

No. 373.

1st Session, 4th Parliament, 16 Victoria, 1853.

BILL.

**An Act to give an Appeal from the
several Division Courts in Upper
Canada, and for other purposes therein
mentioned.**

**Received and Read a first time, Friday, 22nd
April, 1853.**

Second Reading, Monday, 25th April, 1853.

Mr. CRAWFORD.

An Act to give an Appeal from the several Division Courts in Upper Canada, and for other purposes therein mentioned.

WHEREAS the jurisdiction of the Division Courts in Upper Preamble.
Canada, being now sufficiently large to embrace the greater
part of the amounts litigated in Upper Canada, it becomes necessary
that parties dissatisfied with the views of the Judges of the said
5 Courts, may have the benefit of the opinion of the Judges of the
Superior Courts of Common Law in Upper Canada; Be it there-
fore enacted, &c.,

That if either party in any cause or proceeding in any Division Appeal given.
Court in Upper Canada shall be dissatisfied with the determination
10 or direction of the said Court, on any point of law, or as to the admis-
sion or rejection of any evidence, such party may appeal from the
same to either of the Superior Courts of Common Law in Toronto;
Provided that such party shall, within ten days after such deter-
mination or direction, give notice of such Appeal to the other party
15 or his Attorney, and shall also give security, to be approved
by the Clerk of the Division Court, for the costs of the Appeal,
and for the amount of the Judgment if he be the Defen-
dant and the Appeal be dismissed; Provided nevertheless,
20 shall not be required in any case where the Judge shall have
ordered the party appealing to pay the amount of such Judgment
into the hands of the Clerk of the Division Court, and the same
shall have been paid accordingly; and the said Court of Appeal
may either order a new trial or hearing on such terms as it think
25 fit, or may order Judgment to be entered for either party as the
case may be, and such order shall be final, and the costs of Appeal
shall follow the event.

Proviso:
security to be
given for
costs, &c.

Proviso.
Powers of the
Court appeal-
ed to.

II. And be it enacted, That such Appeal shall be in the form of Appeal to be
a case agreed on by both parties or their Attornies, and if they on a case
30 cannot agree, the Judge of the Division Court in which the cause agreed upon,
was tried or proceedings had, upon being applied to by them or or settled by
their Attornies or the Attorney of either of them, shall settle the the Judge.
case and sign it, and such case shall be transmitted by the Appel-

lant to the Clerk of the Crown and Pleas in the Court in which the Appeal is to be brought.

Rules of decision in Division Courts.

III. And be it enacted, That the rules of decision in the Division Courts in Upper Canada shall be the same as in similar cases in the Superior Courts of Common Law in Upper Canada.

5

Certain costs allowed in Division Courts.

IV. And whereas it is just and right that all costs attending the prosecution and defence of suits should be paid by the unsuccessful party; Be it therefore enacted, That from and after the passing of this Act, the costs set down in the Schedule to this Act annexed, shall be taxed and allowed to the successful party against the unsuccessful party in every trial or hearing, and such costs shall abide the event and be included with and ordered to be paid and collected as other costs in the cause.

10

Recital. In what Court the Plaintiff may sue, where the Defendant has removed.

V. And whereas the practice of compelling Creditors to follow their Debtors to the Division Court within the jurisdiction of which they may remove, in most cases, amounts to a denial of justice; for remedy thereof, Be it enacted, That whenever any Defendant shall remove out of the County or Union of Counties wherein the debt was contracted or wrong committed, or the cause of action arose, it shall and may be lawful for the Plaintiff to prosecute and recover such debt or damages for such tort or cause of action, and his costs of suit, in the County Court of the County or Union of Counties wherein the said debt was contracted or tort committed, or the cause of action arose, in the same manner as if such debt or damages were above the jurisdiction of the said Division Courts.

20

25

Judges to fix times of holding Division Courts, and where.

VI. And be it enacted, That the Judges of the several Counties or Unions of Counties in Upper Canada shall, on or before the 15th day of January in each year, appoint days for holding Courts in each of their respective and several Divisions for the succeeding year and shall publish the same in one or more of the newspapers circulated in each County or Union of Counties.

30

SCHEDULE.

IN ACTIONS OF CONTRACT WHERE THERE IS A DEFENCE.

To Counsel or Agent when the evidence runs into amounts in the aggregate over £12 10s.	£1 0 0
And if under £12 10s.	0 15 0

IN ACTIONS OF CONTRACT WHERE THERE IS NO DEFENCE.

To Counsel or Agent where the evidence runs into amounts over £12 10s,	£0 15 0
--	---------

And if under £12 10s. 0 10 0

IN TORTS OR ACTIONS FOR DAMAGES WHERE THERE IS A DEFENCE.

To Counsel or Agent where the damages recovered are over £5, £1 5 0

And if under £5, 0 15 0

IN TORTS OR ACTIONS FOR DAMAGES WHERE THERE IS NO DEFENCE.

To Counsel or Agent where the damages recovered are over £5, £0 15 0

And if under £5, 0 10 0