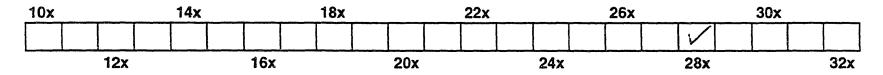
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1st Session, 6th Parliament, 21 Victoria, 1858.

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BILL.

An Act to amend the Division Court Acts of Upper Canada.

Received and read, first time, Tuesday, 16th March, 1858.

Second reading, Tuesday, 23rd March, 1858.

MR. BENJAMIN.

TORONTO: PRINTED BY JOHN LOVELL, YONGE STREET. No. 12.]

BILL.

[1858.

An Act to amend the Division Court Acts of Upper Canada.

THEREAS the laws at present in force, establishing Division Preamble. Courts in Upper Canada, for the recovery of Small Debts, enable the County Judges, who are ex officio Judges of the Division Courts, to appoint the Clerks of the said Courts without reference to 5 their occupation or profession; And whereas the practice now prevails of appointing persons to the said office of Clerk, who are engaged in trade, thereby giving such traders an undue advantage over other traders having recourse to the Courts for the recovery of their lawful demands, and it is deemed expedient to remedy the same : Therefore 10 Her Majesty, &c., enacts as follows :

I. From and after the passing of this Act it shall not be lawful for Traders not to any County Judge as Judge of a Division Court, to appoint any person be made Clerks of Dito the effice of Clerk of a Division Court who is engaged in trade as a vision Courts. merchant or shopkeeper.

15 II. Within six months of the passing of this Act it shall be the duty Clerks who are of each County Judge in Upper Canada, as Judge of the Division traders to be Courts within the limits of his County or Union of Counties, as the removed. case may be, to remove all Clerks of Division Courts who are merchants or shopkcepers; and any Judge failing so to remove such Clerk Penalty on

20 or Clerks shall be deemed guilty of a neglect of duty, and subject to Judges failing to remove such five as the Court appointed for the investigation of charges them. against County Judges shall see fit to impose.

III. No removal of any such Division Court Clerk, so being a mer- Bonds, dc., of chant or shopkeeper as aforesaid, shall in anywise have the effect of Clerks not in-25 impairing the liability of his surcties for defaults committed before such removal. the date of such removal or at the date thereof, or in any manner whatsoever to affect the rights of the Crown, or of any individual, upon any bond, obligation, or other security, before the date of such removal entered into by or in respect of such Clerk.

- IV. When the plaintiff or defendant in any action now pending or Commissions 30 hereafter to be brought in any of the said Division Courts, shall be for the examidesirous of procuring the testimony of any aged or infirm person resi-nesses may dent within Upper Canada, or of any person who is about to withdraw issue in cases hunself or herself out of the same, or who is residing without the before Divi-35 limits of Upper Canada or without the limits of the Province, it shall sion Courts.
- 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.

How the Commissions shall be returned and their effect.

in certain cases.

V. In case of witnesses residing without the limits of Upper Canada, such Commission or Commissions, with the examination of the wit-5 ness 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, clos. under the hand and seal or hands and seals of one or more of such Commissioners, 10 and shall be taken primâ facie to have been duly executed and returned, Provise: Evi- and shall be received as evidence in the said cause ; Provided always, dence so taken that such examination or examinations shall not be read or given in not to be used evidence in the said cause, in case the deponent or deponents respectively shall be living within Upper Canada, and of sound mind, me- 15 mory 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 has or have not been duly taken.