

*Laws of His Majesty's Province of Upper-Canada; Passed in the Third Session of the Provincial Parliament of Upper Canada, Met at Newark, on the Second day of June, in the Thirty-Fourth Year of the Reign of our Sovereign Lord George the Third (1794). Niagara: Gideon Tiffany, Printer to the King's Most Excellent Majesty, 1795.*

34 George III – Chapter 3

**An Act to establish a Court for the Cognizance of Small Causes in each and every District of this Province.**

For the more convenient administration of justice in small causes, in each district of this province; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper-Canada, constituted and assembled, by virtue of, and under the authority 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 there be constituted and established, and there is hereby constituted and established, in each and every district, a court which shall have cognizance in all actions of contract, for sums above forty shillings, not exceeding the sum of fifteen pounds, to be known by the name and style of the District Court, of each respective district, and shall be holden by one or more judge or judges, to be appointed by commission, under the great seal of the province.

II. And for the regular dispatch of business, Be it further enacted, That there be appointed four periods of sitting, or terms for the said court, in each and every year, which terms shall severally commence on the Monday in the week next but one proceeding the week in which the quarter sessions are respectively holden, in each district, and shall end on the Saturday in the same week, which courts shall be severally holden in the respective town, township or place wherein the court-house for the district is directed to be built, excepting in the Western district, where the said court shall be holden in the town of Detroit.

III. And be it further enacted by the authority aforesaid, That the course of proceeding in the said court shall be by summons, issuing in the king's name, returnable on some day in said term, and bearing teste in the name of the first judge of the court, which may be in the following form:

District } *GEORGE the third, by the grace of God, of Great-Britain, France and Ireland, King,*  
to wit. } *defender of the faith, and so forth.*

To A. B. Greeting.

We command you, that you do either in person or by your attorney appear at our district court to be holden at \_\_\_\_\_ on the day of \_\_\_\_\_ to answer the complaint of G. D. in a plea of contract, whereby you have promised to pay him the sum of £. \_\_\_\_\_ for (the

consideration) and which you refuse to pay him as he says: witness E. F. judge of the said court, this day of \_\_\_\_\_ in the year \_\_\_\_\_.

IV. And be it further enacted, That the said process shall be served on the defendant or defendants by a literate person at lead eight days before the return thereof, and in case the said defendant or defendants shall not appear in court either in person, or by attorney, on the return of the process, it shall and may be lawful for the said plaintiff or his attorney, on the day next after the return day, upon affidavit made of the service of such process, to enter appearance for such defendant or defendants, and on the day next after the entry of such appearance, in case the defendant shall not have appeared and discharged the costs of such entry either in person or by attorney, it shall and may be lawful for the plaintiff to sign judgment, and sue out a writ of enquiry of damages, directed to the sheriff of the district, to be executed on some given day, in the course of the week in which the quarter sessions are holden next ensuing, and returnable the first day of the following term.

V. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the defendant or defendants, his or their attorney, to appear on the return day of the writ, and file his plea, on or before the third day After such appearance, which, in case he means to defend the suit and plead the general issue, may be in the following form; "The said C. D. appears in person or by G. H. his attorney, and says he made no such promise;" and in default, of a plea, upon the third day After such appearance, it shall and may be lawful for the plaintiff to sign judgment.

VI. Provided always, That where there are mutual debts between plaintiff and defendant, or if either sue or be sued, as executor or administrator, when there are mutual debts between testator and intestate and the other party, one debt may be set against the other, and such matter may be given in evidence on the general issue, so as at the time of pleading the general issue, when any debt is to be insisted on in evidence, notice be given of the particular sum or debt so intended to be insisted on, and on what account it became due.

VII. And be it further enacted by the authority aforesaid, That in all cases where the defendant or defendants shall enter, or cause his or their appearance to be entered at the return of the writ, it shall and may be lawful for him or them, on motion made in court, to be supported by affidavit, to apply for further time to put in their plea, which motion the court shall be at liberty to grant, where sufficient cause shall be shewn; and also to impose such terms on the defendant as justice may require.

VIII. And be it further enacted, That four days notice of trial shall be given to the defendant or defendants of every issue to be joined in the said court, which notice may be lawfully countermanded, provided such countermand be served on the defendant or his attorney two days before the expiration of the notice.

IX. Provided always, and be it further enacted, That when the plaintiff having given notice of trial, and not having countermanded the same, within the time aforesaid, shall neglect to enter the cause and bring forward the said issue for trial, he shall pay to the defendant or defendants all

reasonable costs and charges by him incurred on account of such notice; and in case the said plaintiff shall not give fresh notice of the trial of the said issue, on or before the third day of the term next ensuing, it shall and may be lawful for the defendant to move for, and the court to give the like judgment as in case of a non-suit.

X. And to the end that the trial of all issues to be joined in the said court, as well as the execution of all writs of enquiry, to be sued out upon judgments obtained by default, as aforesaid, may be had at the most convenient time and place, it shall and may be lawful for the judge presiding in the said court to issue his precept to the sheriff of the district, at least seven days before the week in which the sessions are holden, requiring him to summon, and the said sheriff shall, and is hereby required upon receipt of such precept, to summon not less than thirty-six, nor more than forty-eight jurors living within the said district, to be and appear in the town or place where the quarter sessions are usually holden, on the same day on which the said sessions do federally commence to be holden from whom a jury shall be taken for the trial of each issue, in like manner as directed in all causes to be tried at nisi prius; and each person sworn for the trial of any issue joined, shall be entitled to receive six-pence and no more.

XI. And be it enacted, That in all cases when the verdict of the jurors shall be for the plaintiff, it shall and may be lawful for the plaintiff or his attorney to sign judgment on the third day of the term next after the giving of the said verdict, and to proceed to sue out execution immediately.

XII. Provided always, That when the party defendant shall give any material or just cause to shew why judgment shall not be arrested or a new trial had, it shall and may be lawful for him, either in person or by attorney, on the first or second day of the term, next ensuing the said verdict, to move the court, on grounds to be supported by affidavit, for a rule to shew cause to the effect above mentioned; and in case the court shall be sufficient grounds for the granting of such rule, notice thereof shall be served on the party plaintiff or his attorney, and on hearing the parties, the said rule shall be made absolute or discharged in the course of the said term.

XI. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the persons herein After named, to demand and receive the following fees and no more, for the services herein after set forth.

ATTORNEY

Instructions to sue or defend,	£ 0 : 5 : 0	Notice,	£ 0 : 1 : 0
Declaration,	0 : 4 : 0	Motion of course,	0 : 2 : 6
Plea,	0 : 2 : 6	Special motion,	0 : 5 : 0
Entering apperance by plaintiff,	0 : 2 : 6	Brief and fee thereon,	0 : 10 : 0

SHERIFF

For every jury sworn,	0 : 4 : 0	Poundage, 2 1-2 per cent.
Every execution,	0 : 5 : 0	Milage, four-pence per mile.

CLERK

For filing declaration,	0	:	2	:	0		Taking verdict,	0	:	2	:	6
For filing each paper,	0	:	1	:	0		Entering postea and judgment,	0	:	2	:	6

CRIER

For swearing jury, £ 0 : 2 : 0

JUDGE

On every declaration filed,	0	:	2	:	6		For signing judgment,	0	:	10	:	0
Rule of court on all special motions,	0	:	5	:	0							