

No. 138.

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

BILL.

An Act to amend the Common Law Procedure 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:

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

WHEREAS it is desirable to make certain amendments to “*The Common 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 Canada, declares and enacts as follows :—

Preamble.

1. In addition to any cases in which a defendant in any suit is now entitled to obtain security for costs from a plaintiff, security for costs shall be granted to the defendant or applicant in any suit or proceeding in which it is made to appear satisfactorily to the Court in which such 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 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.

Additional cases in which security for costs may be demanded

2. In any suit or action in which any verdict is rendered for any debt, or sum certain, or any account, debt or promises, such verdict shall bear interest at the rate of six per cent. per annum from the time of the rendering of such verdict, if judgment is afterwards entered in favor of the party or person who obtained such verdict, notwithstanding 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.

Verdicts to bear interest from time of rendering, although judgment suspended.

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numbers two hundred and seventy and two hundred and seventy-one of the said Common Law Procedure Act are hereby repealed and the following clauses substituted in lieu thereof, which substituted clauses shall be read and construed as if they originally formed part of the said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

New Sections in lieu of Sections 270 and 271.

“270. Upon any execution against the person, lands or goods, the sheriff may in addition to the sum recovered by the judgment, levy the poundage fees, expenses of the execution, and interest upon the 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 endorsed upon the writ, and in all cases where satisfaction shall be ob-

Sheriffs poundage limited.

“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 pro-
 perty has
 been seized
 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
 repealed, but
 existing pro-
 ceedings exist.

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 Law Procedure Act” is hereby repealed, provided always, that such re-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

Real and per-
 sonal pro-
 perty may be
 included in
 the same writ,

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
 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.