and the last quarterly
 payment.

Registrar may
 appoint a
 clerk.

Salary of
 Registrar,
 master and
 clerk, and how
 payable.

Proviso.

As to arrears
 in case of va-
 cancies, &c.

44 XIII. And be it enacted, That neither
 the said Master, Registrar or Clerk shall be
 46 entitled to or take for his own use or benefit,
 directly or indirectly, any fee or emolument

Master, regis-
 trar and clerk
 to have no
 fees.

Fees to continue payable, but to go to the Province.

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 fees, 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.

Master and registrar to render accounts to the inspector general.

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.

And pay over monies received for the province.

Act may be amended this session.

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