



No. 238.

---

---

2nd Session, 5th Parliament, 19 Victoria, 1856.

---

---

## BILL.

An Act to simplify and expedite the proceedings in the County Courts in Upper Canada and to alter and amend the law in relation to these Courts.

---

---

Received and read first time, Wednesday, 30th  
April, 1856.

Second reading Friday, 2nd May, 1856.

---

---

Hon. Mr. Atty. Genl. MACDONALD.

---

S. Derbishire & G. Desbarats, Queen's Printer.

An Act to simplify and expedite the proceedings in the County Courts in Upper Canada and to alter and amend the law in relation to these Courts.

**W**HEREAS it is expedient to simplify and expedite the proceedings in the several County Courts in Upper Canada, and to alter and amend the law in relation to these Courts : Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly, enacts as follows :

I. That from the time when this Act shall commence and take effect, the tenth, eleventh, twelfth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-second, twenty-third, twenty-fourth, twenty-eighth, thirty-first, thirty-second, thirty-fifth, thirty-ninth, forty-first, forty-fifth, and forty-sixth sections of An Act of the Parliament of this Province passed in the eighth year of Her Majesty's Reign, intituled : *An Act to amend, consolidate and reduce into one Act, the several laws now in force establishing or regulating the practice of District Courts in the several Districts of that part of this Province called Upper-Canada* ; the second, third and fourth sections of an Act of the Parliament of this Province passed in the twelfth year of Her Majesty's Reign, intituled : *An Act to amend and extend the provisions of the Act of this Province, intituled, An Act to amend, consolidate and reduce into one Act the several laws now in force establishing or regulating the practice of the District Courts in the several Districts in that part of this Province formerly Upper Canada* ; the fourth section of an Act of the Parliament of this Province passed in the thirteenth and fourteenth years of Her Majesty's Reign, intituled : *An Act to alter and amend the Act regulating the practice of the County Courts in Upper Canada, and to extend the jurisdiction thereof*, together with all other Acts or parts of Acts of the Parliament of Upper Canada or of this Province at variance or inconsistent with the provisions of this Act, shall be and the same are hereby repealed, except so far as the said Acts or any of them or any thing therein contained repeal any former Act or Acts, or any part thereof, all which said last mentioned Act or Acts shall remain and continue so repealed, and excepting also so far as the said Acts or parts of Acts hereby repealed and the provisions thereof, or of any of them, shall and may be necessary for supporting; continuing and upholding any Writs that shall have been issued, or proceedings that shall have been had or taken before the commencement of this Act, and any further proceeding taken or to be taken thereon.

Preamble.

Certain sections of the Acts,  
8 V. c. 13,—12 V. c. 66,—  
and13 & 14 V.  
c. 52 ;

And other provisions inconsistent with this Act repealed.

Exception.

Certain sections of the Common Law Procedure Act of this Session, and certain Rules to be made under it, to apply to the County Courts.

II. That the enactments contained in the ninth, fourteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh, forty-eighth, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-fifth, fifty-sixth, fifty-seventh, fifty-eighth, fifty-ninth, sixtieth, sixty-first, sixty-second, sixty-third, sixty-fourth, sixty-fifth, sixty-sixth, sixty-seventh, sixty-eighth, sixty-ninth, seventieth, seventy-first, seventy-second, seventy-third, seventy-fourth, seventy-fifth, seventy-sixth, seventy-seventh, seventy-eighth, seventy-ninth, eightieth, eighty-first, eighty-second, eighty-third, eighty-fourth, eighty-fifth, eighty-sixth, eighty-seventh, eighty-eighth, eighty-ninth, ninetieth, ninety-first, ninety-second, ninety-third, ninety-fourth, ninety-fifth, ninety-sixth, ninety-seventh, ninety-eighth, ninety-ninth, one hundredth, one hundred and first, one hundred and second, one hundred and third, one hundred and fourth, one hundred and fifth, one hundred and sixth, one hundred and seventh, one hundred and eighth, one hundred and ninth, one hundred and eleventh, one hundred and twelfth, one hundred and thirteenth, one hundred and fourteenth, one hundred and fifteenth, one hundred and sixteenth, one hundred and seventeenth, one hundred and eighteenth, one hundred and nineteenth, one hundred and twentieth, one hundred and twenty-first, one hundred and twenty-second, one hundred and twenty-third, one hundred and twenty-fourth, one hundred and twenty-fifth, one hundred and twenty-sixth, one hundred and twenty-seventh, one hundred and twenty-eighth, one hundred and twenty-ninth, one hundred and thirtieth, one hundred and thirty-first, one hundred and thirty-second, one hundred and thirty-third, one hundred and thirty-fourth, one hundred and thirty-fifth, one hundred and thirty-sixth, one hundred and thirty-seventh, one hundred and thirty-eighth, one hundred and thirty-ninth, one hundred and fortieth, one hundred and forty-first, one hundred and forty-second, one hundred and forty-third, one hundred and forty-fourth, one hundred and forty-fifth, one hundred and forty-sixth, one hundred and forty-seventh, one hundred and forty-eighth, one hundred and forty-ninth, one hundred and fiftieth, one hundred and fifty-first, one hundred and fifty-second, one hundred and fifty-third, one hundred and fifty-fourth, one hundred and fifty-fifth, one hundred and fifty-sixth, one hundred and fifty-seventh, one hundred and fifty-eighth, one hundred and fifty-ninth, one hundred and sixtieth, one hundred and sixty-first, one hundred and sixty-second, one hundred and sixty-third, one hundred and sixty-fourth, one hundred and sixty-fifth, one hundred and sixty-sixth, one hundred and sixty-seventh, one hundred and sixty-eighth, one hundred and sixty-ninth, one hundred and seventieth, one hundred and seventy-first, one hundred and seventy-second, one hundred and seventy-third, one hundred and seventy-fourth, one hundred and seventy-fifth, one hundred and seventy-sixth, one hundred and seventy-seventh, one hundred and seventy-eighth, one hundred and seventy-ninth, one hundred and eightieth, one hundred and eighty-first, one hundred and eighty-second, one hundred and eighty-third, one hundred and eighty-fourth, one hundred and eighty-fifth, one hundred and

eighty-sixth, one hundred and eighty-seventh, one hundred and  
 eighty-eighth, one hundred and eighty-ninth, one hundred and  
 ninetieth, one hundred and ninety-first, one hundred and ninety-  
 second, one hundred and ninety-fourth, one hundred and ninety-  
 5 fifth, one hundred and ninety-sixth, one hundred and ninety-  
 seventh, one hundred and ninety-eighth, one hundred and ninety-  
 ninth, two hundredth, two hundred and first, two hundred and  
 second, two hundred and third, two hundred and fourth, two  
 hundred and fifth, two hundred and sixth, two hundred and  
 10 seventh, two hundred and eighth, two hundred and ninth, two  
 hundred and tenth, two hundred and eleventh, two hundred  
 and twelfth, two hundred and thirteenth, two hundred and  
 fourteenth, two hundred and fifteenth, two hundred and six-  
 teenth, two hundred and seventeenth, two hundred and eight-  
 15 eenth, two hundred and nineteenth, two hundred and eighty-  
 seventh, two hundred and eighty-eighth, two hundred and  
 eighty-ninth, two hundred and ninetieth, two hundred and  
 ninety-first, two hundred and ninety-second, two hundred and  
 ninety-fifth, two hundred and ninety-sixth, two hundred and  
 20 ninety-seventh, two hundred and ninety-eighth, two hundred  
 and ninety-ninth, three hundredth, three hundred and first, three  
 hundred and second, three hundred and third, three hundred  
 and fourth, three hundred and fifth, three hundred and sixth,  
 three hundred and seventh, three hundred and eighth, three  
 25 hundred and ninth, three hundred and tenth, and the three  
 hundred and twelfth sections of An Act passed in the pre-  
 sent session of Parliament known as the "Common Law  
 Procedure Act of 1856," and the several provisions of the Rules  
 to be made in pursuance of the said Act, or such of them as  
 30 may relate to the said sections, shall apply and extend to the  
 several County Courts in Upper Canada and actions and pro-  
 ceedings therein respectively; and this Act shall be read and  
 construed as if the said several sections of the said "Common  
 Law Procedure Act of 1856," were repeated at length in this  
 35 Act; subject to the following modifications, that is to say, all  
 the powers under the said sections exercisable by the Court of  
 Queen's Bench or the Court of Common Pleas, or by any one of  
 the Judges thereof, shall and may in like manner be exercisable  
 by the Judges of the County Courts respectively in term or va-  
 40 cation, as the case may require, as to matters and proceedings  
 therein within the jurisdiction of the said County Courts respec-  
 tively; such of the said sections as relate to proceedings in  
*Banc* or *Nisi Prius* respectively, shall be understood as refer-  
 ring and relating to the sittings of the said County Courts  
 45 in term and the sittings thereof for the trial of issues of fact,  
 as the case may be; all the provisions of the said sections ap-  
 plicable to Deputy Clerks of the Crown, shall apply to the  
 Clerks of the County Courts respectively; and also subject to  
 such other modifications as may be necessary to give full and  
 50 beneficial effect to the said several sections in their extension  
 and application to the County Courts, and all actions and pro-

The said sec-  
 tions to be  
 subject to cer-  
 tain modifica-  
 tions, as ap-  
 plied to Coun-  
 ty Courts.

ceedings therein within the jurisdiction of the same Courts respectively.

Clerks to be subject to certain Rules.

III. That the Clerk of each County Court shall be subject to such rules for his governance in his office as may from time to time be made in that behalf according to the provisions of the three hundred and thirteenth and three hundred and fourteenth sections of "The Common Law procedure Act of 1856," in like manner as Deputy Clerks of the Crown. 5

Clerks to sign and seal writs, &c., and account for fees.

IV. The Clerk of each County Court shall sign and seal all writs and process whatsoever which are to be issued from such County Courts, and shall account for and pay over all fees due and receivable by County Court Clerks for writs, processes, summonses, orders and proceedings under this Act, as they are now bound by law to do for all other fees received by them and with and under like responsibilities. 15

In what County suits must be commenced.

V. In cases in which the cause of action shall be transitory and within the jurisdiction of a County Court, the action may be brought and the plaintiff may sue out the writ for the commencement of the action in any County Court; where the venue is local, the writ for the commencement of the action shall be sued out from the Office of the County Court within the proper County. 20

Final judgment on *cognovit*, &c., not over £100, may be in any County Court.

VI. Final judgment may be entered upon a *cognovit actionem* or Warrant of Attorney to confess judgment, for an amount not exceeding one hundred pounds which shall have been given or executed, in the first instance and before the suing out of any process, in any County Court at the option of the Plaintiff, unless some particular Court in which the judgment is to be entered be expressly stated in such *cognovit* or warrant. 25

Clerk to keep a book for docketing judgments, and what it shall contain

VII. The Clerk of each and every County Court shall keep a regular book, in which shall be minuted and docketed all Judgments entered by such Clerk; and such minute shall contain the name of every Plaintiff and Defendant, the date of the commencement of the action, the date of the entry of such judgment, the form of action, the amount recovered, the amount of costs taxed, and whether such judgment was entered upon or by verdict, default, confession, *non pros*, non-suit, discontinuance, or how otherwise; and in case the original judgment-roll be lost or destroyed, so that no exemplification or examined copy thereof can be procured, a copy of the entry in such docket book, certified by the Clerk having such book in his custody, shall be evidence of all matters therein set forth and expressed; and when any such Clerk shall enter up any Judgment in either of the said Courts, he may give to the party on whose behalf it is entered, or to his legal representative, a certificate signed by him, of such Judgment, containing the like particulars as are required in certificates of Judgments given by the 30 35 40 45

Copies of entries to be evidence in certain cases.

Clerks of the Crown and Pleas, and such certificate may be registered in the Registry Office of any County in Upper Canada, and the same certificate and the registration thereof shall have the like force and effect in binding or operating as a charge upon lands, tenements and hereditaments situated within such County, as if the certificate had been granted by a Clerk or Deputy Clerk of the Crown.

Certificates may be given and registered so as to bind lands.

VIII. When any Writ of Summons or Capias in any such action shall have been issued before, and shall be in force at the time of the commencement of this Act, such Writ may, at any time before the expiration thereof, be renewed under the provisions of, and in the manner directed by this Act; and where any Writ, issued in continuation of a preceding Writ, according to the provisions of the laws in force in the County Courts before the passing of this Act, shall be in force and unexpired, or where one month next after the expiration thereof shall not have elapsed at the commencement of this Act, such continuing Writ may, without being returned *non est inventus*, or entered of record according to the provisions of the said Act, be filed in the proper office of the Court, within one month next after the expiration of such Writ, or within twenty days after the commencement of this Act, and the original Writ of Summons or capias in such action may thereupon, but within the same period of one month next after the expiration of the continuing Writ or within twenty days after the commencement of this Act, be renewed under the provisions of, and in the manner directed by this Act; and every such Writ shall, after such renewal, have the same duration and effect for all purposes, and shall be, if necessary, subsequently renewed in the same manner as if it had originally issued under the authority of this Act.

As to writs issued before this Act shall be in force.

Continuing writs.

Renewal thereof.

IX. Causes of action of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit, but this shall not extend to replevin or ejectment, or to causes of action which are local and arise in different Counties, but the Court or a Judge shall have power to prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case the Court or a Judge may order separate records to be made up and separate trials to be had; Provided always, that nothing herein contained shall be construed to restrict or diminish the obligation or right of a Plaintiff to include in one action all or any of the drawers, makers, endorsers and acceptors of any Bill of Exchange or Promissory Note.

What causes of action may be joined.

Proviso.

X. If it be made to appear, at any time after the issuing of the writ of any County Court to the satisfaction of the Judge, upon the application of either party, that the matters in dispute consist wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, it shall be

Matters of account may be decided summarily or referred.

lawful for such Judge, upon such application, if he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, upon such terms as to costs and otherwise as such Judge shall think reasonable ; and the decision or order of such Court or Judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a Jury upon the matter reserved. 5

Questions of law or fact as to items in such account.

XI. If it shall appear to the Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court or upon a question of fact fit to be decided by a Jury, it shall be lawful for such Judge to direct a case to be stated or an issue or issues to be tried ; and the decision of the Judge upon such case, and the finding of the Jury upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive. 10 15

Arbitrator may state special case in award.

XII. It shall be lawful for the arbitrator upon any compulsory reference under this Act, if he shall think fit, and if it is not provided to the contrary, to state his award as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action is referred, judgment if so ordered may be entered according to the opinion of the Court. 20

Proceedings in arbitration cases.

XIII. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner and subject to the same rules and enactments as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, or otherwise, as upon a reference made by consent under a rule of the Superior Courts or Judge's order. 25 30

Matters of mere calculation need not be referred.

XIV. In actions in which it shall appear to the Judge that the amount of damages which ought to be recovered by the Plaintiff is substantially a matter of calculation, it shall not be necessary to assess the damages by a Jury, but the Judge may ascertain the amount for which final Judgment is to be signed, and the attendance of witnesses and the production of documents before such Judge may be compelled by subpoena, in the same manner as before a Jury ; and it shall be lawful for such Judge to appoint the day for hearing the case, and to adjourn the inquiry from time to time, as occasion may require ; and such Judge shall make an order in writing declaring the amount found by him, and such and the like proceedings may thereupon be had, as to taxation of costs, signing Judgment, and otherwise, as upon the finding of a Jury upon an assessment of damages. 35 40 45



XV. Where any issue is or shall be joined in any cause, and the Plaintiff has neglected or shall neglect to bring such issue on to be tried at the first sittings of the Court then next following, whether the Plaintiff shall in the meantime have given notice  
 5 of trial or not, the Defendant may give twenty days' notice to the Plaintiff to bring the issue on to be tried at the next sittings of the Court after the expiration of the notice; and if the Plaintiff afterwards neglects to give notice of trial for such sittings or to proceed to trial as required by the said notice  
 10 given by the Defendant, the Defendant may suggest on the record that the Plaintiff has failed to proceed to trial, although duly required so to do, (which suggestion shall not be traversable, but only be subject to be set aside if untrue,) and may sign Judgment for his costs; provided that the Judge shall  
 15 have power to extend the time for proceeding to trial with or without terms.

Where the Plaintiff neglects to bring the matter to trial; Plaintiff may apply, &c,

XVI. Upon the hearing of any motion or Summons, it shall be lawful for the Judge at his discretion, and upon such terms as he shall think reasonable, from time to time to order such do-  
 20 cuments as he may think fit to be produced, and such witnesses as he may think necessary, to appear and be examined *vid voce* either before such Judge, or before the Clerk of the Court, and upon hearing such evidence or reading the report of the Clerk, to make such order as may be just.

Judge may require witnesses or documents, on hearing motions, &c,

25 XVII. It shall be lawful for any creditor who has obtained a Judgment in any County Court to apply to the Judge for a rule or order that the Judgment debtor should be orally examined as to any and what debts are owing to him before such  
 30 Judge of any County Court or before any other person to be specially named, and the Judge may make such order for the examination of such Judgment debtor, and for the production of any books or documents and the examination shall be conducted in the same manner as in the case of an oral examination of an opposite party under this Act.

Judgment creditor may have his debtor examined as to his property.

35 And with respect to costs; Be it enacted:

XVIII. Until otherwise ordered by rule of Court made in pursuance of the "Common Law Procedure Act of 1856," the costs of Writs issued under the authority of this Act and of all other proceedings under the same, shall be and remain as  
 40 nearly as the nature thereof will allow, the same as heretofore, but in no case greater than those already established, except that there shall be payable to the Clerks of the County Courts for and to form part of the general fee fund, the following fees, viz: for every Special Hearing before the Judge five shillings,  
 45 and the sum of ten shillings for every day's sittings in taking examinations and evidence, and the like sum on every reference to the County Judge from the Superior Courts, together with one shilling per folio on the evidence taken before him, and five

Fees to remain as now until altered.

Exceptica.

Proviso.

shillings for every report thereon ; Provided always, that hereafter no mileage shall be taxed or allowed for the service of any Writ, paper or proceeding, without an affidavit being made and produced to the proper taxing officer, stating the sum actually disbursed and paid for such mileage and the name of the party to whom such payment was made. 5

Practice in cases not provided for.

XIX. In any case not expressly provided for by law, the practice and proceedings in the several County Courts in Upper Canada shall be regulated by and shall conform to the practice of the Superior Courts of Common Law at Toronto ; and the practice of the said Superior Courts, as the same remains now or may be hereafter altered, shall, in matters not expressly provided for as aforesaid, apply and extend to the County Courts and to all actions and proceedings therein.

Recital.

XX. And whereas it is expedient to enlarge and more clearly define the jurisdiction of the several County Courts in Upper

Jurisdiction of County Courts enlarged, notwithstanding 13 & 14 V. c. 52.

Canada—It is enacted, That for and notwithstanding any thing contained in the first section of an Act of the Parliament of this Province, passed in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, *An Act to amend and alter the Acts regulating the practice of the County Courts in Upper Canada and to extend the jurisdiction thereof*, or any other Act of the Parliament of this Province, that the said County Courts respectively shall hold plea of all personal actions where the debt or damages claimed is not more than fifty pounds, and of all causes or suits relating to debt covenant or contract where the amount is liquidated or ascertained by the act of the parties or the signature of the defendant, to one hundred pounds; 20

Proviso.

Provided always, that the said County Courts shall not have cognizance of any action where the title to land shall be brought in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, or for any libel or slander or for criminal conversation or for seduction. 25

Fees in certain special cases.

XXI. In all applications and proceedings before the County Judges, not relating to suits instituted in any Court of Civil Judicature in Upper Canada, there shall be payable to the Clerks of the several County Courts, for and to form part of the general fee fund thereof, such fees as nearly as the nature of the case will allow as are now payable on proceedings under the Act for the relief of insolvent debtors. 35 40

Judge's salary to be from £250 to £650, and fixed by Governor in Council.

XXII. That every Judge shall be paid by a certain salary of not more than six hundred and fifty pounds or less than two hundred and fifty pounds, and the Governor in Council shall fix the remuneration to be paid to the Judges respectively, having due regard as well to the population of the several Counties or Unions of Counties, as the amount of fees received by the County Treasurer, under the several Statutes establishing Fee Funds and the remuneration of Judges may be increased, or as 45

vacancies shall occur may be diminished by the Governor in Council.

XXIII. That so much of the schedule of Fees annexed to the Act passed in the eighth year of Her Majesty's Reign, chaptered thirteen, as applies to the "Fees to be received by the Clerk, and to belong to and be paid over to the Fee Fund," and the whole of Schedule A annexed to an Act passed in the ninth year of Her Majesty's Reign, chaptered seven, shall be and the same is hereby repealed and the following Schedule is substituted therefor :

Every Writ of Summons or *Cupias ad Respondendum*, one shilling and six pence,

Every Verdict, six shillings and three pence,

Executing each Writ of Trial and Enquiry and making Return thereto, six shillings and three pence,

Every Report made by the Judge of the proceedings on executing a Writ of Trial or Enquiry, five shillings,

Every Certificate of proceedings made by the Judge to be transmitted to the Court of Queen's Bench, two shillings and six pence,

Every Rule requiring a motion in open Court, one shilling and six pence,

Every Rule or Order of Reference, one shilling and six pence,

Every other Rule or Judge's order, one shilling and three pence,

Every Recognizance of Bail taken by Judge, one shilling and six pence,

Every Affidavit administered by Judge, one shilling.

Every Computation of principal and interest on a Bill, Note Bond or Covenant for payment of money, three shillings,

Every Writ of Subpœna, one shilling,

Every Judgment entered, six shillings and three pence,

Every Oath administered in open Court, one shilling.

XXIV. That in addition to the Fees now received by each Sheriff for mileage and poundage,, it shall be lawful for him to charge and receive for mileage two pence per mile on all writs executed, and for poundage, upon all moneys actually made under a *fi. fa.* or a *ca. sa.* six pence in the pound.

XXV. That it shall be lawful for the Governor in Council to cause to be paid to the Clerk of the County Court for the United Counties of York and Peel, and after the dissolution of the Union of such Counties, to the Clerk of the County Court for the County of York, over and above all Fees now received by him, an allowance not to exceed one hundred pounds per annum out of any surplus that may remain of the Fee Fund of such United Counties or County, after all present charges thereon shall have been first defrayed.

Part of Schedule of fees to 8 V. c. 13, repealed and the whole of that to 9 V. c. 7. New Schedule substituted.

Sheriff's mileage and poundage.

Extra allowance to Clerk of York and Peel.

Commence-  
ment of this  
Act

XXVI. The provisions of this Act, shall come into operation on the twenty-first day of August, one thousand eight hundred and fifty-six.

Short Title.

XXVII. In Citing this Act, in any instruments, documents or proceedings, it shall be sufficient to use the expression, 5  
“The County Courts Procedure Act of 1856”.