

Laws of His Majesty's Province of United Canada, passed in the year 1851. York: Stewart Derbyshire and George Desbarts, 1851.

14 Victoria – Chapter 10

An Act to provide a remedy against Absent Defendants. 2d August, 1851.

Whereas there are by law no means provided for taking proceedings against parties who are absent from Upper Canada, unless by process under the Absconding Debtors' Act; and whereas it is desirable that the law should be amended in that respect: 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 proceedings may be commenced in any action or suit in any of the Superior Courts of Law and Equity in Upper Canada, against any person who having resided in Upper Canada is absent therefrom, having contracted debts or liabilities while in Upper Canada, or having real or personal property therein, in the same manner and by the same process as if such person was a resident inhabitant therein.

II. And be it enacted, That the first process or proceeding in any such action or suit shall be served on such absent person, either personally in whatever country out of Upper Canada such person may be residing or living, or upon any agent or person having charge of any property real or personal of such person in this Province, and such service when out of Upper Canada, may be proved by affidavit or declaration to be taken before any person having competent authority to take the same in the country where the same shall be taken, such authority being certified by the Mayor or Chief Magistrate, or a Notary Public in the place where the same shall be taken, and such service shall be deemed good service, whether it shall be personal or on such agent or person in charge as aforesaid, only after the same shall have been allowed by the Court from whence such process or proceeding shall have issued, or a Judge in Chambers: Provided always, that such service may nevertheless be proved by affidavit or declaration to be taken in Upper Canada before a Commissioner appointed to take affidavits in any of the Superior Courts of Upper Canada.

III. And be it enacted, That all the proceedings in any such action or suit at law shall be taken in the office of the Court wherein the same shall be commenced in the County where such process shall be issued, and appearance shall be entered at such office as follows: where the process has been served upon any agent, or person in charge as aforesaid in this Province, or on the defendant personally in Lower Canada, within one month after such service; where such service has been made personally in any part of North America out of this Province, within three months after such service; and where the service has been made in any country out of North America, within twelve months after such service; and on the copy of the process or proceeding served shall be endorsed a notice to appear in the form in the schedule hereto, and if such person shall not appear, then after the expiration of the time for such appearance and the allowance of such service as aforesaid, the plaintiff in such action or suit may enter an appearance for such person, and after

any appearance entered may proceed to decree, judgment and execution thereon, in the same manner and times as in ordinary cases of personal service of process; and service of all papers and proceedings after process shall be sufficient by affixing a copy thereof in such office from which such process has issued.

IV. And be it enacted, That in any such action or suit, the Court in which such action or suit is brought, or any Judge in Chambers, may grant any such time to the defendant for appearing, pleading, or taking any other step in the defence of such action or suit, as to such Court or Judge shall seem meet.

V. And be it enacted, That whenever any judgment or decree shall be rendered in favour of any plaintiff or party on service of process on any agent or person in charge of property as aforesaid, no such decree or judgment shall be enforced by any process or proceeding, until the plaintiff or party obtaining such decree or judgment, or his attorney or agent, shall file an affidavit in the cause, that he verily believes that such decree or judgment is just, and also shall give a bond with two sufficient sureties, and to an amount to the satisfaction of the Master, Clerk or Registrar of such Court, conditioned for a re-hearing of the action or suit in which such decree or judgment has been rendered, provided such re-hearing shall be ordered by the Court in which such action or suit was brought, at any time within two years from the rendering of such decree or judgment.

VI. And be it enacted, That a re-hearing shall be allowed to any defendant who has not been personally served with process by order of the Court in which the action or suit was brought, upon such terms as to giving security to pay or answer the decree or judgment that may be rendered on a re-hearing or otherwise, as such Court shall direct: Provided always, that such re-hearing is applied for by such defendant within two years from the time of decree or judgment rendered.

Schedule.

Notice to Process.

To C. D., the Defendant.

Take notice, that your appearance to this Writ must be entered in Her Majesty's Court of Queen's Bench, (Common Pleas or Chancery, as the case may be,) at the office of such Court at Toronto, or at the office of the Deputy Clerk of the Crown of the County or United Counties of—(as the case may be) within (the time mentioned in the Act, according to the country in which the service has been effected,) from the service hereof, and in default of such service, A. B., the within plaintiff, will enter an appearance for you, and proceed thereon. (And also, where the service is on an agent or party in charge of property,) and also take notice, that you, E. F., (agent's name) are served with this process as the Agent or person in charge, in this Province, of some property, real or personal, of the within named Defendant, C D., and you are hereby required to enter an appearance for him as aforesaid.

G. H.,
Plaintiff's Attorney.