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4th Session, 8th Parliament, 29th Vict., 1865.

BILL.

An Act to amend the Common Law Proce dure Act for Upper Canada.

Received and read first time, Wednesday, 16th August, 1865.

Second reading, Thursday, 17th Aug., 1865.

Mr. M. C. CAMERON (N. Ontario.)

QUEBEC:

PRINTED BY HUNTER, ROSE & CO., ST. URSULE STREET.

No. 133.7

BILL.

[1865—2nd Session.

An Act to amend the Common Law Procedure Act of Upper Canada.

WHEREAS it is desirable to make certain amendments to "The Com-Preamble. mon Law Procedure Act, Chapter Twenty-two, of Consolidated Statutes for Upper Canada, "Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of 5 Canada, declares and enacts as follows:-

1. In addition to any cases in which a defendant in any suit is now Additional entitled to obtain security for costs from a plaintiff, security for costs cases in which security for costs security for shall be granted to the defendant or applicant in any suit or proceeding costs may be in which it is made to appear satisfactorily to the Court in which such demanded 10 suit or proceeding has been instituted or taken, or to any Judge in Chambers, that the plaintiff in such suit or the party entering such proceeding is insolvent, unable to pay his debts, or that any execution against his goods has been returned nulla bona, or that he has brought a former suit or proceeding for the same cause which is pending either 15 in Upper Canada or in any other country, or that he has judgment, or rule or order passed against him in such suit or proceeding, with costs, and that such costs have not been paid, and such Court or Judge shall thereupon make such rule or order staying such proceedings until such security be given as to such Court or Judge shall seem meet.

2. In any suit or action in which any verdict is rendered for any Verdicts to debt, or sum certain, or any account, debt or promises, such verdict bear interest shall bear interest at the rate of six per cent. per annum from the time rendering, of the rendering of such verdict, if judgment is afterwards entered in although favor of the party or person who obtained such verdict, notwithstand-judgment 25 ing the entry of judgment upon such verdict has been suspended by the operation of any rule or order of Court which may be made in such suit or action.

3. Sections numbers two hundred and seventy and two hundred and New Sections seventy-one of the said Common Law Procedure Act are hereby repealed in licu of Sec-80 and the following clauses substituted in lieu thereof, which substituted 271. clauses shall be read and construed as if they originally formed part of the said Common Law Procedure Act instead of the said clauses hereby repealed.

"270. Upon any execution against the person, lands or goods, the Sheriffs 35 "sheriff may in addition to the sum recovered by the judgment, levy the roundage "poundage fees, expenses of the execution, and interest upon the limited." "amount so recovered according to law, but in case a part only be levied "or made on or under any such execution, the sheriff shall be entitled to "poundage only upon the amount so, levied or made, whatever be the sum 40 "endorsed upon the writ, and in all cases where satisfaction shall be ob-

"tained of the debt or any part thereof, whilst such execution remains "in the hands of the Sheriff to be executed, the Sheriff shall be entitled "to poundage as aforesaid. 2 Geo. 4, c. 1, sect. 19. 9 Vic., chap. 56 "sec. 3. See 19 Vic., c. 90, sec. 24, and tariff of fees 18th July, 1857.

Cases in which proporty has beenseized but not sold.

"271. In cases of writs of execution upon the same judgment to 5 "several counties wherein the real or personal estate of the judgment "debtor, has been seized or advertised but not sold, by reason of satis-"faction having been obtained under or by virtue of a writ in some "other County, and no money has been actually levied on such execution, "the Sheriff shall not be entitled to poundage, but fees only for the 10 "services actually rendered and performed by him, and the Court out "of which the writ issued, or any Judge thereof, may allow him a "reasonable charge for such services, in case no special fee therefore "be assigned on any table of costs, 9 Vic., c. 56, sec. 2.

Section 252

4. Section number two hundred and fifty-two of the said "Common 15 repealed, but Law Procedure Act" is hereby repealed, provided always, that such reexisting pro- peal shall not in any manner affect or prejudice any existing writ, judgcoodings exist. ment or Proceedings of any of the Courts mentioned in the said Act.

Real and personal pro-perty may be included in

5. Goods and chattels and lands and tenements, may be included in same writ of execution; provided always, that the sheriff shall not 20 expose any lands or tenements for sale, within less than twelve months the same writ, from the day on which the writ is delivered to him, nor until the goods and chattels of the execution debtor shall have been first disposed of and exhausted.