

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: Cover title page is bound in as last page in book but filmed as first page on fiche.

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		32x
											<input checked="" type="checkbox"/>		
	12x		16x		20x		24x		28x				

No. 199.

1st Session, 4th Parliament, 16 Victoria, 1852.

BILL.

An Act to amend the Division Courts Act
of Upper Canada, and to extend the
jurisdiction of the same.

Received and read a first time, Friday, 5th No-
vember, 1852.

Second reading, Tuesday, 15th February, 1853.

Hon. Mr. Atty. Gen. RICHARDS.

QUEBEC:

PRINTED BY JOHN LOVELL, BATHURST STREET.

BILL.

An Act to amend the Upper Canada Division Courts Act, of one thousand eight hundred and fifty, and to extend the jurisdiction of the said Courts.

- W**HEREAS by an Act passed in the session held in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, "An Act to amend and consolidate the several Acts now in force regulating the practice of Division Courts in Upper Canada, and to extend the Jurisdiction thereof," jurisdiction is given, as therein mentioned, to the Courts holden under the said Act, to hold plea of certain claims and demands of debt, account or breach of contract, or covenant, or money demand, whether payable in money or otherwise, not exceeding £25, and of claims and demands in actions of tort to personal chattels, to and including the amount of £10; And whereas it is expedient to extend the provisions of the said Act to all personal actions (except as hereinafter mentioned) not exceeding £10, and also to amend the said Act in the manner hereinafter mentioned; Be it therefore enacted, &c.,
- 15 That the jurisdiction of the several Division Courts in Upper Canada shall extend to, and the Judges of such Courts shall, (in addition to the powers and jurisdiction conferred upon them by the said Act,) have power, jurisdiction and authority to hold plea of, all personal actions where the debt or damages claimed is not more than ten pounds; Provided always, that the said Division Courts shall not have cognizance of any action for any gambling debt, nor for spirituous or malt liquors drunk in a tavern or ale house, or of any action of ejectment, or in which the title to any corporeal or incorporeal hereditaments, or to any toll, custom or franchise shall be in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, or of any action for malicious prosecution, or for any libel or slander, or for criminal conversation or seduction, or breach of promise marriage; and the several powers and provisions of the said Act passed in the 13th and 14th years of Her Majesty's Reign, and all Rules, Orders and Regulations which have been or shall be made in pursuance of the same or of this Act, shall extend to all debts, damages and demands which may be sued for in the said Courts under the extended jurisdiction given by this Act, and to all proceedings and judgments for the recovery of the same, or otherwise in relation thereto, respectively, as fully and effectually to all intents and purposes as the

Preamble.

Act 13 and 14 Vic. c. 53, cited.

Jurisdiction of Division Courts raised to £10.

Proviso: Courts not to have cognizance of certain actions. Powers and provisions of 13 and 14 Vic. c. 53, extend to all cases cognizable by Division Courts.

same respectively are now, or may be applicable to the claims and demands within the present jurisdiction of the said Courts.

The said Act and this Act to be construed as one.

II. And be it enacted, That this Act and the said recited Act shall be read and construed as one Act, as if the several provisions in the said recited Act, not inconsistent with the provisions of this Act, were repeated and re-enacted in this Act. 5

Fees payable to be those in Schedule to 13 and 14 Vic. c. 53, Payment how enforced.

III. And be it enacted, That there shall be payable on every proceeding in the said Division Courts, and to the Clerks and Bailiffs of the Courts, such fees as are set down in the Schedule to the said recited Act (passed in the 13th and 14th years of Her Majesty's 10 Reign) marked A ; and if the fees on such proceedings shall not be paid in the first instance by the plaintiff or party on whose behalf such proceeding is to be had, on or before such proceeding, the payment thereof may be enforced by order of the Judge by such ways and means as any debt or damages ordered to 15 be paid by the Court can be recovered ; Provided always, that it shall be lawful for the Judge of every Division Court, at the trial of any cause in the said Court, to increase the fee for hearing any defended cause to a sum not exceeding *ten shillings*, whether the debt, damages or subject matter of the action is for a sum under or 20 over ten pounds, or for the sum of ten pounds.

Proviso: Judge may increase the fee in certain cases.

Judge may, with consent of parties, refer any case to arbitration; Award to be entered as a judgment.

IV. And whereas it is desirable to extend the law of Arbitration to Division Courts, be it therefore enacted, That the Judge holding any Division Court may, in any case, with the consent of both parties to the suit, order the same, with or without other mat- 25 ters within the jurisdiction of the Court, in dispute between such parties, to be referred to arbitration to such person or persons, and in such manner and on such terms as he shall think reasonable and just ; and such reference shall not be revocable by either party, except by consent of the Judge ; and the award of the arbitrator 30 or arbitrators or umpire, shall be entered as the judgment in the cause, and shall be as binding and effectual, to all intents and purposes, as if given by the Judge ; Provided, that the Judge may, if he shall think fit, on application to him within fourteen days after the entry of such award, set aside such award so given as aforesaid, 35 or may with the consent of both parties, as aforesaid, revoke the said reference and order another reference to be made in the manner aforesaid.

Proviso: Award may be set aside by the Judge, for cause.

How witnesses may be compelled to appear before Arbitrators and give evidence.

V. And be it enacted, That when any reference shall have been made by any such order, as aforesaid, either of the parties to the 40 suit may obtain from the Clerk of any Division Court, a summons requiring the attendance before the said arbitrator or arbitrators, of any witness resident within the County, or served with subpœna therein, with or without a clause requiring the production of books, papers and writings in his possession or control, and that the method 45

- of compelling the attendance of a witness before the arbitrator or arbitrators or umpire upon such reference, shall be in the manner prescribed by the 48th Section of the said recited Act, passed in the 13th and 14th years of Her Majesty's Reign; and parties making default
- 5 in attendance, or refusing or neglecting without sufficient cause, to produce any books, papers or writings required by such summons to be produced, may be proceeded against and punished, in the manner provided for in the 48th Section of the said recited Act, for disobedience of the summons to a witness. And it shall be lawful
- 10 for any one of such arbitrators to administer an oath to the parties in such suit, and to all other persons that may be examined before such arbitrator or arbitrators, either on behalf of the plaintiff or defendant, or to take their affirmation in cases where affirmation is allowed by law instead of an oath; and every person who in any
- 15 examination upon oath, or solemn affirmation before any such arbitrator or arbitrators, shall wilfully or corruptly give false evidence, shall be deemed guilty of perjury, and liable to the punishment which may, by law, be applicable to the crime of perjury.

Punishment of witnesses making default.

Arbitrator may administer oath to parties or witnesses.

False swearing to be perjury.

- VI. And be it enacted, That so much of the Act passed in the
- 20 eighth year of the Reign of Queen Anne, intituled, "*An Act for the better security of rents, and to prevent frauds committed by tenants,*" as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Division Court, but the landlord of any
- 25 tenement in which any such goods shall be so taken, shall be entitled by any writing under his hand or under the hand of his agent, to be delivered to the Bailiff making the levy, (which writing shall state the terms of holding, and the rent payable for the same) to claim any rent in arrear then due to him, not exceeding the rent of four
- 30 weeks when the tenement is let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year; and in case of any such claim being so made, the Bailiff making the levy, shall distrain
- 35 as well for the amount of the rent so claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued, and shall not proceed to sell the same, or any part thereof until after the end of eight days at least next following after such distress taken; and for every
- 40 additional distress for rent in arrear, the Bailiff of the Court shall be entitled to have as the costs of the distress, instead of the fees allowed by the said recited Act passed in the 13th and 14th years of Her Majesty's Reign for making such distress and keeping possession thereof, the fees allowed by an Act of the Parliament of the late Province of Upper Canada, passed in the first
- 45 year of Her Majesty's Reign, intituled, "*An Act to regulate the costs of levying distresses for small rents and penalties;*" and if any replevin be made of the goods so distrained, so much of the

Part of Statute of Anne not to apply to goods taken in execution in Division Courts: recourse of the landlord in such case.

Duty of Bailiff distraining.

Costs to Bailiff.

Act of Upper Canada, 1 Vic. c. 16
Proceedings of

the goods are replevied.

Execution creditor not to be satisfied until the landlord is paid.

goods taken under the said warrant of execution shall be sold, as as will satisfy the money and costs for which the said warrant issued and the costs of the sale, and the surplus of such sale, and of the goods so distrained, if any, shall be returned as in other cases of distress for rent and replevin thereof; but no execution creditor under the said recited Act passed in the 13th and 14th years of Her Majesty's Reign or this Act, shall be satisfied his debt, out of the proceeds of such execution and distress or execution only, where the tenant shall replevy, until the landlord who shall conform to the provisions of this Act shall have been paid the rent in arrear for the periods hereinbefore mentioned.

Sec. 102. of 13 and 14 Vic. c. 53 amended. Proceedings in case any claim to goods or chattels seized or to the proceeds thereof, be made by any landlord or other third party.

VII. And in amendment of the 102nd Section of the said recited Act, passed in the 13th and 14th years of Her Majesty's Reign, be it enacted, That if any claim shall be made to or in respect of any goods or chattels, property or security taken in execution or attached under process of any Division Court, or in respect of the proceeds or value thereof, by any landlord for rent, or by any person not being the party against whom such proceeding has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, as well before as after any action brought against such officer, to issue a summons calling before the Court out of which such process shall have issued, or before the Court holden for the Division in which the seizure under such process shall have been made, as well the party issuing such process as the party making such claim; and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record at Toronto, or in any Local or Inferior Court, in respect of such claim, shall be stayed, and the Court in which such action shall have been brought or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels, property or security were so taken in execution or upon attachment, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the Court, and the Judge of the Court shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit; and such order shall be enforced in like manner as any order made in any suit brought in such Court, and such order shall be final and conclusive between the parties.

In what Division Court any suit may be entered and tried.

VIII. And be it enacted, (notwithstanding anything contained in the said recited Act passed in the 13th and 14th years of Her Majesty's Reign,) That all suits cognizable in a Division Court may be entered and tried in the Court holden for the Division in which the cause of action arose, or in the Court holden for the Division in which the defendant, or where there shall be more than one defendant wherein one of the defendants, shall dwell or carry on his business at the time of the action brought, or, by leave of the Judge, according to

the provision contained in the next Section, in the Court holden for any Division (whether in the same or in an adjoining County) adjacent to the Division in which the defendant is resident.

IX. And whereas in certain Divisions, the places fixed for holding Recital.
 5 the sittings of the Courts, and the offices of the Clerks thereof, may be situate at an inconvenient distance from the place of residence of certain parties residing in such Divisions, while a Division Court is held in the same or in an adjoining County more convenient for such parties, and it is desirable that procedure in the said Division Courts
 10 should be made as easy and inexpensive as may be to the suitors ; be it therefore enacted, That any suit cognizable in a Division Court may, by leave of the Judge of the Court in which such suit is to be brought, be entered and tried in any Court, (whether holden for a Division in the County in which the defendant resides, or
 15 holden for a Division in an adjoining County,) in which the said Judge shall specially order such suit to be entered and tried ; and upon such order made, the defendant shall be liable to be sued in accordance therewith in any adjoining Division Court, whether situate in the County in which he resides, or an adjoining County ; and
 20 every such suit may be entered, tried and proceeded with in the same manner to all intents and purposes, as if the cause of action for which the same shall be brought, had arisen within the Division of the Court in which leave shall be so obtained as aforesaid to enter it, and the defendant were a resident therein.

A suit may be entered and tried in any Court specially designated by the Judge of the Court in which it is to be brought.

25 X. And be it enacted, That it shall be lawful for the Governor of this Province, to appoint and authorize five of the Judges of the County Courts in Upper Canada, to frame such general rules as to them shall seem expedient, for and concerning the practice and proceedings of the Courts holden under the authority of the said
 30 Act, passed in the 13th and 14th years of Her Majesty's Reign, and for the execution of the process of such Courts, and in relation to any of the provisions of the said Act, or of this Act, or of any Act to be hereafter passed, as to which there may have arisen doubts, or may have been conflicting decisions in the said Division Courts, or as to which
 35 there may hereafter arise doubts, and also to frame forms for every proceeding for which they shall think it necessary that a form should be provided ; and all such rules, orders and forms as aforesaid, shall be certified to the Chief Justice of Upper Canada, under the hands of the County Judges so appointed and authorized, or of any three of
 40 them, and shall be submitted by the said Chief Justice to the Judges of the Superior Courts of Common Law at Toronto, or to any four of them, and such Judges of the Superior Courts (of whom the said Chief Justice or the Chief Justice of the Court of Common Pleas at Toronto, shall be one) may approve or disallow,
 45 or alter or amend such rules or orders, and such of the rules as shall be so approved by such of the Judges of the Superior Courts shall have the same force and effect as if the same had been made

The Governor may appoint five County Court Judges to frame rules of practice for Division Courts ; which being approved by a Chief Justice and three Judges of the Superior Courts of Law at Toronto, shall be valid.

Rule in cases
unprovided
for.

and included in this Act ; and in any case not expressly provided for by the said recited Act passed in the 13th and 14th years of Her Majesty's Reign, or by this Act, or by the said rules, the general principles of practice in the Superior Courts of Common Law at Toronto, may be adopted and applied in the discretion of the Judge, 5
to actions and proceedings in the Division Courts ; and the contingent expenses connected with the framing and approval of such rules, and the printing thereof, shall be paid out of the General Fee Fund of the Division Courts : Provided always, that all rules and forms already legally made and approved and in force, shall, as far as applicable, remain in force until it is otherwise ordered : and Provided further, that copies of all such Rules made and approved of as herein provided, shall be forwarded by the Judges making the same, to the Governor of this Province, to be by him laid before each house of the Legislature. 15

Expenses of
making and
printing rules,
how paid.

Proviso.

Proviso.

Jury for try-
ing any fact
which the
Judge shall
think ought to
be so tried.

XI. And be it enacted, That in case any Judge, before whom a suit shall be tried in a Division Court, shall think it proper to have any fact or facts controverted in the cause tried by a Jury, in such case a Jury of five persons present shall be returned instantly by the Clerk of the Court, to try such fact or facts as shall seem 20
doubtful to such Judge, and the Judge may proceed to give judgment on the verdict of such Jury, or grant a new trial on the application of either party in the same way and under similar circumstances as new trials are granted in other cases on verdicts of Juries ; and for the returning of such Jury the Clerk shall be 25
entitled to a fee of *one shilling and three pence*, and no more ; Provided always, that nothing herein contained shall extend, or be construed to extend to affect the sole jurisdiction of the Judge in cases in which a Jury has not been legally demanded by the parties, but as heretofore in such cases, the Judge holding such 30
Courts, shall be the sole Judge of all actions brought in the Division Courts, and shall determine all questions as well of fact as of law in relation thereto.

Fee.

Proviso.

Recital.

Clerks and
Bailiffs receiv-
ing money, to
give security.

XII. And whereas there is no provision in the said recited Act, passed in the 13th and 14th years of Her Majesty's Reign, requiring 35
Clerks and Bailiffs to give security for accounting for, and for the due payment of fees, fines and monies received by them respectively in the performance of their several duties ; be it therefore enacted, That every Clerk and Bailiff of a Division Court, who may receive any fees, fines or monies in the execution of his duty, shall give secu- 40
rity by entering into a bond to Her Majesty, Her Heirs and Successors, in such sums, with so many sureties, and in such form as the Governor of this Province shall see reason to direct for the due accounting for and payment of all fees, fines and monies received by them respectively, by virtue of their respective 45
offices, under the said recited Act passed in the 13th and 14th years of Her Majesty's Reign, or under this Act, or under any

Act to be hereafter passed, and also for the due performance of the duties of their several offices ; Provided always, that nothing herein contained shall affect or be construed to affect the validity of any covenant entered into, under the 22nd Section of the said recited Act of the 13th and 14th years of Her Majesty's Reign or the remedy given thereunder to persons suffering damages by the default, breach of duty, or misconduct of any Clerk or Bailiff, or affect or be construed to affect any bond or security heretofore legally given by any County Treasurer, or any Clerk or Bailiff of a Division Court.

Proviso: covenants entered into under Sect. 22, of 18 and 14 Vic. c. 53, and bonds &c., not invalidated.

XIII. And be it enacted, That the Clerk of each Division Court shall, in the month of January, in each year, make out a correct list of all sums of money belonging to suitors in the Court, which shall have been paid into Court, and which shall have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the parties for whom or on whose account the same were so paid into Court ; and a copy of such list shall be put up and remain during Court hours in some conspicuous part of the Court House or place where the Court is held, and at all times in the Clerk's office : and all sums of money which shall have been paid into Court to the use of any suitor or suitors thereof, and which shall have remained unclaimed for the period of six years after the same shall have been paid into Court, or to the officers thereof, and which are now in the hands of the Clerk or Bailiff, and all further sums of money which shall hereafter be paid into Court, or to the officers thereof, to the use of any suitor or suitors, shall, if unclaimed for the period of six years after the same shall have been so paid, be applicable as part of the General Fee Fund of the Division Courts, and be carried to the account of such fund, and paid over by the Clerk or officer holding the same, to the Treasurer of his County, and no person shall be entitled to claim any sum which shall have remained unclaimed for six years, but no time during which the person entitled to claim such sum shall have been an infant or *feme covert*, or of unsound mind, or out of the Province, shall be taken into account in estimating the six years.

Clerks of Division Courts to make out yearly, lists of monies paid into Court and unclaimed during a certain time ; Lists to be posted up, and such sums unclaimed after a certain time, to go to Fee Fund.

Provision as to infants, &c.

XIV. And be it enacted, That from and after the commencement of this Act, no action shall be brought against any Bailiff of a Division Court, or against any person acting by the order and in aid of any Bailiff, for any thing done in obedience to any warrant under the hand of the Clerk of the Court and the Seal of the Court, until demand hath been made, or left at the residence of such Bailiff, by the party intending to bring such action, or by his attorney or agent in writing, signed by the party demanding the same of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand ; and in case after such demand and compliance therewith,

Action against Bailiff, not to be brought except after certain notice, &c.

As to action where Clerk

is not made a Defendant by shewing the said warrant to and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such Bailiff or other person acting in his aid, for any such cause as aforesaid, without making the Clerk of the Court who signed or sealed the said warrant defendant, then, on producing or proving such warrant, at the trial of such action, the Jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction or other irregularity in or appearing by the said warrant; and if such action be brought jointly against such Clerk, and also against such Bailiff or person acting in his aid as aforesaid, then on proof of such warrant, the Jury shall find for such Bailiff, and for such person so acting as aforesaid, notwithstanding such defect or irregularity as aforesaid; and if the verdict shall be given against the said Clerk, then, in such case, the plaintiff shall recover his costs against him, to be taxed in such manner, by the proper officer, as to include the costs such plaintiff is liable to pay to the defendant for whom such verdict shall be found, as aforesaid; and in any action to be brought as aforesaid the defendant may plead the general issue, and give the special matter in evidence at any trial to be had there-upon.

Interpretation Clause.

XV. And be it enacted, That in construing this Act, the word "landlord" shall be understood to mean the person entitled to the immediate reversion of the lands, or, if the property be held in joint tenancy, coparcenary or tenancy in common, shall be understood to mean any one of the persons entitled to such reversion; and the word "agent," shall be understood to mean any person usually employed by the landlord in letting of lands or in the collection of the rents thereof, or specially authorized to act in any particular matter, y writing under the hand of such landlord.

Short Titles of the several Acts relative to Division Courts.

XVI. And be it enacted, That in citing, pleading or otherwise referring to the said Act passed in the Session held in the 13th and 14th years of Her Majesty's Reign intituled, "*An Act to amend and consolidate the several Acts now in force regulating the practice of Division Courts in Upper Canada, and to extend the jurisdiction thereof,*" it shall in all cases whatsoever be sufficient to use the expression, "*The Upper Canada Division Courts Act, of 1850,*" or words or word and or figure of equivalent import; and that in citing, pleading or otherwise referring to this Act, it shall in all cases whatsoever be sufficient to use the expression, "*The Upper Canada Division Courts Extension Act, of 1853,*" or words or words and figures of equivalent import; and that in pleading, citing or otherwise referring to the said Acts and any other Acts that may be hereafter passed touching or concerning or in any-wise relating to the said Division Courts, it shall in all cases whatsoever be sufficient to use the expression, "*The Upper Canada Division Courts Acts*" or words of equivalent import, which shall in all cases be understood to include

and refer to so such and so much of the said Acts as shall be then in force touching or concerning or in anywise relating to such Courts.

XVII. And be it enacted, That all affidavits to be used in the Division Courts, or before the Judges thereof, may be sworn before Before whom affidavits may be sworn.
 5 any County Judge, or any Clerk of a Division Court, or Commissioner for taking affidavits in either of the Superior Courts of Common Law in Upper Canada.

XVIII. And be it enacted, That this Act shall commence and Commencement of this Act.
 take effect on the day of next after the passing hereof.
 C²¹⁸