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No. 18.

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1st Session, 7th Parliament, 25 Victoria, 1862.

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**BILL.**

An Act to amend the Common Law Procedure Act.

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Received and read, 1st time, Monday, 7th  
April, 1862.

Second reading, Wednesday, 9th April,  
1862.

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Mr. CONNOR.

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**QUEBEC:**

PRINTED FOR THE CONTRACTORS BY HUNTER,  
ROSE & LEMIEUX, ST. URSULE STREET.

An Act for the further amendment of the Common Law Procedure Act.

**WHEREAS** it is desirable further to improve the process, practice and mode of pleading in the Superior Courts of Common Law in Upper Canada; Therefore, Her Majesty, &c., enacts as follows:

**1.** When goods or chattels have been seized in execution by a Sheriff or other officer under process of the above mentioned Courts, and some third person claims to be entitled, under a bill of sale or otherwise, to such goods or chattels by way of security for a debt, the Court or Judge may order a sale of the whole or part thereof, upon such terms as to payment of the whole or part of the secured debt or otherwise, as they or he shall think fit, and may direct the application of the proceeds of such sale in such manner and upon such terms as to such Court or Judge may seem just.

**2.** Upon the hearing of any rule or order calling upon persons to appear and state the nature and particulars of their claims, it shall be lawful for the Court or Judge, wherever, from the smallness of the amount in dispute or the value of the goods seized, it shall appear to them or him desirable and right so to do, at the request of either party, to dispose of the merits of the respective claims of such parties, and to determine the same in a summary manner upon such terms as they or he shall think fit to impose, and to make such other rules and orders therein as to costs and all other matters as may be just.

**3.** In all cases of interpleader proceedings, where the question is one of Law, and the facts are not in dispute, the Judge shall be at liberty in his discretion to decide the question without directing an action or issue, and if he shall think it desirable, to order a special case to be stated for the opinion of the Court.

**4.** The proceedings upon such case shall, as nearly as may be, be the same as upon a special case stated under "the Common Law Procedure Act." And error may be brought upon a judgment upon such case, and the provisions of "the Common Law Procedure Act," as bringing error upon a special case, shall apply to the proceedings in error upon a special case under this Act.

**5.** The judgment in any such action or issue as may be directed by the Court or Judge in any interpleader proceedings, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from or under them.

**6.** All rules, orders, matters and decisions to be made and done in interpleader proceedings under this Act (excepting only any affidavits) may, together with the declaration in the cause, if any, be entered of

record, with a note in the margin expressing the true date of such entry, to the end that the same may be evidence in future times, and to secure and enforce the payment of costs directed by any such rule or order; and every such rule or order so entered shall have the force and effect of a judgment in the Superior Courts of Common Law at Toronto. 5

Joinder of too many plaintiffs not to be fatal.

7. The joinder of too many Plaintiffs shall not be fatal, but every action may be brought in the name of all the persons in whom the legal right may be supposed to exist, and judgment may be given in favor 10 of the Plaintiffs by whom the action is brought, or one or more of them, or in case of any question of misjoinder being raised, then in favor of such one or more of them as shall be adjudged by the Court to be entitled to recover; Provided always, that the defendant, though unsuccessful, shall be entitled to his costs occasioned by joining any person 15 or persons in whose favor judgment is not given, unless otherwise ordered by a Court or Judge.

Judgment.

Costs.

If set off be pleaded by defendant.

8. Upon the trial of such a cause, a Defendant who has therein pleaded a set off, may obtain the benefit of his set off, by proving either that all the parties named as Plaintiffs are indebted to him, notwithstanding that one or more of such Plaintiffs was or were improperly 20 joined, or on proving that the Plaintiff or Plaintiffs who establish their right to maintain the cause is or are indebted to him.

No other action by any parties joined.

9. No other action shall be brought against the Defendant by any person so joined as Plaintiff in respect of the same cause of action. 25

Plaintiff in replevin may pay money on avowry.

10. The Plaintiff in replevin may, in answer to an avowry, pay money into Court in satisfaction, in like manner and subject to the same proceedings as to costs and otherwise, as upon a payment into Court by a Defendant in other actions.

Effect of such payment limited.

11. Such payment into Court in replevin shall not, nor shall the acceptance thereof by the defendant in satisfaction, work a forfeiture of the replevin bond. 30

Attachment may be refused when remedy is worthless, &c.

12. In proceedings to obtain an attachment for debts under "The Common Law Procedure Act," the Judge may in his discretion refuse to interfere where, from the smallness of the amount to be recovered 40 or of the debt sought to be attached or otherwise, the remedy sought would be worthless or vexatious.

When some third person has a lien on the debt.

13. Whenever in proceedings to obtain an attachment of debts under the Act above mentioned, it is suggested by the garnishee that the debt sought to be attached belongs to some third person, who has a lien or 45 charge upon it, the Judge may order such third person to appear before him and state the nature and particulars of his claim upon such debt.

Power of Judge to make order in such case. 1

14. After hearing the allegations of such third person under such order, and of any other person whom, by the same or any subsequent order, the Judge may think fit to call before him, or in case of such 50 third person not appearing before him upon such summons, the Judge may order execution to issue to levy the amount from such garnishee, or the judgment creditor to proceed against the garnishee according to the provisions of "The Common Law Procedure Act;" and he may bar the claim of such third person or make such other order as he shall 51

think fit, upon such terms, in all cases, with respect to the lien or charge, if any, of such third person, and to costs, as he shall think just and reasonable.

15. The provisions of "The Common Law Procedure Act," so far as they are applicable, shall apply to any order and the proceedings thereon, made and taken in pursuance of the herein next before mentioned powers under this Act.

Provisions of  
Com. Law  
Procedure  
Act to apply.

16. The Superior Courts of Common Law at Toronto and every Judge thereof, and any Judge sitting at *nisi prius*, may at all times amend all defects and errors in any proceedings under the provisions of this Act, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made with or without costs, and upon such terms as to the Court or Judge may seem fit; and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be so made if duly applied for.

Courts and  
Judges may  
amend errors  
in proceed-  
ings under  
this Act.

Costs.

Certain  
amendments  
must be made  
if applied.

17. The Judges of the said Courts, or any four or more of them, of whom the Chief Justices shall be two, may from time to time make all such general rules and orders for the effectual execution of this Act and of the intention and object thereof, and for fixing the costs to be allowed for or in respect of the matters herein contained and the performance thereof, as in their judgment shall be necessary and proper; provided that nothing herein contained shall be construed to restrain the authority or limit the jurisdiction of the said Courts or of the Judges thereof, to make rules or orders or otherwise to regulate and dispose of the business therein.

Judges may  
make orders  
for giving ef-  
fect to this  
Act.

18. This Act applies solely to Upper Canada.

Act limited to  
U. C.