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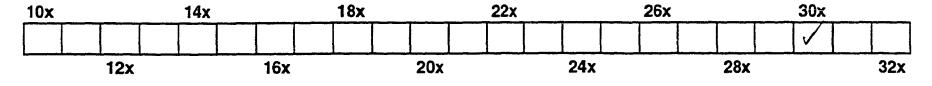
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5th Session, 8th Parliament, 29-30 Vict, 1869.

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BILL.

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

Received and read, first time, Wednesday, 20th June, 1866. Second reading, Thursday, 21st June,1866

Hon. MR. CAMERON.

OTTAWA: PRINTED BY HUNTER, ROSE & CO., SALLY STREET. No. 65.]

BILL.

[1866.

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

THEREAS, it is desirable to make certain amendments in the Preamble. Common Law Procedure Act of Upper Canada; Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :---

- 1. In addition to any cases in which a defendant in any suit is now Additional $\overline{\mathbf{5}}$ entitled to obtain security for costs from a plaintiff, security for costs cases in may be granted to the defendant or applicant in any suit or proceeding which the de-in which it is made to appear satisfactorily to the Court in which such obtain securisuit or proceeding has been instituted or taken, or to any Judge in ty for costs.
- 10 chambers, that the plaintiff 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 may thereupon make such rule or
- 15 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 Interest aldebt, or sum certain, on any account, debt or promises, such verdict lowed from debt, or sum certain, on any account, used of promises, such volute the rendering shall bear interest at the rate of six per cent. per annum from the time of the verdict 20 of the rendering of such verdict, if judgment is ofterwards entered in in certain favor of the party or person who obtained such verdict, notwithstanding cases. 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, and in all cases damages shall be assessed only up to the Astodam-25 day of the verdict. ages.

3. Whereas doubts exist as to the effect of equitable defences pleaded Double as to in suits at law, and it is desirable to remove such doubts ;--if the de- the effect of fendant in any suit at law shall plead any equitable defence, and judg-judgments on equitable dement shall be given against such defendant upon such equitable plea, fences remov-

- 30 such judgment shall be pleadable as a good bar and estoppel against ed. any bill filed by such defendant in equity against the plaintiff or representative of such plaintiff at law, in respect to the same subject matter which has been brought into judgment by such equitable defence at law; but nothing in this section shall apply to any suit or action com- Not to apply
- 35 menced and pending before the passing of this Act, which shall be de- to pending cided upon as if this Act has not been passed, and this Act shall not cases, &c. be construed as declaring that such judgment at law on an equitable defence has not been heretofore a good bar to a suit in equity on the same subject matter.

Stay of proceedings if suit for same C.

4. If any suit or action is brought in any Court of Law or Equity for any cause of action for which any suit or action has been brought suit for same and is pending between the same parties or their representatives in any ing out of U: place or country out of Upper Canada, such Court or any Judge thereof may make a rule or order to stay all proceedings in such first-men--5 tioned Court of Law or Equity, until satisfactory proof is offered to such Court or Judge that the suit or action so brought in such other place or country out of Upper Canada is determined or discontinued.

Two sections substituted for sections 270 and 271 of the said act.

5. Sections numbers two hundred and seventy and two hundred and seventy-one of the said Common Law Procedure Act are hereby repeal- 10 ed 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 :

Sheriffs poundage]

Proviso.

·· 270. Upon any execution against the person, lands or goods, the 15 "Sheriff may, in addition to the sum recovered by the judgment, levy " the poundage and milage 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 upon the amount so levied or made only, what- 20 "ever be the sum endorsed upon the writ; and in all cases where " satisfaction shall be obtained of the debt or any part thereof, after " an actual levy upon the debtor's property while such execution re-"mains in the hands of the Sheriff to be executed, the Sheriff shall " be entitled to poundage as aferesaid : Provided always, that upon any 25 "judgment or decree appealed against, on which any execution shall be "issued, before the Judges flat to stay the execution shall have been "obtained under the seventeenth section of the Statute chaptered " thirteen of the Consolidated Statutes for Upper Canada, no poundage "shall be allowed against the appeliant unless a Judge of the Court 30 -"appealed from shall see fit to order otherwise."

"271. In cases of write of execution upon the same judgment to No poundage allowed in "several counties wherein the real or personal estate of the judgment certain cases, ... debtor has been seized or advertised but not sold, by reason of satisand fees only. " faction having been obtained under or by virtue of a writ in some 35 "other county, and no money has been actually levied on such execu-"tion, the Sheriff shall not be entitled to poundage, but to milage and "fees only for the services actually rendered and performed by him and "the Court out of which the writ issued, or any Judge thereof may al-"low him a reasonable charge for such services, in case no special fee 40-" therefor be assigned on any table of costs."

6. No execution shall issue against lands to the Sheriff of any Coun-When only execution ty until after a return of nulla bona in whole or part with respect to an may istue against lands, execution against goods, in the same suit by the same Sheriff.

When only return of nulla lona

7. No Sheriff shall make any return of nulla bona either in whole or 45. in part, to any writ against goods, until the whole of the goods of the may be made. execution debtor in his county have been exhausted, and then such rcturn shall be made only in the order of priority in which the writs have come into his hands.