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1st Session, 7th Parliament, 25th Victoria, 1862.

B I L L .

**An Act to extend the provisions of Chapter
seventy-seven of the Consolidated Statutes
for Lower Canada in matters of appeal.**

**Received and read first time, Friday, 2nd May,
1862.**

Second reading, Tuesday, 6th May, 1862.

Hon. Mr. Atty. Gen. CARTIER.

An Act to extend the provisions of Chapter seventy-seven of the Consolidated Statutes for Lower Canada in matters of appeal.

WHEREAS it is expedient to declare the true intent of Preamble.
 certain provisions of *An Act respecting the Court of Queen's Bench*, chapter seventy-seven of the Consolidated Statutes for Lower Canada, and to extend the provisions of the said Act: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, declares and enacts as follows :

1. As respects causes heard by the five Judges,—the true intent and meaning of section seven of the said Act is, that when any cause in appeal or error has been heard by the five Judges of the Court of Queen's Bench, any judgment in such cause concurred in by any three judges of the Court at any sitting thereof at which four judges are present, shall have the same force and effect as if the said five judges were present at such sitting, although one of the five may from any cause whatever have been absent from the *délibéré*, or from any sitting or meeting of the judges at any stage of the proceedings after the hearing.

As to causes heard by five judges.

2. Whenever by reason of leave of absence granted to or the sickness of any Judge of the Court of Queen's Bench, it becomes probable that such judge will be absent for one whole term or more, then if the Chief Justice, or in case of his absence or disability, the *puisné* judge next in precedence who is able to act, certifies to the Governor his opinion that the due administration of justice would be promoted by the appointment of an assistant Judge of the said Court during such absence or sickness,—the Governor may appoint any Judge of the Superior Court to be such assistant Judge of the Court of Queen's Bench, for such time as it appears to the Governor probable that the absence of the judge first mentioned will continue,—and during such time such Assistant Judge shall have all the powers and perform all the duties of a Judge of the Court of Queen's Bench ; provided always, that after the expiration of the time for which he is so appointed, such assistant judge may complete the hearing of, assist at the *délibéré* upon, and render judgment in any cause which before the expiration of the said time he heard or commenced hearing as such assistant judge, and this notwithstanding the return or presence in Court of the judge in whose place he was appointed ; and provided

Assistant judge of Q. B. may be appointed in certain cases.

also, that nothing in this section shall prevent the operation of the eleventh section of the said Act, in any case to which it is applicable.

Assistant judge not to act as judge of Superior or Circuit Court, &c... how his place may be supplied.

3. The Assistant Judge, appointed under the next preceding section, shall not during the time for which he is so appointed, act as a Judge of the Superior Court, except only that he may, as such Judge, render judgment in cases heard by him in the Superior or Circuit Court before his appointment as assistant Judge of the Court of Queen's Bench; and during the time for which he is appointed such Assistant Judge, the Governor may, in his discretion, appoint a proper person to be an Assistant Judge of the Superior Court, in his stead, under section eleven of chapter seventy-eight of the Consolidated Statutes for Lower Canada.

Rendering judgment in appeal at a place other than that where the case was heard.

4. Notwithstanding any thing contained in the twenty-second section of the said Act, the Court of Queen's Bench may render judgment, either in term or in vacation, at Quebec, in any cause or upon any proceeding of any kind, although the same may have been heard at Montreal; and in like manner the said Court may render judgment, either in term or in vacation, at Montreal, in any cause or upon any proceeding of any kind, although the same may have been heard at Quebec; but it shall not be the duty of the said Court to exercise the power hereby given, unless the Judges by whom such judgment is to be given, in the exercise of their discretion, are of opinion that the failure by them to do so would tend to subject the parties interested to unreasonable delay; and in any case in which the Judges of the said Court deem it right to render any judgment in pursuance of the discretionary power hereby given to them, they shall cause at least six days' notice of the day on which such judgment will be rendered, to be given by the Clerk of the Court or his Deputy, to all the parties interested.

Where to be recorded.

5. If under the discretionary power given by the next preceding section, any judgment which would otherwise have been rendered at Quebec or at Montreal, is rendered at the other of the said Cities, such judgment shall nevertheless be entered and recorded at the place where, but for the exercise of such power, it would have been rendered, and the record in the cause shall be transmitted to and make part of the records of the said Court at such last mentioned place, as if all the proceedings in the cause had been had there.

Clerk of appeals or his deputy may tax costs, effect of revision by a judge.

6. The Clerk of appeals or his Deputy, shall have full power to tax costs in causes or proceedings in the Court of Queen's Bench on its appeal side; and such taxation shall be made in the same manner and subject to the same rules, and shall have the same effect, as if made by a Judge of the Court, except that it shall be subject to revision by a Judge of the Court, in

any term thereof, at the place where the judgment in the cause or proceeding is recorded, at any time within six months after such taxation by the Clerk of appeals or his Deputy, and after sufficient notice, (of which sufficiency the Judge shall decide) to the opposite party or his Attorney :

Neither the non-expiration of the time allowed for such revision, nor any correction made by the Judge in the course of such revision, shall operate to stay execution or be a ground of any opposition ; but any sum deducted by the Judge shall be deducted from the amount to be paid or levied, and if levied shall be returned by the proper party to the Sheriff or Bailiff levying it, or if paid shall be repaid by the party who received it to the party who paid it ; and the Judge's order for deducting such sum shall have the effect of a judgment for the same, by the Court from which the cause in which the taxation was made was originally brought or instituted, and may be enforced by execution accordingly.

7. And whereas by the thirty-ninth section of chapter seventy-seven of the Consolidated Statutes for Lower Canada, it is in effect enacted, that from any judgment rendered by the Circuit Court in an appealable case the appeal shall be to the said Court of Queen's Bench,—but under the fifteenth section of the Act respecting Lessors or Lessees (chapter forty of the Consolidated Statutes for Lower Canada,) an appeal is also given in certain cases from the Circuit Court to the Superior Court,—and by section seven of the Act respecting redress for the illegal detention of soccage lands, (chapter forty-five of the said Consolidated Statutes) an appeal is given from a judgment rendered by a Judge in vacation, to the Superior Court, in cases where such judgment is to be recorded in the Circuit Court, by a Judge of which it is rendered,—so that in the said cases under the said Acts, an appeal now lies either to the Superior Court or to the Court of Queen's Bench at the option of the appellant, and it is expedient that hereafter all appeals from the Circuit Court should be to the Court of Queen's Bench only,—therefore in every case in which an appeal shall lie from any judgment rendered after the passing of this Act under either of the Acts last cited, such appeal shall be to the said Court of Queen's Bench only, whether the judgment be rendered by the Circuit Court or by a Judge of the Superior Court in vacation.

Appeal under cap. 40 & cap. 45 of the Con. Stat. for L. C. to lie to the Court of Q. B. only, from judgments hereafter rendered.

8. So much of either of the said last Acts, or of the Act respecting the Court of Queen's Bench (chapter seventy-seven of the Consolidated Statutes for Lower Canada) as is inconsistent with this Act, is hereby repealed.

Repeal of inconsistent enactments.