
4th Session, 3d Parliament, 14 & 15 Victoria, 1851.

BILL.

An Act to alter and settle the mode of proceeding in the action of Ejectment.

Received and read a first time, Tuesday, 24th
June, 1851.

Second reading, Monday, 30th June, 1851.

Hon. Mr. SHERWOOD.

Witness, The Hon. A. G. Chief Justice (*or* Senior Judge, *as the case may be*) of our said Court, this day of _____, in the Year of our Lord one thousand eight hundred and fifty _____, in the _____ Year of our Reign.

C. C. S.,

Clerk of the Crown.

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Summons to be served on party in actual possession; and on any other known to be interested, who may appear and defend the action.

II. And be it enacted, That the summons in all actions for the recovery of any estate or interest in lands, shall in all cases be issued against the person or persons in actual occupation of the same, and that a copy of the same shall also be served upon any other person or persons resident within Upper Canada, who shall be known to the plaintiff or plaintiffs in such action to claim any interest in such lands at the time of such action being brought; and such person or persons on filing an affidavit in the office from which such summons shall have issued, setting forth the nature of the estate or interest claimed, and that such claim is not set up for any vexatious purpose or for the purpose of delay, shall be entitled to enter an appearance and to defend the action which shall have been brought for or in respect of such lands, either with the person or persons in actual occupation, or alone, or with any other person or persons who shall make and file an affidavit of the same import; and when such appearance or appearances shall have been entered, it shall and may be lawful for the plaintiff or plaintiffs in such suit to file a declaration in the office in which the suit shall be pending, and to serve the person or persons who shall so have appeared severally with a true copy thereof; and unless such person or persons shall within eight days after the service of such declaration and a demand of plea, file such plea in the proper office, it shall and may be lawful for the plaintiff or plaintiffs to sign judgment, and at any time after the expiration of eight days thereafter to enter up judgment, and to sue out a writ of possession and execution for costs against any person or persons who shall have entered an appearance in manner herein before mentioned: Provided always, nevertheless, that if any one of the persons who shall have appeared shall file a plea and defend the suit for any part of the premises mentioned in the declaration, the plaintiff or plaintiffs shall only be entitled to judgment for such part as shall remain undefended: Provided also that if any person or persons on whom a copy of summons shall have been served shall not enter an appearance within eight days after such service, the plaintiff or plaintiffs shall be at liberty to treat such person or persons as disclaiming any interest in the subject matter of the suit, and to proceed against any other or others who shall have appeared in manner herein before mentioned; and in case none of the parties shall have entered an appearance, the plaintiff or plaintiffs shall be at liberty to enter an appearance for the person or persons in actual

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Declaration to be filed.

Judgment for want of a plea.

proviso: if there be a defence as to any part.

proviso: as to parties not appearing.

occupation of the premises, and a declaration in the form hereinafter mentioned, or other form which by any rule of the Superior Courts of Common Law may be prescribed; and unless a plea to such declaration shall be entered
 5 within four days after the same shall be fyled, the plaintiff or plaintiffs may sign judgment and proceed to enter up final judgment, and sue out a writ of possession and execution for costs.

10 III. And be it enacted, That on each copy of summons served in cases where some person or persons shall be in actual occupation, there shall be a notice to the party served, to the following effect, to be signed by the Plaintiff, or his Attorney :

Notice to party in possession.

“ County of

Form.

15 “ To A. B. of You are served with this
 “ Summons at the suit of C. D., to the intent that if you
 “ claim any estate or interest in the premises mentioned
 “ therein, you may defend the said suit by entering an
 “ appearance in the office of the Deputy Clerk of the
 20 “ Crown for the County (or United Counties) of
 “ within eight days from the Service hereof, and if such
 “ appearance shall not be entered within the said period,
 “ the plaintiff will proceed by fyling a declaration against
 “ E. F., the occupant of the said premises, and any interest
 25 “ which you may have or claim in the said premises will
 “ be barred and extinguished by a recovery in this suit
 “ against the said E. F.

“ Dated at this day of
 “ 185
 30 “ Signed, G. H.”

IV. And be it enacted, That the Declaration in any action which may hereafter be brought to recover the possession of any lands or any estate or interest therein, may be in the following form or in such other form as the
 35 Judges of the said Courts may by any rule establish.

Form of declaration established.

“ In the Queen’s Bench (or Common Pleas),

The form.

County of } A. B. of June 1851.
 To wit. } in the said County
 40 plains of E. F. of by C. D. his attorney, com-
 for that whereas the said A. B. heretofore to wit, on the
 day of in the year of our
 Lord one thousand eight hundred and fifty was
 seized of a certain Lot or parcel of Land, situate and
 45 being in the Township of in the said County,
 being composed of (*here describe the premises particularly*), and being so seized thereof hath from the day and
 year last aforesaid, hitherto always been entitled to possess and enjoy the said parcel or tract of land and
 50 premises, and still is entitled to enjoy the same, yet the said

C. D., not regarding the right of the said A. B., but contriving to injure the said A. B. in the premises, and to deprive him of the use and enjoyment of his said lands and premises, and of great gains which he the said A. B. ought, of right, to derive therefrom, heretofore, to wit, on the day of in the year of our Lord entered into and upon the said parcel or tract of land and premises, from thence hitherto hath kept the said A. B. from and out of the possession and use of his said lands and premises, and hath during all the period from his said entry on the said parcel or tract of land and premises, taken and received to his own use the rents, issues and profits thereof. Wherefore the said A. B. saith that he is injured and hath sustained damages to the amount of £ and therefore he brings his suit.

Jury, trying the right of possession, to assess damages also.

V. And be it enacted, That in all cases wherein a jury shall be empannelled to try any suit brought to recover possession of any estate or interest in lands, the jury shall also be sworn to assess any damages to which the plaintiff or plaintiffs may be entitled for the use, occupation or enjoyment of the premises in dispute by the party or parties defending the suit, and any damage, waste or spoil occasioned to such premises by such party or parties; and the jury shall assess such damages as may appear just according to the evidence; Provided always nevertheless, that in all cases where substantial damages are demanded, the party or parties seeking to recover the same shall, with the original summons, serve the defendant or defendants and the person in occupation (if any) with a notice to the following effect, and that none but nominal damages shall be assessed unless such notice shall be given.

Proviso: notice to be given where more than nominal damages are sought.

Form of notice.

“ To A. B., the occupant (or claimant) of lot
 “ in the Concession of the Township of
 “ in the County of 35
 “ You are hereby notified that the plaintiff or plaintiffs
 “ named in the summons served herewith, will (*should the*
 “ *said suit be defended,*) proceed against you, the said A.
 “ B., on the trial thereof, for the use, occupation, rents and
 “ profits of the premises, for which this action is brought, 40
 “ during your possession and occupation of the said
 “ premises, and for all damages, waste and injury accruing
 “ to the said premises, or any part thereof, while in your
 “ possession and occupation. 45
 “ Dated at this day of

Occupant may notify that he is ready to give up possession, and tender money for rents, &c.

VI. And be it enacted, That it shall and may be lawful for any person or persons who shall be served with a summons in ejectment and the notices required by this Act to be served therewith, within days after the service of such summons and notice or notices, to notify 50

the plaintiff or plaintiffs that such person or persons dis-
 claim any interest in the premises and is or are willing to
 give up possession thereof; and if such person or per-
 sons shall, after such notice, give up possession and pay
 5 or tender to the plaintiff or plaintiffs a sufficient amount
 to cover all claims for the rents, issues, profits or occupa-
 tion of the premises, and all reasonable costs incurred
 and damages occasioned to such premises while in the
 occupation of such person or persons, the proceedings in
 10 such suit may, on the application of such person or per-
 sons, be stayed by the Court in which the same shall be
 pending, or a Judge in Chambers; Provided nevertheless,
 that if a sum insufficient shall be tendered, the plaintiff or
 plaintiffs shall be entitled to proceed for any larger amount
 15 to which he or they may consider himself or themselves
 entitled, but if on the trial a verdict shall be rendered
 against the plaintiff or plaintiffs, or a verdict shall be
 rendered in his or their favor for a sum not exceeding the
 amount tendered, the plaintiff or plaintiffs shall pay all
 20 costs subsequent to such tender, and shall only be entitled
 to levy the amount of the verdict, after deducting there-
 from the defendant's costs subsequent, together with
 costs to the time of such tender.

Proviso: if
 the sum
 tendered be
 insufficient.

VII. And be it enacted, That in all cases when the
 25 party in possession or in the occupation of lands shall,
 after service of a summons under this Act, abandon or
 give up possession of the premises mentioned in such
 summons, and forthwith notify the plaintiff or his attorney
 thereof, and that the plaintiff may enter thereon, the plain-
 30 tiff shall cause a statement of the costs incurred to be
 rendered to such party, and on payment of such costs the
 suit shall be discontinued, unless the plaintiff shall pro-
 ceed in the same for the purpose of recovering damages
 for the rents, issues, profits or occupation of the premises,
 35 or for injury, waste or spoil done or committed thereon
 by such party or parties, or others under him or them
 during the possession of the premises by such party or
 parties; and if the plaintiff or plaintiffs shall proceed in
 such action, and a verdict shall be given for the defend-
 ant, or shall not be given for the plaintiff or plaintiffs for
 40 a greater amount than *five pounds*, the plaintiff or plaintiffs
 shall pay all costs in the suit to the defendant, who shall
 be at liberty to levy any amount of such costs exceeding
 the said sum for which such verdict shall be given.

As to costs in
 cases where
 the defendant
 shall give up
 possession.