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No. 18.

Act of 1859

2nd Session, 6th Parliament, 22 Victoria, 1859.

BILL.

An Act to amend the Division Courts Acts of
Upper Canada, and to extend the juris-
diction thereof.

Received and read, first time, Wednesday, 16th
Feb., 1859.

Second reading, Wednesday, 23rd Feb., 1859.

MR. SIMPSON.

TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to amend the Division Court Acts of Upper Canada, and to extend the Jurisdiction thereof.

WHEREAS it is necessary to amend the laws at present in force, establishing Division Courts in Upper Canada for the recovery of small debts, and to extend the Jurisdiction thereof; Therefore Her Majesty, &c., enacts as follows :

Preamble.

- 5 I. When the plaintiff or defendant in any action now pending, or hereafter to be brought in any of the said Division Courts, shall be desirous of procuring the testimony of any aged or infirm person resident within Upper Canada, or of any person who is about to withdraw himself or herself out of the same permanently, or who is residing without the limits of Upper Canada, or without the limits of the Province, it shall and may be lawful to and for the Judge of such Division Court, upon the application of any such plaintiff or defendant, supported by an affidavit of the facts, to issue one or more Commissions under the seal of such Judge to any Commissioner or Commissioners to be named by him, to take the examination under oath of any such persons, due notice being given personally to the adverse party forty-eight hours at the least prior thereto, to the end that he cause such witness or witnesses to be cross-examined if within Upper Canada, and similar notice seven days prior to such examination of any witness without the limits of Upper Canada or without the limits of this Province, the date, place and hour of such examinations in each case to be specified in the notice aforesaid, and in the case of witnesses as aforesaid examined within Upper Canada, such Commissioner or Commissioners with the examinations reduced to writing and returned under the signature of the Commissioner or Commissioners, sealed up and directed to the Clerk of the proper Division, shall be taken *prima facie*, to have been duly executed, and shall be used at any trial to be had of the cause as evidence thereon: Provided always, that such examinations shall not be read or given in evidence in the cause if it shall be made appear to the satisfaction of the Judge presiding at the trial, that the person or persons respectively alleged to be aged or infirm could have attended the Court without inconvenience or risk of bodily injury, and are still as sound in mind as when so examined, and that it is expedient to require a personal attendance at Court, or in case it shall be made to appear as aforesaid, that the person or persons alleged to have been about to withdraw out of Upper Canada, or without the limits of the Province, did so temporarily, at the desire or instigation of or to serve the party in the cause seeking his evidence, or is again living within Upper Canada: And in the case of witnesses as aforesaid, residing and examined without the limits of Upper Canada or of the Province, such Commission or Commissions with the examination

Commission for examination of absent or infirm witnesses may be issued by Judges of Division Courts.

Proviso: such examination not to be received in evidence if judge be of opinion that witnesses could have attended the Court.

Further proof of execution of commission if witness reside without the Province

of the witness or witnesses taken pursuant thereto shall be returned to the Clerk of the proper Division Court 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 close under the hand and seal, or hands and seals of one or more of such Commissioners, and so returned shall be taken *prima facie* to have been duly executed and returned, and shall be received and used as evidence in the said cause at the trial: Provided always, that such last named examination or examinations shall not be read or given in evidence in the said cause in case the witnesses so examined respectively shall be living within Upper Canada, and of sound mind, memory and understanding at the time of such trial, or provided it is made to appear to the Judge at such trial, that the same have not been duly taken.

Costs of commission to be in discretion of presiding judge.

II. The costs of the said Commissions and examinations respectively mentioned in the preceding section and authorized as therein, shall be wholly in the discretion of the presiding Judge at the trial, as well as regards the taxation and allowance as costs in the cause or any part thereof, as regards the amount to be allowed for each service in detail or otherwise, and which costs he may order to be paid by either party, whatever the result of the cause may be as regards the matter in litigation.

By mutual agreement between plaintiff and defendant any Division Court Judge may decide in cases not exceeding £50.

III. If parties between whom differences have arisen shall agree by memorandum signed by them in presence of any Clerk of a Division Court or that the Judge of any particular Division Court to be named in such memorandum shall have power to hear and determine their cause of action, claims and demands, the Judge acting and presiding over such Division Court shall have power and jurisdiction so to do; Provided the subject matter of difference shall be upon a cause or causes of action not exceeding *Fifty pounds* in amount, and shall not be within the subjects excepted from the jurisdiction of the Division Courts by the first section of the Upper Canada Division Courts Extension Act of 1853; And every such memorandum shall be filed with the Clerk of the Court in which the case is to be heard; and it shall confer upon the said Court jurisdiction, power and authority to hear and determine the matter so referred; and upon such memorandum being filed, the plaintiff may enter his claim, and sue out a summons thereon, as in ordinary cases; And the proceedings in such suit may be conducted and continued to judgment and execution, irrespective of the amount claimed and recovered, so as the same do not exceed *Fifty pounds*, in the same manner as other suits cognizable in a Division Court may be conducted and continued under the provisions of the Upper Canada Division Courts Acts; and the Judgments in such suits shall have the same force and effect in all respects as any other judgment of the Court.

Proceedings in such cases.

Personal service of original summonses not necessary in cases under £10.

IV. And in amendment of the proviso in the 24th section of the Upper Canada Division Courts Act of 1850; Be it enacted as follows: Personal service of original, alias, or pluries summonses, shall not be necessary in any case where the amount claimed shall not exceed *Ten pounds*.

3 W. IV., cap. 70, to extend to Division Courts.

V. The first section of the Act of the Parliament of Upper Canada passed in the third year of the reign of King William the Fourth,

chapter seven, shall extend to Division Courts and to summonses and process issued therefrom, provided that service of summons may be effected on a Railway Company by delivering a copy thereof to the Secretary, at his office, or to a Station Master, or Clerk of the defendant at any station or office of the Company within the County in which the summons issues.

As to service on Railway Companies.

VI. Where the defendant is living or serving on board any steamboat or vessel, it shall be sufficient service to deliver the summons issued from any Division Court to the person on board, who is at the time of such service apparently in charge of such steamboat or vessel, if the defendant on being inquired for cannot be found, and the affidavit of such service must embrace such allegations.

Service on persons living or serving on boats or vessels.

VII. A Barrister or Attorney retained by or on behalf of a party to any suit or proceeding in a Division Court (but without any right of exclusive or pre-audience) or by leave of the Judge any other person allowed by the Judge, may appear instead of the party and address the Court but subject to such regulations as the Judge may from time to time prescribe for the orderly and speedy transaction of business; Provided that no Barrister or Attorney shall be entitled to recover more than five dollars for appearing or acting on behalf of any other person, in any suit or proceeding in the said Court or before the Judge thereof; and the Judge shall have power from time to time to determine in what case the expense of employing a Barrister or Attorney, should be allowed in taxation of costs, and shall settle and regulate the amount in each case, not exceeding five dollars, as aforesaid, to be so allowed, and such amount so settled shall be costs in the cause recoverable, in the same way as other costs in the said Courts.

Barristers, &c., may appear in Court subject to regulations to be made by Judge.

Proviso as to fees to be taken.

VIII. The Judge of each Division Court in Upper Canada shall, in proceeding to dispose of the lists of suits prepared under the thirty-fourth section of "The Upper Canada Division Courts Act of 1850," cause each suit to be called in the order numerically in which it appears therein, and the names of the parties respectively to be openly announced, by first calling the plaintiff until he answers, and then the defendant, in all causes in which confession of judgment has not been given, and the calling or announcement of the number the suit bears shall not be sufficient to authorise proceedings therein; and if any suit has been proceeded with or disposed of, on the calling of the number only, and any party complains of not having been called by name, and of having been therefore taken by surprise, a new hearing shall be forthwith awarded to him, and shall take place immediately, if the opposite party be present and ready for the trial, if not, an adjournment of the trial shall be made until the next Court, without costs to either party.

Proceedings to be taken for hearing of suits.

IX. Hereafter it shall not be lawful for any Clerk of a Division Court in Upper Canada to issue an execution or other process upon a judgment therein, unless such judgment shall have been previously openly pronounced in Court (if the matter has been then and there decided), or if otherwise, has been proceeded upon according to the terms of the thirty-ninth section of "The Upper Canada Division Courts Act of 1850," and any execution or other process issued without such formalities being observed, shall be void, and render the Clerk

Execution not to be issued before judgment first pronounced in Court.

Otherwise to be void.

of the said Court liable to an action of trespass, if the said process has been put in force or attempted against the losing party in the said judgment.

Duties of
Bailiff with
respect to ser-
vice of process.

X. And whereas it is necessary more definitely to declare the duties of Division Court Clerks and Bailiffs, in certain cases, therefore it is enacted and declared, that the several Clerks who may have received summonses or other process from the Clerk of any other Division Court in Upper Canada, shall forthwith place the same in the hands of the proper Bailiff, for service or execution, and shall demand the return thereof from the Bailiff in a reasonable time after such delivery to him, having regard to the return day therein mentioned, and shall urge such return to be made to him, in order that the same may be sent back to the Clerk of the Division Court from whence the same may have issued, in due time for the Court at which the same is returnable (if the same, being a summons, has been served), and if any other process, then according to its exigency; and in case of a summons so received as above mentioned, and returned by the Bailiff as not served, the said Clerk shall return the same in due time, as hereinbefore required, to the Clerk of the Division Court from whence the same may have issued; and in case of final process, the said Clerk so receiving the same shall, immediately after the return day or other period limited for the execution thereof, return the same to the Clerk of the Division Court from whence the same may have issued; and in the event of being unable to return the said summonses or final processes respectively as hereinbefore required, in consequence of non-return by the Bailiff, or for other special causes, he shall report to the Clerk from whom the process was received, before the return day, in cases other than final process, and in cases of final process immediately after the return day, or other period limited for the execution thereof, the cause of the non-return, and the proceedings had in consequence thereof; and in case of omission or default by the Bailiff as aforesaid herein mentioned, to make such return respectively, it shall be the duty of the Clerk so receiving any such process to submit a complaint thereof in writing, forthwith, to the Judge of the County or Division appointing or controlling such Bailiff.

Defaults by
Bailiffs to be
complained of
to Judge.

In case sum-
mons be
against Bailiff,
Clerk to serve
and return it.

XI. If any such summons as is mentioned in the foregoing section be against the Bailiff of the Division to the Clerk whereof it has been sent as aforesaid, such Bailiff shall be bound to accept the same when handed to him by the Clerk, whose duty it shall be to make the required return under his hand in due form, and such return shall be sufficient proof of the due service of such summons, notwithstanding the provisions in any of the Division Courts Acts now in force requiring an affidavit of service to be made in ordinary cases.

Bailiff failing
to make return
in due time to
forfeit his fees,
and he and his
sureties to be
liable for
damages in-
curred.

XII. The Bailiff omitting to make the return in due time of any such process as mentioned in the third section hereinbefore, and authorized by any law to be issued, shall forfeit and lose all fees thereupon, and shall also be liable to pay all damages and extra expenses caused to any suitor; and the sureties of such Bailiff shall also be deemed held and made liable therefor as for any default with respect to any proceeding or process in the Division of such Bailiff; and if he has been paid any fees or money for any such service, and his default renders the service abortive, he shall refund the whole amount

so received or paid to him, upon demand made by the suitor or his agent.

XIII. The Judge of the County Court of the proper County shall forthwith, upon complaint made to him in writing by any Clerk as hereinbefore provided for by any interested party or his agent, proceed summarily, without process, and cause the Bailiff complained of forthwith to answer orally or otherwise in the matter alleged, and shall thereupon make such order therein as may appear to be just; and also, with respect to any loss, damage, or expenses suffered by the suitor, and in order so to decide and determine may receive affidavits of the parties and their witnesses if necessary, such affidavits to be sworn before any officer now authorized to take the same in the said Courts.

Proceedings
by Judge or
complaint
against Bailiff.

XIV. The Clerk of a Division Court sending any such summons or other process as hereinbefore mentioned in preceding sections to another County or Division for service or execution, shall cause the postage thereon to be prepaid, and also shall be personally liable as well as his sureties, to the Clerk of such other Division, for all lawful fees payable to himself and the Bailiff, or to either of them, for the services rendered thereupon; and he shall, within one week after receiving the return of any such process in due form, and in due time for his Court (in the case of a summons) cause the said fees to be paid over to the Clerk entitled to receive them.

Postages on
summons
sent from one
Division to
another to be
prepaid.

XV. Notwithstanding anything contained in section sixty-four of the Upper Canada Division Courts Act of 1850, or in the Schedule D of the said Act, or in any other Act or Acts, or in any Rule or Form established under the authority of the said Acts, or any of them, for the purposes of attachment, it shall be sufficient that the creditor or agent swear that the debtor is indebted to him in the amount claimed, and that he the creditor or agent believes the debtor to be making or intending to make a fraudulent disposal of his property, or that the debtor has threatened to make such fraudulent disposal of his property, although it be not sworn that such debtor has absconded from the Province: Provided, however, that no attachment shall issue upon any such affidavit of a creditor or his agent, unless the facts above mentioned as necessary to be sworn to by the creditor or his agent shall be corroborated by the affidavit of one credible person who is acquainted with the debtor.

Not necessary
to swear that
debtor has
absconded to
obtain attach-
ment.

Proviso: affi-
davit of credi-
tor to be cor-
roborated.

XVI. Notwithstanding any thing contained in section seventy-five of "the Upper Canada Division Courts Act of 1850," creditors who have proceeded to execution before any attachment issued, or who may proceed to execution at the first Court within the Division after the issue of the first attachment, and whose judgment and execution shall not have been satisfied, shall be entitled to participate *pro rata* in the proceeds of the goods, chattels, and property which shall have been attached, in the same manner as any attaching creditor is, or may be entitled to participate according to the provisions of the said section herein mentioned: Provided, however, that any goods or chattels held under any execution, issued before any attachment issued and remaining unsold, shall be surrendered to the attaching officer for the distribution contemplated by the said section mentioned and by this one, otherwise the creditor therein shall be debarred and excluded from any

Creditors pro-
ceeding to
execution be-
fore attach-
ment issued to
take *pro rata*.

Goods held
under execu-
tion before at-
tachment
issued to be
surrendered to
attaching offi-
cer.

participation in the proceeds of the goods, chattels and property so attached, until all the others are paid in full.

Debts due execution debtor may be garnished.

Proceedings in such case.

Garnishee failing to deny or pay the debt to be held liable to execution creditor for amount of judgment and costs due.

Proviso: payment by garnishee before notice of execution to be a discharge as against judgment debtor and creditor.

Judgment creditor to take proceedings if garnishee disputes liability.

XVII. Debts due to the execution debtor shall, after execution issued, become debts due to the execution creditor to the amount of his claim and costs, and such debtor of the judgment debtor shall be termed the garnishee, and the execution creditor shall recover from such garnishee in the same manner as if the debt had originally been due to him the said creditor; and in case the execution debtor has no other means more directly available, it shall be the duty of the Bailiff having the execution in hand, upon being informed of the fact of any debt or debts due to the execution debtor, to notify in writing the garnishee or garnishees to pay no person the said debt or debts except to him the said Bailiff, or to the Clerk of his Division, and to appear within twelve days before the Clerk of the said Division to admit or deny the alleged debt; and if the garnishee or garnishees shall live without the Division of such Bailiff, it shall be the duty of the Clerk thereof, upon information received from the Bailiff, or upon application made by the Plaintiff or other party entitled to the execution or agent, to transmit the requisite information to the Clerk of the Division wherein the garnishee or garnishees reside or carry on business: And it shall be the duty of the last mentioned Clerk to cause his Bailiff to notify in writing the garnishee or garnishees in the same manner and form as the first mentioned Bailiff is instructed and required to do; and if, in either case, or mode of proceeding, as above mentioned, the garnishee or garnishees so notified shall refuse to give the Bailiff an admission or denial in writing of the alleged debt, or do not forthwith pay into the hands of the Clerk of the Bailiff's Division the amount due from him or them to the judgment debtor, or an amount equal to the claim and costs, and do not dispute the debt due, or claimed to be due from him to the judgment debtor, or if he or they do not appear upon the said notice so to be given as hereinbefore provided, the said garnishee or garnishees shall be and be held liable to the execution creditor for the amount of the judgment and all costs due, or for so much thereof as the said garnishee or garnishees owed to the said execution debtor at the time of receiving the notice hereinbefore required to be given, and the judge of the Court of the Division for which the Bailiff hereinbefore first mentioned acts, upon proof of the proceedings and default in payment or appearance by the garnishee or garnishees, may order an execution to issue against him or them in due form, at the suit of the judgment creditor, and it may be sued forth accordingly without any previous process, to levy the amount due from such garnishee or garnishees towards satisfaction of the judgment, debt and costs.

Provided always, that payment of the garnishee before notice of an execution issued in a Division Court against his creditor, shall be a discharge of the debt not only as against the creditor, but as against the judgment creditor of such judgment debtor; And provided also, that payment made by the garnishee before or after execution upon receiving such notice as aforesaid shall be a valid discharge to him as against the judgment debtor to the amount paid, although such proceeding may be set aside or the judgment reversed or vacated.

XVIII. If the garnishee disputes his liability, the judgment creditor shall be at liberty to proceed against the garnishee in the same manner and form as provided for in the ninetieth section of the Upper Canada

Division Courts Act of 1850, and whether the claim of the judgment debtor be founded on an open account or otherwise being in the nature of debt; and all rules and forms adopted in the said Division Courts shall be applicable thereto, and to the proceedings of the judgment creditor under this Act.

XIX. The costs of the Bailiff and other officers and persons for notices, mileage, postage and otherwise necessarily incurred, shall be taxed by the Judge and added to the expenses of the execution of the judgment creditor, and form part of the lawful expenses thereof, such taxation being governed by allowances and charges under the tariff of fees now in force in the said Division Courts.

XX. Any monies in the hands of a Division Court Clerk or Bailiff coming to any such garnishee herein before mentioned shall after notice to them respectively by the judgment creditor of his claim, be withheld from the judgment debtor, for the space of *twenty* days; and if the execution of the judgment creditor be not discharged in the meantime or satisfied, the said Clerk or Bailiff may pay over sufficient of the said monies to discharge the claim of the judgment creditor, and such Clerk and Bailiff respectively shall thereupon be discharged and freed from all further liability to the judgment debtor as fully as any debtor of such judgment debtor is by the provisions of this Act discharged to the extent of the claim of the judgment creditor.

XXI. In case any judgment debtor shall have recovered a judgment against his debtor, (the garnishee) and has not enforced the payment of the same, it shall and may be lawful for the judgment creditor having an execution unsatisfied to demand an execution on such first mentioned judgment in the name of the judgment debtor, and to proceed thereon to levy the amount thereof in the same manner and subject to the rights, liabilities and provisos contained in the ninetieth section of "The Upper Canada Division Courts Act of 1850," as if he had caused the said suit to be instituted under the provisions of such section.

XXII. After notice by a judgment creditor, having an execution as hereinbefore mentioned, to a Division Court Clerk or Bailiff, the said Clerk and Bailiff shall be respectively liable to him for the amount of the monies of the judgment debtor in their hands, or so much as may be necessary to pay the amount of the claim and costs; and in the event of non-payment to him he may maintain an action in his own name for the amount, or may adopt any other remedy against the officer, that such officer is now liable to under the provisions of any of the Acts in force relating to Division Courts.

And in case any Clerk of a Division Court shall refuse without good cause to issue to such judgment creditor an execution as hereinbefore provided; upon any unsatisfied judgment of the judgment debtor, he shall be liable for all loss and damage accruing to the said judgment creditor to be recovered in his own name in any form of proceeding authorized by any of the said Acts to be adopted against Clerks or other officers of the Court.

XXIII. In future, when a creditor desires to take out an execution upon a judgment more than one year old, upon which no

Costs.

Liability of Clerk or Bailiff with respect to monies in their hands belonging to garnishee.

Judgment debtor having judgment against garnishee, judgment creditor may demand execution.

Clerks and Bailiffs after notice by judgment to creditor to be liable to him for monies of judgment debtor in his hands.

Clerk refusing to issue execution to be personally liable.

Affidavit of facts before Clerk to serve

as a revivor of judgment.

execution or other process has been issued, or payment made within the year, it shall be sufficient for him to make the affidavit of the facts of non-payment before the clerk of the division in which judgment was obtained, instead of before the Judge, as heretofore ; which clerk shall thereupon issue the execution, and leave of the Judge to issue the same shall not be necessary ; any Acts or rules to the contrary notwithstanding. 5

Proceedings on appeal from judgment of Court.

XXIV. In all cases in the said Courts, where a suit has been instituted for a sum of *Ten Pounds* or upwards, and judgment has been pronounced in favor of the plaintiff or defendant, or the plaintiff has been non-suited, or the suit dismissed for supposed want of jurisdiction, or other causes, if either party be dissatisfied with the judgment or decision of the judge upon the law, or facts, or either, it shall be lawful for such party to give notice of such dissatisfaction to the Judge orally in Court after pronouncing judgment, at any time during the sitting thereof, or to the Clerk of the said Court at the time of pronouncing judgment, or reading the judgment, (if done after Court,) and the Judge be not present ; and if, during the same day of pronouncing judgment, or reading the same, security be given to the opposite party, with two sureties, to the satisfaction of the Clerk of the Court, according to the following form, or substantially so, viz : 10 15 20

Security by appellant to opposite party.

In the Division Court of

“ We hereby agree to pay, upon demand made upon us, the debt adjudged, and all interest and costs, and all costs of appeal to be awarded in the suit of A B against C D, (or all costs of suit, as well as of appeal, as the case may be,) unto A B, the plaintiff, (or C D, the defendant,) in case the appeal made and laid this day from the judgment and decision of the Judge in the said suit, be dismissed, or any other costs the said C D (or A B) may be ordered to pay. 25

Dated at this day of 18 .”

Proceedings then to be stayed.

the proceedings shall thereupon become stayed, until the direction of the Superior Court shall be made known ; and the Judge of the Division Court, upon such security being given and filed, shall forthwith certify, under his hand, to either of the Superior Courts of Common Law, at Toronto, copies of all papers, proceedings, and evidence, and the exceptions and objections urged, with his judgment or decision ; whereupon the appeal shall be set down for argument in either Superior Court, at the next term after, without any other formality of extra copies to the Judges, or copies to be served on the opposite party or Counsel, but a notice of the day and Court to the opposite party, according to the usual practice ; which Court shall, in due course, give direction to the Judge of the Inferior Court, touching the judgment to be given or course to be pursued, as to new trial or otherwise, as may appear necessary, and may order as to costs to either party, and which costs, if awarded, shall be taken by the proper officer of the Superior Court ; and upon receipt of such direction and order, and certificate of costs, the Judge of the inferior Court shall forthwith proceed in accordance therewith, and observe the same. 30 35 40 45

Judge of Court below to carry out direction of Superior Court.

In case of dismissal costs of appeal to be added to costs in Court below.

And if the said appeal be dismissed with costs, such costs may be added to the costs of the proceedings in the inferior Court, and form part thereof, and of the judgment to be enforced ; and the party entitled to the judgment may proceed thereupon forthwith to have the same executed for the debt, interest, and cost of trial, and such costs 50

of appeal, as the nature of the case may be; and if the full amount of the same cannot be levied of the party against whom the execution is issued as aforesaid, the opposite party may resort to the sureties for any balance, and may proceed by suit against them for such balance; and the said sureties shall be liable therefor, provided a demand upon them has been made before suit brought.

XXV. From and after the passing of this Act, no Clerk of a Division Court shall be ineligible to, or disqualified from holding the office of Clerk of the County Court, or Deputy Clerk of the Crown, of the county in which he resides, or both offices with the other; any law, custom, or usage, or Act, or Acts, to the contrary notwithstanding;— And all Acts and parts of Acts now in force, so far as they, or any, or either of them, render a Clerk of the Division Court ineligible or disqualified to hold the office of Clerk of the County Court, or Deputy Clerk of the Crown of the county in which he resides, whether expressed in distinct terms, or construed so by implication, shall be, and the same are hereby repealed.

Clerk of Division Court may be Clerk of County Court and Deputy Clerk of Crown or either.

XXVI. Notwithstanding anything contained in the third section of "the Division Courts Act of 1850," the Justices of the Peace in any county in Quarter Sessions assembled, shall and may at any time hereafter declare and appoint any number of Divisions in any city or county town, and fix the number, limits, and extent thereof, whether or not the additional number so fixed may cause the whole number in the county to exceed twelve, and may from time to time alter the same, under the restrictions contained in the fourth section of the above last mentioned Act.

Justices of the Peace in Quarter Sessions may fix number and limits of Division.

XXVII. And whereas, in some of the populous towns and cities of Upper Canada, it would facilitate the transaction of business by suitors, to increase the number of Divisions therein, and divide the labour imposed upon the clerks amongst an increased number, it is therefore enacted and declared that, whenever the presiding Judge of the Division Courts in any county, or portion of a county, or in any town or city, can ascertain at the time this Act shall come into operation, that the suits appearing on the lists aforesaid, or by the procedure book, amount to three thousand for the year past, in the said town or city, it shall thereupon be deemed necessary that the Division be sub-divided into two, and for every thousand suits beyond, into an increase of one other Division; and it shall be the duty of the said Judge to report to the Court of General Quarter Sessions of the Peace the necessity for such sub-division into two or more Divisions, and so from time to time as the number of suits of any such town or city, division or divisions, become increased, disclosing an additional number of one thousand suits thereafter, the necessity of sub-division shall be deemed to have arisen, and it shall be reported as hereinafter provided by the presiding Judge.

Recital.

Where suits in one division amount to 3000 for one year, sub-division to be made.

And the Justices of the Peace in General Quarter Sessions having become possessed of the facts from the report of the Judge as aforesaid, or otherwise, shall from time to time declare and appoint the said additional Divisions, and fix the limits, extent and number thereof, and may from time to time alter the same as circumstances require.

By Justices of the Peace in Quarter Sessions.

Debtors in towns and cities to be sued in divisions in which they reside.

XXVIII. In all towns and cities where more Divisions than one is or are set apart under the authority of this Act, a debtor shall be sued in the Division he resides in, (if the contract were made or debt contracted within the said town or city,) notwithstanding any provision in the several Division Courts Acts to the contrary.

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Additional fees to Bailiff when acting as Crier.

XXIX. In addition to the fees now paid to Bailiffs, in each division, they shall be allowed respectively the following sums out of the Fee Fund, to be paid by the Clerk of the Division for which he acts, if there be sufficient money in hand belonging to such Fee Fund, and if not sufficient money, then to be paid by any other Clerk of the County by authority of an order of the Judge, and in either case to be credited to the Clerk in the auditing of his accounts, viz. :

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For attendance in Court when discharging the duties of Crier thereof, *one dollar*, to be increased to the sum of *two dollars* when the attendance is prolonged beyond four hours; and the sum of *one dollar*, in addition, for every additional day's attendance at the same sittings of the Court.

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Rules as to precedence of executions.

XXX. Where several executions are placed in the hands of the same Bailiff against the property of the same Defendant at the same time, the numbers of the suits marked thereon shall guide and govern him as to the right of precedence, taking the said numbers consecutively as indicated thereon : and if an execution from another Division or County or founded upon a Judgment or transcript of Judgment of another Division or County, be delivered with other executions as hereinbefore provided for, without any distinct directions as to priority, the Clerk of his Division shall determine the priority, and to enable him so to determine he shall ascertain as to the time of the receipt of such execution or transcript of Judgment, and if received prior to the completion of executions for the Bailiff in his office, it shall have priority—if not so received, it shall be postponed to those first completed as aforesaid, and take rank thereafter.

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Recital.

XXXI. And whereas by the subdivision of any town or city into several sections as herein before provided for the purposes of the Division Courts, it might happen very frequently that debtors would be prosecuted by creditors of distinct sections, and the Judgments be obtained payable at periods giving a precedence to those not the most diligent in consequence of the Courts for the Sections being held on consecutive days or otherwise succeeding each other, and to prevent any undue precedence, it is hereby enacted, that no execution upon any Judgment recovered within any of the Courts of a town or city where more than one Division has been set apart, shall issue until the day following the expiration of the last day of the sittings of the last of those Courts for the month they may be so held in, except however in the case of an immediate execution being sued out under the provisions of the sixty-third section of "the Upper Canada Division Courts Act of 1850."

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Executions in towns and cities having more than one division, not to issue until after the last day of sitting of the last Court for the month.

Protection of other creditors where immediate execution issue.

XXXII. In the event of any creditor causing an immediate execution to be issued, any other creditor of the Defendant who may have a suit in progress awaiting a day of trial, may give notice to such Bailiff of the amount of his claim, and thereupon such Bailiff may seize sufficient property to cover all the claims in addition, of which he may be so notified, and may hold the same for a period not exceeding one month

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after the first service, and all executions placed in the hands of the various Bailiffs during that month shall be entitled to satisfaction out of the said property so far as it will go, according to precedence, and such precedence shall be determined by the date of issuing the summonses, 5 having regard to the consecutive numbers, and if two or more summonses shall appear to have been issued upon the same day in different Divisions, the execution first issued and acted upon after the immediate one shall have precedence: Where no immediate execution is applied for, the rule of precedence herein before mentioned will be followed as nearly 10 as circumstances will admit.

Precedence of execution.

XXXIII. The Division Courts Acts and this Act shall be read as one Act, and the powers conferred on the Judges, under the provisions of the tenth section of the Upper Canada Division Courts Extension Act of 1853, shall extend to the framing, from time to time, of rules of 15 practice for the said Courts under this Act.

Rules of practice.

XXXIV. In citing, pleading, or otherwise referring to the Act passed in the 18th year of Her Majesty's Reign, intituled "*An Act to extend the jurisdiction of the Division Courts of Upper Canada,*" it shall in all cases whatsoever be sufficient to use the expression "The Division 20. Courts Extension Act of 1855;" And in citing, pleading, or otherwise referring to this Act, it shall in all cases whatsoever be sufficient to use the expression "The Division Courts Extension Act of 1859."

Titles of Division Court Acts.