

Laws of His Majesty's Province of Upper-Canada in North America. West Niagara: Titus G. Simons, Printer to the King's Most Excellent Majesty, 1797.

37 George III – Chapter 4

An Act for regulating the Practice of the Court of King's Bench.

For the more easy and convenient administration of justice by the court of King's bench, 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 or 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 from and after the first day of October next, it shall and may be lawful to and for the clerk of the crown and pleas of this province to have, and he is hereby required to have in each and every district of the same, and also in the town of Newark, in the county of Lincoln, in the Home district, an office in which actions in the said court of King's bench may be instituted, and the parties plead to issue in like manner as is now done in the office of the said clerk, in the district in which the said court is holden; and that for that purpose the said clerk be, and he hereby is authorized and required to supply his deputy in each district, and also in the said town of Newark, from time to time, with blank writs of the said court, properly signed and sealed, which his said deputy is hereby authorized and required to fill up as occasion may require.

II. And whereas many and great inconveniences have followed from the length of time which by present practice of the said court must intervene between the teste and the return of writs, Be it enacted by the authority aforesaid, That from and after the day aforesaid, every Monday in the course of the year, except Easter Monday, and Christmas-day, in case it shall happen on a Monday, shall be a return day for the return of writs issuing out of the said court of King's bench, and no other day or days whatsoever be the return-day or days for such writs; and that no less than fifteen days shall intervene between the teste and return of any process issuing out of the said court in any district of this province.

III. And be it further enacted by the authority aforesaid, That from and after the day aforesaid, Hilary term shall begin on the first Monday in the month of January, and end on the Saturday of the week ensuing; and that Easter term shall begin on the first Monday of the month of April, and end on the Saturday of the week ensuing; and that all commissions of assize and *nisi prius* do issue, and also that the sittings for the Home district be held in the vacations between Hilary and Easter terms, and between Trinity and Michaelmas terms, any law or usage to the contrary notwithstanding.

IV. And be it further enacted by the authority aforesaid, That in cases which do not require special bail the first and original process of the said court shall be by writ of summons, which may be in the following

FORM:—

Upper-Canada, District To wit. George the third, by the grace of God of Great-Britain, France and Ireland, king, defender of the faith, and so forth: To the Sheriff of the district, Greeting: We command you that you summon A. B. to appear either in person or by his attorney before us in our court of the bench, on the _____ day of _____ now next ensuing, to answer the complaint of C. D. in a plea of _____ (as the case may be) according to the annexed declaration; and herein fail not at your peril. Witness the honorable E. F. chief justice of our said province (or one of the justices of our said court, as the case may be) this _____ day of _____ in the _____ year of our reign.

And that the plaintiff do cause the defendant to be served with the said writ of summons: any that the sum of five shillings, and no more be allowed in costs for serving the same, but that there be no allowance whatever for milages.

V. And whereas doubts have arisen with respect to the time when judgment may be signed for want of the defendant in any action having duly appeared thereto, Be it therefore enacted by the authority aforesaid, that in all civil suits where the defendant shall not be holden to bail, the ordinary course of proceeding shall be by serving, or causing the defendant or defendants personally to be served with a copy of the process and declaration by some literate person, and if such defendant or defendants shall not appear at the return of the process, or within eight days of such return, in such case it shall and may be lawful for the plaintiff or plaintiffs, upon affidavit being made and filed of the personal service of such process and declaration, which affidavit shall be filed gratis, to enter a common appearance for the defendant or defendants, and to proceed thereon as if such defendant or defendants had entered his, her, or their appearance.

VI. And be it further enacted by the authority aforesaid, That wherever the defendant in any action shall, in term time, plead any dilatory plea, in case such plea shall be of a matter of law, and not of fact, it shall and may be lawful to and for the plaintiff in the said action to set down such plea for argument on the next day on which the said court shall sit, or on any other day in the term, giving two days notice thereof to the defendant, or his attorney; and in case such plea be filed in the time of vacation, or being filed in term time, the said plaintiff shall neglect so to set down the same for argument as aforesaid, it shall and may be lawful to and for the said plaintiff to apply to any judge of the said court to hear and determine the issue joined thereon in like manner as the same may now be done in open court; and in case the said judge shall give judgment for the plaintiff, he the said judge shall by an order under his hand direct the said plea to be taken off the file, with costs to be taxed by the proper officer: and the said defendant shall within four days from the date of such order plead an issuable plea, and shall rejoin gratis, and shall also be bound to go to trial at such time as he

would have been bound to go to trial in case he had pleaded such issuable plea in the first instance, and not such dilatory plea.

VII. And be it further enacted by the authority aforesaid, That from and after the day aforesaid, no writ of enquiry shall issue to the sheriff in cases where judgment shall have gone by default; but in all such cases the damages shall be ascertained at the same time and in like manner as if the parties had pleaded to issue, and that an entry thereof be made on the roll accordingly.

VIII. And be it further enacted by the authority aforesaid, That from and after the passing of this act, every juror shall be allowed the sum of fifteen pence, instead of the sum of one shilling which is now allowed in each cause in which he shall be sworn as such juror, to be paid to him in like manner as the said sum of one shilling is now paid.