

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbshire & George Desbarats, 1857.

20 Victoria – Chapter 61

An Act to extend the right of Appeal in Criminal Cases in Upper Canada. Assented to 10th June, 1857.

Whereas by law the right of appeal on convictions for criminal offences is allowed only on questions of law reserved by the Judge by whom such offences are tried; And whereas it would be greatly conducive to the ends of justice if such right of appeal were extended: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. When any person shall be convicted before any Court of Oyer and Terminer, or Gaol Delivery, or Quarter Sessions, of any treason, felony or misdemeanour, such person may apply for a new trial to either of the Superior Courts of Common Law where such conviction has taken place before a Judge of either of such Courts, or to such Court of Quarter Sessions when the conviction has taken place at such Sessions, upon any point of law or question of fact, in as full and ample a manner as any person may now apply to such Superior Court for a new trial, in a civil action, and upon any rule being granted for such new trial, the same proceedings shall take place as to any future trial or the commitment or bailing of such person so convicted, as if such conviction had not been had.

II. When any Court of Quarter Sessions shall make any rule or order affirming the conviction of any person so applying for a new trial as aforesaid, such person may appeal therefrom to either of the Superior Courts of Common Law against such rule or order, and thereupon such Court of Quarter Sessions shall state in a case to be prepared by such person so convicted, and approved by such Court, and signed by the Recorder or Chairman thereof, the question or questions of law or fact upon which such new trial was applied for, together with the circumstances upon which the same shall have arisen, and the judgment of such Court, with the reasons therefor; and such case shall be transmitted by such Court of Quarter Sessions to one or other of the said Superior Courts of Common Law on or before the first day of the Term of such Superior Court next after the time when such rule or order shall have been made, and such Superior Court shall thereupon have full power and authority to hear and finally determine the said questions of law or fact, and affirm such conviction or order a new trial, or make such other order as justice may require, and shall also direct the Clerk of the Peace or, Recorder's Clerk, as the case may be, to make such entry on the original record as such Superior Court shall order, and such Superior Court shall make such order for carrying out any sentence already passed, or for passing any sentence, if none has already been passed, or for the discharge of such person so convicted on bail, or otherwise, as the justice of the case shall require; Provided always, that the judgment of such Superior Court on any such appeal as aforesaid, shall be final and conclusive.

III. Any person convicted of any such offence as aforesaid at any Court of Oyer and Terminer or Gaol Delivery, shall not be allowed to make any application to either Superior Court of Common Law for a new trial, unless such application shall be made to such Superior Court on or before the last day of the first week of the Term next succeeding such Court of Oyer and Terminer or Gaol Delivery, and upon such application such Superior Court shall make such rule Or order, either for affirming the conviction

or granting a new trial, or otherwise, as the justice of the case may require, and shall further make all other necessary rules and orders for carrying such rule or order into effect.

IV. Any person so convicted as in the next preceding section mentioned, whose conviction shall be affirmed by either of the said Superior Courts of Common Law, may appeal to the Court of Error and Appeal against such affirmation, and such Court of Error and Appeal shall and may make such rule or order therein, either in affirmance of such conviction or for granting a new trial, or otherwise, as the justice of the case may require, and shall further make all other necessary rules and orders for carrying such rule or order into effect; Provided always, that no such appeal shall be made to such Court of Error and Appeal, unless allowed by such Superior Court, or two of the Judges thereof, in term or vacation; And provided also, that such allowance shall be granted and appeal heard, within six calendar months after such conviction affirmed, unless otherwise ordered by such Court of Error and Appeal, and that any rule or order of such Court of Error and Appeal shall be final and conclusive.

V. No sentence of death in any case of capital felony, shall be passed to take effect until after the expiration of the Terms next succeeding the sitting of the Court at which such sentence of death shall be passed.

VI. The Judges of the said Superior Courts of Common Law, or a majority of them, and the said Court of Error and Appeal, shall have full power and authority from time to time to make such rules and orders as they may consider necessary more effectually to carry out all or any of the provisions of this Act.

VII. Nothing in this Act contained shall be construed to repeal the Act passed in the session held in the fourteenth and fifteenth year of Her Majesty's Reign, chaptered thirteen, and intituled, *An Act for the further amendment of the administration of the Criminal Law*, except in so far as the same may be inconsistent with the provisions of this Act.

VIII. This Act shall apply only to Upper Canada.