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2nd Session, 3rd Parliament, 12 Victoria, 1849.

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## **BILL.**

An Act to consolidate and to reduce into one Act the several Laws now in force, regulating the system and practice of certain Courts in Upper Canada, established for the recovery of Small Debts, and to make other provisions therefor.

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Received and Read a first time, Tuesday, 27th  
February, 1849.

Second Reading, Monday, 19th March, 1849.

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Hon. Mr. SHERWOOD.

## B I L L.

An Act to consolidate and to reduce into one Act the several Laws now in force, regulating the system and practice of certain Courts in Upper Canada, established for the recovery of Small Debts, and to make other provisions therefor

**W**HEREAS it is expedient to consolidate and reduce into one Act the several laws now in force regulating the system and practice of certain Courts in Upper Canada established for the recovery of Small Debts, and to make other provisions therefor: Be it therefore enacted, &c. Preamble.

And it is hereby enacted by the authority of the same, That the Act passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, "*An Act to repeal the laws now in force in that part of this Province formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor,*"—and the Act passed in the eighth year of Her Majesty's Reign, and intituled, "*An Act to amend an Act passed in the fourth and fifth years of the Reign of Her Majesty, intituled, 'An Act to repeal the laws now in force in that part of this Province, formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor,'*"—shall be and the same are hereby repealed. Act 4 and 5, Vict c. 3.  
and 8 Vict c. 27, repeated.

II. Provided always, and be it enacted, That the several Division Courts now established and in existence in each District of Upper Canada and the limits and extent of Division Courts, &c now existing, to remain until altered.

the same respectively shall be and remain as they are now. until altered by the provisions hereafter mentioned.

Number of  
Division  
Courts, and  
time of hold-  
ing them, how  
fixed

III And be it enacted, That the number of the said Courts in each District shall at no 5  
time be less than three, nor more than nine; and that there shall be one Division Court held in each City and District Town, and that a Court shall be holden under this Act once in two months in every such Division, 10  
and that it shall and may be lawful for the Judge of the said Court to fix and appomt the times and the places within such Divisions, when and at which such Courts shall be holden, and in like manner from time to 15  
time to alter the same.

Justices may  
alter Divisions,  
&c

IV And be it enacted, That it shall and may be lawful for the Justices of the Peace in each District now or hereafter to be erected in Upper Canada, from time to time, to alter 20  
the number, limits and extent of such Divisions within their respective Districts, subject to the restrictions herein contained.

Divisions of  
Districts, &c  
to be entered  
in a book to  
be kept by the  
Clerk of the  
Peace

V And be it enacted, That the Divisions of each District so declared and appointed, 25  
and the times and places of holding such Courts, and all alterations that may be from time to time made therein as aforesaid, shall be entered and recorded by the Clerk of the Peace, in a book to be by him kept for that 30  
purpose, and that it shall be his duty to transmit to the Governor of this Province, a copy of every such entry and record as soon as the same shall have been made.

The Justices  
of the Peace  
shall number  
the Divisions

VI. And be it enacted, That the Justices 35  
so assembled as aforesaid, shall be required to number the said Divisions, beginning at number one; and that the Court to be held in each Division shall be known by the name and style of *The First* (or other, as the case 40  
may be) Division Court for the District of

VII. And be it enacted, That the Judges <sup>District</sup> of the District Courts of the several Districts <sup>Judges to pre-</sup> in Upper Canada, shall preside over the <sup>sides.</sup> Division Courts within their respective Districts, and no such Judge shall during the  
 5 continuance of his appointment be capable of being elected or of sitting as a Member of the Legislature of this Province.

VIII. And be it enacted, That in case of <sup>Judge, in case</sup> the illness or unavoidable absence of the <sup>of illness, &c.</sup> Judge of any such District Court, it shall be <sup>may appoint</sup> lawful for such Judge to appoint some other <sup>a deputy pro-</sup> person who would be otherwise qualified to <sup>perly qualifi-</sup> be appointed a Judge of such District Court,  
 10 to act as his deputy; and every person so appointed, shall during the time for which he shall be so appointed, have all the powers and privileges, and be subject to all the duties  
 15 of the Judge by whom he shall have been so appointed, and notice of every such appointment shall be forthwith sent by the Judge or Deputy Judge to the Governor of  
 20 this Province, and such notice shall specify the name, residence and profession of the  
 25 Deputy Judge and the cause of his appointment; and no such appointment shall be continued for more than one calendar month without a renewal of the like notice, and it shall be lawful for the Governor to annul any  
 30 such appointment of which he shall disapprove.

IX. And be it enacted, That for every <sup>Clerk and</sup> Court holden under the authority of this Act, <sup>baillifs to be</sup> there shall be a Clerk and one or more Bar- <sup>appointed.</sup> liffs; and the Judge of the District Court  
 35 shall from time to time appoint, and at his pleasure remove, the Clerks and Bailiffs of the Courts holden by him.

X. And be it enacted, That it shall be <sup>Clerk may ap-</sup> lawful for the Clerk of any such Division <sup>point a deputy</sup> Court (with the approval of the Judge there- <sup>in case of ill-</sup> of,) to appoint from time to time, a Deputy to <sup>ness, &c</sup> act for him in the office of Clerk of the Court,

at any time when he shall be prevented by illness or other unavoidable accident from acting in such office, and to remove such deputy at his pleasure; and such deputy during the time for which he shall be so appointed, shall have the like powers and privileges, and be subject to the like duties as if he were the Clerk of the Court for the time being; and the Clerk of the Court shall be civilly responsible for all the acts and omissions of his Deputy. 5 10

Treasurer to receive all fees

XI. And be it enacted, That the Treasurer of every District shall be the Receiver General of fees of the several Division Courts within his District; and every such Treasurer shall be paid a per centage of pounds, on every hundred pounds of the gross produce of the fees of the Courts of which he is Receiver General; and every Judge shall be paid by a certain salary, the salary of a Judge being in no case more than 15 20

Judge's salary

Clerk and bailiffs how paid

pounds, or less than pounds; and the Clerk and the Bailiffs of the Court, shall be paid by fees hereby allowed to them; and the Governor in Council shall fix the remuneration to be paid to the Judges, having due regard to the population of the several Districts and Divisions, and the remuneration to be paid to the Judges, may be increased, or, as vacancies shall occur, may be diminished by the same authority: Provided always, that the salaries of the said Judges as at present established, shall remain the same unless otherwise altered by law, or unless vacancies shall occur 25 30 35

Proviso.

Certain duties assigned to the Clerks

XII. And be it enacted, That the Clerk of each Division Court, shall issue all summonses warrants, precepts, and writs of execution, and register all orders and judgments of the Court, and keep an account of all such summonses, executions, and other process of the Court, and shall take charge of, and keep an account of all Court fees and fines payable or paid into Court, and of all suitor's money 40

paid into and out of Court, and shall enter an account of all such fees, fines and moneys in a book to be kept by him for that purpose, which book shall be open to all persons desirous of searching the same, on payment of 5 for each search, and shall from time to time, at such times as shall be directed and appointed by the Governor, submit his accounts to be audited or settled by the 10 Treasurer of his District ; and the Bailiffs of the Court shall serve all summonses, and execute all such orders, warrants, precepts and writs. And to the Bailiffs

XIII. And be it enacted, That there shall 15 be payable on every proceeding in the Division Courts holden in pursuance of this Act, and to the Clerks and Bailiffs of the Courts, such fees as are set down in the Schedule to this Act annexed, or which shall be set down 20 in any Schedule of reduced fees, under the power hereinafter given for that purpose, and none other ; and a table of such fees shall be hung up in some conspicuous place in the offices of the several Clerks of Division 25 Courts ; and the fees upon every proceeding shall be paid in the first instance by the Plaintiff, on or before such proceeding, and the Bailiff's fees upon executions, shall be paid to the Clerk of the Court, at the time of the 30 issue of the warrant of execution, and shall be paid over by such Clerk to the Bailiff, upon the return of the warrant of execution, and not before : Provided always, that if the Bailiff shall neglect to make a return, within 35 the time required by law, of any summons, process or execution, he shall, for each such neglect, forfeit his fees on such summons, process or execution, and all fees so forfeited, shall be accounted for and paid by the Clerk 40 of the Court, to the Treasurer of the District, to form part of the General Fee Fund. Fees to be those in the Schedule or in any Schedule of reduced fees

XIV. And be it enacted, That the Clerk of each Division Court shall, from time to time, and as often as he shall be required so Provido, as to Bailiff neglecting to return process

Clerks to render certain accounts to the District Treasurers.

to do by the Treasurer of his District, and at least once in every three months, deliver to him a full account in writing of the fees received in such Court, under the authority of this Act, and a like account of all fines levied by the Court (accounting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may have made out of any such fine, in pursuance of the power hereinafter given) and a like account of the moneys paid into, and received out of Court, by the Defendants and Plaintiffs in the said Court, under any orders and decrees of the Court, or under process of the Court, and of the balance then remaining in Court, belonging to the Plaintiffs or Defendants in the Court, and the amount of such fees, payable to the General Fee Fund, from time to time received by such Clerk, shall be paid over from time to time to the Treasurer) such payment being made, at least once in every three months,) and shall form part of a fund, to be called the General Fee Fund of the Division Courts, which fund shall be applied towards the payment of the salaries of the Judges and Clerks of such Courts.

And to pay  
over moneys  
to the Treas-  
urer

Treasurer to  
account for  
and pay over  
moneys to the  
Receiver Gen-  
eral, twice  
every year

Penalty for  
default

XV. And be it enacted, That the Treasurer of every District shall, on or before the thirteenth day of June and the thirty-first day of December in every year, render to the Inspector General of this Province, a true account in writing of all moneys, received, and of all moneys disbursed by him on account of the Division Courts holden under the authority of this Act. during the period comprised in such account, in such form, and with such particulars as the said Inspector General shall from time to time require ; and shall, within ten days after the rendering of every such account, pay over the amount of any surplus of such fees to the Receiver General of this Province ; and if default shall be made in such payment, the amount due by the said Treasurer shall be deemed a special debt to Her Majesty.



XVI. And be it enacted, That in case the amount of fees received in the Division Courts in any District shall not be sufficient to repay the disbursements required on account of such Courts, during the period comprised in the said account, it shall be lawful for the Governor of this Province forthwith to issue his warrant on the Receiver General of this Province, in favour of the District Treasurer, for the amount which shall be required to make up the salaries of the Judge and Clerks, and the amount of such warrant shall be charged upon the Consolidated Revenue Fund of this Province.

If the fees be insufficient to meet the disbursements, the Governor may pay the difference out of the public moneys,

XVII. And be it enacted, That the accounts to be kept by the several Treasurers on account of the said Courts, shall be deemed public accounts, and shall be inquired into and audited, and shall be within any provision of law now or hereafter to be in force for auditing public accounts.

Treasurer's accounts to be public accounts

XVIII. And be it enacted, That if any person having resigned or having been removed from the office of Treasurer, or of Clerk of a Division Court, shall neglect, after twenty-one days notice to such person, to account for and pay to the Treasurer of the District for the time being, or to such person as he shall appoint to receive the same, all such sums as shall remain in his hands of moneys received under the authority of this Act, it shall be lawful for such Treasurer for the time being, in his own proper name only, or by his name and description of office, to sue for and recover the same from such person with double costs of suit, in any Court of Record in this Province having competent jurisdiction, by action of debt; in which action it shall be sufficient for such Treasurer to declare as for money had and received to the use of such Treasurer for the purposes of this Act; and the Court in which the action shall be brought, may, at the instance of either of the parties, refer the account in

Proceedings in case any Treasurer or Clerk resigning or removed, shall refuse to pay over moneys in his hands

dispute in a summary manner, to be audited by any officer of the Court or other fit person, who shall have power to examine both plaintiff and defendant upon oath; and upon the report of the referee, (unless either of the parties shall shew good cause to the contrary,) the Court may make a rule either for the payment of such sum as upon the report shall appear to be due, or for staying the proceedings in the action, and upon such terms and conditions as to the Court shall appear reasonable; or the Court may order judgment to be entered up as by confession, for such sum as upon the report shall appear to be due. 5  
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Proceedings  
in case of the  
death of any  
Treasurer or  
Clerk having  
moneys in his  
hands

XIX. And be it enacted, That in case of the death of any person during the time that he shall be holding the office of District Treasurer or of Clerk of any Division Court, or after he shall have resigned or be removed from such office, the Treasurer for the time being may, in his own proper name, or by his name and description of office, sue and recover from the executors or administrators of such person deceased, all such sums as shall have been remaining in his hands, of money received under the authority of this Act by an action of debt in any Court of Record in this Province having competent jurisdiction—in which it shall be competent for the plaintiff to declare that the deceased was indebted to the plaintiff for money had and received to his use for the purposes of this Act; and that the deceased died possessed of money had and received for the purposes of this Act, whereby an action hath accrued to the plaintiff, to demand and have the same from such executors or administrators; and a like action may be brought against any executors or administrators of executors or administrators; and in all such actions the defendant or defendants may plead in like manner, and avail themselves of the like matters in defence as in any action founded on simple contract of the original testator 20  
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