

NO. 114

1st Session, 4th Parliament, 16 Victoria, 1852.

BILL.

An Act to increase the Jurisdiction of the County Courts in Upper Canada, to amend the Acts regulating their Practice, expediting and simplifying the proceedings of the said Courts, and for the settlement of disputes without litigation.

Received and read a first time, Tuesday, 31st August, 1852.

Second reading, Wednesday, 8th September, 1852.

MR. W. H. BOULTON.

QUEBEC :

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

B I L L .

An Act to increase the Jurisdiction of the County Courts in Upper Canada, to amend the Acts regulating their practice, expediting and simplifying the proceedings of the said Courts, and for the settlement of disputes without litigation.

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, &c., Terms abolished.

5 That such provisions of the Act or Acts now in force as require the holding of Terms of the said Courts, be repealed, and that the Terms of the said Courts be abolished: Provided always, that any Judge of the said Courts shall have and exercise the same powers at all times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, and shall have power to make Rules of Practice in cases rendered necessary by the abolition of the said Terms. Judges to have same powers as in Term at all times.

15 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 Judgment of non-suit, 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 shown by affidavit, order immediate Judgment upon any verdict obtained, and also that any Judge of the said Courts may upon sufficient cause shown by affidavit, extend the time for levying under execution, for a period not exceeding (three) months beyond the return day mentioned in the Writ of Execution. Time given after verdict for motions for new trials, &c.
Judgments immediate in certain causes.
Judges may extend time of levying under execution.

25 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 a Writ of Capias ad Satisfaciendum or an original Writ against Lands 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. All writs tested on day of issue.
Writs to be in force for three weeks.
Sheriff when liable to be called for non-return.

- Actions where 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 the 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
- Ca: Res.—Ca: Sa: and writs of attachment when returnable.** V. And be it enacted, That all Writs of Capias ad Respondendum, and of Capias ad Satisfaciendum, and of Attachment against person or estate shall bear Teste on the day on which they issue, and shall be returnable either forthwith or on a day not later than (thirty) days from the issuing thereof. 15
- When Non Pros: for not declaring. Judge may give time to declare or plead.** VI. And be it enacted, That unless the plaintiff in any action shall file his declaration within (three) calendar months next ensuing the last return day of the process served, the defendant may enter judgment of Non-pros: Provided always, that the time for declaring or pleading may be extended by the Judge of the Court. 20
- Sci: fa: abolished and judgments revived by ordinary Judge's Summons.** VII. And be it enacted, That the proceedings 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 reviving 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 shown, to order that such Judgment be revived and Execution, Certificate of Judgment or other usual proceedings be obtained thereon. 25
- Courts to have inherent jurisdiction to remedy technical difficulties.** VIII. 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. 30 35
- Vacation abolished.** IX. 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 all proceedings therein, may be filed, served and taken at all usual legal times. 40
- As to suits brought in Q. B. or C. P., and within the** X. And be it enacted, That in any suit to be brought in the Court of Queen's Bench or Common Pleas after this Act shall come into effect, which suit may be of the proper competence of the said County Courts, 45

no more costs shall be taxed against the defendant than would have been incurred in the County Court in carrying on the same action, unless the Judge who presides at the trial of such suit or action, shall certify in open Court, immediately after the verdict is recorded, that it was a fit cause to be withdrawn from the County Court and to be commenced in the said Court of Queen's Bench or Common Pleas ; Provided also, that so much of the costs of the defendant to be taxed as between client and Attorney in any such suit, wherein the Judge shall not certify as aforesaid, as shall exceed the costs of defence taxable, and which would have been incurred in the County Court in defending the same action, shall be set off and allowed by the master in entering judgment, against the costs to be taxed for the plaintiff and recoverable from the defendant.

competence of the County Courts.

Proviso.

XI. And be it enacted, That whenever the parties in a matter of dispute within the jurisdiction of the Court, shall sign and file an agreement in writing to abide the event, it shall be competent to the Judge to appoint a day of hearing, whereto witnesses may be subpoenaed if necessary, and that the said Judge may proceed to such hearing, either before the commencement of any action or during suit, and may enlarge the time for such hearing, and may examine the parties or either of them on oath if he think fit, and a copy of the entry made by the Judge of the evidence if any taken, and of his decision in the matter, with the amount of costs if any taxed, and added to the sum if any awarded, shall become a judgment roll of the said Court, whereupon judgment shall be entered, and the said judgment shall be final, and may be followed by execution or certificate of judgment in the usual manner.

Parties may by agreement obtain a hearing and judgment before action brought or while pending.