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No. 31.

4th Session, 6th Parliament, 24 Vic., 1861.

BILL.

An Act to establish a more expeditious
means of deciding Controverted Elections.

Received and read, first time, Saturday, 23rd
March, 1861.
Second reading, Tuesday, 2nd April, 1861.

Hon. Mr. SICOTTE.

QUEBEC:

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An Act to establish a more expeditious means of deciding Controverted Elections.

HER Majesty, &c., enacts as follows:

RIGHT TO PETITION.

1. Any elector who was qualified to vote at the election of a Member to serve either in the Legislative Assembly or in the Legislative Council, or any Candidate at such election, may bring a petition and complaint 5 denying the legality of such election, or against the return of the person declared elected, and may pray that some other person be declared duly elected.

2. Such petition and complaint shall be presented in the manner prescribed by the Law now in force, within fifteen days after the day 10 on which the declaration and proclamation were made by the Returning Officer, of the result of the election and of the person elected thereat, but after such delay of fifteen days, such petition may not be presented; and shall be dismissed purely and simply with costs against the complainant.

TRIBUNAL—MODE OF SUMMONS.

3. Upon a petition being presented by any elector qualified to vote at such election, or by a candidate at such election, alleging the illegality of the election or complaining of the return of the person declared to be elected, for the reasons assigned in the said petition, the Superior Court, if it be in Lower Canada, sitting in the District in which 20 the election took place, or either of the Superior Courts of Common Law, if it be in Upper Canada, shall direct the issue, in the form prescribed for writs of summons, of a writ ordering that the person whose election or return is complained of, be summoned to appear before the Court to answer to such petition and complaint on a day to be fixed by such 25 Writ.

4. The Writ of Summons shall be served on the person whose election or return is complained of, by leaving a copy of the Writ of Summons and of the Petition, certified by the Clerk of the Court, with him personally, or at his domicile, in the manner prescribed in the case of 30 ordinary actions, allowing a delay of at least six days between the day of Summons and that of the return of the Writ, when service shall have

been made within a distance of fifteen miles from the place at which the party shall have been summoned to appear, and a further delay of one day for each fifteen miles beyond the first fifteen miles.

5. Such Writ of Summons shall also be served on the Returning Officer, who shall have acted as such at the election, by leaving a copy of the Writ and of the Petition certified by the Clerk of the Court, with him personally or at his office, as Registrar or Sheriff if he be the Registrar or the Sheriff, or at his domicile if he holds neither of these offices, in the manner prescribed by the next preceding section. 5

6. It shall not be necessary to prove by oath or special affidavit, the service of any Writ of Summons, Order, Subpoena, or Rule rendered necessary by the proceedings required to be taken in carrying this Act into execution, but the return of service made by the Bailiff or any other person competent to make such service, shall be proof of the facts mentioned in such return. 10 15

APPEARANCE AND ENQUETE.

7. If the person whose election or return is disputed, appears on the day fixed, he shall be bound to plead to the merits of the petition within the four days next after his appearance, and the party complaining shall be bound to answer to the pleadings within four days after the filing thereof; and in default of pleading or answering within the said delays, foreclosure shall be granted and registered as against the party in default, without it being necessary to make any motion for that purpose. 20

8. The party complaining, who shall be deemed the plaintiff in the proceeding, shall, within four days from the filing of the answer, proceed to prove the allegations of his petition, and such proof or such part thereof as may be oral shall be taken in writing in the manner in which the depositions of witnesses are taken in such Court. 25

9. When the party complaining shall have declared his *enquête* to be closed, the party against whom the complaint is brought shall, after a delay of four days, and no longer, if he ask for such delay, proceed to produce such proof as he intends to offer against the petition and in support of his plea; and so soon as he shall have closed his evidence, the party complaining, after a delay of four days, shall bring his evidence in rebuttal, if he intends to do so. 30

10. The *enquête* shall be taken and continue without further delays or postponements than those fixed by the present Act, but nothing herein prescribed shall have the effect of preventing the Court from ordering the issue of and issuing rogatory commissions in the usual form to facilitate the examination of witnesses and to expedite the proceedings, when the party complaining shall apply therefor, or shall give his consent thereto. 35 40

11. The Clerk of the Court is authorized and required, in case of the absence of the Judge, to open the Court and preside at the *enquête* in such proceedings, and the parties shall be bound to proceed with their *enquête*, notwithstanding the absence of the Judge. 45

12. Any objection as to the admissibility of the evidence tendered, shall be entered and noted when made, without discussion, and shall be reserved, without delaying the proceedings, to be discussed and decided, at the time of the hearing on the merits and of the judgment to be rendered on the merits of the petition.

13. Forthwith after both parties shall have closed their *enquête*, the Court at some sitting thereof shall appoint and fix, and in the absence of the Judge it shall be the duty of the Clerk of the Court to appoint and fix, a day which shall not be more than ten days after the day of the closing of the *enquête*, for hearing the matter on the merits; and it shall not be necessary to give to the parties or their Counsel any other notice of the day fixed for the hearing on the merits of the petition.

14. The party against whom the complaint is brought, may admit before the Court, the illegality of the election or of his return, and such confession shall be taken in writing and be attested under the signature of the party in presence of the Judge, who shall certify such confession in the usual way.

15. If the party against whom the complaint is brought does not appear on the day fixed for the return of the Writ of Summons, the default shall be established and recorded, and the party complaining may then forthwith proceed to prove the allegations of his petition, and to the hearing on the merits thereof, without it being necessary to give any further notice or summons to the opposite party.

HEARING ON THE MERITS—JUDGMENT.

16. With the view of securing a Judgment which shall give to the parties and to society the most perfect confidence in the independence and impartiality of the tribunal, the laws constituting the Superior Court for Lower Canada, in so far as they enact that the said Court shall be presided over by one Judge, shall not apply to such judgment; and notwithstanding the said provision of the Judicature Act of 1857, (Con. Stat., L. C., c. 78, s. 12, 5,) the Superior Court for Lower Canada shall, for and during the hearing on the merits of the petition, and for the judgment to be rendered, be composed of and presided over by three Judges of the Superior Court; but all the proceedings on such petition, from the application for the issue of a Writ of Summons to the hearing on the merits, shall be had and taken before one Judge only, in conformity with the provisions of the Judicature Act of 1857, and the laws now in force.

17. In Lower Canada, the hearing on the merits of such Petition shall take place either in the City of Quebec or in the City of Montreal, in conformity with the order of the Court in which the proceedings have been commenced by the issue of the Writ of Summons; and the transmission of the record and of all the papers, shall be effected in the manner in which it is effected in other causes and proceedings in the Superior Court for Lower Canada, when appeals are brought in such causes; And it shall be the duty of the said Superior Court, on fixing the day for the hearing on the merits of such petition, to appoint and declare at the same time, and in the order to be registered respecting the fixing

of the day, in which of the cities of Montreal or Quebec the hearing on such merits shall take place.

18. In Upper Canada, the hearing on the merits shall take place at such place as may be fixed by the Court in which the case is pending.

19. The Court shall first render judgment on the rights of the party against whom the complaint is brought, and then on the rights of the party who claims to have gained the election and to be declared elected; and no appeal shall lie from any judgment rendered on such petition. 5

The Court shall in its examination and consideration of the matter, proceed to the establishment of the following facts: 10

1st. Whether or not an election has taken place conformably to law? 10

2nd. Whether or not the person declared elected possessed the real property qualification required by law? whether the value of the property on which this qualification is founded, is that fixed and established by the municipal valuation then in force? and whether he has given and furnished such qualification when required by law, and in the form prescribed by law? 15

3rd. Whether there was violence during the election, to such an extent as to hinder the voting, and whether such violence was committed by the candidate elected or his partizans, or by the party or the partizans of the party who claims the election and the return. 20

4th. Whether the party declared elected and against whom the complaint is brought, had the majority of legal votes inscribed in the poll books, or whether any other person had the majority of such votes, who such person is, and whether he claims the Election. 25

5th. Whether electoral frauds have been committed, such as the fraudulent entering of votes in the poll books, the falsification of the poll books, the destruction or abstraction of the poll books, or any other fraud whatever relating to the entering of the votes on the poll book, by whom, and for whose advantage, and whether the said frauds were committed to the knowledge or with the assistance and participation of the Candidate elected or of the person who claims to be entitled to the Election. 30

6th. Whether or not any corruption has existed or whether any intrigues or underhand dealings have been practised contrary to law, on the part of the Candidate elected or with his participation, or on the part of the person claiming to be elected. 35

7th. Whether the person declared elected or the person claiming to have gained the Election is, by the evidence, proved to have been guilty of any of the acts declared by the laws relating to elections to be felony or misdemeanor, or punishable by fine or imprisonment, and indicating specially of what acts such person has been guilty. 40

20. The commission of any act declared by the laws respecting Elections to be felony or misdemeanor or punishable by fine or imprisonment, or any participation or complicity in such act on the part of the Candidate elected, the want of a real property qualification or the insufficiency of the value of the properties offered as such qualification, shall render his Election void; and such commission or participation, or want of qualification on the part of the Candidate who claims to be elected, shall render him incapable of being declared elected and disqualified for taking the seat. 45 50

21. Proof of the commission of such act or of participation or complicity therein on the part of the Candidates shall be made and decided upon in conformity with the laws in force respecting it, and in accordance with the Criminal Law of the Province.

22. The Court, in rendering its judgment, shall pronounce specially on each of the facts enumerated in the nineteenth Section, and shall declare in a specific and precise manner its opinion on the evidence produced against the person accused of the commission of or of participation in any of the acts declared by the electoral laws to be felony or misdemeanor or punishable by fine or imprisonment, and shall further declare whether an Election has taken place, whether the person declared elected was duly elected, whether he possessed the requisite property qualification, or whether the election of the person declared and returned elected was null, or whether another person, and what person was really elected and should have been returned as duly elected for the County, Riding or Electoral Division, the Election for which was contested.

TRANSMISSION OF THE JUDGMENT TO PARLIAMENT.

23. The judgment pronounced by the Court on such petition shall be registered in the Registers of the Court, in the ordinary manner, and it shall be the duty of the Clerk of the Court to address and transmit to the Clerk of the Legislative Assembly or of the Legislative Council, as the case may be, on the day immediately following that on which the judgment shall have been given, a copy of such judgment attested and certified in the manner in use as regards other judgments in civil matters, by depositing a copy of the judgment in the Post Office nearest to the place at which the Court sits, and the Clerk shall take a receipt of such deposit from the Post Master or one of the employees in such Post Office.

24. It shall be the duty of the Clerk of such Court, within fifteen days after the rendering of the judgment, to transmit a copy duly attested and certified of the evidence and proof offered and produced by the parties in the matter of such petition, by addressing such copy to the Clerk of the Legislative Assembly, or of the Legislative Council, as the case may be, in the manner prescribed by the next preceding Section respecting the transmission of the judgment.

ACTION OF PARLIAMENT.

25. It shall be the duty of the Clerk of the Legislative Assembly or of the Legislative Council, as the case may be, at the sitting immediately following the receipt of the judgment, as soon as the Speaker shall have taken the Chair, to read the said judgment, and to enter it as part of the proceedings of the day, and to cause it to be published at length in the Votes and Proceedings of that day.

26. It shall be the duty of the Speaker of the Legislative Assembly or of the Legislative Council, as the case may be, after the sitting immediately following the reading of such judgment, to issue his warrant for a new writ of election, whenever the election of the member returned as elected and sitting shall have been declared null or illegal by the judg-

ment of the Court, and to inform the House over which he presides of his having so done ; and when the judgment of the Court shall declare and shall be that a person other than the sitting member was entitled to the election and the seat, it shall then be the duty of the Speaker to see that during the sitting next after the reading of the judgment, the proper officer makes such changes as may be requisite in the books and the returns of such election, and that the name of the person declared entitled to the election and the seat, is substituted and inscribed in the books and returns of the election as having been duly elected. 5

27. The person so declared by the judgment to be entitled to the seat and to the election, after such changes in the books and returns of the elections have been made, may take his seat and place in the Legislative Assembly or Council, as the case may be, upon observing the ordinary formalities prescribed by law. 10

GENERAL PROVISIONS.

28. The party making such complaint shall, at the time he applies for the issuing of the writ of summons, provide and give security for the payment of the costs to be incurred in the matter of his petition, and which shall be payable to the party complained against, in the sum of four hundred dollars, and security shall also be given in a like amount of four hundred dollars by the party against whom the complaint is brought at the time his pleading and contestation are filed, for the costs payable to the party complaining. 15 20

29. Such security shall be given in Court in the ordinary form of judicial securities, and the sureties shall be proprietors of real estate of the value of at least six hundred dollars, over and above all charges and hypothecs, and shall be bound in all cases to justify their sufficiency on oath, and shall be liable jointly and severally with the party for whom they are sureties. 25

30. Each party shall be permitted to deposit in the hands of the Clerk, who shall give a certificate of such deposit, the sum of four hundred dollars, instead of giving such security, and such deposit shall be equivalent to and be in the stead of such security. 30

31. It shall not be lawful to object to the security as insufficient or null or informal, but such security is declared to be effectual and to be always good and valid as against the sureties, by the mere fact of the signatures of the sureties to such security, or of the declaration of their presence attested by the Clerk at the time of the execution of the security, if they were unable or did not know how to sign. 35

32. The Court shall decide as regards costs as in ordinary proceedings, and the judgment shall be executory in respect of the costs against the party condemned to pay them, and against his sureties; without its being necessary that any judgment or order be given or made against them, in the same manner as any other judgment of the Court. 40

33. No witness shall be disqualified or incompetent because he was entitled to vote or because he shall have voted at such election. 45

34. No petition against an election or against the return of a person as having been elected, nor the defence to such petition, shall be objected to by reason of defects or errors in form, but the Court shall compel the parties to proceed to *enquête* and hearing on the merits of
 5 such petition without delay, so as to ensure the speedy proceeding with the matter as provided for with respect to matters requiring despatch.

35. The parties, whether the complainant or the party complained against, shall be bound to answer all such questions as may be put to them by the opposite party, respecting the proceedings at such election ;
 10 and the party desirous of interrogating and putting such questions to his opponent, shall previously communicate the same to him, serving upon him, at the same time, the order fixing the day on which he must appear to answer such questions, in the manner prescribed for the service of the writ of Summons.

36. Any refusal or neglect to answer such questions shall be declared and taken to be a confession and admission of the facts.
 15

37. Any person who shall make any false statement under oath in relation to any fact or matter whatsoever having reference to such petition and complaint and resulting therefrom, shall be guilty of perjury
 20 and punished in conformity with the laws against perjury.

38. It shall be the duty of the Attorney General for the section of the Province in which the persons incriminated by any such judgment of the Court reside, to take or cause to be taken such proceedings as the laws relating to the matter, direct, within three months after the
 25 rendering of judgment on such petition, against each and every person incriminated by the facts established by the judgment.

39. The person who holds in such section the office of Attorney General at the period at which such proceedings ought to be commenced, shall be guilty of negligence in the discharge of the duties of his office,
 30 if he neglects to institute such proceedings within the delay prescribed by the next preceding section.

40. The Returning Officer at such election shall be bound to return and transmit the writ of Summons, service of which shall have been made upon him in conformity with the fifth Section of this Act, to the
 35 Clerk of the Crown in Chancery, or to any other officer appointed by Law for that purpose, in the manner and with the formalities prescribed for the return and transmission of the writ of Election.

OBJECT OF THIS ACT.

41. The object of this Act is to secure purity and freedom of election, and to place the decision of contested elections beyond the evil influences of party.
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REPEAL OF EXISTING LAWS.

42. Chapter seven of the Consolidated Statutes of Canada, respecting Controverted Elections, and all Acts contrary to this Act, are hereby repealed.