

No. 45.

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

B I L L .

**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 suc-
 action whatsoever, a rule or order shall be made by and ceeding on a
 Court of Common Law, to arrest the judgment, or to motion to ar-
 enter judgment *non obstante veredicto*, the party succeed rest judgment,
 10 ing upon such rule or order, to obtain the benefit thereof, or for judg-
 shall within two terms, inclusive, next after such rule or ment non ob-
 order granted, pay to the other party all such costs and stante, to pay
 expenses, taxable as between party and party, as the costs of trial.
 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, to be arrested
 by reason of any misjoinder of causes of action, in any for misjoinder
 25 such action or suit, but such misjoinder shall be cause of of causes of
 special demurrer only. action.

III. And be it enacted, That upon the delivery of any Pleading dem-
 special demurrer, the party whose pleading is demurred urred to may
 to, shall be at liberty to amend without payment of costs; be amended
 30 Provided always, that such amendment is made within without pay-
 eight days after service of a demand of joinder in demur- ment of costs,
 rer; 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. Proviso.

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

40 V. And be it enacted, That whenever in any plea, Any one or
 replication or subsequent pleading, in any action or suit, more material
 there are two or more material facts alleged, it shall and facts alleged
 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 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. 5

Actions of trespass and trespass on the case abolished.

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 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 trespass or trespass on the case. 10 15

Plea not to be demurred to on 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. 20

Wrong form of action to be ground of special demurrer only.

IX. And be it enacted, That whenever in any form of action, it shall be apparent on the face of the pleadings, that 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 a ground for arresting the judgment, or bringing or allowing a writ of error or appeal. 25

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

X. And be it enacted, That no defendant in any action or suit, shall be allowed to plead to the same count inconsistent pleas, or pleas varying the statement of 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 plea:—Provided always, that such judgment may be set aside on sufficient cause shewn, by any Court or Judge having jurisdiction therein: 30 35
And provided also, that such rule or order authorizing such inconsistent plea or plea varying the statement of defence, shall also provide that the costs arising from such 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 was reasonable cause on the whole case for pleading such additional plea or pleas. 40 45

Proviso.

Proviso: permission to be on conditions.

And so as to replications to plea of set-off.

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

XII. And be it enacted, That no plea in abatement shall be allowed, nor shall any nonsuit be granted, nor verdict nor judgment on demurrer be entered for the defendant, nor shall any judgment be arrested or reversed on error 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 therein, on such terms as such Court or Judge shall think fit to impose.

Misjoinder, or nonjoinder of plaintiffs how to be objected to and amended.

XIII. And be it enacted, That if in any action or suit there shall be any misjoinder of defendants, the plaintiff shall be entitled to recover against such defendant or defendants as shall be proved to be liable, in the same manner as if such defendant or defendants were the only defendant or defendants, and the other defendant or defendants misjoined shall be entitled to recover from the plaintiff, by judgment or rule as the case may be, the costs of defence that such defendant or defendants shall or may have incurred by reason of such misjoinder; but no such misjoinder shall be a ground of nonsuit, or entry of verdict for defendants generally, arrest of judgment, or reversal of judgment on error or appeal.

On Misjoinder of defendants, plaintiff may recover against those liable, and the others against him for costs of defence.

Misjoinder not to be ground of nonsuit, &c.

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

Time within which advantage must be taken of irregularities.

Notice required.

Proviso: as to costs.

XV. And be it enacted, That after verdict for the plaintiff in any action or suit, no rule *nisi* shall be issued for a new trial, except for misdirection, admission or rejection of evidence, or other default or misapprehension of the Judge, until the defendant or party moving for such rule 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 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 such rule *nisi* shall be granted, shall and may dispense with the giving of such security, when from any special circumstances appearing to such Court, it shall seem just and proper so to do.

Rule nisi for new trial, not to be allowed except on certain grounds, until security be given.

Proviso.

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

Extent of Act.