

Laws of Her Majesty's Province of United Canada, passed in the year 1851. Quebec: Stewart Derbyshire and George Desbarts, 1852.

16 Victoria – Chapter 119

An Act to confer Equity Jurisdiction upon the several County Courts in Upper Canada, and for other purposes therein mentioned. Assented to 23rd May, 1853.

Whereas it is expedient to extend the jurisdiction of the several County Courts in Upper Canada to certain matters cognizable in the Court of Chancery of 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 jurisdiction of the said County Courts respectively shall extend to the several matters hereinafter enumerated, and that the said County Courts respectively shall possess the like power and authority in respect of the matters hereinafter enumerated as by law is now possessed by the Court of Chancery of Upper Canada.

II. And be it enacted, That it shall be lawful to and for any person seeking equitable relief, to enter (personally or by Attorney) a claim against any person from whom such relief is sought, with the Clerk of the County Court of the County within which such last mentioned person resides, in any of the following cases, that is to say:

1. A person entitled to an account of the dealings and trans-actions of a partnership (the joint stock or capital not having been over two hundred pounds,) dissolved or expired, seeking such account.
2. A creditor upon the estate of any deceased person, such creditor seeking payment of his debt (not exceeding fifty pounds) out of the deceased's assets (not exceeding two hundred pounds.
3. A legatee under the will of any deceased person, such legatee seeking payment or delivery of his legacy (not exceeding fifty pounds in amount or value) out of such deceased person's personal assets (not exceeding two hundred pounds.)
4. A residuary legatee, or one of the residuary legatees of any such deceased person seeking an account of the residue and payment or appropriation of his share therein (the estate not exceeding two hundred pounds.)
5. An executor or administrator of any such deceased person seeking to have the personal estate (not exceeding two hundred pounds) of such deceased person, administered under the direction of the Judge of the County Court for the County within which such executor or administrator resides.

6. A legal or equitable mortgagee whose mortgage is created by some instrument in writing, or judgment creditor having duly registered his judgment, or person entitled to a lien for security for a debt, seeking foreclosure or sale or otherwise to enforce his security, where the sum claimed as due does not exceed fifty pounds.

7. A person entitled to redeem any legal or equitable mortgage or any charge or lien seeking to redeem the same, where the sum actually remaining due does not exceed fifty pounds.

8. Any person seeking equitable relief for, upon or by reason of any act, matter or thing whatsoever, where the subject matter involved does not exceed the sum of fifty pounds.

9. Injunctions to restrain the committing of waste or trespass to property by unlawfully cutting, destroying or removing trees or timber, may be granted by the Judge of any County Court, which injunctions shall only remain in force for a period of one month unless sooner dissolved on an application to the Court of Chancery; Provided always, that the power to grant such injunction shall not authorize the prosecuting of the suit in the County Court, but the injunction may be extended and the suit further prosecuted to judgment or otherwise in the Superior Court, in the like manner as if the same had originated in that Court.

III. And be it enacted, That such claim in the several cases enumerated above, may be similar in principle to the form set forth in Schedule A to this Act.

IV. And be it enacted, That upon entering such claim with the Clerk of a County Court, the same shall be numbered and filed by such Clerk according to the order in which it shall be entered, and thereupon a Summons, briefly stating the nature of the claim and bearing the number of the claim on the margin thereof, shall be issued under the Seal of the Court, requiring the person against whom such claim is made, on some day in the next ensuing term of such County Court, or (upon Special Order of the Judge of the County Court,) on a day to be therein named, to appear before the Judge of the said Court, to show cause, if he can, why such relief as is claimed by the Plaintiff should not be had, or why such Order as shall be just with reference to the claim shall not be made.

V. And be it enacted, That such Writ of Summons may be in the form or to the effect in that behalf set forth in Schedule B to this Act, with such variations as circumstances may require, and shall be sealed with the Seal of the Court from which it issues, and that, when necessary, *alias* and *pluries* Writs may be issued.

VI. And be it enacted, That a copy of the said Writ of Summons, to which shall be attached a certified copy of the Plaintiff's claim so entered as aforesaid, shall be served on the Defendant ten days at least before the day appointed in the said Writ of Summons for showing cause.

VII. And be it enacted, That at the time appointed for showing cause as aforesaid, the Defendant shall appear personally or by Attorney, and show cause, if he can, (and if necessary by Affidavit)

why such relief as is claimed by the Plaintiff should not be had against him; and each party may, on giving five clear days' notice in writing prior to any hearing, of his intention so to do, examine the other party upon the matters relating to such claim; and the Judge, on hearing the claim, and what the Plaintiff alleges in support thereof, and such other evidence, whether oral or written or by Affidavit, as he may produce in that behalf, and what may be alleged on the part of the Defendant, and such evidence whether oral or written or by affidavit as he may produce in that behalf, or on production of an affidavit, that the Writ of Summons and copy of claim aforesaid have been duly and personally served on such Defendant, may, if he shall think fit, make an Order granting or refusing the relief claimed, or directing any accounts or inquiries to be taken or made, (such accounts or enquiries to be taken or made before the Judge if he shall deem such course proper or expedient, or before the Clerk of such Court, at days or times to be appointed by the Judge for that purpose,) or may direct such other proceedings to be had for the purpose of ascertaining the plaintiff's title to the relief claimed, or make such other Order as according to the nature and circumstances of the case shall seem to be just and proper; and further, the Judge may direct such persons or classes of persons, as he may think necessary or fit, to be summoned or ordered to appear as parties to such claim, or on any proceedings with reference to any account or inquiries directed to be taken or made, or otherwise; and all oral evidence given by any person before such Judge relating to such claim, shall be upon the oath of the person giving the same, to be administered by or before said Judge; and further, in default of the appearance of either of the parties, the said Judge may make such Order as to the payment of costs by the party in default, as to him may seem meet.

VIII. And be it enacted, That the said Judge of the County Court shall be the sole Judge in all actions brought in the said County Courts respectively under the jurisdiction given by this Act, and shall determine in a summary manner all questions of law or equity as well as of fact arising therein, unless the said Judge shall think it proper to have any fact or facts controverted in the action tried by a jury, or either party shall apply to have such facts tried by a Jury; and upon order made allowing a trial by Jury, such trial shall take place at the then next ensuing Sittings of such County Court, and be conducted in the same manner as other trials by Jury in the said Court are conducted, and the Judge may, unless a new trial be moved for within ten days after verdict rendered, proceed to make such Order and Decree on the verdict of such Jury as according to the nature and circumstances of the case shall seem just and proper.

IX. And be it enacted, That the Rules of decision in the said County Courts respectively, in respect to the matters aforesaid, shall be the same as govern the said Court of Chancery, (when not otherwise provided for by or under the authority of this Act) so far as the same may be held to be applicable to a Court of Summary Jurisdiction. And the said County Courts respectively shall possess full power and authority to enforce and compel obedience to their Orders, Judgments and Decrees, in respect to all and singular the matters hereinbefore and hereinafter set forth and contained; and that all Sheriffs, Gaolers, Coroners, Constables and other Peace Officers, shall be aiding, assisting and obeying the said County Courts respectively, in the exercise of their jurisdiction, when required by any Comity Court so to do.

X. And be it enacted, That the Judge of the said County Court may at any time, in furtherance of justice and on such terms as he may think proper, amend such claim so filed as aforesaid, and any and every proceeding relating thereto, by adding or striking out the name of any party, or a mistake in any other respect, or by inserting other allegations material to the case, or by conforming such claim or proceeding to the facts proved, where the amendments shall not change substantially the form of the action, and may also in any stage of the proceedings disregard any error or defect which shall not affect the substantial rights of the adverse party, and may make any Order for granting time to the Plaintiff or Defendant to proceed in the prosecution or defence of his suit that to such Judge may seem necessary for the ends of justice.

XI. And be it enacted, That every Order by the Judge of the County Court, made upon the hearing of any such claim as aforesaid, or in respect to such claim and suit, or in respect to the matters hereinbefore or hereinafter mentioned, may be enforced in the same manner as any Judgment or any Order of a County Court is or may be enforced in the said County Court, under the existing provisions of law in relation to the said Courts, so far as such provisions are applicable, or in such other manner as may be prescribed by Rules to be made in the manner hereinafter mentioned.

XII. And be it enacted, That the Judge before or upon any hearing or trial, or upon taking any accounts or making any inquiries, shall have the same powers and authority to order the parties to produce books, papers and writings as is possessed by the Court of Chancery, and may cause advertisements for Creditors and next of kin, or other unascertained persons, and the representatives of such as may be dead, to be published in the usual forms or otherwise, as the circumstances may require, and in such advertisements, appoint a time within which such persons are to come in and prove their claims, and within which time, unless they so come in, they are to be excluded from the benefit of the Order.

XIII. And be it enacted, That, no Order, Direction, Verdict, Decree or Judgment, or other proceeding made concerning any of the matters aforesaid, shall be reversed, quashed or vacated for want of form.

XIV. And be it enacted, That every Summons, (except the Summons at the commencement of the action,) Order, Notice or other proceeding, shall be served ten days at least before the day on which the same is returnable, or the action thereunder intended, except where otherwise directed by the said Judge.

XV. And be it enacted, That the costs in every action or proceeding brought or had under the authority of this Act in the said County Courts respectively, shall be paid by or apportioned between the parties in such manner as the Judge shall think fit, and that in default of any special directions the costs shall abide the event of the action or proceeding.

XVI. And be it enacted, That all affidavits to be used in the said County Courts respectively may be sworn before any Judge or Clerk of the said Courts, or before any Commissioner for taking affidavits in the Superior Courts at Toronto.

XVII. And be it enacted, That any claim as aforesaid entered in a County Court under the provisions of this Act, shall be removable by either party into the Court of Chancery by Order of the said Court, to be obtained on a summary application by motion or petition supported by affidavit, of which reasonable notice shall be given to the opposite party, and the said Order shall be made on such terms as to payment of costs, giving security in respect to the relief claimed and costs, or upon such other terms as to the said Court of Chancery shall seem reasonable, just and proper; but no claim shall be so removed as aforesaid, unless the said Court of Chancery shall be of opinion that the same is of such a nature as to render it proper that the same should be withdrawn from the jurisdiction of the said County Court, and disposed of in the said Court of Chancery.

XVIII. And be it enacted, That either party may appeal to the said Court of Chancery against any Order or Decree made by the Judge in any County Court under the provisions of this Act; and the said Court of Chancery shall make such Order thereupon in respect to costs or otherwise, or for referring back the same matter to the Judge before whom the same has been first heard, as shall be just and proper; Provided always, That before the County Court Judge shall be called on to certify the said Order or other matter appealed against to the said Court of Chancery, the party appealing shall enter into a recognizance, with sufficient bail to the satisfaction of the said Judge, to pay the sum decreed in case no relief shall be had on such appeal, or to obey the said Order, (or as the case may be,) and that when the party appealing appears by Attorney, an affidavit shall be made by such Attorney, that the appeal is not intended for delay as he believes, and that there is in his opinion probable cause for reversing the Order or Decree against which the appeal is made; and the said Court of Chancery shall specially make the necessary regulations for the practice to be observed in proceedings under this and the next preceding section.

XIX. And in order that procedure under this Act may be fully traced out, and from time to time be improved and rendered as simple, speedy and cheap as may be — Be it enacted, That it shall be the duty of the Judges of the said Court of Chancery, and they, are hereby authorized and empowered to frame such General Rules and Orders and all such forms as to them shall seem expedient, for and concerning the practice and proceedings in the said County Courts in relation to the powers conferred on such Courts by this Act, and for the execution of the Orders and Process under this Act, and in relation to any of the provisions thereof as to which there may arise doubts; and from time to time to alter and amend such Roles, Orders and Forms, and also the forms and mode of procedure prescribed by this Act; and such Rules, and Orders and Forms as shall be made and framed by the said Judges or any two of them, (of whom the Chancellor of Upper Canada shall be one,) shall from and after a day to be named therein, be in force in every County Court in Upper Canada, and shall be of the same force and effect as if the same had been embodied in this or some other Act of Parliament.

XX. And be it enacted, That there shall be payable on every proceeding for equitable relief or other proceeding under this Act in the said County Courts respectively, the fees which are set down for such proceeding respectively in the Schedule to this Act marked C, and that the Clerks of the said County Courts respectively, shall keep a separate account of such fees, and shall render an account to the Receiver General of fees in his County, and shall pay over the amount of such fees

to such Receiver General, under the same liabilities, securities and conditions, and to be accounted for in like manner as the present General Fee Fund of the County, and that the several provisions of the Act passed in the eighth year of Her Majesty's Reign and intituled, *An Act to amend, consolidate and reduce into one Act, the several Laws now in force, establishing or regulating the practice of District Courts in the several Districts of that part of this Province formerly Upper Canada*, in relation to the receiving, accounting for and paying over fees, and in relation to the responsibilities and duties of County Treasurer and Clerks, shall apply to the fees under this Act as fully as if the said provisions were herein contained and re-enacted.

XXI. And be it enacted, That there shall be payable to the Clerk of every County Court, and to the Sheriff of every County respectively, the fees which are set down for such proceedings respectively in the Schedule to this Act annexed marked D, and that the scale of costs to be paid to Attorneys and Counsel in the said County Courts, as between party and party, for proceedings under this Act, shall, be according to Schedule E to this Act annexed.

XXII. And be it enacted, That if any action or proceeding be commenced in the said Court of Chancery after this Act shall come into force, for any cause or claim which might have been entered in a County Court under this Act, no costs shall be taxed against the Defendant in such action or proceeding, and the Defendant, if he shall succeed in his action, shall be entitled of right to a Decree against the Plaintiff for his costs, as between Attorney and Client, unless the said Court of Chancery shall be of opinion that it was a fit cause or claim to be withdrawn from a County Court and entered in the said Court of Chancery.

XXIII. And be it enacted, That this Act, and the several Acts of Parliament now in force relating to County Courts, or affecting in any way their powers or practice, shall be read and construed as one Act, as if the several provisions therein contained, not inconsistent with the provisions of this Act, or inapplicable to an equitable jurisdiction, -were repeated and re-enacted in this Act.

XXIV. And be it enacted, That in construing this Act and the Schedules thereto, the following words shall have the several meanings hereby assigned to them over and above their several ordinary meanings, unless there be something in the subject or context repugnant to such construction, viz: The words "person" or "party" shall be understood to mean a body politic or corporate as well as an individual, and every word importing the singular number, shall, when necessary to give full effect to the enactments herein contained, be understood to mean several persons or things as well as one person or thing; and every word importing the masculine gender shall, when necessary, be understood to mean a female as well as a male; and the word "affidavit" shall include affirmation, and the word "legacy" shall include an annuity and a specific as well as a pecuniary legacy; the word "legatee" shall include a person interested in a legacy; and the words "residuary legatee" shall include a person interested in the residue; and the word "County" shall include any two or more Counties united for judicial purposes.

XXV. And be it enacted, That in citing this Act in other Acts of Parliament, and in legal instruments and other proceedings, it shall be sufficient to use the expression, "The County Courts Equity Extension Act."

XXVI. And be it enacted, That this Act shall commence and take effect on the Thirty-first day of December next after the passing hereof.

Schedule A.

In the County Court of the County of _____

A. B., of the Township of _____ in the said County, states, that from the _____ day of _____ down to the _____ day of _____ he, and C. D., of the Township of _____ in the said County, carried on the business of _____ in copartnership, under certain articles of copartnership dated the _____ day of _____ and made between the said A. B. and the said C. D., on the _____ day of _____ (or under a verbal agreement, &c., as the case may be), that the said Copartnership was dissolved (or expired, as the case may be,) on the _____ day of _____ yet that the said C. D. refuses to account with the said A. B. concerning the dealings and transactions thereof. The said A. B. claims relief in the premises, and that an account of the partnership dealings and transactions between the said A. B. and C. D., may be taken, and the affairs and business of the said Copartnership wound up and settled under the directions of the Court, and such further relief given as may be just and proper. And the said A. B. requests that a Writ of Summons be issued from the Court, according to the Statute in that behalf, requiring the said C. D. to appear on the _____ day of _____ before the Judge of the Court, to show cause, if he can, why the relief claimed by the said A. B. should not be had, and such Order in the premises made as may be just.

Dated the _____ day of _____

A. B., in person.
(Or A. B. by J. P., one, &c.)

Schedule B.

Victoria, &c.,
(County of _____)

To C. D. of _____

Greeting:

[L. S.] You are hereby summoned to appear either in person or by Attorney before His Honor the Judge of the County Court of the County of _____ on the _____ day of _____, at twelve o'clock noon, at the Court House in the town of _____ to answer the complaint of A. B. of the, &c. _____ who has filed a claim against you in this Court for an account of the dealings and transactions respecting a partnership between you and the said A. B. now expired, (or as the same may be, stating briefly the nature of the claim) a certified copy of which claim is hereunto attached, and you are required then and there to show cause, if you can, why such relief as is claimed by the said A. B. should not be had, or why such Order as shall be just, with reference to the claim, shall not be made.

Witness, _____ Esquire, Judge of the County Court of the County of _____ at
_____, this _____ day of _____

Schedule C.

Fees to be received by the Clerk and to belong to and to be paid over to the Fee Fund.

Every claim filed One Shilling and Three Pence; Every Writ of Summons, or other Writ under the Seal of the Court, One Shilling and Three Pence; every Order or application for Order, One Shilling and Three Pence; every Hearing, Five Shillings, to be increased in the discretion of the Judge to a sum not exceeding Ten Shillings; every Oath administered in Court, One Shilling; every Certificate under Seal of Court, One Shilling and Three Pence; every Sitting in taking an account, or other Sittings, Five Shillings.

Schedule D.

Fees to the Clerk.

Receiving and filing Claim, Four Pence; every Writ of Summons, or other Writ, One Shilling; filing every separate paper, Three Pence; preparing Order, One Shilling and Four Pence per folio for every folio over three; taking any Affidavit other than oath in open Court, One Shilling; every Search, Six Pence; recording every final Order or Decree, One Shilling; other Orders, Six Pence; every Certificate not exceeding three folios, One Shilling; every Special Writ, Writ of Execution or other Special Document, Eight Pence per folio; taxing costs, One Shilling; every attendance on reference, Five Shillings; every Verdict taken, Two Shillings and Six Pence.

Fees to the Sheriff.

Every Summons or Order served, including Return, Two Shillings and Six Pence; every Jury sworn, Two Shillings and Six Pence; every Execution or Judgment Order received, One Shilling and Three Pence; return thereof, money made or party arrested, One Shilling and Three Pence; necessary mileage actually travelled, Four Pence per mile; and for other services, a sum to be fixed by Order of the Judge not exceeding the present allowance by Statute for similar services.

Schedule E.

Attorney and Solicitor.

Instructions to sue or defend, Two Shillings and Six Pence; Drawing Claim, Two Shillings and Six Pence; Fee on every Writ or Order, One Shilling and Three Pence; Common Affidavits One Shilling; Common Notice or Appointment, One Shilling; Every necessary Attendance, Six Pence; Special Affidavits and other Special Documents, Eight Pence per folio; Fee on Common Motions, One Shilling and Three Pence; Copy of every paper when necessary, half the amount allowed for the Original; Bill of Costs, One Shilling; Postages actually paid.

Counsel.

Fee on Special Applications, Arguments, Hearings, &c., Ten Shillings, to be increased at the discretion of the Judge to Twenty-five Shillings.