

Laws of His Majesty's Province of Upper Canada, passed in the year 1822. York: R. C. Horne, 1822.

2 George IV – Chapter 2

An Act to reduce into one Act the several Laws now in force establishing District Courts, and regulating the Practice thereof, and also to extend the powers of the said District Courts. Passed 17th January, 1822.

Whereas, it is expedient to amend and reduce into one Act the several Laws now in force for establishing and regulating the practice of the several District Courts within this Province. Be it therefore 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 an Act passed in the thirty-fourth year of His late Majesty's Reign, entitled "*An Act to establish a Court for the cognizance of small causes in each and every District in this Province,*" also an Act passed in the thirty-seventh year of His late Majesty's Reign, entitled "*An Act to extend the Jurisdiction and regulate the proceedings of the District Court and Courts of Requests,*" also an Act passed in the thirty-eighth year of His late Majesty's Reign, entitled "*An Act to repeal part of an Act passed in the thirty-seventh year of the Reign of His Majesty, entitled 'An Act to extend the Jurisdiction and regulate the proceedings of the District Court and Courts of Requests, and to make further provision for the same,'*" also the first Clause of an Act passed in the fifty-first year of His late Majesty's Reign, entitled "*An Act to amend the process of the District Courts, and also further to regulate the proceedings of Sheriffs in the sale of Goods and Chattels taken by them in execution;*" and also an Act passed in the fifty-ninth year of His late Majesty's Reign, entitled "*An Act to repeal and amend certain parts of an Act passed in the thirty-fourth year of His Majesty's Reign, entitled, 'An Act to establish a Court for the cognizance of small causes in each and every District of this Province,'*" and also an Act passed in the thirty-seventh year of His Majesty's Reign, entitled "*An Act to extend the Jurisdiction, and regulate the proceedings of the District Court and Courts of Request,*" be and the same are hereby repealed.

II. And be it further enacted by the authority aforesaid, That there be constituted and established in each and every District within this Province, a Court of Record, which shall be known by the name and style of the District Courts of each respective District, to be holden by one or more Judge or Judges to be appointed under the Great Seal of this Province.

III. And be it further enacted by the authority aforesaid, That the said Courts shall hold Plea in all matters of contract from forty Shillings to fifteen Pounds, and when the amount is liquidated or ascertained, either by the act of the parties, or the nature of the transaction, to

forty Pounds: and also in all matters of Tort respecting personal Chattels, when the damages to be recovered, shall not exceed Fifteen Pounds, and the title to the Lands shall not thereby be brought into question.

IV. And be it further enacted by the authority aforesaid, That the periods of Sitting or Terms of the said Court in each and every year shall severally commence on the Monday in the week next but one preceding the week, and at the place in which the Quarter Sessions are respectively holden in each District, and shall end on the Saturday in the same week.

V. And be it further enacted by the authority aforesaid, That in all Actions not Bailable, the course and proceedings in the said Court shall be by Summons issuing in the King's name directed to the Sheriff of the District where the Court shall be holden, tested in the name of the first Judge or the said Court, which may be in the following form:—

District to wit: George the Forth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith: TO the Sheriff of the said District. — Greeting:—

We Command you that you Summon A.B. to appear either in person or by his Attorney at our District Court, to be holden at _____ in the said District on the _____ day of _____ (next or instant, as the case may be, being some day in Term.) to answer to the complaint of C.D. in a plea of _____ as the case may be, (here state the cause of Action) to the damage of the said C.D. of _____ for which he brings the suit.

VI. And be it further enacted by the authority aforesaid, That the said Process shall be personally served on the Defendant or Defendants by a lite-rate person, at least eight days before the return day thereof, and in case the Defendant or Defendants shall not appear either in person or by Attorney on the return thereof, it shall and may be lawful for the said Plaintiff or his Attorney on the day next after such return day, upon Affidavit made of the service of such Process to enter an 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 his Attorney, it shall and may be lawful for the Plaintiff to sign Judgment.

VII. 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 the same shall be an Action of Assumpsit and he means to defend the suit, and to plead the general issue, may be in the following form:—

“That said A.B. appears in person or by G.N. 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.

VIII. And Whereas, it is expedient to authorize the said Courts to issue Writs of Capias in all actions of contract within their respective Jurisdiction; Be it therefore enacted by the authority aforesaid, That the said District Courts and each and every of them are hereby authorized and empowered to issue Writs of Capias ad Respondendum in all actions of contract within their Jurisdiction, and in like manner to issue Writs of Capias ad Satisfaciendum, on all Judgments regularly entered in said Courts, or which at any time hereafter may be so entered.

IX. And be it further enacted by the authority aforesaid, That before any such Writ as aforesaid shall be sued out, the same Affidavit as may by Law be required to authorize the issue of a like Writ from the Court of King's Bench in this Province, shall be made before a Judge of the District Court, the Clerk thereof, or before a Commissioner of the said Court of King's Bench duly appointed to take Affidavits, and the said Affidavit so made, shall be filed with the aforesaid Clerk.

X. And be it further enacted by the authority aforesaid, That the Sheriff to whom a Writ of Capias ad Respondendum issuing out of any District Court, may be directed shall take bail thereon, and assign the Bail Bond if required, in like manner as the Law does or shall direct in cases where the like process may be issued from the said Court of King's Bench, and such Assignment shall have the like validity and effect in the one instance as in the other.

XI. And be it further enacted by the authority aforesaid, That the Defendant or Defendants in everyailable Action shall be allowed two days after the return of the Writ to enter and perfect Bail to such Action, and to give notice thereof to the Plaintiff or Plaintiffs of his or their Attorney, and the recognizance of such Bail shall be the same in substance as the recognizance taken in the said Court of King's Bench, and may be acknowledged before any Judge of the District Court issuing the Writ or before a Commissioner of the said Court of King's Bench duly appointed to take recognizances of Bail in the same District.

XII. And be it further enacted by the authority aforesaid, That all Affidavits or Justification of Bail may be taken before a Judge of the said District Court, or before the Clerk thereof or a Commissioner for taking Affidavits in the Court of King's Bench, and shall be duly filed by such Clerk, and the practice of the said Court of King's Bench shall be the rule of decision in all matters respecting the justification of such Bail.

XIII. And be it further enacted by the authority aforesaid, That each of the said District Courts shall have power to grant such relief to the Debtor, the Bail to the Sheriffs, or the Bail to the Action, as might be done by the said Court of King's Bench, in case such action had been instituted in the said last mentioned Court.

XIV. And be it further enacted by the authority aforesaid, That the Plaintiff or Plaintiffs may file a declaration de beue case in any suit where a Capias in the first instance shall issue, and if the Defendant or Defendants shall enter and perfect Bail to the action in due time as herein before mentioned for that purpose, he, or they, shall be bound to plead to such

declaration, within two days after the perfecting of such Bail without any demand of plea, and the conditional filing or the said declaration shall, in no case discharge the Defendant or Defendants from the necessity of entering and perfecting Bail to the Action aforesaid.

XV. And be it further enacted by the authority aforesaid, That whenever the amount of the penalty of the aforesaid Bail Bond to be taken by the Sheriff, shall exceed the sum of Forty Pounds, an action on such Bail Bond so exceeding the said sum may be brought in the aforesaid Court, and preceded upon to final judgment and execution as in other actions therein any thing herein contained to the contrary notwithstanding.

XVI. And be it further enacted by the authority aforesaid, That where there are mutual debts between the 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 at the time of pleading the general issue when any such 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.

XVII. 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.

XVIII. And be it further enacted by the authority aforesaid, That four days notice of trial and Assessment of damages 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 time appointed for the trial of the said issue or the Assessment of damages.

XIX. Provided always, and be it further enacted by the authority aforesaid, 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.

XX. And to the end that the trial of all issues to be joined in the said Court as well as the Assessment of damages 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 severally commence to be holden, from whom a Jury shall be taken for the trial of each issue and the assessment of damages in like manner as directed in all cases to be tried at Nisi Prius, and each person sworn for the trial of any issue joined or for the assessment of damages as aforesaid shall be entitled to receive six pence and no more.

XXI. Provided always, and be it further enacted by the authority aforesaid, That in all actions upon Promissory Notes when Judgment by Default shall be signed in the said District Courts, it shall and may be lawful for the Judge of the said Court in Term time only upon proof of the service of notice of such intended proceeding to compute the Principal and Interest due on any such Note or Notes and proceed to final Judgment and execution in the same manner as if the damages had been assessed by a Jury any thing contrary thereof in any wise notwithstanding.

XXII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the party for whom any verdict shall be rendered or his Attorney to sign final Judgment on the third day of the Term next after the giving of the said verdict and to proceed to sue out execution immediately.

XXIII. And be it further enacted by the authority aforesaid, That when the party Defendant shall have any material or just cause to show why Judgment should be arrested, or the party Plaintiff or Defendant, any such cause to show why a new trial should be had, it shall and may be lawful for the said party, either in person or by his 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 show cause to the effect above mentioned, and in case the Court shall see sufficient grounds for the granting of such rule, notice thereof shall be served on the opposite party or his Attorney, and on hearing the parties the said rule shall be made absolute or discharged in the course of the said Term.

XXIV. And in order to enforce obedience to the orders of the Judges of the said Courts, Be it therefore enacted by the authority aforesaid, That it shall and may be lawful for the Judge or Judges of the said Courts respectively and they are hereby authorised upon due proof of disobedience to the regular order of the said Courts or of any wilful contempt or resistance to the regular Process or order of the said Courts to proceed against the parties so withstanding, disobeying or offending, by attachment to be directed to the Sheriff and in case the Sheriff shall be party in the said Process or order to be directed to the Coroner of the District, who is hereby authorised and required to execute the same, and upon the appearance of the said party so offending upon the return of the said Attachment shall and may be lawful for the Judge issuing the same, to proceed thereon in the same manner as is now practised in the Court of King's Bench.

XXV. Provided always, and be it further enacted by the authority aforesaid, That the said Judge or Judges respectively shall not have power or authority to order the party offending to be fined a greater sum than Ten Pounds nor be imprisoned a longer period than one Calendar month.

XXVI. Provided also, and be it further enacted by the authority aforesaid, That nothing in this Act contained shall extend or be construed to extend to annul or make void any existing Commission of Judge of the District Court in any District in this Province, or to interfere with or obstruct any proceeding now depending in any District Court in this Province, but that the same shall continue and proceed as if this Act had never been passed.

XXVII. And be it further enacted by the authority aforesaid, That it shall and may be lawful for the persons hereinafter named to demand and receive the following fees;—

INSERT TABLE (pg. 6-7)

XXVIII. And be it further enacted by the authority aforesaid, That no person whatsoever shall claim or be entitled to any other or greater fee for any business done by him in the said District Court, whether as Judge, Commissioner, Attorney, Sheriff, Clerk or Crier, than is set down for him in this Act, or any fee for any business done by him in the said Court, other than the business which is prescribed and directed by Law, nor shall any such fee be allowed in any Bill of Costs.