

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbyshire & George Desbarats, 1849.

12 Victoria – Chapter 66

An Act, to amend and extend the provisions of the Act of this Province, intituled, *An Act to amend, consolidate and reduce into one Act the several Laws now in force, establishing or regulating the practice of the Distinct Courts in the several Districts of that part of this Province formerly Upper-Canada*. 30th May, 1849.

Whereas it is advisable to make further provision regulating the practice of the several District Courts in Upper-Canada: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the seventh, eighth and twenty-fifth clauses of the Act of the Parliament of this Province, passed in the eighth year of Her Majesty's Reign, and intituled, *An Act to amend, consolidate and reduce into one Act the severed Laws now in force, establishing or regulating the practice of the District Courts in the severed Districts of that part of this Province formerly Upper-Canada*, be, and the same are hereby repealed: Provided always, that the repeal of the said seventh, eighth and twenty-fifth clauses shall not in any wise affect or invalidate any act, proceeding, matter or thing whatever that may have heretofore been had, issued, made, done or entered into, but the same shall be and remain as valid and effectual to all intents and purposes as if this Act had not been passed.

II. And be it enacted, That in all cases where it is not intended to hold the Defendant to special bail, the original Process for compelling the appearance of the Defendant in any suit to be brought in the said Courts respectively, shall be a Writ of Summons, in the form of the Schedule to this Act annexed marked A, which shall bear *teste* on the day on which it issues, and be returnable immediately after the service thereof, and which shall be considered to all intents and purposes the commencement of the action, a copy of which shall be personally served upon the Defendant or on each of the Defendants, if more than one, or in case the action be against a Corporation, upon the proper Officer thereof, by some literate person, which Writ shall be served within three months from the date thereof: And that in case the Defendant shall not appear within eight days after such service, it shall be lawful for the Plaintiff, upon affidavit being made and filed of the service of such Process, to enter an appearance for such Defendant, and thereupon to file his declaration, and to proceed thereupon according to the practice of the said Court of Queen's Bench in actions notailable; Provided always, that the costs to be allowed and charged for such Writs shall be the same as for Writs of *Capias ad respondendum*.

III. And be it enacted, That the original Process in anyailable action to be brought in the said Courts respectively after this Act shall come into effect, shall be a Writ of *Capias ad respondendum*, which shall bear *teste* on the day on which it issues.

IV. And be it enacted, That it shall be lawful for the Plaintiff, his Servant, or Agent in any action now pending or hereafter to be brought in any of the said District Courts, at any time after action brought and before final judgment, upon making such an affidavit as is required by Law in Upper-Canada in similar cases in the said Court of Queen's Bench, to sue out an Original *alias* or *pluries*, *Capias ad respondendum*, as the case may require in the said suit, and cause the Defendant to be thereupon arrested and holden to bail, which bail, if the Writ shall have been sued out after appearance being filed, shall be bail to the action, and shall be perfected before the Defendant shall be discharged from the custody of the Sheriff, and the suit shall in all such cases proceed after bail put in and perfected as the same would have proceeded if no suchailable Writ had been taken out: Provided always, that the second, third, fourth and fifth sections of this Act, shall not come into force until the tenth day of June next after the passing of this Act: And provided also, that the Process in any action commenced before the day last aforesaid by non-ailable *Capias ad respondendum*, shall and may be continued by *alias* or *pluries* Summonses, in the same way as if the suit had been commenced by Summons under the provisions of this Act.

V. And whereas doubts have arisen respecting the jurisdiction of the said Courts in actions against Attorneys and Members of the Legislative Assembly and Legislative Council of this Province, and the mode of proceeding in such actions therein: Be it therefore enacted, That from and after the passing of this Act, it shall be lawful for any person or party having a cause of action within the jurisdiction of the said District Courts against an Attorney or Attorneys of the said Court of Queen's Bench, or any Member of the Legislative Assembly or of the Legislative Council of this Province, to commence and prosecute to Judgment and Execution any action for the recovery thereof in the said District Courts without filing a bill, and in the same manner and by the like process as against any other Defendant, any custom or privilege to the contrary notwithstanding; and if in any such action the Defendant shall plead any privilege in abatement thereto, the Plaintiff shall and may be at liberty to treat such plea as a nullity and to sign judgment as for a want of a plea; Provided that nothing in this Act contained shall subject any person to arrest who by reason of any privilege, usage or otherwise, may now by law be exempt therefrom.

VI. And be it enacted, That the several Judges of the said District Courts shall have and may exercise the like power in vacation to issue summonses and make orders in all matters of practice arising in suits in the same Courts respectively, as are exercised in vacation by the Judges of the Court of Queen's Bench in Upper-Canada in matters of practice arising in the said last mentioned Court.

VII. And be it declared and enacted, That it was and is the intention and true meaning of the fiftieth section of the Act aforesaid, that all recognizances of bail taken in any of the said District Courts might and may be entered of record in the Court in which the suit shall have been or shall be instituted, and that action of debt or *scire facias* should and shall lie thereupon in the said District Courts as in similar cases in the Court of Queen's Bench, whatever may have been or shall be the amount recovered or for which the bail therein mentioned may have been or shall be liable.

VIII. And whereas doubts have arisen whether the stating and claiming of different sums in the several Counts of a declaration upon causes of action within the jurisdiction of the District Courts, amounting in the aggregate to a sum beyond the Jurisdiction thereof, is not demurrable, notwithstanding that the damages at the conclusion are laid at a sum within the jurisdiction, and it is desirable that such a course of proceeding should be declared legal: Be it therefore enacted, That although the sums mentioned or claimed in the different Counts of any declaration heretofore or hereafter to be filed in the said Courts shall or may in the aggregate exceed the jurisdiction of the said District Courts, yet that no such declaration or any subsequent pleading, on that ground, shall be subject to any objection either by demurrer or otherwise: Provided that in any such declaration, the damages laid at the conclusion thereof shall not exceed the jurisdiction of the said Courts: Provided also, and it is hereby further enacted, that no declaration or pleading after declaration shall be filed or delivered in any action in the said District Courts, between the first day of July and the twenty-first day of August, in each and every year: and provided further, that the party shall in every defended case be entitled to the same number of days, after the said twenty-first day of August, to plead or answer any pleading filed or delivered before the first day of July, to which he would have been entitled, after the day last aforesaid if this Act had not been passed.

IX. And be it enacted, That from and after the passing of this Act, it shall not be necessary in any case, in the said District Courts, to enter any other venire than the following upon the record, that is to say: Therefore the Sheriff, (or Coroner, as the case may be) is (or are) commanded that he (or they) cause to come before _____ Esquire, Judge of our said Court, at the next sitting thereof for trials and assessments, at the Court House, in _____ in the said District, on Tuesday, the _____ day of _____ in the year of Our Lord one thousand eight hundred and _____ a Jury to try the said issue, (or assess the damages, as the case may be). Provided, that when there are issues in law and also in fact, or upon any assessment of damages, the above venire may be altered and adapted to the particular case.

X. And be it enacted, That in addition to the powers conferred upon the said District Courts by the forty-third section of the said hereinbefore mentioned Act, it shall be lawful for the said Courts to entertain applications and at their discretion to make orders for Judgment *non obstante veredicto*, according to the course, and practice of the said Court of Queen's Bench, and that an appeal under the provisions of the fifty-seventh section of the aforesaid Act may be had to the said Court of Queen's Bench from the said District Courts upon any decision or motion for Judgment *non obstante veredicto*, and also for the reception of improper evidence or the improper rejection of evidence, upon which, shall be allowed the same costs and charges as are allowed for any other proceeding under the said fifty-seventh section.

XI. And be it enacted, That in case any party shall be desirous of appealing against the decision of the Judge upon any matter provided for in the fifty-seventh section of the said Act, it shall be the duty of the Judge, at the request of the party intending to appeal, his Attorney or Counsel, to stay the proceedings for any time not exceeding four days, so as to afford the party appealing, time to, execute and perfect the Bond, required by the said section.

XII. And be it enacted, That from and after the passing of this Act, each and every Clerk of any such District Court, and the Deputy-Clerk of the Crown in each District, shall hold his office in the Court House or in some other convenient place within the District Town of his respective District, and shall keep such office open for the transaction of business pertaining to such office on every day (Sundays and the legal holy-days excepted) from the hour of ten in the forenoon to the hour of three in the afternoon, and in term time from the hour of nine of the clock in the morning to the hour of four of the clock in the afternoon; and' that no British subject, whatever his profession, calling or employment, shall in future be deemed disqualified to hold the office of Clerk of the District Court or Deputy-Clerk of the Crown in Upper-Canada; any law or enactment heretofore made to the contrary thereof notwithstanding.

Schedule A.
Writ of Summons.

Victoria, &c.

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

We command you (or as before or often we have commanded you) that within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in Our District Court of the District of _____, at _____, in an action on promises (or as the case may be) at the suit of A. B. And take notice that in default of your so doing, the said A. B. may cause an appearance to be entered for you, and proceed thereon to judgment and execution.

Witness (name of Judge) at (place where Court sits) this _____ day of _____
Clerk's name.

Memorandum to be subscribed on the Writ.

N. B.—This is to be served within three calendar months from the date thereof, including the day of such date, and not afterwards.