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4th Session, 3rd Parliament, 14 and 15 Victoria, 1851.

V.

BILL.

An Act to alter and amend the Acts
regulating the Practice of the County
Courts in Upper Canada, and to ex-
pedite and simplify the proceedings
of the said Courts.

Received and Read first time, Monday, 28th July, 1851.

Second Reading, Friday, 1st August, 1851.

[200 Copies.]

HON. MR.

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1959

B I L L .

An Act to alter and amend the Acts regulating the Practice of the County Courts in Upper Canada, and to expedite and simplify the proceedings of the said Courts.

WHEREAS it is expedient to alter and amend the Acts regulating the practice of the County Courts in Upper Canada and to expedite and simplify the proceedings of the said Courts. Be it therefore enacted by the Queen's Most Excellent Majesty &c. and it is hereby enacted by the authority of the same, That such provisions of the Act or Acts now in force as require the holding of Terms of the said Courts be repealed and that the Terms of the said Courts be abolished. Provided always that any Judge of the said Courts shall have and exercise the same powers at all times and in all proceedings not inconsistent with the provisions of this Act that have heretofore appertained to the said Courts in Term time.

Preamble.

Terms of County Courts abolished.

II. And be it enacted, That after the close of each of the sittings of the said Courts fourteen days shall be allowed for motions to set aside verdicts or non-suits or in arrest of Judgment or for new Trials or for Judgments of Non-Suits or for all such proceedings as have heretofore in Term time followed the sittings of the said Courts; Provided always that any Judge of the said Courts may upon sufficient cause shewn by Affidavit order immediate Judgment upon any verdict obtained; And also that any Judge of the said Courts may upon sufficient cause shewn by Affidavit extend the time for levying under Execution for a period not exceeding three months beyond the return day named in the Writ of Execution.

Fourteen days after each sittings to be allowed for certain motions.

Proviso.

III. And be it enacted that all Writs issued out of the said Courts shall bear *teste* on the day on which they issue and that every Writ of Execution not being an original Writ against Land and Tenements shall be returnable on a day at least twenty days after and not later than three calendar months from the issuing thereof. Provided always that a Sheriff or other proper Officer shall not be liable to Attachment for not returning or improperly returning a Writ of Execution unless he shall have been required to execute the same at least fourteen days before the return day thereof or in case of an original Writ of Execution against Lands at least six calendar months before the return day thereof.

As to the teste and return of Writs.

Proviso.

In what County Court any action may be brought.

IV. And be it enacted that all actions in the County Courts shall be brought either in the County in which the Plaintiff or Plaintiffs or one or more of them or the Defendant or Defendants or one or more of them shall reside at the time of the commencement of action or in the County in which the Debt was contracted or made payable or the contract was made in the option of the Plaintiff or Plaintiffs and in default thereof the whole proceedings may on the application of the Defendant or Defendants or any one or more of them made at any time before plea pleaded or any interlocutory judgment or other judgment signed be set aside with costs. 5 10

Proceeding by Writ of Scire Facias abolished.

Judgments to be revived &c., after cause shewn on a Judge's Summons.

V. And be it enacted that the proceeding by Writ of *Scire Facias* be abolished and instead thereof that a party or parties to a suit or any one of them desirous of recovering a judgment obtained therein may obtain a Judge's Summons calling upon the opposite and proper party or parties to shew cause why the judgment should not be revived and proceedings had thereon and that it shall be in the power of any Judge of the said Courts sufficient cause to the contrary not being shewn to order that such judgment be revived and execution certificate of judgment or other usual proceedings be obtained thereon. 15 20

County Courts to be held to possess inherent jurisdiction.

Difficult points of practice to be decided according to equity and good conscience.

VI. And be it enacted that the said Courts shall be held to possess inherent jurisdiction to carry out to final judgment and determination any suit properly instituted within their jurisdiction and that on the occurrence of any point of practice involving doubt or technical difficulty in Law it shall be competent to any Judge of the said Courts to decide upon the same as shall appear to him to be just and agreeable to equity and good conscience. 25

Declarations and pleadings in County Courts to be filed, and served at any legal time, even in July or August.

VII. And be it enacted that such provisions of the Act or Acts now in force as require that no declaration or pleading after declaration shall be filed or delivered in any action in the said County Courts between the first day of July and the twenty-first day of August in each and every year be repealed and that declarations pleadings and proceedings thereon may be filed served and taken at all the usual legal times. 30 35