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No. 59.

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2nd Session, 7th Parliament, 26 Victoria, 1863.

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**BILL.**

**An Act to amend the Act respecting Division Courts, chapter nineteen of the Consolidated Statutes for Upper Canada.**

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Received and read first time, Friday 27th  
February, 1863,

Second reading, Monday, 2nd March, 1863.

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Mr. M. C. CAMERON.

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QUEBEC :

PRINTED FOR THE CONTRACTORS BY  
HUNTER, ROSE & LEMIEUX, ST. URSULIN ST.

An Act to amend the Act respecting Division Courts, Chapter nineteen of the Consolidated Statutes of Upper Canada.

**W**HEREAS by the eighth section of Chapter nineteen of the Consolidated Statutes for Upper Canada, the Justices of the Peace in each County in General Quarter Sessions assembled, may, subject to the restrictions therein contained, appoint and from time to time alter the number, limits and extent of every Division, and shall number the divisions beginning at number one; but a less number of Justices cannot alter or rescind any resolution or order made by a greater number at any previous Session:—And whereas more townships than one in many instances have been and may be included in one Division, and by reason of the increase of population in townships so included, the public convenience may require that the number of Divisions and Courts should be increased;—And whereas in consequence of the difficulty experienced in effecting such increase by reason of the non-attendance at any General Quarter Sessions of as many Justices as were present when the Divisions were established, it is expedient for remedy thereof that the said eighth section should be repealed; Therefore Her Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

Preamble.  
Con. Stat., 5.  
C., cap. 19,  
sec. 8.

1. From and after the passing of this Act, the eighth section of the said Act cited in the preamble shall be repealed and the following clause be read as forming part of the said Act in the place of the said eighth section:—

Section 8  
repealed.

“A majority of the Justices of the Peace in General Quarter Sessions assembled in any County may, subject to the restrictions hereinafter contained, appoint and from time to time alter the number of Divisions or the limits and extent of any Division or Divisions, and shall number the Divisions beginning at number one; but a less number of Justices than five shall not alter or rescind any resolution or order made at any previous Session; nor shall a less number of Justices decrease the number of Divisions established in any County by any order or resolution made by a greater number at any previous Session.”

New clause  
appointing  
and altering  
number of  
Divisions.

2. Notwithstanding anything in the one hundred and seventy-fifth section of the said Act, any party brought before any Division Court or any County Judge under the provisions of the said section, dissatisfied with the decision of such Court or Judge or the verdict of any jury, in respect to any claim to any property seized or attached under execution or attachment, where the property seized or attached shall exceed the value of fifty dollars,—whether seized under one execution or attachment or several, may appeal from such decision or verdict to the County Court of the County or United Counties in which such decision or verdict is made or rendered;—Provided always, that no such appeal shall be heard or allowed unless the party or parties appealing, shall within ten days after such decision or verdict shall have been given or rendered, give notice of his or their intention to appeal, to the Clerk of the Division Court in which such decision or verdict shall have been given or rendered,—and shall also within the time aforesaid, file with such Clerk a bond to the said Clerk, executed by the party appealing

Section 175  
amended, ap-  
peal given in  
certain cases  
of seizure or  
attachment.

Proviso:  
Notice of ap-  
peal and  
security to be  
given.

Proviso:  
Sureties to  
justify.

or by some other person, and two sureties to be approved by the said Clerk, in the sum of two hundred dollars,—conditioned to prosecute the appeal with effect and without delay and to pay all costs as well of the proceedings in the said Division Court as of the said appeal, in the event of the appellant not succeeding in the said appeal;—And provided also, that the said bond be accompanied by an affidavit of justification by such sureties, and an affidavit of the due taking thereof by a subscribing witness to the execution of the said bond. 5

What ques-  
tion shall be  
tried on such  
appeal, and  
how.

3. The question to be tried on the said appeal shall be the right of the claimant or claimants to the property seized or attached as against the plaintiff or plaintiffs in the execution or executions, attachment or attachments, and it shall be tried before a jury without formal pleadings, in the manner in which interpleader issues are now tried in the County Court; and it shall be the duty of the party or parties appellant to prepare an issue embodying such question, and a statement of the goods or property claimed, and to file the same in the office of the Clerk of the County Court of the County in which such issue is to be tried, within fifteen days after the decision or verdict appealed from is made or rendered,—and to give notice thereof to the Clerk of the Division Court in which such decision or verdict was made or rendered; and in case the party or parties in whose favor such decision or verdict has been made or rendered, shall not object to such issue and give notice of such objections to the said Clerk within five days next after the expiration of the last day allowed to the appellant to file such issue, the issue so filed shall be tried by a jury of the County at the next sitting of the County Court for the trial of causes which shall happen not sooner than twenty-four days next after the decision or verdict appealed from shall have been given or rendered; Provided always, that it shall be lawful for the Judge of the County Court in which such issue is to be tried, to enlarge the time for the trial thereof, upon cause shown by either party as in ordinary cases. 10 15 20 25 30

When and  
where the  
trial shall be  
had.

Proviso.

What verdict  
may be  
rendered.

4. The jury before whom the said issue is tried may render a general verdict in favor of the appellants or respondents, and for the whole of the goods and chattels or personal property seized or attached, or in favor of one or more appellant or appellants, respondent or respondents and against the other or others of them, or in favor of one or more as to some portion of the goods or property, and of the others as to other portion or portions. 35

Costs;—how  
taxed,  
allowed and  
recovered.

5. Wherever the jury shall render a general verdict in favor of the appellant or respondent, or for the whole of the property seized or attached, the successful party shall be entitled to his costs; and in case of the verdict being apportioned, the costs shall be in the discretion of the Judge of the Court before whom the issue is tried, who shall make an order on the back of the issue directing by whom the costs shall be paid; and such costs shall, after taxation by the Clerk of the County Court in accordance with the tariff of fees, or practice in interpleader issues,—be recovered by execution to be issued out of the County Court as upon a judgment in ordinary cases;—and in case the appellant shall be directed to pay the costs, the respondent shall or may in his option proceed to recover such costs by execution as aforesaid, or by action on the bond given as security aforesaid. 40 45 50

Who shall be  
made parties  
to the issue.

6. All parties giving notice of their intention to appeal shall be made appellants in one issue, and all parties in whose favor the decision or verdict appealed from has been given or rendered shall be made respondents, and shall be answerable for costs according to the 55

provisions of the fifth section of this Act, unless he or they shall give notice of the abandonment of the appeal or of the decision or verdict in his or their favor appealed from, within twenty days next after such decision or verdict shall be made or rendered; and in case of the appeal <sup>Appeal</sup> being abandoned, the decision or verdict appealed from shall stand, and <sup>abandoned.</sup> in case of the abandonment of the decision or verdict by the party or parties in whose favor the same has been rendered, the said decision or verdict shall be reversed with or without costs in the discretion of the Judge of the Court in which the proceeding appealed from was pending; <sup>10</sup> such costs to be recovered and all further proceedings to be had in the said Court as if the decision had been originally in favor of the appellant.

<sup>7.</sup> The Judge of the County Court before whom any issue shall be tried under the provisions of this Act shall have all the powers of <sup>Powers of</sup> amendment and other powers of a Judge in the County Court in causes <sup>Judge.</sup> <sup>15</sup> originated in such County Court.