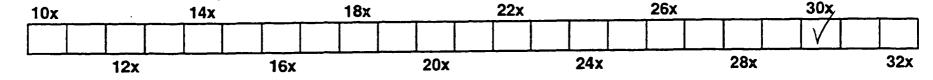
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3d Session, 3d Parliament, 13 Victoria, 1850.

BILL.

An Act to restrain Technical Objections in suits at Common Law.

Received and Read a first time, Monday, 3rd June, 1850.

Second Reading, Monday, 10th June, 1850.

Hon. Mr. Cameron, (of Cornwall).

BILL.

An Act to restrain technical objections in suits at Common Law.

WHEREAS for the advancement of justice and the Preamble. more speedy prosecution of suits, it is necessary that there should be a greater restriction of technical objections than now exists in pleading and practice:— 5 Be it therefore enacted. &c.

That whenever after trial had in any form or cause of Party sucaction whatsoever, a rule or order shall be made by and motion to ar-Court of Common Law, to arrest the judgment, or to rest judgment, enter judgment non obstante veredicts, the party succeed ment son ob-10 ing upon such rule or order, to obtain the benefit thereof, state, to pay shall within two terms, inclusive, next after such rule or order granted, pay to the other party all such costs and expenses, taxable as between party and party, as the party succeeding on such trial shall be put to by reason 15 of such trial, notwithstanding the verdict upon such trial has become abortive, in consequence of such arrest of judgment, or judgment non obstante veredicto, as aforesaid, otherwise such rule or order shall be of none effect, and the party succeeding on such trial may thereupon proceed 20 to judgment and execution in the same manner as if such rule or order had not been made.

II. And be it enacted, That no judgment in any action Judgment not or suit shall be arrested or reversed on error or appeal, for misjoinder by reason of any misjoinder of causes of action, in any of causes of 25 such action or suit, but such misjoinder shall be cause of action. special demurrer only.

III. And be it enacted, That upon the delivery of any Pleading despecial demurrer, the party whose pleading is demurred to may be amended to, shall be at liberty to amend without payment of costs; without payment of costs, Provided always, that such amendment is made within Proviso. eight days after service of a demand of joinder in demurrer; And provided also, that the Court or any Judge Proviso. thereof, in which the action is brought, may, if such Court or Judge think fit, order costs to be paid upon 35 such amendment, on a special application therefor.

IV. And be it enacted, That whenever in any action Judgment on or suit judgment shall be given upon any issue in law, rer to be final. joined upon special demurrer, such judgment shall be final as if given upon general demurrer.

40 V. And be it enacted, That whenever in any plea, Any one or more material replication or subsequent pleading, in any action or suit, facts alleged there are two or more material facts alleged, it shall and in any plead-

ing may be denied by the answer.

may be lawful for the parties respectively to deny all or any of such material facts in the answer to such plea. replication or subsequent pleading.

Several replications allowed to plea of set-off, &c.

VI. And be it enacted, That whenever in any action 5 or suit the defendant shall plead any plea of set-off or mutual credit, it shall and may be lawful for the plaintiff to plead several replications thereto.

Actions of trespass and trespass on the

New form of action given.

VII. And be it enacted, That the forms of action known, called or used, as trespass and trespass on the 10 case abolished. case, shall be, and the same are hereby abolished, and in the place and stead thereof there shall be a form of action called, known and used as an action of wrong, which shall and may be applied to all actions indiscriminately which at the time of the passing of this Act would be classed either as actions of frespass or trespass on the case.

Plea not to be demurred to (4) certain grounds.

VIII. And be it enacted, That no special demurrer shall be allowed to any plea in any action, on the ground that such plea so demurred to amounts to the general issue.

Wrong form ground of rer only.

IX. And be it enacted, That whenever in any form of of action to be action, it shall be apparent on the face of the pleadings. special demurthat the plaintiff has proceeded in a wrong form of action. such error in the form of action shall be a cause of special demurrer only, and shall not be heard or entertained as 25 a ground for arresting the judgment, or bringing or allowing a writ of error or appeal.

X. And be it enacted, That no defendant in any

Inconsistent pleas forbidden except by permission of the Court or Judge, for cause shown.

action or suit, shall be allowed to plead to the same count 30 inconsistent pleas, or pleas varying the statement of

Proviso.

mission to be

'defence, without a rule or order therefor, to be obtained from the Court or a Judge on affidavit shewing sufficient cause for such rule or order; and if such pleas are pleaded without such rule or order, the plaintiff shall be at liberty to sign judgment as for want of a blea: - Provided always, 35 that such judgment may be set aside on sufficient cause shewn, by any Court or Judge having jurisdiction therein: Proviso: per- And provided also, that such rule or order authorizing on conditions, such inconsistent plea or plea varying the statement of defence, shall also provide that the costs arising from such 40 additional plea or pleas, shall be recoverable by attachment against the defendant in the event of a verdict being found or judgment recovered against the defendant thereon, unless the Court or Judge wherein such verdict was found or judgment recovered, shall certify that there 45 was reasonable cause on the whole case for pleading such additional plea or pleas.

And so as to replications to

XI. And be it enacted, That the provisions contained plea of set-off in the next preceding clause shall be applicable to replica-50 tions to a plea of set-off under this Act.

XII. And be it enacted, That no plea in abatement shall Misjoinder. be allowed, nor shall any nonsuit be granted, nor verdict or nonjoinder nor judgment on demurrer be entered for the defendant, how to be obnor shall any judgment be arrested or reversed on error jected to and or appeal, by reason of the misjoinder or population of any or appeal. 5 or appeal, by reason of the misjoinder, or nonjoinder of any plaintiff or plaintiffs in any action or suit, but the defendant may, on application to the Court or a Judge, on sufficient cause shewn, compel the plaintiff to amend such action or suit, by making the proper parties plaintiffs 10 therein, on such terms as such Court or Judge shall think fit to impose.

XIII. And be it enacted, That if in any action or suit there On Misjoinshall be any misjoinder of defendants, the plaintiff shall der of defendants, plaintiff be entitled to recover against such defendant or defenment recover 15 dants as shall be proved to be liable, in the same manner liable, and the as if such defendant or defendants were the only defen-others against dant or defendants, and the other defendant or defendants of defence. misjoined shall be entitled to recover from the plaintiff, by judgment or rule as the case may be, the costs of 20 defence that such defendant or defendants shall or may have incurred by reason of such misjoinder; but no such Misjoinder misjoinder shall be a ground of nonsuit, or entry of verdict not to be ground of non-for defendants generally, arrest of judgment, or reversal suit, &c. of judgment on error or appeal.

XIV. And be it enacted, That no motion to set aside any Time within proceeding for irregularity shall be entertained by any which advantage must be Court or Judge, unless such motion shall be made within taken of irregularities. eight days inclusive, after the irregularity complained of regularities. has take place, and unless also the party complaining of Notice requi-30 the irregularity shall have immediately given notice red. thereof to the opposite party, who shall have declined amending the same: Provided always, that the costs of Proviso: as to such motion shall be in the discretion of the Court or costs. Judge, who is hereby authorized to direct the payment 35 of the same by the attorney of either party, if the Court of Judge shall think fit so to do.

XV. And be it enacted, That after verdict for the plaintiff Rule nisi for in any action or suit, no rule nisi shall be issued for a new new trial, not trial, except for misdirection, admission or rejection of except on cer-40 evidence, or other default or misapprehension of the until security Judge, until the defendant or party moving for such rule be given. shall have first given security to the satisfaction of the said Court or a Judge thereof, for the payment of any judgment that may be ultimately recovered against him; and 45 unless such security shall be so given within four days after the granting of such rule nisi, the plaintiff shall be

at liberty to enter judgment as if such rule nisi had not been granted: Provided always, that the Court by which Proviso. such rule nisi shall be granted, shall and may dispense

b0 with the giving of such security, when from any special circumstances appearing to such Court, it shall seem just and proper so to do.

XVI. And be it enacted, That this Act shall be in force in Extent of Act. Upper Canada only.