

No. 137.

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

BILL.

An Act to repeal chapter seven of the Consolidated Statutes of Canada, and to make better provisions respecting Controverted Elections.

Received and read, 1st time, Monday, 9th
March, 1863.

Second reading, Wednesday, 11th March
1863.

Hon. Mr. DORION.

QUEBEC.

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An Act to repeal the Act chapter seven of the Consolidated Statutes of Canada, and to make other provisions for the trial of Controverted Elections.

Her Majesty, etc., enacts as follows :

Preamble.

1. The Act chapter seven of the Consolidated Statutes of Canada, intitled, " An Act respecting Controverted Parliamentary Elections," is hereby repealed: except only that its provisions shall continue to apply **5** to the contestation of any election which may have taken place before the passing of this Act, and the following provisions of this Act shall apply only to elections had after its passing.

Con. Statutes of Canada c. 7 repealed.

2. In case the validity of the election of a member of the Legislative Council or of a member of the Legislative Assembly be contested, the **10** validity thereof may be tried, in term or in vacation, by a Judge of the Superior Court sitting for the District in which the election has taken place, if the member whose election is contested be elected for a constituency in Lower Canada, or by a Judge of either of the Superior Courts of Law in Upper Canada, if such member elected for a constituency in Up- **15** per Canada.

Controverted elections to be tried by Judges.

3. Any candidate or any elector who gave or tendered his vote at the election shall be entitled to contest such election.

Who may contest.

4. If within six weeks after the day on which the election shall have been closed, the party or one of the parties entitled to contest and con- **20** testing such election, deposits the sum of \$800 with the Clerk of the Court, by a Judge of which the election is to be tried, or enters into a recognizance before the Judge or before a Justice of the Peace in Lower Canada, and before the Judge or a Commissioner for taking bail in Up- per Canada, in the sum of \$800, with two sureties (to be allowed as suf- **25** ficient upon affidavit of justification) in the sum of \$400 each, which recognizance may be in the form of Schedule A, or in any other form of like import, to answer the costs which may be adjudged against such party, and by petition accompanied by an affidavit of the truth of the **30** facts alleged in such petition, shews reasonable grounds for supposing that the election was not legal, or was not conducted according to law, or that the person returned thereat was not duly elected, the Judge shall direct a writ of summons to be issued as hereafter provided, to try the matters contested.

Contestant to give security and show reasonable ground upon which a writ of summons shall issue.

5. In case the petition sets forth that some other person has been **35** duly elected, then the validity of the election complained of and of the alleged election of the other person named in the petition shall be tried under such petition.

Right of person claiming the seat to be tried at the s. 137. 1. 2. 3.

6. When more writs than one are issued to try the validity of the same election, all such writs shall be made returnable before the Judge **40** One Judge to decide all petitions on the

One Judge to decide all petitions on the

- same elec-
tion. who is to try the first, and such Judge may order that the proceedings be united, and give one judgment upon all or a separate judgment upon each one or more of them, as he thinks fit.
- Issue and re-
turn of writ. **7.** The writ shall be issued, in Lower Canada, by the Prothonotary of the Superior Court of the District in which the election contested was held, and in Upper Canada by the Clerk of Process of either of the Superior Courts of law, and shall be returnable before the Judge in Chambers on the day and at the place named in the writ. 5
- Service of a writ and copy of petition. **8.** A copy of the writ and of the petition and affidavit on which it is sued, shall be served in the same manner as ordinary writs of summons are served, on the party whose election is contested, at least eight days, exclusive of the day of service,) before the return of the writ. 10
- Judge may allow electors to intervene to defend. **9.** The Judge before whom the writ is returned may allow any person entitled to be a petitioner to intervene and defend the election, and may grant a reasonable time for the purpose; and any intervening party shall be liable or entitled to costs in like manner as any other party to the proceedings. 15
- Hearing any proceedings to be summary. Powers of Judge. **10.** The Judge shall, in a summary manner, upon the allegations of the petition and an answer thereto, without formal pleadings, hear and determine the validity or invalidity of the election and the right of the sitting member or any other person claiming the seat or on whose behalf the seat is claimed, and may, by order, cause the assessment rolls, lists of voters, poll-books, and any other records of the election to be brought before him, and may inquire into the facts in such mode as may be most in accordance with the proceedings adopted before the Courts in the section of the Province in which the proceedings are had. 20
- Copy of judgment to be sent to speaker, &c. **11.** The Judge shall transmit without delay a copy of his judgment to the Speaker of the Legislative Council, if the election controverted was that of a member of the Legislative Council, or to the Speaker of the Legislative Assembly, if the election was that of a member of the Legislative Assembly, to be laid before the House, and another copy thereof to the Provincial Secretary, to be transmitted by him to the Clerk of the Crown in Chancery and to remain on record in his office. 30
- Judge to order new writ in certain cases. **12.** In case the election complained of be declared invalid, and no other person be declared duly elected, the Judge shall accompany his decision with an order for the issue of a new writ to cause a new election to be held; and in case the Judge determines that any other person was duly elected, he shall certify the same in his judgment, so that the return may be amended at the earliest meeting of the House to which such return refers. 40
- Sitting member may disclaim the seat. **11.** Any person whose election is complained of may transmit, post-paid, through the post office, directed, "To the Clerk of the Judge's Chambers, Osgoode Hall, Toronto," in Upper Canada, if the election complained of was in Upper Canada,—or to the Prothonotary of the Superior Court for the District wherein the contestation of the election is to be tried, if such election was in Lower Canada,—or may cause to be delivered to such Clerk or Prothonotary a disclaimer signed by him, to the effect following: 45
- Form of disclaimer. "I. A. B., upon whom a writ of summons and petition contesting my election as a member of the Legislative Council for the Division of (or for the Legislative Assembly for the County of 50

[or as the case may be] do hereby disclaim the seat, and all defence of any right I may have in virtue of the said election."

Dated the day of , 18

(Signed,)

A. B.

5 **12.** Such disclaimer, or the envelope containing the same, shall ^{Indorsement} moreover be endorsed on the outside thereof with the word "Disclaimer," ^{and trans-} and if not delivered personally, shall be registered at the post office ^{mission.} where mailed.

13. No costs shall be awarded against any person disclaiming as ^{Costs.} ^{Costs.} aforesaid.

14. In all cases not otherwise provided for, costs shall be in the ^{Costs.} discretion of the Judge.

15. The decision of the Judge shall be final, and the writ of sum- ^{Judge's de-} mons, petition and other proceedings had before him shall remain on ^{cision to be} record into the court from which the summons issued, and shall be en- ^{final.} forced by writs of execution for the costs awarded, as a judgment of the said court.

16. The Judges of the Superior Courts of Common Law in Upper ^{Judges may} Canada, and of the Superior Court in Lower Canada, or the majority ^{make rules of} of them respectively, may by rules to be made in term time, regulate ^{practice un-} the practice in regard to the hearing and determining the validity of ^{der this Act.} elections and all proceedings under this Act, in each section of the Province, for which they are such Judges, and respecting the costs to be allowed on such proceedings, and may from time to time rescind, ²⁵ alter or add to such rules; and until such rules are made, the Judge, before whom a contestation shall be tried shall regulate the proceedings in accordance with the practice in summary matters before the Court from which the writ issued, and shall tax the costs to be allowed on such proceedings.

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SCHEDULE A.

(Referred to in the Fourth Section of this Act.)

UPPER (or Lower) CANADA, } Be it remembered that on the
To wit: } day of , in the year
of our Lord one thousand eight hundred and , before me,
35 the Honorable A. M., one of the Judges of the Court of Queen's Bench
for Upper Canada (or as the case may be,) at , in
Canada, came A. B., of , Esquire (as the case may be,) C. D.,
of , and E. F., of , &c., and acknowledged them-
selves to owe to our Sovereign Lady the Queen the said A. B. the sum
40 of eight hundred dollars, and the said C. D. and E. F. the sum of four
hundred dollars each, to be levied on their respective goods and
chattels, lands and tenements, to the use of our said Sovereign Lady the
Queen.

Now the condition of this recognizance is such, that if the said A. B.,
45 (if more than one petitioner, insert their names, adding the words,
"Or any of them,") shall well and truly pay all sums of money, costs and
expenses which shall become payable by him (or them) in respect of the
petition signed by him (or them) and presented to the (Court of Queen's
Bench for Upper Canada or as the case may be,) complaining of the
50 undue election of K. L., as a member of the Legislative Council (or
Assembly) of this Province, for the Electoral Division of

(*or as the case may be,*) to any witnesses summoned in his (*or their*) behalf or to the sitting member (*or members,*) or other party complained of in the said petition, or to any party who may be admitted to defend the same, or to any other person or party, by reason of the said petition, then this recognizance shall be void ; otherwise it shall be of full force and effect.

Taken and acknowledged before me, at the day and place aforesaid, the said cognizors having first justified their sufficiency before me, as required by the statute in that behalf.

A. B.
C. D.
E. F.

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A. M.,

Judge, etc., (*or as the case may be.*)