

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbishire & George Desbarats, 1857.

20 Victoria – Chapter 2

An Act for the amendment of the Practice and Procedure in Suits instituted on behalf of the Crown in matters relating to the Revenue. Asserted to 27th May, 1857.

Whereas it is necessary to alter and amend the Practice and Procedure in Suits instituted on behalf of the Crown in matters relating to the Revenue: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. Inasmuch as there is often inconvenient delay and great expense incurred in recovering debts due to the Crown, more particularly with respect to Extents, by reason of the intervals between the Terms — Be it enacted, That all or any Commissions, Extents, Writs, or other Process of whatever denomination, to be hereafter issued from either of the Superior Courts of Common Law for Upper Canada, in pursuance of this or any former or other Act or Acts, or according to the usage or practice of the said Courts or of the Court of Exchequer in England, may bear teste, and be made returnable and be returned on any day certain in Term or Vacation to be named in such Commission, Extent, Writ or other Process, and thereupon, and at the return of any such Commission, Extent, Writ or other Process, the like rules may be given, and such other proceedings had, and any such subsequent Writs and Process issued, at any time in Vacation, as may be given, had or issued in Term, or at or before the seal day alter Term; and all such Commissions, Extents, Writs or other Process, rules and proceedings, shall be as valid and effectual as if the same had been tested and made returnable, or given or had or issued in Term, according to the Common Law and course of practice that prevailed in Upper Canada before the passing of this Act: Provided always, that nothing herein contained shall extend to alter the time for filing any pleadings; and that where any person shall enter a claim to any goods seized under any Extent or returned as forfeited (which it shall be lawful to do in Vacation), the further proceedings shall be only according to the ordinary practice of the Court of Exchequer in England.

II. And whereas in divers proceedings instituted by or on behalf of the Crown against the Queen's subjects in respect of matters relating to the Revenue, no costs are recovered by the Crown except in certain cases, and no costs are paid by the Crown to the Subject; And whereas it is expedient to assimilate the Law as to the recovery of costs in such proceedings, by or on behalf of the Crown, to that in force as to proceedings between Subject and Subject — Be it enacted, That in all informations, actions, suits and other legal proceedings to be hereafter instituted before any Court or Tribunal whatever in Upper Canada, by or on behalf of the Crown, against any Corporation or person or persons, in respect of any lands, tenements or hereditaments, or of any goods or chattels belonging to or accruing to the Crown, or standing or being in the name of Her Majesty, or in respect of any sum or sums of money due and owing to Her Majesty, by virtue of any vote of Parliament for the service of the Crown, or of any Act of Parliament relating to the public Revenue, or in any manner whatsoever, Her Majesty's Attorney General for Upper Canada shall be entitled to recover costs, where judgment shall be given for the Crown, in the same manner and under the same rules, regulations and provisions as are or may be in force touching the payment or receipt of costs in proceedings between Subject and

Subject: and if in any such information, action, suit or other, proceeding, judgment shall be given against the Crown, the defendant or defendants shall be entitled to recover costs, in like manner and subject to the same rules and provisions as though such proceeding had been had between Subject and Subject; and, it shall be lawful for the Receiver General, and he is hereby required to pay such costs out of any moneys which may be hereafter voted by Parliament for that purpose.

III. And whereas the procedure and practice in informations, suits and other proceedings instituted by or on behalf of the Crown in Her Majesty's Courts of Common Law in Upper Canada is dilatory and requires amendment, and it is desirable that the same should be assimilated as nearly as may be to the course of practice and procedure now in force in actions and: suits between Subject and Subject — Be it enacted, That it shall be lawful for the Judges of the Superior Courts of Common Law in Upper Canada, or any four of them, of whom the Chief Justices shall be two, to make all such general rules and orders for the regulation of the pleading and practice on such informations, suits and other proceedings, and to frame such writs and forms of proceedings, as to them may seem expedient for the purpose aforesaid; and all such rules, orders or regulations shall be laid before both Houses of Parliament, if Parliament be then sitting, immediately upon the making of the same, or, if Parliament be not then sitting, within five days after the next meeting thereof; and no such rule, order or regulation shall have effect until three months after the same shall have been so laid before both Houses of Parliament; and any rule, order or regulation so made, shall, from and after such time aforesaid, be binding and obligatory on the said Courts, and on all Courts of Error or Appeal into which any Judgment of the said Courts shall be carried, and be of the like force and effect as if the provisions contained therein had been expressly enacted by Parliament: Provided always, that it shall be lawful for the Governor in Council, by any Proclamation inserted in the *Canada Gazette*, or for either of the Houses of Parliament, by any Resolution passed at any time within three months next after such rules, orders and regulations shall have been laid before Parliament, to suspend the whole or any part of such rules, orders or regulations; and in such ease the whole, or such part thereof as shall be so suspended, shall not be, binding and obligatory on the said Courts, or on any other Court of Common Law, or Court of Error or Appeal.

IV. This Act shall extend to Upper Canada only.

V. The Interpretation Act shall apply to this Act.