

Pleas, the Puisné Justices of the said Court of Queen's Bench and Common Pleas, and the Vice-Chancellors, and to such and so many other persons as he shall think fit; and such Commissioners, or any three of them, of whom the said Chief Justice of the Court of Queen's Bench, the Chancellor for Upper Canada, the Chief Justice of the said Court of Common Pleas, or one of the said Puisné Justices of the said Court of Queen's Bench or Common Pleas, or one of the said Vice-Chancellors shall be one, (such three Commissioners to be a quorum for all the purposes of that Act,) shall have full power and authority, in the manner and for all the purposes mentioned in the said Act.

### C A P . X I I I .

An Act for the further amendment of the Administration of the Criminal Law.

[ 2d August, 1851. ]

**W**HEREAS it is expedient to provide a better mode than that now in use of deciding any difficult question of law which may arise in Criminal trials in any Court of Oyer and Terminer and Gaol Delivery, and to make further amendments in the Administration of the Criminal Law: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That when any person shall have been convicted of any treason, felony or misdemeanor before any Court of Oyer and Terminer or Gaol Delivery, or Quarter Sessions, the Judge, Recorder or Justices of the Peace before whom the case shall have been tried, may, in his or their discretion, reserve any question of law which shall have arisen on the trial, for the consideration of the Justices of either of Her Majesty's Superior Courts of Common Law, and thereupon shall have authority to respite execution of the judgment on such conviction, or postpone the judgment, until such question shall have been considered and decided, as he or they may think fit; and in either case the Court, in its discretion, shall commit the person convicted to prison, or shall take a recognizance of bail, with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time or times as the Court shall direct, and receive judgment, or to render himself in execution, as the case may be.

II. And be it enacted, That the Judge, Recorder, or Court of Quarter Sessions, shall thereupon state in a case to be signed by such Judge, Recorder or the Chairman of such Court, the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen; and such case shall be transmitted by such Judge, Recorder or Court of Quarter Sessions to one or other of the said Superior Courts on or before the last day of the first week of the Term of such Superior Court next after the time when such trial shall have been had; and the Justices of either of the said Superior Courts shall thereupon have full power and authority to hear and finally determine the said questions, and thereupon to reverse, affirm or amend any judgment which shall have been given on the indictment or inquisition on the trial whereof such question or questions have arisen, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said Justices the party convicted ought not to have been convicted, or to arrest the judgment, or order judgment to be given thereon at some other Session of Oyer and Terminer or Gaol Delivery, or other Sessions of the Peace, if no judgment shall have been before that time given, as they shall be advised, or to make such other order as justice may require; and such judgment and order, if any, of the said Justices shall be certified under the hand of the Chief Justice or Senior Judge of such Court to the

Preamble.

Any question of law may be reserved by certain courts for the opinion of one of the superior courts of law, &c.

Case to be stated and certified to such superior court.

Powers of the Judges of such superior court.

Judgment to be certified to the court

below: its consequence.

Clerk of Assize, or to the Clerk of the Peace, or Recorder's Clerk, as the case may be, who shall enter the same on the original record in proper form, and a certificate of such entry, under the hand of the Clerk of Assize, or the Clerk of the Peace, or the Recorder's Clerk, as the case may be, in the form as near as may be, or to the effect mentioned in the Schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the Sheriff or Gaoler in whose custody the person convicted shall be, and the said certificate shall be sufficient warrant to such Sheriff or Gaoler, and all other persons, for the execution of the judgment, as the same shall have been so certified to have been affirmed or amended, and execution shall thereupon be executed on such judgment, or for the discharge of the person convicted from further imprisonment, if the judgment be reversed, avoided or arrested, and in that case such Sheriff or Gaoler shall forthwith discharge him, and also the next Court of Oyer and Terminer or Gaol Delivery, or Sessions of the Peace, shall vacate the recognizance of bail, if any; and if the Court of Oyer and Terminer or Gaol Delivery, or Sessions of the Peace, shall be directed to give judgment, the said Court shall proceed to give judgment at the next Session.

How the Judgment of the superior court shall be delivered.

III. And be it enacted, That the judgment or judgments of the said Justices of the said Superior Courts shall be delivered in open Court, after hearing Counsel or the parties, in case the prosecutor or person convicted shall think it fit that the case shall be argued, in like manner as the judgments of the said Superior Courts are now delivered.

Case may be sent back for amendment.

IV. And be it enacted, That the said Justices of the said Superior Courts, when a case has been reserved for their opinion, shall have power, if they think fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

What Judgment may be pronounced by a Court of Error.

V. And be it enacted, That whenever any Writ of Error shall be brought upon any judgment or any indictment, information, presentment or inquisition in any criminal case, and the Court of Error shall reverse the judgment, it shall be competent for such Court of Error either to pronounce the proper judgment, or to remit the record to the Court below, in order that such Court may pronounce the proper judgment upon such indictment, information, presentment or inquisition.

Punishment of persons forging certificates, &c.

VI. And be it enacted, That every person who shall forge or alter, or shall offer, utter, dispose of or put off, knowing the same to be forged or altered, any certificate of or copy certified by a Chief Justice or Senior Judge, or by a Clerk of Assize, Clerk of the Peace or Recorder's Clerk, as the case may be, with intent to cause any person to be discharged from custody, or otherwise prevent the course of justice, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned in the Provincial Penitentiary for any period not more than seven nor less than three years.

Extent of Act.

VII. And be it enacted, That this Act shall be in force only in Upper Canada.

SCHEDULE.

Whereas at the Session of the Peace, for the County (or united Counties or City) of \_\_\_\_\_ held on \_\_\_\_\_ before \_\_\_\_\_ and others, their fellows (or at the Session of Oyer and Terminer and Gaol Delivery, held for the County (or united Counties) of \_\_\_\_\_, on \_\_\_\_\_ before the Honorable \_\_\_\_\_, one of the Justices of the Court of \_\_\_\_\_, and others his fellows, Justices of Oyer and Terminer and Gaol Delivery,) A. B., late of \_\_\_\_\_ having been found guilty of felony, and judgment thereon given, that (state the substance,) the Court before whom he was tried reserved a certain question of law for the consideration of the Justices of one of the Superior Courts of Common Law, and execution was thereupon respited in the mean time; This is to certify that the Justices of the Court of Queen's Bench (or Common Pleas) having met at Toronto, in \_\_\_\_\_ Term (or the sittings after \_\_\_\_\_ Term,) it was considered by the said Justices there, that \_\_\_\_\_

that the Judgment aforesaid should be annulled, and an entry made on the record, that the said A. B. ought not, in the judgment of the said Justices, to have been convicted of the felony aforesaid ; and you are therefore hereby required forthwith to discharge the said A. B. from your custody.

(Signed, E. F.  
(Clerk of the Peace for the County (or united Counties of (or Recorder's Clerk of the City of , or Clerk of Assize of , as the case may be.)

To the Sheriff of  
the Gaoler of  
all others whom it may concern. , and }  
, and }

C A P . X I V .

An Act to provide for the payment of Petit Jurors in Upper Canada.

[ 2d August, 1851. ]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That every Petit Juryman actually attending any of the Courts of Assize and Nisi Prius, Oyer and Terminer, General Gaol Delivery, General Quarter Sessions of the Peace, or County Courts in Upper Canada, shall be entitled to receive and be paid, in the manner hereinafter provided, the sum of Five Shillings per day, for every day he shall attend such Court, and the sum of Six Pence per mile for every mile he shall necessarily travel from his place of residence to the said Court, or such other sums as any County Council shall by By-law from time to time fix and determine, and that the distance shall be ascertained by the declaration of the Sheriff's Bailiff summoning such Juror, or by the declaration of the Juror himself: Provided always, that any false declaration respecting the distance of such party's residence, shall forfeit the right of every Juror making such false declaration to receive any payment for travelling or attending such Court as Juror ; and provided also, that no Petty Juror shall be entitled to any fee or allowance other than is provided by this Act.

Allowance to Petit Jurors attending certain Courts.

Proviso: false declaration to forfeit allowance.  
Proviso.

**II.** And be it enacted, That it shall be the duty of every Sheriff to make a pay list for the Petit Jurors summoned to attend the said Courts, in the form set forth in the Schedule to this Act, and to attend or cause some Officer to attend at the opening of the said Courts, on the morning of every day such Court shall sit for the trial of causes by Jury, and upon the Jurors being called over, shall check and mark the word " present," or " absent," as the case may be, in the proper column of such list opposite the name of every Juror, and on the last day of the sitting of such Court shall certify and return to the Treasurer of the County the said pay list.

Sheriff to make a Pay list for Petit Jurors.

And to transmit it to Treasurer.

**III.** And be it enacted, That the said pay list, checked and certified as aforesaid, shall be a sufficient authority for the Treasurer to pay to each Juror the sum to which he shall appear entitled, as certified by such list, and it shall be the duty of the Treasurer forthwith to pay every Juror the sum so appearing due to him on such list.

Treasurer to pay the Jurors.

**IV.** And be it enacted, That every Sheriff shall be entitled to receive from the Treasurer of the County of which he is Sheriff such sum for each pay list, and such sum per diem for checking the same every day at the opening of the Court, and for certifying and returning the same to the Treasurer as the County Council by By-law shall determine ; Provided always, that the County Court and General Quarter Sessions

Allowances to Sheriffs.

Proviso.