

Original pro-
cess, what &c.

IV. *And be it further enacted by the authority aforesaid, That in cases which do not require special bail the first and original process of the said court shall be by writ of summons, which may be in the following*

F O R M :---

Form.

UPPER-CANADA,
DISTRICT
To wit.

GEORGE the third, by the grace of God of Great-Britain, France and
Ireland, king, defender of the faith, and so forth : To the sheriff of the
district,
Greeting :

WE command you that you summon A. B. to appear either in person or by his attorney before us
in our court of our bench, on the day of now next ensuing, to answer the complaint of
C. D. in a plea of (as the case may be) according to the annexed declaration ; and
herein fail not at your peril. Witness the honorable E. F. chief justice of our said province (or one
of the justices of our said court, as the case may be) this day of in the year of our
reign.

How to be ser-
ved, and fees.

AND that the plaintiff do cause the defendant to be served with the said writ of summons :
any that the sum of five shillings, and no more, be allowed in costs for serving the same, but
that there be no allowance whatever for milages.

In suits, where
defendant is
not holden to
bail, the ordi-
nary course
what.

V. AND whereas doubts have arisen with respect to the time when judgment may be sign-
ed for want of the defendant in any action having duly appeared thereto, Be it therefore en-
acted by the authority aforesaid, that in all civil suits where the defendant shall not be hol-
den to bail, the ordinary course of proceeding shall be by serving, or causing the defendant
or defendants personally to be served with a copy of the process and declaration by some li-
terate person, and if such defendant or defendants shall not appear at the return of the pro-
cess, or within eight days after such return, in such case it shall and may be lawful for the
plaintiff, or plaintiffs, upon affidavit being made and filed of the personal service of such
process and declaration, which affidavit shall be filed gratis, to enter a common appearance
for the defendant or defendants, and to proceed thereon as if such defendant or defendants
had entered his, her, or their appearance.

Of dilatory
pleas.

VI. *And be it further enacted by the authority aforesaid, That wherever the defendant in any ac-
tion shall, in term time, plead any dilatory plea, in case such plea shall be of a matter of law,
and not of fact, it shall and may be lawful to and for the plaintiff in the said action to set
down such plea for argument on the next day on which the said court shall sit, or on any
other day in the term, giving two days notice thereof to the defendant, or his attorney ; and
in case such plea be filed in the time of vacation, or being filed in term time, the said plain-
tiff shall neglect so to set down the same for argument as aforesaid, it shall and may be law-
ful to and for the said plaintiff to apply to any judge of the said court to hear and determine
the issue joined thereon in like manner as the same may now be done in open court ; and in
case the said judge shall give judgment for the plaintiff, he the said judge shall by an order
under his hand direct the said plea to be taken off the file, with costs to be taxed by the pro-
per officer : and the said defendant shall within four days from the date of such order plead
an issuable plea, and shall rejoin gratis, and shall also be bound to go to trial at such time
as he would have been bound to go to trial in case he had pleaded such issuable plea in the
first instance, and not such dilatory plea.*