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No. 143.

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3rd Session, 6th Parliament, 23 Victoria, 1860.

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**BILL.**

An Act to amend chapter seven of the Consolidated Statutes of Canada, and to establish a new Tribunal for the trial of Controverted Elections.

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Received and read, first time, Monday, 2nd  
April, 1860.

Second reading, Wednesday, 4th April, 1860.

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**Mr. McDougall.**

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QUEBEC:

PRINTED BY THOMPSON & CO., STE. URSULE STREET.

An Act to amend chapter seven of the Consolidated Statutes of Canada, and to establish a new Tribunal for the trial of Controverted Elections.

**W**HEREAS the trial of Controverted Elections by Select Committees, has not proved satisfactory, and it is expedient to provide for the appointment of a new Tribunal for the trial thereof; Be it enacted, &c. :

Preamble.

1. Sections of chapter seven, of the Consolidated Statutes of Canada, are hereby repealed.

Part of Cap. 7 of Con. Stat. Can. repealed.

2. There shall be established, as hereinafter provided, a Court of Elections, consisting of a Judge of one of Her Majesty's Courts of Record, and such seven Members of the Legislative Assembly, and such five Members of the Legislative Council, as hereinafter mentioned, and such Judge shall preside in the said Court, and shall, with such twelve Members, try the case submitted to the same.

Court for trial of controverted Elections.

3. The Legislative Council shall, on a day to be appointed by the Speaker not less than five nor more than ten days from the commencement of the first session of each Parliament, proceed to choose fifteen Members who may be deemed most fit and proper to serve upon trials of disputed questions of law and fact. They shall be chosen in manner following, to wit :—All the Members present within one hour after the opening of the House on the day appointed, shall be divided by lot, into three equal sections, as nearly as may be, and numbered one, two, three, as they are drawn; All the members then absent shall also be divided into three equal sections as nearly as may be, and numbered in like manner. Each of the said first mentioned sections shall forthwith retire into a room, elect a chairman and proceed to choose five members (who shall be deemed the most fit and proper to serve as aforesaid) from among themselves, and the section of absent members (if any) whose number corresponds to their own. And in like manner, on a day to be appointed by the Speaker within the same period, the Legislative Assembly shall proceed to choose twenty-four Members who may be deemed most fit and proper to serve upon trials of disputed questions of law and fact, and they shall be chosen in manner following, to wit :—All the Members present within one hour after the opening of the House on the day appointed, shall be divided by lot into four equal sections, as nearly as may be, and numbered one, two, three, four, as they are drawn. All the Members then absent (if any) shall be divided by lot into four sections (if practicable) and numbered in like manner. Each of the said sections shall forthwith retire into a room, elect a Chairman, and proceed to choose six Members (whom they shall deem the most fit and proper to serve as aforesaid) from among themselves, and the section of absent Members whose number corresponds to their own. The names of the Members so chosen shall be reported to the House to which they belong, on the next sitting day, and the said members shall together form the panel of Election Tryers during that Parliament.

Mode of constituting the Court : selection of members from both Houses, &c.

Panel reported to the House.

Legis. Assembly to Select one of the Chief Justices as Judge.

**4.** The Legislative Assembly, on the day on which the names of the members so chosen are reported, shall proceed to choose one Judge by lot from among all the Chief Justices in the Province, who shall preside at the trial of every election petition during that Parliament.

Reference of Election Petitions.

**5.** Every election petition received by either House shall be referred to the Court of Elections. The said Judge shall be President of the Court, with power to appoint one or more Clerks, and to hear and determine all preliminary objections which may be taken before him; to issue summonses for the attendance of witnesses, and generally to make such orders as he may deem just, subject to appeal, as hereinafter mentioned. 5 10

Sittings of Judge to decide preliminary objections

**6.** The first sitting of the said Judge to hear preliminary objections, issue summonses, and make orders in the matter of any petition referred to the Court of Elections, shall be not less than ten days, nor more than fifteen days, after his appointment as aforesaid; and he shall cause at least one week's notice of the same to be inserted in two newspapers, one published in Upper Canada and the other in Lower Canada, and shall also forthwith notify the day of such sitting to the Speakers of both Houses of Parliament. 15

To continue till he has disposed of objections on all petitions then presented.

**7.** The said Judge shall sit every day for at least three hours, in some convenient room near the Assembly Chamber (Sundays and statutory holidays excepted), until he has disposed of all preliminary objections raised before him in the matter of the several Petitions then referred to the Court of Elections; and he shall fix a day which, after hearing the parties, he may deem most convenient for the trial of each and every petition referred to the said Court, and which then remains to be tried, and shall immediately report the same to both Houses; but the first day so fixed shall not be more than ten days from the day on which the said Judge held the first sitting. 20 25

Formation of the Court for trying any Petition.

**8.** On the day next but one, or if the same be Sunday or a statutory holiday, then on the day next but two, before that on which any Petition shall be set down for trial by the Judge, as aforesaid, the Clerk of the Legislative Council shall, between the hours of twelve and one of the clock, and in the presence of the parties, if they attend, choose by lot five names from the said panel of fifteen; and the Clerk of the Legislative Assembly shall, between the hours of two and three of the clock on the same day, and in the presence of the parties, in like manner, choose by lot seven Members from the said panel of twenty-four; and the said five Members and the said seven Members so chosen, shall form the Court under the presidency of the Judge for the trial of the election petition so fixed for trial, as aforesaid. The said Clerks shall forthwith notify the Members so chosen to form the said Court, and also report their names to the Speaker of the House of which he is Clerk at the next opening thereof, who shall cause the same to be read aloud to the House. 30 35 40 45

Members having any bias on the question may be exempted.

**9.** Each House may exempt any Member from serving on the said Court, who shall appear to the satisfaction of the House to which he belongs to have any bias on the subject matter of the Petition about to be tried arising from connection with the parties interested, but such ground of exemption shall be declared to the said House by such Member, or any other Member thereof, on the day upon which the names shall be communicated to the House and not afterwards. 50

- 10.** If the said Court shall at any time by exemption, death or illness of Members, be reduced to less than seven, the Judge shall adjourn its sittings for any time not exceeding three days, and shall immediately report the same to both Houses, with the names of all the Members whose absence caused such reduction.
- 11.** Unless the House whose Members are reported to be absent from the sittings of the said Court shall otherwise order, the Clerk shall, between five and six of the clock, on the same day on which the Report is communicated to the House, proceed to choose by lot from all the other names on the panel as many as will be equal to the number reported absent belonging to that House, and the Members so chosen shall thereafter be Members of the said Court in the place and stead of those reported absent as aforesaid.
- 12.** No Member of either House chosen to serve on the said Court shall be allowed to absent himself from the same without leave of the House to which he belongs, and in default thereof he shall be fined in the discretion of such House upon the report of the Judge.
- 13.** The said Court shall sit every day (Sunday and statutory holidays excepted,) and shall never adjourn for a longer time than twenty-four hours, exclusive of such Sunday or holiday, but it shall be lawful for the Judge, at the request of either of the parties to the Petition, upon good cause shewn, to postpone the further hearing of the case until a day to be then named, but not more than ten days from the day on which the request is made.
- 14.** As soon as any petition is disposed of by the Court, whether finally or otherwise, such disposition thereof shall be immediately reported to both Houses, and the Court shall on the next sitting day proceed to try the Petition (if any) next in order, as previously fixed by the Judge.
- 15.** If either of the parties to such Petition shall make application to the Judge for a Special Court, it shall be his duty to cause five Members to be chosen by lot from the said fifteen Members, and seven Members to be chosen by lot from the said twenty-four Members, and the said five Members and the said seven Members so chosen shall be the Court under the Presidency of the said Judge for the trial of such Petition, and their names shall be immediately reported to both Houses. If no such application is made before the day fixed for the trial of such Petition, then the Court, as already constituted, shall proceed to try the same.
- 16.** It shall be lawful for the Judge, with the consent of the parties, to try the merits of any Petition, and report finally thereon without the said Court. Whenever any such consent, signed by the parties, their Counsel or Agents, is filed with the Judge, he shall report the same to both Houses, and the Members, if any, then chosen to serve on the said Court, shall be discharged from further attendance thereon in respect to the said Petition,
- 17.** The Members of the said Court shall, before proceeding to try any Petition, take and subscribe the following oath, which shall be administered by the *clerk*.—  
 “I, A. B., do solemnly promise and declare that I will well and truly inquire of the matters referred to this Court, and true report make, ac-
- Adjournment of Court if reduced to less than seven.
- Appointment of members to supply the places of those absent.
- Fine on members absent from the Court.
- Court to sit every day: Exception.
- When one Petition is disposed of another to be tried.
- Parties may demand a Special Court. How it shall be formed.
- Judge may by consent try and decide any case alone.
- Oath of members of the Court.

cording to the provisions of the several Acts respecting controverted Parliamentary Elections: So help me God."

Questions of admission and of evidence how decided.

**18.** All questions on admitting or rejecting evidence adduced before the said Court, as well as all preliminary objections, shall be determined by the said Judge; but it shall be lawful for the party against whom the decision upon preliminary objections, or upon evidence, shall be given, to take the opinion of the entire panel of election tryers thereon, in the form of a special case to be settled before such Judge, and the said election tryers shall meet on a convenient day to be fixed by the Judge and reported to both Houses; and the said panel shall give their opinion in writing on such case, which opinion shall be binding. 5 10

Judge to propound questions to be decided.

**19.** The Judge shall propound in writing the questions for the determination of the Court, the same embracing all the allegations contained in the said petition, and any other matter on which the Judge may desire to have a special finding by the Court; and it shall be lawful for the Court to add any other special findings according to their discretion, so that the same are distinguished from their findings on the questions propounded to them by the Judge. 15

Majority to decide.

**20.** The Court shall return their finding in writing by a majority of voices, which the Judge shall report to both Houses, and it shall be entered in the Journals thereof respectively. 20

Certain powers of the Judge.

**21.** The Judge may exercise all the powers vested in a Judge of a Court of Record, for the punishment of prevarication of witnesses, and of refusal to be sworn to give evidence.

Court may command attendance of witnesses, &c.

**22.** The said Court may by warrant command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such warrant, and the disobedience to such warrant shall be deemed a contempt of Court, if in addition to such order, an appointment of the time and place of attendance in obedience thereto, signed by the Judge, shall also be served, together with the service of such warrant; Provided also, that any person whose attendance shall be so required, shall be entitled to the like conduct money and payment of expenses, and for loss of time, as for and upon attendance at any trial in the Queen's Bench, if the witness reside in Upper Canada, and in the Superior Court, if the witness reside in Lower Canada. 25 30 35

Proviso: Allowance to witnesses, &c.

Swearing witnesses, &c.

**23.** Upon the examination of any witness before the said Court the Judge may administer an oath to such witness, or take his affirmation in a case where affirmation is allowed by law, instead of an oath; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed guilty of perjury, and shall be prosecuted and punished accordingly. 40

Vote of Judge.

**24.** In case of an equality of votes the Judge shall have a casting vote, but otherwise he shall not vote. 45

Effect of finding of the Court.

**25.** The finding of the said Court, and the report thereof to the House, shall have the same force and effect as the report of a Select Committee appointed to try the merits of an Election Petition, under chapter seven of the Consolidated Statutes of Canada, entitled "An Act respecting controverted Parliamentary Elections." 50

**26.** It shall be lawful for the said Judge, from time to time, to make such orders, rules and regulations as he may deem just and necessary for the more speedy trial of election petitions ; which orders, rules and regulations, not being contrary to law, shall be immediately reported to both Houses and entered on the journals thereof respectively, and so many and such parts of the same as shall not be disapproved by resolution of one of the said Houses within three sitting days after being so reported, shall be and continue in force until altered or annulled by the said Judge, such alteration or annulment being reported, and not disapproved, as aforesaid.

Judge to  
make Orders,  
Rules, &c.

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