

*Laws of Her Majesty's Province of United Canada*, passed in the year 1856. Quebec: Stewart Derbishire and George Desbarts, 1856.

20 Victoria – Chapter 90

**An Act to simplify and expedite the proceedings in the County Courts in Upper Canada, and to alter and amend the law in relation to these Courts. Assented to 1st July, 1856.**

Whereas it is expedient to simplify and expedite the proceedings in the several County Courts in Upper Canada, and to alter and amend the law in relation to these Courts: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. From the time when this Act shall commence and take effect, the tenth, eleventh, twelfth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-second, twenty-third, twenty-fourth, twenty-eighth, thirty-first, thirty-second, thirty-fifth, thirty-ninth, forty-first, forty-fifth and forty-sixth sections of an Act of the Parliament of this Province passed in the eighth year of Her Majesty's Reign, 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*; the second, third and fourth sections of an Act of the Parliament of this Province passed in the twelfth year of Her Majesty's Reign, intituled: *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 District Courts in the several Districts of that part of this Province formerly Upper Canada'*; the fourth section of an Act of the Parliament, of this Province passed in the thirteenth and fourteenth years of Her Majesty's Reign, intituled: *An Act to alter and amend the Act regulating the practice of the County Courts in Upper Canada, and to extend the jurisdiction thereof*, together with all other Acts or parts of Acts of the Parliament of Upper Canada or of this Province at variance or inconsistent with the provisions of this Act, shall be and the same are hereby repealed, except so far as the said Acts or any of them or any thing therein contained repeal any former Act or Acts, or any part thereof, all which said last mentioned Act or Acts shall remain and continue so repealed, and excepting also so far as the said Acts or parts of Acts hereby repealed and the provisions thereof, or of any of them, shall and may be necessary for supporting, continuing and upholding any Writs that shall have been issued, or proceedings that shall have been had or taken, before the commencement of this Act, and any further proceeding taken or to be taken thereon.

II. The enactments contained in the ninth, fourteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first, forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth, forty-seventh, forty-eighth, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-third, fifty-fourth, fifty-fifth, fifty-sixth, fifty-seventh, fifty-eighth, fifty-ninth, sixtieth, sixty-first, sixty-second, sixty-third, sixty-fourth, sixty-fifth, sixty-sixth,



tenth, and the three hundred and twelfth sections of An Act passed in the present session of Parliament and known as the "Common Law Procedure Act, 1856," and the several provisions of the Rules to be made in pursuance of the said Act, or such of them as may relate to the said sections, shall apply and extend to the several County Courts in Upper Canada and actions and proceedings therein respectively; and this Act shall be read and construed as if the said several sections of the said "Common Law Procedure Act, 1856," were repeated at length in this Act; subject to the following modifications, that is to say, all the powers under the said sections exercisable by the Court of Queen's Bench or the Court of Common Pleas, or by any one of the Judges thereof, shall and may in like manner be exercisable by the Judges of the County Courts respectively in term or vacation, as the case may require, as to matters and proceedings therein within the jurisdiction of the said County Courts respectively; such of the said sections as relate to proceedings in Banc or Nisi Prius respectively, shall be understood as referring and relating to the sittings of the said County Courts in term and the sittings thereof for the trial of issues of fact, as the case may be; all the provisions of the said sections applicable to Deputy Clerks of the Crown, shall apply to the Clerks of the County Courts respectively; and also subject to such other modifications as may be necessary to give full and beneficial effect to the said several sections in their extension and application to the County Courts, and all actions and proceedings therein within the jurisdiction of the same Courts respectively.

III. The Clerk of each County Court shall be subject to such rules for his governance in his office as may from time to time be made in that behalf according to the provisions of the three hundred and thirteenth and three hundred and fourteenth sections of "The Common Law Procedure Act, 1856," in like manner as Deputy Clerks of the Crown.

IV. The Clerk of each County Court shall sign and seal all writs and process whatsoever which are to be issued from such County Courts, and shall account for and pay over all fees due and receivable by County Court Clerks for writs, processes, summonses, orders and proceedings under this Act, as they are now bound by law to do for all other fees received by them and with and under like responsibilities.

V. In cases in which the cause of action shall be transitory and within the jurisdiction of a County Court, the action may be brought and the plaintiff may sue out the writ for the commencement of the action in any County Court; where the venue is local, the writ for the commencement of the action shall be sued out from the office of the County Court within the proper County.

VI. Final judgment may be entered upon a *cognovit actionem* or Warrant of Attorney to confess judgment, for an amount not exceeding one hundred pounds, which shall have been given or executed in the first instance and before the suing out of any process, in any County Court at the option of the Plaintiff, unless some particular Court in which the judgment is to be entered be expressly stated in such *cognovit* or warrant.

VII. The Clerk of each and every County Court shall keep a regular book, in which shall be minuted and docketed all Judgments entered by such Clerk; and such minute shall contain the name of every Plaintiff and Defendant, the date of the commencement of the action, the date of the entry

of such judgment, the form of action, the amount recovered, the amount of costs taxed, and whether such judgment was entered upon or by verdict, default, confession, *non pros*, non-suit, discontinuance, or how otherwise; and in case the original judgment-roll be lost or destroyed, so that no exemplification or examined copy thereof can be procured, a copy of the entry in such docket book, certified by the Clerk having such book in his custody, shall be evidence of all matters therein set forth and expressed; and when any such Clerk shall enter up any Judgment in either of the said Courts, he may give to the party on whose behalf it is entered, or to his legal representative, a certificate signed by him, of such Judgment, containing the like particulars as are required in certificates of Judgments given by the Clerks of the Crown and Pleas, and such certificate may be registered in the Registry Office of any County in Upper Canada, and the same certificate and the registration thereof shall have the like force and effect in binding or operating as a charge upon lands, tenements and hereditaments situate within such County, as if the certificate had been granted by a Clerk or Deputy Clerk of the Crown.

VIII. When any Writ of Summons or Capias in any such action shall have been issued before, and shall be in force at the time of the commencement of this Act, such Writ may, at any time before the expiration thereof, be renewed under the provisions of, and in the manner directed by this Act; and where any Writ, issued in continuation of a preceding Writ, according to the provisions of the laws in force in the County Courts before the passing of this Act, shall be in force and unexpired, or where one month next after the expiration thereof shall not have elapsed at the commencement of this Act, such continuing Writ may, without being returned *non est inventus*, or entered of record according to the provisions of the said laws, be filed in the proper office of the Court, within one month next after the expiration of such Writ, or within twenty days after the commencement of this Act, and the original Writ of Summons or Capias in such action may thereupon, but within the same period of one month next after the expiration of the continuing Writ or within twenty days after the commencement of this

Act, be renewed under the provisions of, and in the manner directed by this Act; and every such Writ shall, after such renewal, have the same duration and effect for all purposes, and shall be, if necessary, subsequently renewed in the same manner as if it had originally issued under the authority of this Act.

IX. Causes of action of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit, but this shall not extend to replevin or ejection, or to causes of action which are local and arise in different Counties, and the Court or a Judge shall have power to prevent, the trial of different causes of action together, if such trial would be inexpedient, and in such case the Court or a Judge may order separate records to be made up and separate trials to be had; Provided always, that nothing herein contained shall be construed to restrict or diminish the obligation or right of a Plaintiff to include in one action all or any of the drawers, makers, endorsers and acceptors of any Bill of Exchange or Promissory Note.

X. If it be made to appear, at any time after the issuing of the writ of any County Court, to the satisfaction of the Judge, upon the application of either party, that the matters in dispute consist wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary

way, it shall be lawful for such Judge, upon such application, if he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, upon such terms as to costs and otherwise as such Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a Jury upon the matter referred.

XI. If it shall appear to the Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court or upon a question of fact fit to be decided by a Jury, it shall be lawful for such Judge to direct a case to be stated or an issue or issues to be tried; and the decision of the Judge upon such case, and the finding of the Jury upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive.

XII. It shall be lawful for the arbitrator upon any compulsory reference under this Act, if he shall think fit, and if it is not provided to the contrary, to state his award as to the whole or any part thereof, in the form of a special case for the opinion of the Court; and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court.

XIII. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner and subject to the same rules and enactments as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting-aside the award, or otherwise, as upon a reference made by consent under a rate of the Superior Courts or Judge's order.

XIV. In actions in which it shall appear to the Judge that the amount of damages which ought to be recovered by the Plaintiff is substantially a matter of calculation, it shall not be necessary to assess the damages by a Jury, but the Judge may ascertain the amount for which final Judgment is to be signed, and the attendance of witnesses and the production of documents before such Judge may be compelled by subpoena, in the same manner as before a Jury; and it shall be lawful for such Judge to appoint the day for hearing the case, and to adjourn the inquiry from time to time, as occasion may require; and such Judge shall make an order in writing declaring the amount found by him, and such and the like proceedings may thereupon be had, as to taxation of costs, signing Judgment, and otherwise, as upon the finding of a Jury upon an assessment of damages.

XV. Where any issue is or shall be joined in any cause, and the Plaintiff has neglected or shall neglect to bring such issue on to be tried at the first sittings of the Court then next following, whether the Plaintiff shall in the meantime have given notice of trial or not, the Defendant may give twenty days' notice to the Plaintiff to bring the issue on to be tried at the next sittings of the Court after the expiration of the notice; and if the Plaintiff afterwards neglects to give notice of trial for such sittings or to proceed to trial as required by the said notice given by the Defendant, the Defendant may suggest on the record that the Plaintiff has failed to proceed to trial, although duly required so to do, (which suggestion shall not be traversable, but only be subject to be set aside if

untrue,) and may sign Judgment for his costs; provided that the Judge shall have power to extend the time for proceeding to trial, with or without terms.

XVI. Upon the hearing of any motion or Summons, it shall be lawful for the Judge, at his discretion and upon such terms as he shall think reasonable, from time to time to order such documents as he may think fit to be produced, and such witnesses as he may think necessary, to appear and be examined *vivâ voce* either before such Judge or before the Clerk of the Court, and upon hearing such evidence or reading the report of the Clerk, to make such order as may be just.

XVII. It shall be lawful for any creditor who has obtained a Judgment in any County Court, to apply to the Judge for a rule or order that the Judgment debtor should be orally examined as to any and what debts are owing to him, before such Judge of any County Court or before any other person to be specially named, and the Judge may make such order for the examination of such Judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner as in the case of an oral examination of an opposite party under this Act.

And with respect to costs; Be it enacted:

XVIII. Until otherwise ordered by rule of Court made in pursuance of the "Common Law Procedure Act, 1856," the costs of writs issued under the authority of this Act and of all other proceedings under the same, shall be and remain, as nearly as the nature thereof will allow, the same as heretofore, but in no case greater than those already established, except that there shall be payable to the Clerks of the County Courts for and to form part of the General fee fund, the following fees, viz: for every Special Hearing before the Judge five shillings, and the sum of ten shillings for every day's sittings in taking examinations and evidence, and the like sum on every reference to the County Judge from the Superior Courts, together with one shilling per folio on the evidence taken before him, and five shillings for every report thereon; Provided always that hereafter no mileage shall be taxed or allowed for the service of any writ, paper or proceeding, without an affidavit being made and produced to the proper taxing officer, stating the sum actually disbursed and paid for such mileage and the name of the party to whom such payment was made.

XIX. In any case not expressly provided for by law, the practice and proceedings in the several County Courts in Upper Canada shall be regulated by and shall conform to the practice of the Superior Courts of Common Law at Toronto; and the practice of the said Superior Courts, as the same remains now or may be hereafter altered, shall, in matters not expressly provided for as aforesaid, apply and extend TO the County Courts and to all actions and proceedings therein.

XX. And whereas it is expedient to enlarge and more clearly define the jurisdiction of the several County Courts in Upper Canada — It is enacted, That for and notwithstanding any thing contained in the first section of an Act of the Parliament of this Province, passed in the thirteenth and fourteenth years of Her Majesty's Reign, intituled, *An Act to amend and alter the Acts regulating the practice of the County Courts in Upper Canada, and to extend the jurisdiction thereof, or any*

other Act of the Parliament of this Province, the said County Courts respectively shall hold plea of all personal actions where the debt or damages claimed is not more than fifty pounds, and of all causes or suits relating to debt, covenant or contract where the amount is liquidated or ascertained by the act of the parties or the signature of the defendant, to one hundred pounds; Provided always, that the said County Courts shall not have cognizance of any action where the title to land shall be brought in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, or for any libel or slander, or for criminal conversation or for seduction.

XXI. In all applications and proceedings before the County Judges, not relating to suits instituted in any Court of Civil Judicature in Upper Canada, there shall be payable to the Clerks of the several County Courts, for and to form part of the general fee fund thereof, such fees, as nearly as the nature of the case will allow, as are now payable on proceedings under the Act for the relief of insolvent debtors.

XXII. Every County Judge shall be paid by a certain salary of not more than six hundred and fifty pounds or less than two hundred and fifty pounds; and the Governor in Council shall fix the remuneration to be paid to the Judges respectively, having due regard as well to the population of the several Counties or Unions of Counties, as to the amount of fees received by the County Treasurer, under the several Statutes establishing Fee Funds; and the remuneration of Judges may be increased, or as vacancies shall occur may be diminished, by the Governor in Council.

XXIII. So much of the Schedule of Fees annexed to the Act passed in the eighth year of Her Majesty's Reign, chaptered thirteen, as applies to the "Fees to be received by the Clerk, and to belong to and be paid over to the Fee Fund," and the whole of Schedule A annexed to an Act passed in the ninth year of Her Majesty's Reign, chaptered seven, shall be and the same are hereby repealed, and the following Schedule is substituted therefor:

Every Writ of Summons or *Capias ad Respondendum*, one shilling and six pence,  
Every Verdict, six shillings and three pence,  
Executing each Writ of Trial and Enquiry and making Return thereto, six shillings and three pence,  
Every Report made by the Judge of the proceedings on executing a Writ of Trial or Enquiry, five shillings,  
Every Certificate of proceedings made by the Judge to be transmitted to the Court of Queen's Bench, two shillings and six pence,  
Every Rule requiring a motion in open Court, one shilling and six pence,  
Every Rule or Order of Reference, one shilling and six pence,  
Every other Rule or Judge's order, one shilling and three pence,  
Every Recognizance of Bail taken by Judge, one shilling and six pence,  
Every Affidavit administered by Judge, one shilling, Every Computation of principal and interest on a Bill, Note, Bond or Covenant for payment of money, three shillings, Every Writ of Subpoena, one shilling,  
Every Judgment entered, six shillings and three pence, Every Oath administered in open Court, one shilling.

XXIV. In addition to the Fees now received by each Sheriff for mileage and poundage, it shall be lawful for him to charge and receive for mileage, two pence per mile on all writs executed, and for poundage, upon all moneys actually made under a *fi. fa.* or a *ca. sa.* six pence in the pound.

XXV. It shall be lawful for the Governor in Council to cause to be paid to the Clerk of the County Court for the United Counties of York and Peel, and after the dissolution of the Union of such Counties, to the Clerk of the County Court for the County of York, over and above all Fees now received by him, an allowance not to exceed one hundred pounds-per annum, out of any surplus that may remain of the Fee Fund of such United Counties or County, after all present charges thereon shall have been first defrayed.

XXVI. The provisions of this Act, shall come into operation on the twenty-first day of August, one thousand eight hundred and fifty-six.

XXVII. In citing this Act, in any instruments, documents or proceedings, it shall be sufficient to use the expression, "The County Courts Procedure Act, 1856."