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No. 3.

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1st Session, 4th Parliament, 16 Victoria, 1852.

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## **BILL.**

An Act to establish Courts of Conciliation or Arbitration in Upper Canada.

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Received and read a first time, Tuesday, 24th  
August, 1852.

Second reading,

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MR. MACKENZIE.

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**B I L L .**

**An Act to establish Courts of Conciliation or Arbitration  
in Upper Canada.**

**W**HEREAS the moral power that would be exercised by Courts of Conciliation, might have a very beneficial tendency in preventing expensive, vexatious, uncertain and prolonged lawsuits, which occupy much of the time of Courts, Judges, Jurors and Witnesses, and are productive of ill-will, envy and strife in society; and whereas it is desirable to establish such Courts, for the prompt and final determination of controversies having their origin in passion, excitement and misapprehension—for repressing the spirit of litigation—for lessening the necessity of taking oaths—for avoiding needless exposures of human frailty in the legal tribunals—and for encouraging the speedy and amicable settlement of disputes and differences arising between friends and neighbours:—Be it therefore enacted, &c.

Preamble.

That Tribunals are hereby established in the several Counties of Upper Canada, to be known as the Courts of Conciliation.

Courts of Conciliation established.

15 **II.** And be it enacted, That a Court of Conciliation shall be held in each of the said Counties by the County Judge. It may be held on any juridical day, and wherever, in his County, the Judge may happen to be.

Where, when and by whom to be held.

20 **III.** And be it enacted, That the causes of action of which this Court shall have cognizance, are assault, battery, false imprisonment, breach of promise of marriage, libel, slander, malicious prosecution, and personal violence of any kind.

In what cases they shall act.

25 **IV.** And be it enacted, That any person claiming to have a cause of action against another, in any of the cases mentioned in section III, may serve on him or her a written notice, mentioning the alleged cause of action, and requiring him or her to appear in relation thereto, before the Court of Conciliation of the County where the notice is served, at a specified time, not less than five days from the time of service, such notice must be served in the manner prescribed for a summons in a civil action, and shall cost

Summons to attend Conciliation Court.

30 **V.** And be it enacted, That at the time specified in the notice, or at such other time as the hearing may be adjourned to by the Court, the parties appearing must be received by the Judge apart from all other persons, except that when an infant or a woman is a party to a proceeding before the Court, such infant or woman may be attended by the husband or guardian of such party, or if there be none, then by some

Parties to appear and be heard in private.

**Judge's duty.** friend approved by the Court ; and thereupon it shall be the duty of the Judge to hear the allegations and explanations of the parties, to inform them of their respective rights, and to endeavour to reconcile their differences.

**Parties may appear without summons.** VI. And be it enacted, That parties may voluntarily appear before the Court without notice, and such appearance shall be as effectual as if notice had been previously served. 5

**Memorandum to be made if reconciliation effected.** VII. And be it enacted, That if a reconciliation be had, a memorandum thereof, stating the nature of the controversy or alleged cause of action, the appearance of the parties and the fact of the reconciliation, without specifying the terms thereof, unless it be agreed by the parties to specify them, must be entered in a book of records, to be kept by the Judge, and such entry must be signed by the respective parties. 10

**To be final.** The reconciliation thus effected shall be the final determination of the matter in controversy. 15

**Any judgment to which the parties agree may be executed, and how.** VIII. And be it enacted, That if the parties agree to a judgment in favour of one against the other in settlement of their differences, the Judge may make, at the foot of the entry of reconciliation, a memorandum, stating the judgment agreed upon. A transcript of such memorandum, certified by the Judge, may be fyled in the office of the Clerk of the County Court, and shall thereupon have the same effect, and may be enforced in the same manner as any judgment of a County Court. 20

**And so of a judgment given by the Judge with consent of parties.** IX. And be it enacted, That if, instead of a reconciliation, the terms of which are settled between the parties, they voluntarily submit their matters in difference to the Court, and agree to abide the judgment, or assent thereto, in the presence of the Court, such submission and agreement or assent, must be entered in the book of records and signed by the respective parties ; and thereupon the judgment of the Court, made pursuant to the submission, shall be fyled and have the same effect, and may be enforced in the same manner as the judgment mentioned in section VIII. 25 30

**Entry of default to appear, &c. to be made by Judge.** X. And be it enacted, That if, after the service of the notice prescribed in section IV, either party fail to appear, or, if the parties appearing, be not reconciled, as mentioned in sections VII and VIII, or do not enter into the submission and agreement mentioned in section IX, it shall be the duty of the Judge to make an entry in his book of records, stating, in a summary manner, the nature of the charge, the notice given, the proof of service thereof, the failure to appear of either party, or the appearance of the parties and their failure to be reconciled. 35

**Entries or certified copies thereof to be evidence.** XI. And be it enacted, That the entries in such book of records, or certified copies thereof signed by the Judge shall be evidence of the facts therein stated, and it shall be the duty of the Judge to give a transcript of the entries in any case, certified by him, to either party, on request. 40

**Costs not to be recovered by** XII. And be it enacted, That in any action that may be hereafter brought for the recovery of damages for a cause of action mentioned in 45

section III, the plaintiff cannot recover costs unless he produce at the trial the certified copy mentioned in section XI, and unless it thereby appear that the notice was duly served, and that he or she appeared pursuant thereto, or that both parties appeared without notice, as mentioned in section VI. The defendant cannot recover costs in such action when it appears that after service of the notice he or she failed to appear pursuant thereto.

parties not appearing before Court of Conciliation.

XIII. And be it enacted, That if the case be one requiring a provisional remedy, and of such urgency as not to justify the delay arising from a previous notice to appear before the Court of Conciliation, the action may be commenced without such appearance or notice, and if the plaintiff afterwards give the notice and appear before the Court of Conciliation pursuant thereto, he may recover costs accruing subsequent to such appearance.

Cases of urgency provided for.

XIV. And be it enacted, That in an action between partners, or between principal and agent, if either party make it appear to the Court that, previous to his complaint or answer, he made an offer, in writing to his adversary to submit the matter in difference between them to arbitration, as prescribed in section XV, no costs can be awarded against the party making such offer.

In cases between partners, &c., no costs without prior offer of arbitration.

XV. And be it enacted, That the Arbitrators required by section XIV, must be three competent and disinterested persons, one to be chosen by each party, and the third to be either chosen by those two, or by the Judge of the Court of Conciliation of the County where the notice was served, or before whom the parties voluntarily appeared.

Arbitrators how appointed.

XVI. And be it enacted, That it shall be the duty of the Judge of the Court of Conciliation, so far as may be compatible with his duties as Judge, to give to every person who may ask it, advice respecting his differences with another. No fee can be received by the Judge for any services rendered in the said Court, nor can any proceedings be protracted therein longer than fifteen days, unless both parties agree to a longer delay. When advising parties, in cases submitted to him, the Judge shall act according to conscience and right, without regard to technical rules.

Judge to give advice to parties: limitation. No Fee.

To decide according to conscience.

XVII. And be it enacted, That no party to any admission or declaration made before the Court of Conciliation, shall be bound thereby or responsible therefor, in any other judicial proceeding whatever, except as provided in this Act. No statements made by parties before the said Court shall be used as evidence for or against them in any other place, in case the Court fail to effect a settlement of their differences. The hearing of all matters submitted to the Court must be private.

Admission, &c., not to be used against party making it.

Hearing to be private.

XVIII. And be it enacted, That the parties must appear in person and not by an agent or attorney; and no oaths shall be administered to parties; nor are the parties to call and examine witnesses.

No attorney, &c., allowed.

**XIX.** And be it enacted, That each of the Judges shall transmit to the office of the Attorney General for Upper Canada, at any time during the month of January, in each year, a report of his proceedings under this Act, for the then next previous year, together with such suggestions relative to its improvement, or to the placing of other causes of action under the cognizance of the Court, as he shall see fit to offer. 5

Commence-  
ment and  
duration of  
Act.

**XX.** And be it enacted, That this Act shall have force and take effect upon, from and after the first day of January, 1853, and shall continue in operation until the first day of January, 1856.