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~~SECRET~~
No. 2.

3d Session, 3d Parliament, 13 Victoria, 1850.

BILL.

An Act to alter, simplify and amend the
Practice of the Law and to diminish
Law Expenses.

Received and Read a First time, Wednesday, 15th
May, 1850.

Second Reading, Thursday, 23rd May, 1850.

Hon. Mr. BOULTON.

TORONTO : PRINTED BY LOVELL AND GIBSON.

BILL.

An Act to alter, simplify and amend the Practice of the Law, and to diminish Law Expenses.

WHEREAS experience has shewn that the system Preamble.
of pleading introduced under the authority of an Act passed in the Parliament of Upper Canada in the seventh year of the Reign of King William the Fourth, 5 intituled, "*An Act for the further amendment of the Law* Act 7, W. 4, c. 3.
"*and the better advancement of Justice,*" and confirmed by an Act of the Parliament of Canada, passed in the sixth year of Her present Majesty's Reign, intituled; "*An* Act 6 V. c. 19, recited.
"*Act to confirm certain Rules, Orders and Regulations* 10 "*made by the Chief Justice and Judges of Her Majesty's*
"*Court of Queen's Bench for Canada West,*" instead of diminishing costs has tended materially to increase them: Be it therefore enacted, &c., as follows :

I. That the said Acts and all Rules, Orders and Regu- The said Acts, and Rules under them, repealed.
15 lations made in pursuance thereof, shall be repealed after the first day of November next.

II. All mesne process is abolished and the filing the Declaration shall be the commencement of the suit, should the Plaintiff cause a copy thereof to be served personally 20 on each Defendant within *six months* thereafter or without further unnecessary delay. How actions shall be commenced.

III. Each Defendant shall have *one month's* time to plead from the day of serving the Declaration, and the filing the plea shall be held also to be an appearance. Delay to plead. Pleading to be an appearance.

25 IV. In all cases where the defence consists of a denial of the Plaintiff's cause of action, the Defendant may plead the general issue, or any general denial of the Plaintiff's Declaration, or he may deny any particular fact or facts set forth by the Plaintiff, when the facts not denied will 30 be held to have been admitted. As to pleas, denying the whole or part of facts alleged by Plaintiff.

V. Special pleas in justification or excuse, or of any Statute are admitted as heretofore. As to pleas of justification or excuse.

VI. After issue in fact joined, either party may require his opponent to appear before a Judge having jurisdiction 35 to hear Chamber business in the cause, at a certain day and hour to be examined upon oath or otherwise, as the Judge shall think fit touching the matters in dispute, when the Judge shall examine both parties and certify to After issue joined, parties to be examined by a Judge, who shall certify the facts as to which they agree.

the Court upon the back of the Declaration and Plea or otherwise the various facts therein alleged, and upon which the parties do not differ.

Superfluous words forbidden:—saving usual course of pleading.

VII. The use of all superfluous words shall be avoided in every pleading, which shall be as short as may be consistent with a true and perspicuous statement of the cause of action and defence, preserving however the usual course of pleading. 5

Creditor for a sum certain, may compel debtor to appear before a Judge, by notice in a certain form.

VIII. Any creditor may serve upon any person indebted to him in a sum certain or capable of being ascertained by computation, a notice in the form or to the effect of that set forth in the schedule to this Act, marked A, to which shall be annexed a copy of the account, promissory note, bill of exchange, bond, covenant, or other evidence of debt so claimed, notifying such person that he will apply to a Judge of some Court, having jurisdiction in the premises for judgment, for the amount claimed, giving not less than *twenty* days notice of the day, hour and place of application. 10 15

Judge may give judgment for the sum proved or admitted: Or order any disputed fact to be ascertained by a Jury.

IX. Upon appearance of the parties and admission or proof of the amount due, either voluntarily or upon oath of the parties, Plaintiff and Defendant, or upon the oath of witnesses by consent of the parties, either of the whole amount claimed or any part thereof, the Judge may give judgment therefor, as in schedule A, or may direct any fact *bona fide* in dispute to be determined by a jury, at some coming Court where jury trials are had, the issue being directed as in the schedule hereto, marked C, or in such form as the Judge shall direct. 20 25

Judge may adjourn hearing, and may allow 20s. costs

X. The judge may adjourn the hearing if he shall see cause, and in his discretion may allow not more than *twenty* shillings costs to the successful party, to be included in the judgment. 30

Judge may grant stay of execution on terms.

XI. With a view to discourage trials for the purpose of gaining time, it shall be the duty of the Judge to grant such stay of execution; as, upon hearing the parties, he shall deem reasonable, and either on terms giving such security as the party may be enabled to offer to pay the debt, either in part or in whole, at one time or by instalments, as to the Judge shall seem just; and if landed security be offered, the judgment being registered, shall constitute a lien thereon until the debt be paid, but upon no other real property. 35 40

Lien on realty offered as security.

Judgment may be confessed for £100 before Judge of Division Court.

XII. Judgment may be confessed before any Judge of any Division Court to the amount of *one hundred pounds*, for any debt or other claim or demand which the Judge shall be satisfied on hearing the parties is a *bona fide* demand, with stay of execution, as in the last section. 45

XIII. Defendants may in all such cases give ten days' notice to the Plaintiff of any set-off he may claim against the Plaintiff, and judgment may be rendered for the balance, either in favour of Plaintiff or Defendant, as the case may be.

Notice of set-off, and judgment for balance due to either party.

XIV. No person suing for any such debt or demand, by action, without first having endeavoured to get judgment upon such notice, shall be entitled to any costs.

No costs in suit brought without trying to get judgment on notice.

XV. Should the Debtor not appear upon such notice, judgment may be given by default upon proof of the due service of notice and of the actual sum due, so as to satisfy the Judge of its being an honest and *bona fide* claim; but the Defendant may come before the Judge at any time before execution executed and move the Judge to hear the case or modify the judgment, if to the Judge it shall appear that he had any reasonable cause for not appearing in the first instance, or that any mistake or error has occurred in ascertaining the amount.

Judgment by default on reasonable proof.

But defendant may appear and pray hearing before execution done.

XVI. All petit torts and injuries affecting the person or personal property, whether in the nature of trover, case for a consequential damage or neglect of duty or other wrong, or for a direct trespass, not involving the title to land, and where damages cannot reasonably be expected to exceed ten pounds, or the party shall elect to proceed for that amount only, shall be heard and determined before any tribunal established for the summary trial of small causes having jurisdiction within the locality where such cause of action arose, but not before mere Justices of the Peace.

Cases of petit torts, &c., where the damages are not above £10, may be determined before tribunals for the trial of small causes.

XVII. In actions of ejectment where the Deeds and other documentary evidence shall have been admitted to be genuine, either upon the oath of the parties or other proof, the Court shall, upon inspection thereof, decide the question of title, as well legal as equitable; ordering any disputed fact or facts to be either previously or subsequently decided by a Jury for the better information of the Court.

Court may decide without a Jury in cases of ejectment, when titles are admitted to be genuine. Disputed facts to go to a Jury.

XVIII. In any action or suit either party may be examined as a witness; and may by summons or such other process as the Court or a Judge thereof may direct, cause his adversary to come before any Judge or Court having authority to hear any matter in such suit, and to be interrogated upon oath upon any point or matter relevant to the cause of complaint or defence; and such examinations which shall be signed by the party in presence of the Judge, shall be received in evidence in all subsequent stages of the cause, subject however to be rebutted or supported by other evidence or testimony.

Either party may be examined as a witness in any suit.

Effect of such examination.

XIX. Every person who shall in any judicial proceeding make any affidavit, or who shall refuse to make an affidavit of facts whereof he shall be supposed to be cognizant, and which shall be pertinent to the subject of inquiry, may be required by summons or other process to come before the Court or a Judge having jurisdiction to hear any matter connected with the suit or proceeding, and to be examined and cross-examined, as at *Nisi Prius*; and if such examination shall be intended to be used upon some future occasion, such examination shall be signed by the deponent, and certified in the *Jurat* by the Judge or Clerk of the Court, where such examination shall have been had.

Persons making or refusing to make affidavit of facts may be examined and cross-examined as at *Nisi Prius*.

Examination how attested in certain cases.

As to costs on setting aside proceedings for irregularity &c.

XX. Any Attorney moving to set aside any proceeding for irregularity, shall pay all costs incident thereto, unless he shall previously have given notice of such irregularity, to afford the party guilty thereof an opportunity of correcting it, which he may do on payment of *five shillings*.

But if opposite Attorney shall not amend on notice.

XXI. If the opposite Attorney shall neglect to correct the irregularity of which he shall be notified, and to pay *five shillings*, and a motion shall be made to set aside the proceedings, the Attorney for the unsuccessful party in the cause, Plaintiff or Defendant, shall pay all the costs.

Attornies to pay costs on frivolous demurrers. As to Attorney refusing to amend notice.

XXII. The costs of all frivolous demurrers, not tending to the substantial benefit of the party demurring, shall be borne by his Attorney, if decided against him; but if upon being apprised of the cause of demurrer, the Attorney on the opposite side shall decline amending his alleged faulty pleading, and paying *five shillings* for the notice thereof, he shall pay the costs if decided against his client.

No affidavit of service by a public officer to be requisite.

Penalty for certifying falsely.

XXIII. No affidavit of the service of any paper or process, by any Sheriff or other public officer, shall be required, but a return by such officer, certifying as to the distance travelled to serve the same, shall be *prima facie* evidence of the truth of its contents; and if knowingly or heedlessly untrue as to the distance travelled, or any other important particulars, he shall forfeit all fees in respect thereof, and pay all damages to the party injured in consequence thereof.

Affidavits not to be made by Attornies or their Students, in certain cases

Declaration substituted.

XXIV. No affidavit shall be made by any Attorney, Solicitor, or Student at Law of any facts whereon to found an application to the Court in any cause in which he shall be acting as such Attorney or Solicitor, or in which such Student shall be acting as his Clerk; but in lieu thereof a declaration or certificate of the truth of the facts to be stated to the Court, signed by such Attorney,

Solicitor, or Student, shall be received in lieu thereof: and if any Attorney, Solicitor, or Student, shall knowingly declare that whereof he is not informed, or that which is untrue, he shall be struck off the Roll of Solicitors and Attorneys, or refused admittance thereon.

Penalty for false declaration.

XXV. No Attorney, Solicitor or Student shall be admitted as a witness to prove any conversation or verbal statement made to him by any opposite party to the suit, after instructions given for the commencement or defence thereof, unless called by his opponent.

Attornies, &c. not to be witnesses for certain purposes,

XXVI. All or any number of the parties to any Promissory Note or Bill of Exchange for any amount may be included in one action, as might heretofore have been done, where the amount hath been under *one hundred* pounds.

All parties to Bills and Notes may be sued at once, whatever be the amount.

XXVII. No assessment of damages shall be had after judgment by default in any action for the recovery of a mere money demand or debt for a sum specified, or certain, or capable of being ascertained by computation, but the Plaintiff may notify the Defendant that on a given day and hour an application will be made to a Judge having jurisdiction in the matter, to order it to be referred either to an officer of the Court, or to such other person as the Judge shall name, or he may direct an issue as in Schedule C., to ascertain the amount due, and the Referee shall certify the same to the Clerk of the Court, if not referred to himself, for which sum judgment shall be entered or a new reference made, as if upon an assessment before a Jury; Six Jurors shall try all issues joined in all civil Proceedings.

Reference substituted for assessment of damages by Jury, in certain cases.

XXVIII. Any person to whom any reference shall be made by a Judge, shall, if residing within two miles of the place where he shall be required to attend, proceed to hear the parties, their proofs, and witnesses, at such time and place as the Judge shall appoint, and shall be entitled to not more than *twenty shillings* per diem, including his report thereon to the Court, but less in the discretion of the Judge hearing the case.

Referee must attend and hear the parties.

Allowance to him.

XXIX. The Clerks of the County Court shall do the duty heretofore performed by the Clerks of Assize and shall be allowed 20s. per diem for such service.

Allowance to Clerks of County Courts.

XXX. The Superior *Common Law* Judges shall make such Rules and Orders and devise such Forms as shall be necessary for carrying the provisions of this Act into effect, and such Rules and Orders shall have the like force and effect as if embodied in this Act.

Common Law Judges to make Rules and Forms.

XXXI. This Act shall come into force on the day of next and may be amended during the present Session.

Commencement of Act.

SCHEDULE A.

To

Take Notice that an application will be made to a (*or* the) Judge of the Court of _____ (*or* the Court) at his Chambers, in the Town or City of _____ at _____ of the Clock in the forenoon (*or* afternoon) for Judgment in favor of _____ for the amount of the Debt and Interest due on the _____ a copy whereof is hereto annexed, and to award Execution for the sum found to be due.

A. B. Plaintiff (*or* by C. D. his Attorney or agent.)

SCHEDULE B.

To

Take Notice that upon your application to the Judge of _____ according to your notice of _____ for Judgment against ~~me~~, the demand of which a copy is hereto annexed will at the same time be submitted as a set-off, and that I shall claim Judgment for the balance.

SCHEDULE B.

A. B, Plaintiff, *vs.* C. D, Defendant.

Judgment is this day rendered against the Plaintiff (*or* Defendant) for the sum of _____ found by Judge _____ to be due to the Plaintiff, (*or* Defendant,) upon a production of their respective claims before me and filed in Court, and Execution is stayed until _____

Let a Jury be empannelled at the Court to be holden at _____ to try whether

and to assess the damages between the Parties.