

*Provincial Statutes of Canada*, passed in the year 1845. Montreal: Stewart Derbishire & George Desbarats, 1845.

8 Victoria – Chapter 37

**An Act to allow the issuing of Testatum Writs of Capias ad Respondendum in the several Districts in Upper Canada, and for other purposes therein mentioned. (29th March, 1845.)**

Whereas it is expedient to make certain amendments in the practice of the Court of Queen's Bench, in that part of the Province of Canada which formerly constituted the Province of Upper Canada: 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 it shall and may be lawful for the Clerk of the Crown, from time to time, and he is hereby required to supply his Deputies in each and every District of Upper Canada, with the original and Testatum Writs of Mesne and final Process, excepting Writs against Lands and Tenements, and that the same shall and may be issued by such Deputies in any District, in the same manner as may be done in the principal office at Toronto.

II. And be it enacted, That the notice on the copy of Mesne Process to be served on a Defendant or Defendants, shall be in the form already by law provided; and that all proceedings upon any suit so instituted in any District shall be continued and carried on in such District to final judgment: Provided always, that the service of papers shall be made upon the Defendant or Defendants, or if he or they appear by Attorney, then upon such Attorney at his office in the usual mode, or upon his Agent at Toronto, according to the existing practice of the Court of Queen's Bench: Provided always, that the Court of Queen's Bench, or any Judge thereof in Chambers, on making an order to change the Venue in any suit, may order the papers in such suit to be transmitted to and filed in the office of the, Clerk of the Crown at Toronto.

III. And be it enacted, That it shall and may be lawful for such Deputy Clerk of the Crown in each District, to tax the costs, and enter final judgment in all suits commenced within such District where a Cognovit shall have been executed, and also in cases of Non. Pros. and where judgment shall be final in the first instance, and to issue an original or Testatum Writ of Fieri Facias or Capias ad Satisfaciendum, according to the practice of the Court of Queen's Bench: Provided always, that it shall be lawful for either party, in any suit, to sue out a rule from the principal office at Toronto for the taxation of costs in such said suits by the Master.

IV. And be it enacted, That the Deputy Clerk of the Crown in each District shall transmit to the office of the Clerk of the Crown at Toronto, all judgments by him entered, and the papers thereto belonging, immediately after entering the same; and that upon receipt thereof such judgments shall be entered of record and docketted in the principal office.

V. And be it enacted, That it shall and may be lawful for the Clerk of the Crown at Toronto, in all cases pending in the said Court, where papers are transmitted to him without any charge thereon, to receive and file all such papers in the same manner as if the same had been taken to the said office, by the Attorney or Agent of the Attorney requiring the same to be filed.

VI. And be it enacted, That all alias and subsequent Writs of final Process, and all Writs against Lands, shall be sued out in the office of the Clerk of the Crown at Toronto.

VII. And be it enacted, That the office of such Deputy Clerk of the Crown in each District shall be held in the Court House of each District, if room shall be provided for the same therein; and that such Deputy shall not be a practising Attorney, or an articulated Clerk to any practising Attorney.

VIII. And be it enacted, That in all cases where a Writ shall have been sued out of the office of any Deputy Clerk of the Crown, for any District east of the Home District, into any District westward thereof, or from such Deputy in any District west of the Home District into a District eastward thereof, the time for filing an appearance, and for pleading, replying, and rejoicing therein, shall be extended to twelve days; any existing provision to the contrary notwithstanding.

IX. And be it enacted, That it shall and may be lawful for each and every such Deputy Clerk of the Crown to issue Rules upon the Sheriff, Coroners or Elisors of his District, for the return of any Writs of Mesne or Final Process to him directed, in the same manner as may now be done in the principal office.