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No. 65.

5th Session, 8th Parliament, 29-30 Vict., 1866.

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.

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

WHEREAS, 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:—

5 **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 Additional cases in which the defendant may obtain security for costs.
 10 may 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 has brought a former suit or proceeding
 15 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 order staying such proceedings until such security be given as to such Court or Judge shall seem meet.

20 **2.** In any suit or action in which any verdict is rendered for any debt, or sum certain, on 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
 25 suit or action, and in all cases damages shall be assessed only up to the day of the verdict. Interest allowed from the rendering of the verdict in certain cases. As to damages.

30 **3.** Whereas doubts exist as to the effect of equitable defences pleaded in suits at law, and it is desirable to remove such doubts;—if the defendant in any suit at law shall plead any equitable defence, and judgment shall be given against such defendant upon such equitable plea, such judgment shall be pleadable as a good bar and estoppel against
 35 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 commenced and pending before the passing of this Act, which shall be decided upon as if this Act has not been passed, and this Act shall not 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. Doubts as to the effect of judgments on equitable defences removed. Not to apply to pending cases, &c.

Stay of proceedings if suit for same cause is pending out of U. 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 and is pending between the same parties or their representatives in any 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-mentioned 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. 5

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 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: 10

Sheriff's poundage: 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 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, whatever 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 remains in the hands of the Sheriff to be executed, the Sheriff shall be entitled to poundage as aforesaid: Provided always, that upon any judgment or decree appealed against, on which any execution shall be issued, before the Judges *fiat* 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 appellant unless a Judge of the Court appealed from shall see fit to order otherwise. 15 20 25 30

No poundage allowed in certain cases, but milage and fees only. 271. In cases of writs of execution upon the same judgment to several counties wherein the real or personal estate of the judgment debtor has been seized or advertised, but not sold, by reason of satisfaction 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 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 allow him a reasonable charge for such services, in case no special fee therefor be assigned on any table of costs. 35 40

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

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