

*Statutes of Upper-Canada, Passed in the first session of the fifth provincial parliament (1809).*  
From *The Provincial Statutes of Upper-Canada: Revised, Corrected, and Republished* (York, R. C. Horne, 1818.)

49 George III – Chapter 4

**An Act for the more effectual preventing of Frivolous and Vexatious suits, and to authorize the Levying of Poundage upon Executing in certain cases, and to regulate the Sales by Sheriffs and other Officers. (Passed 9th March, 1809.)**

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That in all actions to be brought in the Province of Upper-Canada, from and after the passing of this Act, wherein the defendant or defendants shall be arrested and held to bail, and wherein the plaintiff or plaintiffs shall not recover the amount of the sum for which the defendant or defendants in such action shall have been so arrested and held to Special Bail, such defendant or defendants shall be entitled to costs of Suit, to be taxed according to the custom of the Court, in which such action shall have been brought, provided it shall be made appear to the satisfaction of the Court, in which such action is brought, upon motion to be made in Court for that purpose, and upon hearing the parties by affidavit, that the plaintiff or plaintiffs in such action, had not any reasonable or probable cause for causing the defendant or defendants to be arrested and held to Special Bail, in such amount as aforesaid; and provided that such Court shall thereupon by Rule or Order of the same Court, direct that such costs shall be allowed to the defendant or defendants, and the plaintiff or plaintiffs shall, upon such Rule or Order being made as aforesaid, be disabled from taking out any Execution for the sum recovered in any such action, unless the same shall exceed, and then in such sum only, as the same shall exceed the amount of the taxed costs of the defendant or defendants in such action, and in case the sum recovered in any such actions shall be less than the amount of the costs of the defendant or defendants to be taxed as aforesaid, that then the defendant or defendants shall be entitled after deducting the sum of money recovered by the plaintiff or plaintiffs in such action, from the amount of his, her, or their costs, to be taxed as aforesaid, to take out execution for such costs in like manner as a defendant or defendants may now by law have execution for costs in other cases.

II. And be it further enacted by the authority aforesaid, That in all actions which shall be brought in the Province of Upper-Canada after the passing of this Act, upon any judgment recovered, or which shall be recovered, in any Court of the said Province; the plaintiff or plaintiffs in such action on the judgment, shall not recover, or be entitled to any costs of suit, unless the Court in which such action on the judgment shall be brought, or some Judge of the same Court shall otherwise order.

III. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, in every action in which the plaintiff or plaintiffs shall be entitled to levy under an execution, against the goods of any defendant or defendants, such plaintiff or plaintiffs may also levy the Poundage fees and expences of the execution, over and above the sum recovered by the judgment.

IV. And be it further enacted by the authority aforesaid, That from and after the passing of this Act, if any defendant or defendants shall be taken, detained or charged in custody, at the suit of any person or persons upon mesne process, issuing out of the Court of King's Bench, in the said Province, and shall be imprisoned and detained thereon, after the return of such process, it shall and may be lawful for such defendant or defendants in vacation time only, and upon due notice thereof given to the Attorney of the plaintiff or plaintiffs in such process, to put in and justify Bail before the Chief Justice or any of the Justices of the said Court of King's Bench, who may, if he shall think fit, thereupon order a rule to issue for the allowance of such Bail, and may further order such defendant to be discharged out of custody, by Writ of Supersedeas, or otherwise, according to the practice of the said Court, in like manner as the same is, and may be done, by an order from the Court in Term time.

V. And be it further enacted by the authority aforesaid, That no Sheriff or other Officer, in any District of this Province, shall proceed to the sale of any effects, taken by virtue of any Writ of Execution, until public notice in writing thereof is given, at least eight, days previous thereto, at the most public place in the Town or Township where such effects may have been taken in execution, and of the time and place where such effects are to be exposed to sale.