

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

14 & 15 Victoria – Chapter 114

An Act to alter and settle the mode of proceeding in the action of Ejectment. 30th August, 1851.

Whereas it is expedient to abolish all fictions of law in actions of Ejectment, and to place such actions, as nearly as may be, on the same footing as other actions between parties; and it is also expedient to prevent the multiplication of suits for the purpose of recovering costs or mesne profits where parties recover the possession of land in such actions, and to enable such parties to recover such mesne profits and costs, in any suit brought for the recovery of lands: 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 all actions of Ejectment shall be commenced by Writ of Summons, in the same manner as other actions, in which the names of all the persons claiming the property shall appear as Plaintiffs, and the persons in actual possession, or in case of a vacant possession, the persons last in actual possession, shall appear as Defendants, and such Writ may be in the following form, and shall bear teste of the day on which it is issued, and be in force for four calendar months thereafter:

County of _____ }
to wit: _____ } Victoria, by Grace of God, of the United Kingdom of Great Britain
and Ireland, Queen, Defender of Faith.

[Seal] To A. B. of _____

We command you that you do appear before us in our Court of Queen's Bench (or Common Pleas, as the case may be) within sixteen days after the service hereof, to answer to C. D., of _____, in the County of _____, Yeoman, in an action of Ejectment, in which action the said C. D. claims to recover certain premises, of which it is said you are in possession, which premises consist of (describe the premises particularly), and you are hereby required to enter your appearance in the office of the (Clerk of the Crown, or Deputy Clerk of the Crown, as the case may be), in and for the County of _____, at _____, in the said County, at the suit of the said C. D., for your defence to the whole of the said property, or such part thereof as you may be advised, or in default of such appearance you will be turned out of possession of the said property. Herein fail not.

Witness, &c. (to be tested in the usual manner.)

II. And be it enacted, That the said Writ of Summons shall be served in the same manner as a declaration in Ejectment is at present served, and in case of a vacant possession, by posting a copy

thereof upon the door of the dwelling house (if any) or on some other conspicuous part of the property, and the persons named as Defendants in the Writ, or any of them, or any person having an interest in the land shall be allowed to appear within the time appointed, and also any other person shall be allowed to appear on filing an Affidavit in the office from which the Writ issued, that at the time of action brought he was and still is in possession of the property, either by himself or his tenants: Provided always, that the Court or a Judge shall, on cause shewn, have power to strike out or confine defences set up by persons not in possession by themselves or their tenants.

III. And be it enacted, That any person appearing shall be at liberty to limit his defence to a part only of the property mentioned in the Writ, describing that part with reasonable certainty, in a notice entitled in the Court and cause, and signed by the party appearing or his Attorney, to be filed and served within four days after appearance, upon the Attorney whose name is endorsed on the Writ, if any, and if none, then upon the Plaintiff: Provided always, that if the description of the premises in any Writ or notice be not sufficiently certain, the Court or a Judge, or the Judge of the County Court of the County in which the action is brought, may order better particulars of the land claimed or defended to be delivered.

IV. And be it enacted, That an appearance without a notice, confining the defence to part, shall be considered as a defence for the whole property claimed.

V. And be it enacted, That if no appearance shall be entered within the time appointed, or if an appearance be entered, but the defence be limited to part only, the Plaintiffs shall be at liberty to sign a judgment that the person whose title is asserted in the Writ shall recover possession of the property, or of the part thereof to which the defence does not apply; which judgment may be in the form in the Schedule A, to this Act.

VI. And be it enacted, That in case an appearance shall be entered, the case shall be at once considered at issue, and the record for trial shall be made up, setting forth the Writ, stating the appearance with its date, and setting forth the notice limiting the defence, if any, of each of the persons appearing, so that it may appear for what part defence is made, and also setting forth a Plea in the form of the Schedule B, to this Act, which shall be the only Plea allowed, and the remainder of the record being made up as in other actions.

VII. And be it enacted, That a special case in any such action may be stated in the same manner as at present, and if no special case be agreed to, the parties may proceed to trial in the same manner as in other actions, and the question at the trial shall be, except in the cases hereinafter mentioned, whether the statement in the Writ of the title of the claimants is true or false, and if true, then which of the claimants is entitled; but the Jury may find a special verdict as at present.

VIII. And be it enacted, That upon a finding for the claimants, judgment may be signed, and execution issue for the recovery of possession and costs, as at present in the action of Ejectment, and the said judgment having the same and no other effect than at present.

IX. And be it enacted, That upon a finding for the Defendants, or any of them, a judgment may be signed and execution issue against the claimants named in the Writ.

X. And be it enacted, That in any such action brought by some or one of several persons entitled as joint tenants, tenants in common or coparceners, any joint tenant, tenant in common or coparcener in possession may, at the time of appearance, or within four days after, give notice, in the same form as in the notice of a limited defence, that he defends as such, and admits the right of the claimant to an undivided share of the property, but denies any actual ouster of him from the property, and within the same time file an Affidavit stating the same facts, and such notice shall be entered on the record in the same manner as the notice limiting the defence, and upon the trial, the additional question of whether an actual ouster has taken place shall be tried, as at present, in an action of Ejectment, and the effect of a judgment therein shall be the same as at present.

XI. And be it enacted, That the Judges of the Superior Courts of Common Law shall have power from time to time to make such alterations in the forms of Writs and proceedings, and also such Rules as they may consider necessary to carry this Act into better effect.

XII. And be it enacted, That in all cases wherein a Jury shall be empannelled to try any suit brought to recover possession of any property, the jury shall also be sworn to assess any damages to which the Plaintiff or Plaintiffs may be entitled for the use, occupation or enjoyment of the premises in dispute by the party or parties defending the suit, and any damage, waste or spoil occasioned to such premises by such party or parties; and the jury shall assess such damages as may appear just according to the evidence; Provided always nevertheless, that in all cases where substantial damages are demanded, the party or parties seeking to recover the same shall, with the original Summons, serve the Defendant or Defendants, and the person in occupation (if any) with a notice to the following effect, and that none but nominal damages shall be assessed unless such notice shall be given.

“To A. B., the occupant of lot _____, in the _____ Concession of the Township of _____, in the County of _____:

“You are hereby notified that the Plaintiff or Plaintiffs named in the Summons served herewith, will proceed against you, the said A. B., on the trial thereof, for the use, occupation, rents and profits of the premises for which this action is brought, during your possession and occupation of the said premises, and for all damages, waste and injury accruing to the said premises, or any part thereof, while in your possession and occupation.

“Dated at _____, this _____ day of _____.”

XIII. And be it enacted, That in all cases where no appearance is entered according to the provisions of this Act, and the Plaintiff has in consequence thereof signed judgment and entered up the same and sued out his Writ of Possession thereon, it shall and may be lawful for the said Plaintiff, after having given the notice in the twelfth clause of this Act mentioned, to suggest upon

the Roll or Record of the judgment that he is entitled to damages for all or any of the causes set forth in the said twelfth clause of this Act mentioned, and thereupon, after giving the notice which the law now requires in all cases of assessment of damages of his intention to assess such damages, may be entitled at any Court of Assize and Nisi Prius thereafter, upon filing a certified copy of the said record and suggestion thereon in the said Court, to have a Jury empanelled to assess his said damages, and in case they find a verdict for the Plaintiff for any sum not less than Two Pounds, he shall upon filing the said record and verdict in the proper office, have the right to sue out a Writ of Execution, and to levy the same with the costs from the time of entering the said suggestion, including the entry thereof.

XIV. And be it enacted, That it shall and may be lawful for any person or persons who shall be served with a Summons in Ejectment and the notices required by this Act to be served therewith, within twelve days after the service of such Summons and Notice or Notices, to notify the Plaintiff or Plaintiffs that such person or persons disclaim any interest in the premises, and is or are willing to give up possession thereof; and if such person or persons shall, after such notice, give up possession and pay or tender to the Plaintiff or Plaintiffs a sufficient amount to cover all claims for the rents, issues, profits or occupation of the premises, and all reasonable costs incurred and damages occasioned to such premises while in the occupation of such person or persons, the proceedings in such suit may, on the application of such person or persons, be stayed by the Court in which the same shall be pending, or a Judge in Chambers; Provided nevertheless, that if a sum insufficient shall be tendered, the Plaintiff or Plaintiffs shall be entitled to proceed for any larger amount to which he or they may consider himself or themselves entitled, but if on the trial a verdict shall be rendered against the Plaintiff or Plaintiffs, or a verdict shall be rendered in his or their favor for a sum not exceeding the amount tendered, the Plaintiff or Plaintiffs shall pay all costs subsequent to such tender, and shall only be entitled to levy the amount of the verdict, after deducting therefrom the Defendant's costs subsequent, together with costs to the time of such tender.

XV. And be it enacted, That in all cases when the party in possession or in the occupation of lands shall, after service of a Summons under this Act, abandon or give up possession of the premises mentioned in such Summons, and forthwith notify the Plaintiff or his Attorney thereof, and that the Plaintiff may enter thereon, the Plaintiff shall cause statement of the costs incurred to be rendered to such party, and on payment of such costs the suit shall be discontinued, unless the Plaintiff shall proceed in the same for the purpose of recovering damages for the rents, issues, profits or occupation of the premises, or for injury, waste or spoil done or committed thereon by such party or parties, or others under him or them during the possession of the premises by such party or parties; and if the Plaintiff or Plaintiffs shall proceed in such action, and a verdict shall be given for the Defendant, or shall not be given for the Plaintiff or Plaintiffs for a greater amount than Five Pounds, the Plaintiff or Plaintiffs shall pay all costs in the suit to the Defendant, who shall be at liberty to levy any amount of such costs exceeding the said sum for which such verdict shall be given.

XVI. And be it enacted, That the Act passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, and intituled, *An Act to alter and amend the practice and proceedings in actions of Ejectment in Upper Canada*, be, and the same is hereby repealed.

XVII. And be it enacted, That the provisions of this Act shall not in any wise affect any proceeding taken in any action of Ejectment before this Act becomes a Law; and that this Act shall come in force from and after the first day of January next, and not before, and shall not apply to any suit or action commenced before that day.

Schedule A.

Form of Judgment Where No Appearance to Whole of Property Claimed.

The _____ day of _____ (day when judgment entered). (After setting forth the Writ, proceed.) And the said A. B. did not appear as directed by the said Writ, but made default. Therefore, it is considered that the said C. D. do recover his possession of the said property in the said Writ mentioned. (And in cases where the appearance is only for part of the property), [except (setting out the part for which no appearance has been entered)]. And also the sum of £ _____ for his costs and charges expended about his suit, and a Writ to recover such possession and costs is granted accordingly.

Schedule B.

Form of Plea.

And the Defendant says that the Plaintiff is not entitled to the possession of the said property, for which the Defendant has appeared.