

[No. 35.]

5th Session, 8th Parliament, 29 Victoria, 1866.

B I L L .

**An Act respecting the Court of Queen's Bench
for Lower Canada.**

**Received and read first time, Friday, 15th
June, 1866.**

Second reading, Tuesday, 19th June, 1866.

Hon. Mr. Atty. Genl. CARTIER.

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An Act to facilitate the rendering of judgments in the Court of Queen's Bench and Superior Court for Lower Canada.

WHEREAS it is expedient to facilitate the rendering of judgments in the Superior Court and Court of Queen's Bench in Lower Canada, in the cases hereinafter mentioned : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Preamble.

1. No change in the personal composition of the Superior Court or of the Court of Queen's Bench, by the appointment of any Chief Justice, Puisné Judge or Assistant Judge thereof, or the death, resignation or removal to another Court of any Chief Justice, Puisné Judge or Assistant Judge thereof, shall be held to make it necessary that any cause which had theretofore been heard in review, or in error or appeal, should be reheard merely in consequence of such change, provided there be a sufficient number of judges who have heard the cause to give judgment therein.

Change in personal composition of Court not to necessitate re-hearing.

2. Whenever any cause in the Superior Court, either in the first instance or in review, or any cause in appeal or error in the Court of Queen's Bench, has been heard by any Judge or Assistant Judge either alone or with other Judges, and before the rendering of the judgment founded on such hearing, such Judge or Assistant Judge is removed to another Court or resigns, or is appointed Chief Justice or a Judge of the same or of another Court, or obtains leave of absence, such Judge or Assistant Judge may nevertheless sit in judgment in such cause as a Judge of the Court, and either alone or with other judges as the case may be, as if no such event had happened.

Judge &c. removed to another Court &c., may yet sit in judgment in a cause which he has heard.

3. Whenever any cause in appeal or error has been heard by all the Judges or by a quorum of the said Court of Queen's Bench, and at least three of the Judges who heard the same are present in Court, and ready to proceed to judgment in the cause, then if any Judge who heard the cause, and would have been competent to sit in judgment therein, be prevented by death, sickness or other cause from being present, but has (or had before his decease), addressed a letter to the clerk or deputy clerk of the Court, containing his decision in the

Judge in appeal &c. necessarily absent, may transmit his decision in writing in certain cases.

cause, agreeing in or dissenting from the judgment of the majority of the Court, and signed by him, or has or had, in testimony of his concurrence therein, signed a written decision drawn up to be delivered and delivered by any other Judge or Judges, such Judge shall be reckoned as if present for the purpose of rendering judgment in the cause, and the decision so transmitted or signed by him shall be of the same effect as if delivered or concurred in by him in Court; and such decision may be so transmitted or signed by a Judge who has been removed to another Court or has resigned, and who would be competent to sit and give the decision in person, under section two.

Such Judge to be reckoned as if present.

The same cases heard in review by Judges of the Superior Court.

4. Whenever any cause in the Superior or Circuit Court has been heard in review by three Judges of the Superior Court, and at least one of the Judges who heard the same, is present in Court and ready to proceed to judgment in the cause, then if any Judge who heard the cause and would be competent to sit in judgment therein, be prevented by death, removal to another Court, sickness or other cause from being present, but has (or had before his decease,) addressed a letter to the Prothonotary of the said Court, containing his decision in the cause signed by him, or has or had in testimony of his concurrence therein, signed a written decision drawn up to be delivered and delivered by a Judge so present, such Judge shall be reckoned as present for the purpose of rendering judgment in the cause, and the decision so transmitted or signed by him shall be of the same effect as if delivered or concurred in by him in Court; and such decision may be so transmitted or signed by a Judge who has resigned or been removed to another Court and who would have been competent to sit and give his decision in person under section two.

Interlocutory judgments.

5. The foregoing provisions shall apply as well to interlocutory as to final judgments.

Act not to prevent express order for rehearing.

6. Nothing in this Act shall prevent the Court from ordering a rehearing in any cause if notwithstanding the provisions herein made, they deem such rehearing requisite.

Interpretation.

7. The word "Judge" in this Act includes the Chief Justice, or Assistant Judge of the Court, unless the context requires a different construction.