



BY AUTHORITY.

ANNO TRICESIMO SEXTO VICTORIÆ REGINÆ.

CAP. XXXI.

An Act to amend the Practice in the Supreme Court, and to consolidate various Acts of Assembly relating thereto.

Passed 14th April, 1873.

BE it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. The process and proceedings in the Supreme Court shall be as follows:—

NON-BAILABLE PROCESS.—WRIT OF SUMMONS.

2. Except in cases where it is intended to hold the defendant to bail, all personal actions except replevin and proceedings in *scire facias*, and actions against Members of the Parliament of Canada, but including actions by and against Members of the General Assembly and Attorneys-at-Law, where the defendant is residing or supposed to reside within the jurisdiction of the Court, shall be commenced by writ of summons according to the form No. 1 in Schedule A to this Act annexed.

3. Every writ of summons shall contain the names of all the defendants in the action, and shall not contain the name or names of any defendant or defendants in more actions than one.

4. It shall not be necessary to mention any form or cause of action in any such writ.

5. Every such writ shall bear date on the day on which the same issues, except in the case of concurrent writs, hereinafter referred to, and shall be tested in the name of the Chief Justice, or in case of a vacancy in such office, then in the name of the senior Puisne Judge of the Court.

6. Every such writ shall be indorsed with the name of the Attorney suing out the same; and if sued out by the plaintiff in person, it shall be indorsed with a memorandum stating that it was so sued out, and mentioning the City, Town or Parish where the plaintiff resides.

7. In all cases where the defendant resides within the jurisdiction of the Court, and the action is upon a bill of exchange, promissory note, or cheque, or on a bond or contract under seal for payment of a liquidated amount of money, the plaintiff may make upon the writ of summons, and copy thereof, a special indorsement of the particulars of his claim, in the form No. 7 in the Schedule A, or to the like effect.

8. The service of a writ of summons may be made by personal service within the jurisdiction of the Court; or in case the defendant has a known place of abode within the jurisdiction, such writ may be served at such place of abode by delivering a copy thereof to the wife of the defendant, or to an adult person residing in the house and being an inmate of the family of the defendant; provided that such last mentioned service shall not be deemed good without the order of the Court, or a Judge thereof, hereinafter called a Judge, to be made upon affidavit, shewing the circumstances of such service, and that the place where such writ was served was, at the time of such service, the usual place of abode of such

defendant, and that he was at the time of the service within the jurisdiction of the Court, according to the belief of the person serving such summons, stating his reasons for such belief.

9. Every such writ issued against a Corporation aggregate may be served upon the mayor, warden, president or other head officer; or on the cashier, manager, secretary-treasurer, clerk or agent of such Corporation, or of any branch or agency thereof in this Province; and every person who within this Province manages, transacts or carries on any of the business of, or any business for any foreign Corporation whose chief place of business is without the limits of the Province, shall for the purpose of being served with a writ of summons issued against such Corporation, be deemed the agent thereof.

10. Where a summons is issued against any person carrying on business in this Province, who may have a place of business but no place of residence therein, the service of such summons may be effected by leaving a copy of the same at the place of business of the defendant, with an agent or clerk, or other adult person in the employment of the defendant or defendants in such business, and known to the person serving the same as being an agent, clerk or person in the employment of the defendant, in such business.

11. Where a summons is issued against any person whose place of residence is within the Province, but who may have temporarily left the same for the purpose of avoiding the service of summons, service thereof may be made in the manner directed in the last preceding section, or in the eighth section of this Act, or as near as may be; provided that no such service as is directed in this or the last preceding section, shall be deemed good without the order of a Judge, on satisfactory proof by affidavit of the nature and place of business carried on by the defendant within the Province, and the particular nature of the agency or employment of the person with whom the copy of process was left; and, if under this section, of the full reasons for believing that the defendant has left the Province temporarily to avoid the service of summons.

12. Upon the delivery of a writ of summons at the office of any Sheriff, he or his deputy or clerk shall indorse thereon the day it was so delivered, and shall immediately on the service thereof return the same with an affidavit of service to the plaintiff's Attorney.

13. The plaintiff in any action may at any time during two months from the issuing of the writ of summons, issue one or more concurrent writ or writs of the same kind, to be tested and dated of the same day as the original writ, and to be marked with the word "*concurrent*" in the margin, but such concurrent writ or writs shall only be in force for the period during which the original writ continues in force.

14. No writ of summons shall be in force for more than two months from the day of the date thereof inclusive; but if any defendant therein named has not been served therewith, such writ may be continued by *alias* or *pluries*, as the case may require; and every such writ, whether served by the Sheriff, or his deputy, or by any other person, shall be returned through the office of the Sheriff of the County in which such writ has been served; and such Sheriff shall be entitled to the same fees thereon, whether served by him or not, for service and return, exclusive of mileage, when not served by or through him.