



CHAPTER 63.

An Act to provide for the Institution of Actions against the Crown by Petition of Right, and respecting Procedure in Crown Suits.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short Title.

1. This Act may be cited as the "Crown Procedure Act." R. S. Short title. 1897, c. 57, s. 1.

Interpretation.

2. In the construction of this Act—

Interpretation.

"Court" means the Supreme Court:

"Relief" shall comprehend every species of relief claimed or prayed for in any petition of right, whether a restitution of any corporeal right, or a return of lands or chattels, or a payment of money, or damages or otherwise:

"Judge" means any Judge of the Court. R. S. 1897, c. 57, s. 2.

Petitions of Right.

3. A petition of right may be intituled in the Court, and shall state in the margin the venue for the trial of such petition; and such petition shall be addressed to His Majesty in the form or to the effect in the Schedule No. 1 to this Act, and shall state the christian and surname and usual place of abode of the suppliant, and of his solicitor (if any) by whom the same shall be presented, and shall set forth, with convenient certainty, the facts entitling the suppliant to relief, and shall be signed by such suppliant, his counsel or solicitor. R. S. 1897, c. 57, s. 3.

Form of petition of right.

Petition to be submitted to Lieut.-Governor for his fiat.

4. The said petition shall be left with the Provincial Secretary, in order that the same may be submitted to the Lieutenant-Governor for his consideration, and in order that the Lieutenant-Governor, if he shall think fit, may grant his fiat that right be done; and no fee or sum of money shall be payable by the suppliant on so leaving such petition, or upon his receiving back the same. R. S. 1897, c. 57, s. 4.

Proceedings after fiat is obtained.

5. Upon the Lieutenant-Governor's fiat being obtained to such petition, a copy of such petition and fiat shall be left at the office of the Attorney-General, with an indorsement thereon in the form or to the effect in the Schedule No. 2 to this Act, praying for a statement of defence on behalf of His Majesty, within twenty-eight days. R. S. 1897, c. 57, s. 5.

Time for pleading.

6. The time for pleading to such petition on behalf of His Majesty shall be the said period of twenty-eight days after the same, with such prayer of a statement of defence as aforesaid, shall have been left at the office of the said Attorney-General, or such further time as shall be allowed by the Court or a Judge: Provided always that it shall be lawful for the Court or a Judge in Chambers, on the application of the Attorney-General, or of the suppliant, to change the venue for the trial of the same. R. S. 1897, c. 57, s. 6.

Change of venue.

Proceedings where the subject-matter previously granted by the Crown.

7. In case any such petition of right shall be presented for the recovery of any real or personal property, or any right in or to the same, which shall have been granted away or disposed of by or on behalf of His Majesty, or his predecessors, a copy of such petition, allowance, and fiat shall be served upon or left at the last or usual or last-known place of abode of the person in the possession, occupation, or enjoyment of such property or right, indorsed with a notice in the form set forth in the Schedule No. 3 to this Act, requiring such person to appear thereto within eight days, and to deliver a statement of defence thereto in the said Court within fourteen days after the same shall have been so served or left as aforesaid, and it shall not be necessary to issue any scire facias or other process to such person for the purpose of requiring him to appear and plead to such petition, but he shall, within the time so limited, if it be intended by him to contest such petition, enter an appearance to the same in the form set forth in Schedule No. 4 to this Act, or to the like effect, and shall plead to the said petition within the time specified in such notice, or such further time as shall be allowed by the Court or a Judge. R. S. 1897, c. 57, s. 7.

Pleadings.

8. Such petition may be answered by way of statement of defence, by or in the name of His Majesty's Attorney-General on behalf of His Majesty, and by or on behalf of any other person who may in pursuance hereof be called upon to plead thereto, in the same manner as if such petition were a statement of claim in a personal

action, and without the necessity for an inquisition finding the truth of such petition on the right of the suppliant; and such and the same matter as would be sufficient ground of defence in point of law or fact to such petition on the behalf of His Majesty may be alleged on behalf of any such other person as aforesaid called on to plead thereto. R. S. 1897, c. 57, s. 8.

9. Any issue of fact or assessment of damages to be tried or had under this Act, and which would, but for this section, be tried or had by a Judge with a jury, shall be tried or had by a Judge without a jury. R. S. 1897, c. 57, s. 9.

Issues of fact or assessments of damages to be tried or had before a Judge without a jury.

10. So far as the same may be applicable, and except in so far as may be inconsistent with this Act, the laws and Statutes in force as to pleading, proceedings in lieu of demurrer, evidence, hearing and trial, security for costs, amendment, arbitration, special cases, the means of procuring and taking evidence, set-off and appeal in personal actions between subject and subject, and the rules, orders, practice, and course of procedure of the Court for the time being in reference to such personal actions, shall, unless the Court in which the petition is prosecuted shall otherwise order, be applicable, and apply, and extend to such petition of right. R. S. 1897, c. 57, s. 10.

Rules of pleading, etc.

Rules of Supreme Court to apply.

11. In case of a failure on behalf of His Majesty, or of any such other person as aforesaid called upon to plead to such petition, to plead in due time, either to such petition, or at any subsequent stage of the proceedings thereon, the suppliant shall be at liberty to apply to the Court or a Judge for an order that the petition may be taken as confessed; and it shall be lawful for such Court or Judge, on being satisfied that there has been such failure to plead in due time, to order that such petition may be taken as confessed, as against His Majesty, or such other party so making default; and in case of default on the behalf of His Majesty, and any other person (if any) called upon as aforesaid to plead thereto, a decree may be made by the Court, or leave may be given by the Court, on the application of the suppliant, to sign judgment in favour of the suppliant: Provided always that such decree or judgment may afterwards be set aside by such Court or a Judge, in their or his discretion, upon such terms as to them or him shall seem fit. R. S. 1897, c. 57, s. 11.

In default of plea, etc., applicant to take petition pro confesso.

Judgment, Costs, Rules, etc.

12. Upon every such petition of right, the decree or judgment of the Court, whether given upon the pleadings, or upon a default to plead in time, or upon proceedings in lieu of demurrer, or after hearing, or verdict, or otherwise, shall be that the suppliant is or is not entitled either to the whole or to some portion of the relief

The judgment or decree.

sought by his petition, or such other relief as the Court may think right; and such Court may give a decree or judgment that the suppliant is entitled to such relief, and upon such terms and conditions (if any) as such Court shall think just. R. S. 1897, c. 57, s. 12.

When judgment to be equivalent to amoveas manus.

13. In all cases in which the judgment, commonly called a judgment of amoveas manus, was formerly in England pronounced or given upon a petition of right, a judgment that the suppliant is entitled to relief as hereinbefore provided shall be of such and the same effect as such judgment of amoveas manus. R. S. 1897, c. 57, s. 13.

Costs against suppliant.

14. Upon any such petition of right, the Attorney-General, or other person appearing on behalf of His Majesty, and every such other person as aforesaid who shall appear and plead, shall be entitled respectively to recover costs against the suppliant, in the same manner and subject to the same restrictions and discretion, and under the same rules, regulations, and provisions, so far as they are applicable, as are or may be usually adopted or in force touching the payment or receipt of costs in proceedings between subject and subject; and, for the recovery of such costs, such and the same remedies and writs of execution as are authorised for enforcing payment of costs upon judgments in personal actions or decrees, rules or orders, shall and may be prosecuted, sued out, and executed respectively by or on behalf of His Majesty, and of such other persons as aforesaid as shall appear and plead to such petition; and any costs recovered on behalf of His Majesty shall be paid to the officer in charge of the Provincial Treasury. R. S. 1897, c. 57, s. 14.

Costs to suppliant.

15. Upon any such petition of right, the suppliant shall be entitled to costs against His Majesty, and also against any other person appearing or pleading to any such petition of right, in like manner, and subject to the same rules, regulations and provisions, restrictions and discretion, so far as they are applicable, as are or may be usually adopted or in force touching the right to recover costs in proceedings between subject and subject; and, for the recovery of any such costs from any such person, other than His Majesty, appearing or pleading in pursuance hereof to any such petition of right, such and the same remedies and writs of execution as are authorised for enforcing payment of costs upon rules, orders, decrees, or judgments in personal actions between subject and subject shall and may be prosecuted, sued out, and executed on behalf of such suppliant. R. S. 1897, c. 57, s. 15.

If judgment be for relief, etc., Judge to certify to Provincial Treasurer.

16. Whenever upon such petition of right, a judgment, order, or decree shall be given or made that the suppliant is entitled to relief, and there shall be no motion or order for a new trial or proceeding in appeal, and whenever upon a motion for a new trial the same

shall be dismissed or upon any proceeding in appeal a judgment, order, or decree shall be affirmed, given, or made that the suppliant is entitled to relief, and whenever any rule or order shall be made entitling the suppliant to costs, any Judge of the Court shall and may, upon application in behalf of the suppliant, after the lapse of fourteen days from the making, giving, or affirming of such judgment or decree, rule or order, give a certificate, certifying to the officer in charge of the Provincial Treasury the tenor and purport of the same, in the form in the Schedule No. 5 to this Act, or to the like effect; and such certificate may be sent to or left at the office of the said officer in charge of the Provincial Treasury. R. S. 1897, c. 57, s. 16.

17. It shall be lawful for the officer in charge of the Provincial Treasury, and he is hereby required, to pay the amount of any moneys and costs as to which a judgment or decree, rule or order, shall be given or made that the suppliant in any such petition of right is entitled thereto, and of which judgment or decree, rule or order, the tenor and purport shall have been so certified to him as aforesaid, out of any moneys in his hands for the time being legally applicable thereto, or which may be thereafter voted by the Legislature for that purpose. R. S. 1897, c. 57, s. 17.

Payment by Provincial Treasurer.

18. It shall be lawful for the Judges of the Court, from time to time, to make all such general rules and orders in the Court for regulating the pleading and practice on such petitions of right, and for the effectual execution of this Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the several matters herein contained, and the performance thereof, and for the government and conduct of the officers of the Court in and relating to the distribution and performance of the duties and business to be done and performed in execution of this Act, as such Judges may think fit, reasonable, necessary, or proper; and to frame such writs and forms of proceedings as to them may seem expedient for the purpose aforesaid. R. S. 1897, c. 57, s. 18.

Judges to make rules, etc.

Crown Actions.

19. The procedure and forms which are and may, from time to time, be in force for the prosecution of rights, claims, or demands, or for the recovery of the possession of any lands, deeds, or personal property between subject and subject, may be used in the like cases for the prosecution of rights, claims, or demands which His Majesty may have against any person or body corporate, or for the recovery of the possession of any lands, deeds, or personal property whereto His Majesty claims to be entitled. R. S. 1897, c. 57, s. 19.

Forms and procedure.

20. In any action or proceeding commenced under the provisions of the last preceding section, the defendant shall be entitled to

Defendant may compel Attorney-General to proceed.

require His Majesty's Attorney-General to reply or otherwise answer the last pleading of the defendant, and to proceed to trial in the same manner and within the same times as may be limited as between subject and subject, and shall, in the event of default, by leave of the Court or a Judge, be entitled to obtain and enter up judgment, dismissing such action or proceedings with costs. R. S. 1897, c. 57, s. 20.

Saving Clauses.

Suppliants may proceed as heretofore.

21. Nothing in this Act contained shall prevent any suppliant from proceeding as before the passing of this Act. R. S. 1897, c. 57, s. 21.

Construction.

22. Notwithstanding anything herein contained, this Act shall not be construed so as to entitle any person to institute a suit against the Crown, in respect of any proceeding, matter, or thing alleged to have been had, taken, done, committed, or omitted before the twenty-first day of February, 1873. R. S. 1897, c. 57, s. 22.

SCHEDULES.

SCHEDULE No. 1.

PETITION.

In the Supreme Court of British Columbia.

TO THE KING'S MOST
EXCELLENT MAJESTY.

To Wit:

Venue.

The humble petition of *A. B.*, of _____, by his solicitor, *E. F.*, of _____ (if any), sheweth that [*state the facts*].

Conclusion.

Your suppliant therefore humbly prays that, etc.

Dated the _____ day of _____, 19 ____.

(Signed.) *A. B.*

or *C. D.*, Counsel for *A. B.*

or *E. F.*, Solicitor for *A. B.*

R. S. 1897, c. 57, Sch. 1.

SCHEDULE No. 2.

The suppliant prays for a statement of defence on behalf of His Majesty, within twenty-eight days after the delivery hereof, or otherwise that the petition may be taken as confessed.

R. S. 1897, c. 57, Sch. 2.

SCHEDULE No. 3.

To A. B. :

You are hereby required to appear to the within petition in the Supreme Court of British Columbia within eight days, and to deliver a statement of defence thereto within fourteen days after the delivery hereof.

Take notice that, if you fail to appear or plead in due time, the said petition may, as against you, be ordered to be taken as confessed.

Dated the day of , 19 .

R. S. 1897, c. 57, Sch. 3.

SCHEDULE No. 4.

PETITION OF RIGHT.

In the Supreme Court of British Columbia.

A. B., Suppliant,	}	C. D. appears in person, or
vs.		C. D., solicitor for E. F., appears
The King.		for him.

[If the appearance be in person, the address of the party appearing to be given.]

Entered the day of , 19 .

R. S. 1897, c. 57, Sch. 4.

SCHEDULE No. 5.

To the Officer in charge of the Treasury of British Columbia:

Petition of Right of A. B. in the Supreme Court of British Columbia.

Pursuant to the provisions of section 16 of the "Crown Procedure Act," I hereby certify that on the day of , 19 , it was by the said Supreme Court of British Columbia adjudged [or decreed or ordered] that the above-named suppliant was entitled to, etc.

(Judge's Signature.).....

R. S. 1897, c. 57, Sch. 5.

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