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No. 325.

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1st Session, 4th Parliament, 16 Victoria, 1853.

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## BILL.

An Act to lessen Costs in Suits at Law  
in Upper Canada.

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Received and Read a first time, Wednesday, 30th  
March, 1853.

Second Reading, Wednesday, 6th April, 1853.

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MR. ROSE.

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**B I L L .**

[No. 325.

**An Act to lessen Costs in Suits at Law in Upper Canada.**

**W**HEREAS it is desirable to make provision, by enactment, to enable Defendants in Upper Canada to give or make confession of Judgment, in all cases where they may desire so to do, and also to define in what cases the Defendant in any action may be relieved from paying costs ; Be it therefore enacted, &c.,

Preamble.

That from and after the passing of this Act, it shall and may be lawful for any Defendant, or the Attorney of any Defendant thereunto duly authorized, against whom any Writ of Summons shall issue from any Court of Common Law in Upper Canada having jurisdiction in Civil Suits, for debt, on a promissory note, contract, or book accompt, to call at the usual place of business of the Plaintiff's Attorney, between the hours of ten of the clock, A. M., and three, P. M., on any day not by law a holiday, and tender his confession of Judgment for the full amount claimed, or for such amount as he shall acknowledge to be justly due by him to the Plaintiff, including the legal interest thereon, and the costs already accrued.

Defendant may tender confession of judgment and how.

II. And be it enacted, That it shall be lawful for such Attorney of the Plaintiff, and he is hereby required under the penalty against such Plaintiff hereinafter provided, to take such confession of Judgment on any day, not a holiday, previous to the sittings of any such Court at which such action ought to be tried or decided; and such Attorney shall be entitled to charge and receive from such Defendant the sum of \_\_\_\_\_, in full payment of the costs on taking such confession of Judgment and all necessary duties connected therewith.

Such confession must be taken on pain, &c.

Costs.

III. And be it enacted, That the Defendant shall have time for the payment of the sum mentioned in such confession of Judgment as follows, that is to say, until the next sittings of the Court in which such action or suit is brought, and so long thereafter (without being subject to any further process or costs) as he could or would have had if such action or suit had been heard or tried and a verdict obtained or judgment given at the sittings aforesaid; and that no Writ of Execution shall issue against such Defendant, nor shall any further costs be incurred by him until the expiration of the delay hereby granted.

Time allowed to Defendant before execution.

Proceeding by Defendant if the confession be refused.

V. And be it enacted, That whenever any Plaintiff, by his Attorney, shall refuse to take a confession of Judgment for such sum as shall by any Defendant or his Attorney be tendered, as hereinafore provided, then it shall and may be lawful for such Defendant to make such confession of Judgment before any other practising Attorney legally qualified to act in the Court in which such action is brought, for such amount as such Defendant shall think proper, and to cause notice thereof, in writing, to be served on the Plaintiff's Attorney in the action. 5 10

No costs to Plaintiff after confession tendered unless he recover more than the amount confessed.

VI. And be it enacted, That in all cases where the Plaintiff's Attorney shall refuse to accept the confession of Judgment so tendered, it shall be his duty to notify the Defendant's Attorney, in writing, within days after the service of such notice as aforesaid ; provided always, that when after the trial of the cause, the amount for which judgment shall be obtained by the Plaintiff shall not exceed the sum for which the confession shall have been given or tendered, then, no costs accruing after such confession shall have been tendered as aforesaid shall be chargeable on or against such Defendant, and the Defendant shall recover the costs by him incurred after the tender of such confession, and may set off the same against the amount of the Judgment. 15 20

Receipt in full to be a discharge as well for the costs as of the debt.

VII. And be it enacted, That whenever, upon the hearing or trial of any action or suit at law in any Court after the passing of this Act, brought for the recovery of any debt due or alleged to be due by or from any person to any person whatsoever, any Defendant shall produce, and prove to the satisfaction of the Court, the receipt in full from the Plaintiff in such suit, dated on any day previous to the day upon which such action or suit shall be heard or tried, such receipt so proven shall be to all intents and purposes a discharge, and the Defendant producing the same shall not be liable to any costs that have arisen or may arise out of such action or suit, whether he may or may not have pleaded such receipt previously to the day on which such action or suit is tried, any law or practice of any Court to the contrary notwithstanding. 25 30 35

Practice to be regulated by this Act.

VIII. And be it enacted, That this Act shall regulate the practice in all cases where any confession shall be so tendered or made as aforesaid; and all Judges and Courts where such actions are brought or heard shall be guided thereby, anything in the laws of this Province or the practice of the Courts therein to the contrary notwithstanding. 40

Extent of Act.

IX. And be it enacted, That this Act shall apply only to Upper Canada.