15 (3) 1861 10 41

V. R.

AN ACT

To facilitate the remedies on Bills of Exchange and Promissory Notes by the prevention of frivolous or fictitious defences to actions thereon.

WHEREAS, bona fide holders of dishonored Bills of Exchange and Promissory Notes are often unjustly delayed and put to unnecessary expense in recovering the amount thereof by reason of frivolous or fictitious defences to actions thereon, and it is expedient that greater facilities than now exist should be given for the recovery of money due on such Bills and Notes :

Be it therefore enacted by the Governor on behalf of Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Colony of Vancouver Island and its dependencies as follows :

From the passage of this Act all actions upon Bills of Exchange may be by Writ of Summons as in the Form in schedule A. Plaintiff on filing affidavit of personal service may at once sign final judgment as in form in schedule B.

I. From and after the passage of this Act all actions upon Bills of Exchange or Promissory Notes commenced within six months after the same shall have become due and payable, may be by writ of summons in the special form contained in schedule A., to this Act annexed, and endorsed as therein mentioned, and it shall be lawful for the Plaintiff on filing an affidavit of personal service of such Writ within the jurisdiction of the Court, or an order for leave to proceed as provided by the Common Law Procedure Act 1852, and a Copy of the Writ of Summons and the indorsements thereon in case the Defendant shall not have obtained leave to appear and have appeared to such Writ according to the exigency thereof, at once to sign final judgment in the form contained in schedule B. to this Act annexed (on which payment no proceeding in error shall lie) for any sum not exceeding the sum indorsed on the Writ, together with interest at the rate specified (if any) to the date of judgment, and a sum for costs to be fixed by the Chief Justice of Vancouver Island, unless the Plaintiff claim more

than such fixed sum, in which case the costs shall be taxed in the ordinary way, and the Plaintiff may upon such judgment issue Execution forthwith.

Defendant showing a defence upon the merits, to have leave to appear.

II. The Chief Justice shall, upon application within the period of twelve days from such service, give leave to appear to such writ and to defend the action on the Defendant paying into Court the sum endorsed on the Writ, or upon affidavits satisfactory to the Judge, which disclose a legal or equitable defence, or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Chief Justice may deem sufficient to support the application, and on such terms as to security or otherwise as to the Chief Justice may seem fit.

Chief Justice may under special circumstances set aside judgment.

III. After judgment the Chief Justice may, under special circumstances, set aside the judgment, and if necessary stay or set aside Execution, and may give leave to appear to the Writ and to defend the Action, if it shall appear to be reasonable to the Chief Justice so to do, and on such terms as may seem just.

Chief Justice may order Bill to be deposited with officer of Court.

IV. In any proceedings under this Act it shall be competent to the Chief Justice to order the Bill or note brought to be proceeded upon, to be forthwith deposited with an officer of the Court and further to order that all proceedings shall be stayed until the Plaintiff shall have given security for the costs thereof.

Remedy for recovery of costs of noting non-acceeptance of dishonored Bills.

V. The holder of every dishonored Bill of Exchange or Promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise by reason of such dishonor as he has under this Act for the recovery of the amount of such Bill or note.

Holder of Bill of Exchange may issue one Summons against all or any of the parties to the Bill.

VI. The holder of any Bill of Exchange or Promissory note may, if he think fit, issue one Writ of Summons according to this Act against all or any number of the parties to such Bill or note, and such Writ of Summons shall be the commencement of an action or actions against the parties therein named respectively, and all subsequent proceedings against such respective parties shall be in like manner, so far as may be, as if separate Writs of Summons had been issued.

Common Law Procedure Acts and Rules incorporated in this Act.

VII. The Provisions of the Acts of the Imperial Parliament named the "Common Law Procedure Act 1852, and the Common Law Procedure Act 1854," and all Rules made under or by virtue of either of the said Acts shall so far as the same are or may be made applicable, extend and apply to all proceedings to be had or takem under this Act.

Short Title.

VIII. This Act may be cited as "The Summary Procedure on Bills of Exchange Act, 1861."

Passed the House of Assembly 19th July, 1861. Council amendments agreed to 4th November, 1861.

E. Bowers Doggett,
Clerk of the House of Assembly.

Passed the Council the 29th day of October, 1861.

Joseph Porter,
Acting Clerk of the Council.

Received my assent this 28th day of November, A. D. 1861.

JAMES DOUGLAS.

SCHEDULE A.

Victoria, by the Grace of God, etc.

To C. D. of .....

.....We warn you.....

that unless within Twelve days after the service of this Writ on you, inclusive of the day of such service, you obtain leave from the Chief Justice of Vancouver Island and its dependencies, to appear and do within that time appear in our .....Court of .....

in an Action at the suit of A. B., the said A. B. may proceed to Judgment and Execution.

Witness, etc.....

[Memorandum to be subscribed on the Writ.]

N. B. This Writ is to be served within six Calendar months from the date hereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

[Indorsement to be made on the Writ before service thereof.]

This Writ was issued by E. F., of ..... Attorney for the Plaintiff,

or

This Writ was issued in Person by A. B., who resides at .....

INDORSEMENT.

The Plaintiff claims.....principal and interest, or balance of principal and interest, due to him as the Payee or Indorsee of a Bill of Exchange or Promissory note, of which the following is a copy:

[Here copy Bill of Exchange or Promissory note, and all Indorsements upon it.]

And if the amount thereof be paid to the Plaintiff or his Attorney within..... days from the service thereof, further proceedings will be stayed.

NOTICE.

Take notice, that if the Defendant do not obtain leave from the Chief Justice of Vancouver Island and its Dependencies within twelve days after having been served with this Writ, inclusive of the day of such service, to appear thereto, and do within such time cause an appearance to be entered for him in the Court out of which this writ issues, the Plaintiff will be at liberty at any time after the expiration of such twelve days to sign final judgment for any sum not exceeding the sum above claimed, and the sum of..... for costs, and issue Execution for the same.

Leave to appear may be obtained, on an application at the Chief Justice's Chambers, Victoria, supported by affidavits shewing that there is a defence to the action on the merits, or that it is reasonable that the Defendant should be allowed to appear in the action.

[Indorsement to be made on the Writ after service thereof.]

This Writ was served by X. Y. on L. M. (the defendant) on the .....day of .....18.....

SCHEDULE, B.

In the Supreme Court of Civil Justice on the..... day of .....in the year of Our Lord, 18..... (day of signing Judgment).

Vancouver Island and its Dependencies (to wit) A. B. in his own person (or by his Attorney) sued out a Writ against C. D., Indorsed as follows:

[Here copy Indorsement of Plaintiff's claim.]

And the said C. D. has not appeared. Therefore it is considered that the said A. B. recover against the said C. D..... together with ..... for costs of suit.