

STATUTES,

OF

Upper Canada,

PASSED IN THE FIRST SESSION OF THE TWELFTH PROVINCIAL
PARLIAMENT.

MET AT TORONTO ON THE FIFTEENTH DAY OF JANUARY 1835, AND PROROGUED ON THE
SIXTEENTH DAY OF APRIL 1835, IN THE FIFTH YEAR OF THE REIGN OF
WILLIAM IV.

SIR JOHN COLBORNE, K. C. B.

LIEUTENANT GOVERNOR.

ANNO DOMINI 1835.

CHAP. I.

*AN ACT to prevent the unnecessary multiplication of Law Suits and
increase of Costs in Actions on Notes, Bonds, Bills of Exchange,
and other Instruments.*

[Passed 16th April, 1835.]

WHEREAS it is expedient to make such alteration in the Law as will
prevent the necessity of bringing separate Actions for sums not large in
amount, against the several makers of a Bond or other Instrument, or
against several persons liable to be sued upon a Bill of Exchange or
Promissory Note, as maker, endorser, acceptor : *Be it therefore enacted*
by the King's Most Excellent Majesty, by and with the advice and con-
sent of the Legislative Council and Assembly of the Province of Upper
Canada, constituted and assembled by virtue of, and under the authority

Preamble.

Costs recoverable in one suit only;

And disbursements in others;

Not to extend to interlocutory costs.

of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That after the first day of July next after the passing of this Act, when several suits shall be brought on one Bond, Recognizance, Promissory Note, Bill of Exchange, or other Instrument, which shall be made or entered into after the passing of this Act; or when several suits shall be brought against the maker and endorser of a Note, or against the drawer, acceptor, or endorsers of a Bill of Exchange, there shall be collected or received from the Defendant, the costs taxed on one suit only, at the election of the Plaintiff, and in the other suits the actual disbursements only shall be collected or received from the Defendant—but this provision shall not extend to any interlocutory costs in the progress of a cause.

Upon Bills of Exchange &c. not exceeding £100 all the parties may be included in one action

II. *And be it further enacted by the authority aforesaid,* That it shall be lawful for the holder of any Bill of Exchange or Promissory Note hereafter to be made, for a sum not exceeding One Hundred Pounds, instead of bringing separate suits against the drawers, makers, endorsers and acceptors of such Bill or Note, to include all or any of the said parties to the Bill or Note in one action, and to proceed to judgment and execution in the same manner as though all the Defendants were joint contractors.

Defendants may plead separately.

III. *And be it further enacted by the authority aforesaid,* That in any such action, any joint drawer or maker, endorser or acceptor, may plead in abatement the non-joinder of any other joint drawer, maker, endorser or acceptor, in the same manner as though this Act had not been passed, and no judgment to be rendered in pursuance of this Act, shall be of any effect against a Defendant not served with process.

Plaintiff may declare upon money counts alone.

IV. *And be it further enacted by the authority aforesaid,* That the Plaintiff in any such action, and in all other actions on Bills of Exchange or Promissory Notes, may declare upon the money counts alone, and such Bill or Note may be given in evidence under the money counts, in all cases where a copy of the Bill or Note shall have been served with the declaration.

Judgment against one or more of the Defendants.

V. *And be it further enacted by the authority aforesaid,* That in any such action judgment may be rendered for the Plaintiff against some one or more of the Defendants, and also in favor of some one or more of the

Defendants against the Plaintiff, according as the rights and liabilities of the respective parties shall appear, either upon confession, default by pleading, or on trial; and when judgment shall be rendered in favor of any Defendant, he shall recover costs against the Plaintiff, in the same manner as though judgment had been rendered for all the Defendants. Defendant's costs.

VI. And be it further enacted by the authority aforesaid, That in any such action any person or persons sued, shall be entitled to set off his or their demands against the Plaintiff, in the same manner as though such Defendant or Defendants had been sued in the form heretofore used. Set off may be pleaded.

VII. And be it further enacted by the authority aforesaid, That if upon the trial of any such action, the whole amount of the demand set off by any or all of the Defendants and allowed by the Jury, shall be equal to or shall exceed the amount of the Plaintiff's demand, as proved on the trial, the Jury shall find a verdict in favor of the Defendants generally, but if the Jury shall allow any demand as a set off, and still find a balance in favor of the Plaintiff, they shall state in their verdict the amount which they allow to each Defendant, as a set off against the Plaintiff's demand. Verdict in set off.

VIII. And be it further enacted by the authority aforesaid, That the rights and responsibilities of the several parties to any such Bill or Note as between each other, shall remain the same as though this Act had not been passed, saving only the rights of the Plaintiff, so far as they may have been determined by the judgment. Rights of the parties as between each other to remain.

IX. And be it further enacted by the authority aforesaid, That in every suit brought pursuant to the provisions of this Act, any one or more of the Defendants shall be entitled to the testimony of any Co-Defendant, as a witness in all those cases where the Defendant or Defendants calling the witness would have been entitled to his testimony had the suit been brought in the form heretofore used, and in no other case. Defendants may be witnesses in certain cases.

X. And be it further enacted by the authority aforesaid, That in all actions on Promissory Notes or Bills of Exchange, when the Plaintiff shall file a copy of such Promissory Note or Bill of Exchange with the Declaration, and shall also annex a copy of such Note or Bill to the copy of the Declaration that shall be served on any Defendant, the damages may be assessed as though the said Note or Bill of Exchange had been set out specially in said Declaration. Copy of the Bill or Note may be filed with the Declaration.

XI. *And be it further enacted by the authority aforesaid,* That when in any case an action shall be brought against more than one Defendant under this Act, who must otherwise have been sued separately, and it shall happen that any one or more of the Defendants shall die pending the suit, an action may nevertheless be brought against the Executors or Administrators of any such deceased Defendant, *Provided* such Defendant would have been liable to be sued separately, in case this Act had not been passed.

Defendant's Executors liable to be sued.

XII. *Provided always, nevertheless, and be it further enacted by the authority aforesaid,* That this Act shall not apply in any case in which the sum expressed to be payable in or upon any such Bond, Recognizance, Promissory Note, Bill of Exchange or other Instrument, shall exceed the sum of One Hundred Pounds, nor to any case where separate actions are brought in the District Court, against persons residing in several Districts.

This act not to extend to Notes for more than £100.

Nor to actions in several Districts.

XIII. *And be it further enacted by the authority aforesaid,* That when several Defendants are included in one process, in pursuance of the provisions of this Act, and any one or more of them cannot be served with such process by reason that he or they is or are absent from the Province, or concealed within the same, then the action may proceed as against the other Defendant or Defendants, without prejudice; and it shall be in the power of the Plaintiff afterwards to sue such Defendant or Defendants separately, who shall not have been served with process, and to recover costs as if this Act had not been passed.

Suits may proceed, though one or more Defendants be absent.

XIV. *And be it further enacted by the authority aforesaid,* That this Act shall remain in force for four years, and from thence to the end of the then next ensuing Session of Parliament, and no longer; but that any proceedings then pending shall be conducted to a final end, without being affected by the expiration of this Act.

Act limited to four years.

CHAP. II.

AN ACT to allow the issuing of Writs of Error from the Court of King's Bench.

[Passed 24th February, 1835.]

WHEREAS it would facilitate the correction of Errors in the Judgment of inferior Courts of Record, if the Writ of Error, which for such purposes is required by the Law of England to be issued from Chancery,

Preamble.