

Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

- Coloured covers / Couverture de couleur
- Covers damaged / Couverture endommagée
- Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- Cover title missing / Le titre de couverture manque
- Coloured maps / Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- Bound with other material / Relié avec d'autres documents
- Only edition available / Seule édition disponible
- Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- Additional comments / Commentaires supplémentaires:

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured pages / Pages de couleur
- Pages damaged / Pages endommagées
- Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- Pages detached / Pages détachées
- Showthrough / Transparence
- Quality of print varies / Qualité inégale de l'impression
- Includes supplementary material / Comprend du matériel supplémentaire
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below /
Ce document est filmé au taux de réduction indiqué ci-dessous.

10x		14x		18x		22x		26x		30x	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12x		16x		20x		24x		28x		32x	

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-

plaint thereof forthwith to the Judge of the County appointing such Bailiff, and also to report to the Clerk from whom the process was received, before the return day, in cases other than final process, and in cases of final process immediately after the return day, the cause of the non-return and the proceedings had in consequence thereof; and in case the summons be against the Bailiff, he shall be bound to accept the same when handed to him by the Clerk, whose duty it shall be to make the required return thereon.

IV. That the Bailiff omitting to make the return in due time of any such process mentioned in the preceding section, and authorised by any law to be issued, shall be liable to pay all damages and extra expense caused to any suitor, and his sureties shall also be deemed and made liable to him therefor, as for any default with respect to any proceeding or process in the Division of such Bailiff, and if he has been paid any fees or money for such service, and his default renders the service abortive, he shall refund the whole upon demand made by the suitor.

V. That the Judge of the County Court of each County shall forthwith, upon complaint made to him by any Clerk or any interested party or his agent, as hereinbefore provided, cause the Bailiff complained of to forthwith answer orally or otherwise, in the matter alleged, and shall make such order therein as may appear just, and also with respect to any loss, damage, or expense suffered by the suitor.

VI. The plaintiff's books, if kept to the satisfaction of the Judge, shall be admitted as evidence, in all cases where it is shown that defendant has been in the habit of dealing with or employing the plaintiff, but nothing herein contained shall be taken to affect the right of oral testimony when admitted.

VII. That notwithstanding anything contained in section sixty-four of "the Upper Canada Division Courts' Act of 1850," for the purposes of attachment, it shall be sufficient that the plaintiff swear that the defendant is indebted to him in the amount claimed, and that he, the plaintiff, believes defendant to be making or intending to make a fraudulent disposal of his property, although it be not sworn that such defendant has absconded from the Province.

VIII. That debts due the execution debtor shall, after issue of execution, become debts due to the execution creditor, to the amount of his claim and costs, and he shall recover from the garnishee in the same manner as if the debt had originally been due to him, the said creditor; and in case the execution debtor has no other means more directly available, it shall be the duty of the bailiff having the execution in hand, upon being informed of the fact of any debt or debts due to the execution debtor, to notify in writing the garnishee or garnishees to pay no person the said debt or debts, except to him the said Bailiff, or to the clerk of his Division, and if the garnishee or garnishees so notified shall refuse to give the bailiff an admission or denial of the alleged debt, the said notice shall contain a summons to the said garnishee or garnishees so notified to appear within twelve days from the service of said notice, before the Clerk of the said Division, there to admit or deny the alleged debt: And if the garnishee or garnishees shall live without the division, it shall be the duty of the Clerk, upon information received from the bailiff, or upon application made by the plaintiff, to do so, to transmit the requisite information to the Clerk of the Division wherein the garnishee or garnishees reside or carry on business. And it shall be the duty of the last mentioned clerk to cause his bailiff to notify the garnishee or garnishees in the same manner as the first mentioned bailiff is instructed to do, and non-

compliance with the said notice, by paying the execution debtor or otherwise, shall render the garnishee or garnishees liable to the execution creditor for the amount of judgement and costs due to such creditor, or for so much thereof as the said garnishee or garnishees shall have owed to the said execution debtor at the time of receiving said notice: *Provided always*, that payment of the garnishee before notice of a judgment obtained in a Division Court against his creditor, shall be a discharge of the debt not only as against the creditor, but as judgment debtor as against the judgment creditor of such judgment debtor.

IX. That in future when a creditor desires to take out an execution upon a judgment of more than one year's standing, and upon which no execution has been issued, it shall be sufficient for him to make the affidavit of the facts of non-payment, before the Clerk of the Division in which judgment was obtained, instead of before the judge as heretofore.

X. That notwithstanding anything contained in Sec. LXV. of "the Upper Canada Division Courts' Act of 1850," creditors who have proceeded to execution, or who may proceed to execution, within one month from the date of the issue of the first attachment, and whose judgment or execution shall not have been satisfied, shall be entitled to participate *pro rata* in the proceeds of the goods and chattels which shall have been attached, in the same manner as any attaching creditor would be permitted to participate according to said section herein mentioned.

XI. That in case of executions issued out of any Division Court, the wearing apparel of such debtor and that of his family, and their beds and bedding, and household utensils, not exceeding altogether the value of ten pounds, and the tools and implements of the trade of such debtor or other property, not exceeding in value ten pounds, shall be protected from execution.

XII. That in all cases where a judgment with costs amounts to ten pounds, either Plaintiff or Defendant shall have the right of appeal to the County Court; which Court shall have power to tax the necessary additional costs incurred by the appeal, according to the practice of said County Court.

XIII. That the Clerk of any Division, shall, on or before the first Monday in January, April, July and October in each year, make a return of all monies paid into his hands by the Bailiff in his Division, to the Clerk of the County Court, who shall file the same on the day it is received, and any Clerk failing to do as hereby required, shall be subject to such penalty or fine as the Judge shall inflict, not exceeding twenty dollars.

XIV. That upon payment of five cents to the Clerk of said County Court, he (the said Clerk) shall show to any party, any return so made to him, and allow extracts to be taken without any further charge.

XV. From an after the passing of this Act no Clerk of a Division Court shall be ineligible or disqualified from holding the office of Clerk of the County Court, or Deputy Clerk of the Crown of the County in which he resides, any law, custom, or usage to the contrary notwithstanding, and all Acts and parts of Acts now in force so far as they, or any or either of them render a Clerk of the Division Court ineligible or disqualified to hold the office of Clerk of the County Court or Deputy Clerk of the Crown of the County in which he resides, shall be and the same are hereby repealed.

XVI. From and after the passing of this Act, no Clerk of any Division Court shall retain more than a net salary of two thousand dollars for any one year out of the fees paid to him as clerk's fees of his Division; with such further allowance for the necessary assistants required in his office as the Judge shall consider to be just and proper; but no assistant shall receive more than five hundred dollars per annum, and no office shall be entitled to more than two assistants.

XVII. That the Clerks of such offices shall make quarterly returns under oath; which return shall show the amount of fees charged against each suit, the amount actually received and paid to such Clerk, together with all sums received as arrearages

XVIII. That all fees received by the Clerk of any Division Court over and above the sum of five hundred dollars quarterly, and the sums required to pay the quarterly salaries of the assistants, considered necessary by the Judge, shall be paid over quarterly to the credit of the Fee Fund, under the same provisions and according to the same forms and to the same persons, as now by law established.

XIX. That with the quarterly return so to be made by said Clerks, the certificate of the Judge, showing the number of assistants authorized by him to be employed, and the amount of salary to which each assistant was entitled, for the quarter ending with the return, as well as duplicate receipts under the hands of the assistants for all money paid to them, and unless such certificates and receipts shall be produced, the amount charged shall not be allowed in the quarterly returns so to be made.

XX. That in addition to the fees now paid to Bailiffs, they be allowed the following:

For each day's attendance in Court, when discharging the duties of Crier of the Court, one dollar.