

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

20 Victoria – Chapter 57

An Act to amend the Common Law Procedure Act 1856, and to facilitate the remedies on Bills of Exchange and Promissory Notes. Assented to 10th June, 1857.

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. The Clerks of the Crown and Pleas, the Clerk of the Process and the Deputy Clerks of the Crown and Pleas in the Courts of Queen's Bench and Common Pleas in Upper Canada, shall, within two calendar months after this Act shall come into force, or within one month next after being appointed to any of the said offices, give security to Her Majesty, Her Heirs and Successors, in such sum, and with so many sureties and in such form as the Governor in Council shall direct, conditioned for the due performance of the duties of their office and for the rendering of the quarterly accounts and returns required from them by law, and for the due payment to the Receiver General of this Province, of all the fees, dues, emoluments, perquisites and profits received by them on account of their said offices respectively, and for and on account of any duty or service done and performed by them respectively, in their said several offices and the neglect to give such security by any such Clerk or Deputy Clerk or to render quarterly returns, or to pay over all such, moneys within twenty days next after each quarterly day, shall *ipso facto* render his appointment void, and vacate his office: Provided that, such avoidance shall not annul or affect any act, mailer or thing done by any such Clerk or Deputy Clerk, during the time that lie shall actually hold his appointment.

II. The Governor of this Province shall approve of the security and sureties to be given by the said Clerks and Deputy Clerks, (the Judge of the County Court first certifying his approval in writing of the security and sureties to be given by the Deputy Clerk of the Crown for his County,) and such securities shall, as soon as they are so executed and approved, be duly recorded in the manner provided by the third section of the Statute passed in the session of the Provincial Parliament, held in the fourth and fifth years of Her Majesty's Reign, chaptered ninety-one, and then deposited in the office of the Inspector General of Public Provincial Accounts; and if any surety in any such security shall die or cease to reside in Upper Canada, or become insolvent, it shall be the duty of such Clerk or Deputy Clerk, within one month of his knowledge of the fact, or after being thereto required by the Inspector General, to give a new security, in manner hereinbefore provided, and the omission to give such new security shall render the appointment of the Clerk or Deputy Clerk so omitting, void.

III. Every Deputy Clerk of the Crown shall, within twenty-four hours after notice in writing delivered to him at his office, for that purpose, enclose, seal up and transmit by post to the proper principal office at Toronto, addressed to the Clerk thereof, any record of *Nisi Prius* in his custody to be mentioned in such notice, together with all exhibits filed at the trial, and in default thereof, he may be adjudged guilty of a contempt of Court, and be dealt with in the discretion of the Court accordingly. And if, after such notice, the *Nisi Prius* record shall not be in Court at the time of moving any rule requiring a reference

thereto, the party moving may, on filing an affidavit of the service of notice, and that the record, on search, has not been found in the said principal office, be allowed by the Court to move any such rule without the production of the Record of *Nisi Prius*.

And with respect to Bills of Exchange and Promissory Notes, Be it enacted as follows:

IV. From and after the first day of July, in the year of our Lord one thousand eight hundred and fifty-eight, all actions upon Bills of Exchange or Promissory Notes, commenced in either of the Superior Courts of Common Law, within six months after the same shall have become due and payable, may be by writ of summons in the special form contained in the Schedule to this Act annexed, numbered one, and endorsed as is therein mentioned; and it shall be lawful for the Plaintiff on filing an affidavit of personal service of such writ within the jurisdiction of the Court or an order for leave to proceed as provided by the Common Law Procedure Act, 1856, and a copy of the writ of summons and the indorsements thereon, in case the Defendant shall not have obtained leave to appear, and have appeared to such writ according to the exigency thereof, at once to sign final judgment in the form contained in the schedule numbered two to this Act annexed, (on which judgment no proceeding in error shall lie) for any sum not exceeding the sum endorsed on the writ, together with interest to the date of the Judgment, and a sum for costs to be fixed by rule of Court, unless the Plaintiff claim more than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the Plaintiff, may upon such judgment issue execution at the expiration of fifteen days after such judgment has been signed.

V. A Judge of either of the said Courts, or a Judge of a County Court, shall, upon application within the period of sixteen days from such service, give leave to appear to such writ and defend the action on the defendant paying into Court the sum endorsed on the writ, or upon affidavits satisfactory to the Judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the Judge may seem fit.

VI. After judgment, the Court or a Judge may, under special circumstances, set aside the judgment and, if necessary, stay or set aside execution, and may give leave to appear to the writ, and to defend the action, if it shall appear to be reasonable to the Court or Judge so to do, and on such terms as to the Court or Judge may seem just.

VII. In any proceedings under this Act, it shall be competent to the Court or a Judge to order the bill or note sought to be proceeded upon to be forthwith deposited with an officer of the Court, and further to order that all proceedings shall be stayed until the plaintiff shall have given security for the costs thereof.

VIII. The holder of every dishonored bill of exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting or protesting the same for non-acceptance or non-payment, or otherwise, or of damages where damages for non-payment are by law recoverable, by reason of such dishonor, as he has under this Act for the recovery of the amount of such bill or note.

IX. The holder of any bill of exchange or promissory note may proceed against all the parties to such bill or note under this Act in one action, in conformity with the provisions, of the Acts of the Parliament of Upper Canada and of this Province, enabling the bringing a joint action against all the parties to any bill of exchange or promissory note.

And with respect to proceedings for the revival of judgments, Be it enacted as follows:

X. The two hundred and second section of the Common Law Procedure Act, 1856, is hereby repealed; and during the lives of the parties to a judgment or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, and within six years from the recovery of the judgment, execution may issue without a renewal thereof.

And with respect to Equitable defences; Be it enacted as follows:

XI. The two hundred and eighty-seventh section of the Common Law Procedure Act, 1856, and the words placed between that and the next preceding section, are hereby repealed; and alter this Act shall come into force it shall be lawful for the defendant, or the plaintiff in replevin, in any cause in either of the Superior Courts, in which, if Judgment were obtained, he would be entitled to relief against such Judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea, provided that such plea shall begin with the words "For defence on Equitable grounds," or words to the like effect.

And as to reference to arbitration ordered at the trial; Be it enacted as follows:

XII. The Judge at *Nisi Prius* directing any reference under the one hundred and fifty-sixth section of the Common Law Procedure Act, 1856, may direct such reference, if he shall see fit to do so, in like manner as he has power to do under the eighty-fourth and eighty-fifth sections of the said Act, and every arbitrator so appointed at *Nisi Prius* shall be subject to the provisions of the said sections, and shall have the powers expressed in the eighty-sixth section and be subject to the same regulations as are mentioned and provided in regard to arbitrators in and by the eighty-seventh section of the said Act.

And as to trials *at bar*, Be it enacted as follows:

XIII. The plaintiff or demandant, and the defendant or tenant, respectively, in any action or suit whatever commenced or brought, or to be commenced or brought in either of the Courts of Queen's Bench or Common Pleas for Upper Canada, may, in the Term next after issue joined apply to the said Courts respectively for a trial *at bar*, and each of the said Courts respectively may, in its discretion, upon hearing the parties, grant or refuse the same.

XIV. In all cases in which the Crown may be actually or immediately interested, a trial *at bar* may be had as of right upon the same principle, and be regulated and governed thereby as in similar cases in England.

XV. If any trial *at bar* shall be directed by either of the said Courts, it shall be competent to the Judges of such Court to appoint such day or days for the trial thereof as they shall think fit, and the time so appointed, if in vacation, shall, for the purposes of such trial, be deemed and taken to be a part of the preceding term.

And as to proceedings against Garnishees; Be it enacted as follows:

XVI. When the amount claimed as due from any garnishee, shall be within the Jurisdiction of any County or Division Court, the order to be made under the one hundred and ninety-fourth section of the Common Law Procedure Act, 1856, shall be for the garnishee to appear before the Judge of the County Court of the County within which the garnishee resides — at some day and place within his County to be appointed in writing by such Judge — and written notice thereof shall be given to the garnishee at the time of the service of the order, and if the garnishee does not forthwith pay the amount due by him, or an amount equal to the Judgment debt, and does not dispute the debt due or claimed to be due from him to the Judgment debtor, or if he does not appear before the Judge named in the order at the day and place appointed by such Judge, then such Judge may, on proof of service of the order and appointment having been made four days previous, make an order directing execution to issue out of the County Court or out of a Division Court according to the amount due, and which order shall be sufficient authority for the clerk of either of such Courts to issue execution without any previous writ or process, to levy the amount due from such garnishee; and the Sheriff or Bailiff to whom such writ of execution shall be directed, shall be thereby authorized to levy, and shall levy the amount mentioned in the said execution, towards satisfaction of the Judgment debt, together with the costs of the proceeding, to be taxed, and his own lawful fees, according to the practice of the Court from which such execution issues; but if the garnishee disputes his liability, such Judge may order that the Judgment creditor shall be at liberty to proceed against the garnishee according to the usual practice of the County or Division Court as the case may require, for the alleged debt or for the amount due to the Judgment debtor if less than the Judgment debt, and for costs of suit, and payment by or execution levied upon the garnishee, in any such case shall be a valid discharge to him as against the Judgment debtor to the amount paid or levied,; although the proceeding may be set aside or the Judgment reversed.

And with respect to confessions of judgment and to judgments and the registration thereof; Be it enacted as follows:

XVII. No confession of judgment or *cognovit actionem*, given by any person, shall be valid or effectual to support any judgment or writ of execution, unless the same, or a sworn copy thereof, shall be filed of record in the proper office of the Court in the County in which the person giving such confession of judgment or *cognovit actionem* shall reside, within one month after the same is given; and a book shall be kept in every such office, to be called the Cognovit Book, in which shall be entered the names of the plaintiff and defendant in every such confession or *cognovit*, the amount of the true debt or arrangement secured thereby, the time when judgment may be entered and execution issued thereon, and the day when such confession or *cognovit*, or copy thereof, is filed in the said office; and such book shall be open to inspection by any person during office hours, on The payment of a fee of *one shilling*.

XVIII. No confession of judgment or *cognovit actionem* given before the passing of this Act, which shall be still unsatisfied when this Act comes into effect, shall be valid and effectual to support any judgment or writ of execution, unless the same, or a sworn copy thereof, shall be filed of record as aforesaid within four months after the passing of this Act; and the same entries shall be made in respect of such confessions or cognovits, in the Cognovit Book, as by the next preceding section are required in respect of confessions or cognovits given after the passing of this Act.

XIX. Every judgment registered against land in any County shall cease to be a lien or charge upon the land of the party against whom such judgment has been rendered, or any one claiming under him, in three years after such judgment has been registered or within one year after the passing of this Act, unless before the expiration of the said period of three years, or within one year after the passing of this Act, such judgment shall be re-registered; and such lien or charge shall cease whenever the period of three years shall at any time be allowed to elapse without a further re-registration.

XX. Any judgment registered against land shall and may be discharged from the registry of the County where the same, is registered, on the production to the Registrar, of such County of a certificate signed by the judgment creditor, or, if more than one, by any one of them, his executors, administrators or assigns, to the following effect:

"I do hereby certify that a judgment rendered in favor of A. B. against C. D., for the sum of £_____, and registered in the Registry Office of the County of _____, has been discharged."

And such certificate shall be proved to the Registrar by the affidavit of one subscribing witness who has witnessed the execution of such certificate, which affidavit may be taken before any person before whom any affidavit for the registry of any deed or other instrument can be taken: Provided always, that the registry of a judgment may also be discharged in the manner now provided by law.

And in order to facilitate the conduct of suits; Be it enacted as follows:

XXI. In any action in any of the Superior Courts of Common Law, when the attorneys of both plaintiff and defendant reside in the same County, the Judge of the County Court of such County may issue summonses and orders for copy or inspection of documents and particulars of demand or set-off, security for costs, and time to plead, with the same effect and authority as if such summonses and orders were issued by any Judge of either of the said Superior Courts.

And with respect to execution; Be it enacted as follows:

XXII. After this Act shall come into force, the sheriff, or other officer having the execution of any writ of *fiery facias* against goods sued or to be sued out of either of the said Courts, or out of any County Court, or of any precept made in pursuance thereof, may and shall seize and take any money or bank notes, (including any surplus of a former execution against the defendant or party,) and any cheques, bills of exchange, promissory notes, bonds, mortgages, specialties or other securities for money belonging to

the person against whose effects such writ of *feri facias* shall be sued out, and may and shall pay or deliver to the party suing out such execution, any money or bank notes which shall be so seized or a sufficient part thereof, and may and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties or other securities for money, as a security or securities for the amount by such writ, of *feri facias* directed to be levied, or so much thereof as shall not have been otherwise levied or raised, and may sue in the name of such sheriff or other officer for the recovery of the sum or sums secured thereby, if and when the time of payment thereof shall have arrived; and the payment to such sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty or other security with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment or of such recovery any levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note) bond, specialty or other security; and such sheriff or other officer may and shall pay over to the party suing out such writ, the money to be so recovered, or such part thereof as shall be sufficient to discharge the amount by such writ directed to be levied; and if, after satisfaction of the amount so to be levied together with sheriff's poundage and expenses, any surplus shall remain in the hands of such sheriff or other officer, the same shall be paid to the party against whom such writ shall be so issued; provided that no such sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty or other security, unless the party suing out such execution shall enter into a bond with two sufficient sureties for indemnifying him from all costs and expenses, to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof; the expense of such bond to be deducted out of any money to be recovered in such action.

XXIII. The necessary wearing apparel, the bed and bedding, and one stove and the cooking utensils, of a party against whom any writ of execution may be issued, or of his family, and also the tools and implements of his trade to the value of fifteen pounds, shall be protected from seizure under any execution from either of the said Courts or from any County Court.

XXIV. Where a writ against the goods of a party has issued from either of the said Courts or from any County Court, and a warrant of execution against the goods of the same party has issued from a Division Court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the sheriff to be executed, or of the warrant to the bailiff of the said Division Court to be executed; and the sheriff, on demand, shall, by writing signed by him or his deputy or any cleric in his office, inform the bailiff of the precise time of such delivery of the writ, and the bailiff, on demand, shall shew his warrant to any sheriff's officer; and such writing purporting to be so signed, and the endorsement on the warrant shewing the precise time of the delivery of the same to such bailiff, shall respectively be sufficient justification to any bailiff or sheriff acting thereon.

And with respect to debtors in close custody; Be it enacted as follows:

XXV. In all cases in which the sheriff of any County or Union of Counties shall take from any debtor confined in the gaol thereof a bond under the provisions of the three hundred and second section of the Common Law Procedure Act, 1856, such bond shall, in addition to the conditions in the said three hundred and second section mentioned, contain a further condition that the said debtor shall, within thirty days from the delivery thereof to the sheriff, cause and procure the said bond, or that to be

substituted for the same according to the provisions hereinafter contained, to be allowed by the Judge of the County Court of the County or Union of Counties wherein the debtor is confined, and such allowance to be endorsed thereon by the said Judge; and for this purpose the sheriff shall, upon reasonable notice by the debtor given, cause such first mentioned bond to be produced before the Judge, and upon such allowance being so endorsed, the sheriff shall be discharged from all responsibility respecting such debtor, unless such debtor be again committed to the close custody of such sheriff in due form of law; and the said bond shall, upon any breach of the above mentioned condition, be assignable in like manner and the like remedies be had thereon as is provided in respect of other breaches in the three hundred and fifth section of the said Common Law Procedure Act contained.

XXVI. Such allowance shall be made upon motion by the debtor, and four clear days' notice thereof shall be given in writing to the plaintiff or his attorney, who may object thereon to the sufficiency of the sureties; and if the Judge shall refuse his allowance of such bond, then the debtor may cause another bond made to the sheriff in the same terms and under the Same conditions, to be executed without any further application to the sheriff, and may move in like manner and upon the like notice for the allowance thereof; and such bond, if allowed and endorsed as aforesaid, shall be substituted for and take place of and have the like effect in all respects, and the like remedies shall be had thereon, as the bond so first given to the sheriff as aforesaid would have had upon the allowance thereof, and such first given bond shall thereupon become void.

And with respect to interpleader; Be it enacted as follows:

XXVII. In all cases of attachments against absconding debtors, the sheriff shall have the like right of interpleading as is provided in respect of writs of execution, and all the provisions of law in that behalf shall in such cases apply.

And with respect to the service of writs; Be it enacted as follows:

XXVIII. No fees shall be taxed or allowed for the service of any writ whereby an action at law is commenced in either of the Superior Courts of Common Law or in any County Court, unless a return of the sheriff (or coroner, in actions against the sheriff) of the County in which such service is made, shall be endorsed thereon, unless when the sheriff shall have omitted to serve the said writ within fifteen days after it has been delivered to him for service.

XXIX. From and after the twenty-first day of August next, the nineteenth section of the Act of the Parliament of this Province, passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to make further provision for the administration of Justice, by the establishment of an additional, Superior Court of Common Law, and also a Court of Error and Appeal, in Upper Canada, and for other purposes*, shall be and the same is hereby repealed, and the terms of sitting of the Court of Queen's Bench and Common Pleas in Upper Canada, shall be as follows: Trinity Term shall begin on the Monday next after the twenty-first day of August, and shall end on the Saturday of the ensuing week; Michaelmas Term shall begin on the third Monday in November, and shall end on the Saturday of the ensuing week; Hilary Term shall begin on the first Monday in February, and shall end on the Saturday of the ensuing

week; and Easter Term shall begin on the third Monday in May and shall end on the Saturday of the ensuing week.

XXX. The one hundred and fifty-second and the one hundred and fifty-third sections of the Common Law Procedure Act, 1856, are hereby repealed from and after the last day of Trinity Term next; and thenceforth Courts of Assize and *Nisi Prius*, of Oyer and Terminer and of General Gaol Delivery shall be held in every County or Union of Counties in Upper Canada, (except in that County or Union of Counties within which the City of Toronto is situate,) in each and every year in the vacations between Hilary and Easter Terms and between Trinity and Michaelmas Terms, with or without commissions as to the Governor of this Province shall seem best, and on such days as the Chief Justices and Judges of the said Superior Courts of Common Law in Upper Canada shall respectively name: and if commissions are issued, then such Courts shall be presided over by any one of the persons to be named in such commissions (among whom shall always be the Chief Justices and Judges aforesaid, and any one of whom being present shall always preside in the said Courts,) and to whom may be added such of the Judges of the County Courts or of Her Majesty's Counsel Learned in the Law of the Upper Canada Bar as shall be named in any one or more of such commissions, and who shall preside in the absence of the Chief Justices and Judges of the Superior Courts; But if no such commissions are issued, then the said Courts shall be presided over by one of the Chief Justices or of the Judges of the said Superior Courts, or in their absence then by some one Judge of a County Court, or by some one of Her Majesty's Counsel Learned in the Law of the Upper Canada Bar, upon such Judge or Counsel being requested by any one of the said Chief Justices or Judges of the Superior Courts to attend for that purpose; and each and every of the said Chief Justices and Judges and of such Judges of the County Court and of such of Her Majesty's Counsel Learned in the Law, presiding at any Court of Assize and *Nisi Prius*, or of Oyer and Terminer and General Gaol Delivery shall and may possess, exercise and enjoy all and every the like powers and authorities as have been usually set forth and granted in commissions issued for holding all or any of the said Courts; and it shall not be necessary to name any associate Justices in any commissions of Oyer and Terminer and General Gaol Delivery that may be issued, or that any associate Justices should be nominated or should attend or be present at any Court of Oyer and Terminer and General Gaol Delivery to be holden after the day in this section mentioned: and all such Courts shall in like manner be held in the County or Union of Counties within which the City of Toronto is situate, three times in each year, to commence on the Thursday next after the holding the Municipal Elections in January, on the second Monday in April, and on the second Monday in October in each year: Provided that nothing herein contained shall restrict the Governor of this Province from issuing special commissions for the trial of any offenders when he shall deem it expedient to issue any such commissions.

XXXI. The provisions of the Common Law Procedure Act, 1856, and all rules of Court made under or by virtue thereof shall, so far as the same are or may be made applicable, extend and apply to all proceedings to be had or taken under this Act, and the powers conferred on the Judges by that Act shall be and are hereby extended to the making from time to time all rules, and new forms of proceedings necessary for giving effect to this Act.

XXXII. The fourth, fifth, sixth, seventh, eighth, ninth and thirty-first sections of this Act shall extend and apply to and be in force in the several County Courts in Upper Canada, and actions and proceedings

therein respectively, as shall also the rules and forms already made or to be made, as mentioned in the said twentieth section, subject to the modifications expressed in the second section of the County Courts Procedure Act, 1856.

XXXIII. In citing this Act in any instrument, document or proceeding, it shall be sufficient to use the expression, "The Common Law Procedure Act, 1857."

Schedule referred to in the foregoing Act.

No. 1.

Victoria, by the Grace of God, &c.

To C. D. of _____, in the County of _____

(Process Seal.)

We warn you that unless within sixteen days after the service of this Writ on you, inclusive of the day of such service, you obtain leave from one of the Judges of our Court of Queen's Bench, or of Common Pleas (or as the case may be), at _____ to appear, and do within that time appear in our Court of _____ in an action at the suit of A. B., the said A. B. may proceed to judgment and execution.

Witness, &c.

Memorandum to be subscribed on the Writ.

N. B. — This Writ is to be served within six calendar months from the date hereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the Writ before service thereof.

Indorsement to be made on the Writ before service thereof.

This Writ was issued by E. F., of _____, Attorney for the Plaintiff, or this Writ was issued in person by A. B., who resides at (mention the City, Town incorporated, or other Village or Township within which such Plaintiff resides).

Indorsement.

The Plaintiff claims £_____, principal and interest, (or £_____ balance of principal and interest) due to him as the payee (or "endorsee," &c.,) of a Bill of Exchange, (or "Promissory Note,") of which the following is a copy (here copy Bill of Exchange or Promissory Note, and all endorsements upon it), and also _____ shillings for noting (or "protesting," as the case may be,) and £_____ for damages (if damages be recoverable on the Bill under 12 Vict. chap.76,) and £ for costs, and if the amount thereof be paid to the Plaintiff, or his Attorney, within eight days from the service hereof, further proceedings will be stayed.

Notice.

Take notice, that if the Defendant do not obtain leave from one of the Judges of the Queen's Bench or Common Pleas, within sixteen days after having been served with this writ, inclusive of the day of such service, to appear thereto, and do within such time, cause an appearance to be entered for him in the Court out of which this Writ issues, the Plaintiff will be at liberty at any time after the expiration of such sixteen days to sign final judgment, for any sum not exceeding the sums above claimed, and the sum of £_____ for costs, and issue execution for the same.

Leave to appear may be obtained, on an application at the Judge's Chambers, Osgoode Hall, Toronto, supported by affidavit, shewing that there is a defence to the action on the merits, or that it is reasonable that the Defendant should be allowed to appear in the action.

Indorsement to be made on the Writ after service thereof.

This Writ was served by X. Y. on C. D., (the Defendant or one of the Defendants,) on _____ day, the _____ day of _____, 18_____.

(Signed,) X. Y.

No. 2.

In the (Q. B., or C. P.)

On the _____ day of _____, in the year of our Lord, 18_____.

Upper Canada, } A. B., in his own person (or by _____ his Attorney) sued out a Writ against C.
to wit: } D., indorsed as follows:

(Here copy Indorsement of Plaintiff's claim.)

And the said C. D., has not appeared, therefore it is considered that the said A. B. recover against the said C. D., £_____ together with £_____ for costs of suit.