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No. 94.

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

BILL.

An Act for the Improvement of the
Practice of Law, and for limiting the
amount of Costs to be taxed and
recovered in certain Courts in Upper
Canada.

Received and Read a first time, Thursday, 13th
June, 1850.

Second Reading, Monday, 17th June, 1850.

HON. MR. SHERWOOD.

TORONTO : PRINTED BY LOVELL AND GIBSON.

BILL.

An Act for the Improvement of the Practice of Law, and for limiting the amount of Costs to be taxed and recovered in certain Courts in Upper Canada.

WHEREAS it is expedient to make alterations for Preamble.
 improving the Practice of the Law as it at present
 exists in Upper Canada, and to fix a limit to the amount
 of Costs to be taxed and recovered in certain Courts
 5 therein: Be it therefore enacted, &c.

That in every civil action hereafter to be tried in the General Issue to be the only plea in bar.
 Court of Queen's Bench, Court of Common Pleas or
 County Court, all matters of law or of fact, in defence of
 such action, may be given in evidence under the general
 10 issue, and no other plea in bar of such action shall be
 pleaded.

That the respective Courts aforesaid are hereby autho- As to notice of facts intended to be proved.
 rized to pass such general and special rules and orders
 respecting notice to the opposing party of matters intended
 15 to be given in evidence by either party to a suit, as shall
 be necessary to prevent surprise and to afford opportunity
 for preparation for trial.

That whenever a plaintiff in any action shall have mis- Special demurrers abolished, &c.
 taken the form of action suited to his claim, the Court, on
 20 motion, shall permit amendments to be made on such
 terms as they shall judge reasonable; and all special
 demurrers are hereby forever abolished.

That from and after the passing of this Act, in any suit Costs recoverable limited.
 which may be instituted in any of the Courts in Upper
 25 Canada hereinafter named, the costs (exclusive of all
 disbursements) to be taxed and recovered by either
 plaintiff or defendant, shall not exceed the following
 amounts, viz. :—

	In the Court of Appeals, the sum of.	£20	0	0
30	In the Court of Chancery, the sum of.	15	0	0
	In the Court of Queen's Bench and Common Pleas.	10	0	0
	In the County Courts, respectively.	5	0	0

That in any action for assault, battery, false imprison- No more costs than damages in certain cases.
 35 ment, libel, slander, malicious prosecution, criminal con-
 versation or seduction, if the plaintiff recovers less than
 £10, he shall receive no more costs and charges than
 damages.

As to costs when there are several defendants, &c.

That when there are several defendants not united in interest, and making separate defences by separate answers, and the plaintiff fails to recover judgment against all, the Court may award costs to such of the defendants as have judgment in their favour, or any of them, not exceeding in any one case the limit fixed as aforesaid; and in the following cases the costs of an appeal shall be in the discretion of the Court,—where a new trial is ordered or where a judgment is modified. 5

Costs where new trial is granted.

That where a new trial is granted in any case upon payment of costs, the Court may, in its discretion, determine the amount thereof, so as the same shall in no case exceed the sum of £7 10s., exclusive of disbursements. 10

Costs against the Crown.

That in all civil actions prosecuted in the name of the Sovereign, by any officer duly authorized for that purpose, the Government shall be liable for costs in the same cases and to the same extent as private parties; and when costs are awarded and recoverable against the Government, payment thereof must be made by the Receiver General, upon the production of proper evidence thereof. 15 20

How paid.

When the proceeding is for the benefit of another party.

That in any action prosecuted in the name of the Sovereign, for the recovery of money or property, or to establish a right or claim for the benefit of any County, City, Town, Village, Corporation or person, costs awarded against the plaintiff shall, by the judgment, be made a charge against the party for whose benefit the action was prosecuted and not against the Government, and payment thereof may be enforced by order of Court. 25

As to assignment of the cause of action after action commenced.

That in an action in which the cause of action after the commencement thereof, by assignment or in any other manner, becomes the property of a person not a party to the action, and the prosecution and defence shall be thereafter continued, such person shall be liable for the costs, in the same manner as if he were a party, and payment thereof may be enforced by order of Court. 30 35

Attorney of a foreign Plaintiff liable for costs.

That the Attorney of a plaintiff who resides out of Upper Canada, or is a foreign corporation, against whom costs may be awarded to a defendant, shall be responsible to such defendant therefor, to an amount not exceeding the sum allowed to be taxed in the respective Courts hereinbefore mentioned, and the Attorney neglecting to pay the same, after due proceedings against him, may, by order of the Court, be struck off the Roll; but he may relieve himself from responsibility, at any time before judgment, by filing an undertaking for the payment to the defendant of the costs and charges, executed by a sufficient surety. 40 45

Unless security be given.