

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbshire & George Desbarats, 1849.

12 Victoria – Chapter 37

An Act to establish a Court having jurisdiction in Appeals and Criminal Matters, for Lower-Canada. 30th May, 1849.

Whereas it is expedient to alter and reform the judicial system of Lower-Canada, which hath been found in some respects inadequate to the due administration of justice in that division of the Province, and for that purpose, among other things, to establish therein a Court having jurisdiction in Appeals and Criminal Matters: 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 the Act passed in the seventh year of Her Majesty's Reign, and intituled, *An Act for the establishment of a better Court of Appeals in Lower-Canada*, shall be and is hereby repealed; but all Acts and provisions of law thereby repealed shall nevertheless remain repealed.

II. And be it enacted, That there shall be and there is hereby established in and for Lower-Canada a Court of Record to be called "The Court of Queen's Bench," and to consist of four Judges, that is to say, of a Chief Justice and three Puisné Judges, to be appointed from time to time by Her Majesty, Her Heirs or Successors, by Letters Patent under the Great Seal of this Province; but no person shall be appointed to be such Chief Justice or Puisné Judge, unless at the time of his appointment he shall have been a Justice of one of the several Courts of Queen's Bench in Lower-Canada, or a Judge of the Superior Court, or a Circuit Judge, or shall be an Advocate of at least ten years' standing at the Bar of Lower-Canada: Provided always, that the said Court shall be called "The Court of Queen's Bench," or "The Court of King's Bench," according as the Sovereign then reigning shall be a Queen or a King.

III. And be it enacted, That the Act passed in the seventh year of Her Majesty's Reign, and intituled, *An Act to render the Judges of the Courts of King's Bench in that part of this Province heretofore Lower-Canada, independent of the Crown*, shall apply to the Judges of the Court hereby established, as if they had been expressly mentioned in the said Act; and that no such Judge shall sit in the Executive or Legislative Council, or in the Legislative Assembly, or hold any other place of profit under the Crown.

IV. And be it enacted, That the Judges of the said Court shall respectively reside either at Quebec or at Montreal, and that at least one of them shall reside at each of the said places.

V. And be it enacted, That the said Court, and the Judges thereof, shall have, hold and exercise an appellate civil jurisdiction and also the jurisdiction of a Court of Error, within and throughout

Lower-Canada, with full power and authority to take cognizance of, hear, try and determine in due course of law, all causes, matters and things appealed or to be appealed, removed or to be removed, by Writ of Appeal or of Error, from all and every the Courts and jurisdictions wherefrom an Appeal or Writ of Error by law lies or is allowed, or hereafter may by law lie or be allowed, unless such Appeal or Writ of Error is expressly directed to be to some other Court.

VI. And be it enacted, That all and every the powers, authorities and jurisdictions which immediately before the coming into force of the Act herein first above cited and repealed, were by law required to be exercised, or might be exercised by and were vested in the Provincial Court of Appeals abolished by the said Act, and by or in the several Judges or Members thereof, or any of them, as well in Court as out of Court, in Term as out of Term or in Vacation, shall, in so far as the same may not be inconsistent with the provisions of this Act or of any other Act of this Session, become and be vested in the Court hereby established, and shall and may be as effectually exercised by the said Court, and the Judges thereof severally and respectively, in Court or out of Court, in Term or out of Term, or in Vacation, as the same might have been exercised and enjoyed by the said Provincial Court of Appeals abolished by the said Act, and the several Judges or Members thereof, or any of them, in Court or out of Court, in Term or out of Term or in Vacation, if neither the said Act nor this Act had ever been passed.

VII. And be it enacted, That in the Court hereby established, the Chief Justice thereof shall preside, or if he be absent, then the Puisné Judge thereof, entitled by his commission to precedence in the Court.

VIII. And be it enacted, That two Terms of the said Court in Appeal and Error shall be held in each year in the City of Quebec, and two in the City of Montreal; but at either of the said Cities, any case in Appeal or Error may be heard or determined, whatever be the place from which the same shall have been appealed or removed.

IX. And be it enacted, That the said Terms shall beheld in the City of Quebec; from the seventh to the eighteenth of January, and from the first to the twelfth of July, both days in each case inclusive; and in the City of Montreal, from the first to the twelfth of March, and from the first to the twelfth of October, both days in each case inclusive; but the Court may, on the last juridical day of any Term, adjourn, for the purpose of rendering judgments only, to any day thereafter, on and after which day it may again adjourn for the like purpose; and such adjournment may be to any day during the Criminal Term or subsequent thereto.

X. And be it enacted, That any three Judges of the said Court shall form a Quorum thereof in Appeal and Error, and may hold the Court and exercise all the powers and authority thereof; and any judgment or order concurred in by any majority of a Quorum of the Court shall have the same force and effect as if concurred in by all the Judges present; excepting always, that no judgment appealed from shall be reversed or altered unless such reversal or alteration be concurred in by at least three Judges of the said Court; but any two Judges thereof, another or the others being present, may affirm any such judgment, with costs against the appealing party.

XI. And be it enacted, That no Judge of the said Court shall be disqualified from sitting in any case, by the mere fact of his having been a Judge of the Court whose judgment is in question, while such case was there pending, unless he shall have sat in the case at the rendering of final judgment, or, if the appeal be brought before final judgment from some interlocutory judgment, then unless he shall have sat in the case at the rendering of such interlocutory judgment.

XII. And be it enacted, That there shall be appointed from time to time a Clerk of the said Court, who shall be the Clerk thereof for all matters depending upon its jurisdiction as a Court of Appeal and Error, and shall be known as the "Clerk of Appeals;" and the said Clerk shall reside either in the City of Quebec or in the City of Montreal, and shall by an Instrument under his hand and seal appoint a Deputy who shall reside in that one of the said Cities in which the said Clerk shall not himself reside: and such Deputy is hereby empowered to perform any duty of the Clerk of Appeals, and shall continue to perform all the duties of that office, in case of the death, dismissal, suspension from office or resignation of the said Clerk, until the appointment of his successor in the said office; and the Instrument by which such Deputy Clerk shall have been appointed shall be entered at full length in the Register of the Court; but it shall be at all times lawful for the said Clerk to remove such Deputy and appoint another.

XIII. And be it enacted, That no Clerk or Deputy Clerk of Appeals shall, while he remains such, practise as an Advocate, Proctor, Solicitor, Attorney or Counsel in Lower-Canada.

XIV. And be it enacted, That all Writs and Process to be issued from and out of the said Court in the exercise of its jurisdiction as a Court of Appeal and Error, shall be distinguished as being so issued, and shall run in the name of Her Majesty, Her Heirs or Successors, and shall be sealed with the Seal of the said Court, and signed by the Clerk thereof or his Deputy, whose duty it shall be to make out and prepare the same; and they shall not be tested in the name of any Judge, but the words "in witness whereof we have caused the Seal of Our said Court to be hereunto affixed," shall be instead of such teste; Provided always, that no such Writ or Process shall be deemed void or voidable by reason of its having a wrong seal or no seal thereon, and every such Writ and Process may be either in the English or in the French language; any law, usage or custom to the contrary notwithstanding.

XV. And be it enacted, That whenever two or more of the Judges of the said Court shall be lawfully recused or disqualified, or rendered incompetent, either by reason of interest or otherwise to sit in the said Court in any cause cognizable thereby, or shall be suspended from office, or absent from the Province with the permission of the Governor, so as to leave the said Court without a *Quorum* to take cognizance of such cause, it shall be the duty of the Clerk of Appeals, when duly required so to do in writing by any of the parties, to report the fact under his Hand, and the Seal of the Court, to the Governor, who may thereupon, by an Instrument under his Hand and Seal, appoint *ad hoc* a like number of persons to sit in the said Court in the place and stead of the Judges so recused, or disqualified, or rendered incompetent, or suspended, or absent, for the purpose of hearing and determining such cause as aforesaid, and of doing all such judicial Acts therein as may be required before or after the determination thereof; taking such persons in his discretion either from among the Judges of the Superior Court, or the Circuit Judges, or from

among the Members of the Bar of Lower-Canada of at least ten years' standing: and the persons so appointed to act as Judges *ad hoc*, shall, when acting as such, have the same powers and authority in and with respect to the said cause, as the Judges so recused, disqualified, or rendered incompetent, or suspended, or absent, would otherwise have had; and in case they or any of them shall die, resign, or be recused, disqualified or otherwise rendered incompetent, so as to leave the Court without a Quorum to take cognizance of the cause with reference to which they were appointed, other Judges *ad hoc* may be appointed in their stead in like manner and with like effect.

XVI. And be it enacted, That all and every the Laws, which immediately before the coming into force of the Act hereinbefore cited and repealed, were in force in Lower-Canada, to govern and direct the proceedings and practice of the Provincial Court of Appeals abolished by the said Act, in so far as they are not repealed or varied by this Act or by any other Act of this Session, or inconsistent with the provisions of such Act or of this Act, shall continue to be in force and shall apply to and be observed in and by the Court hereby established, in the same manner as they would have applied to and been observed in and by the said Provincial Court of Appeals, if neither the said Act nor this Act had been passed.

XVII. And be it enacted, That the said Court, shall and may (and it shall be the duty of the Court so to do within one year from the time when this Act shall come fully into effect,) make and establish a Tariff of Fees for the Officers of the said Court and the Counsel, Advocates and Attornies practising therein, and also such Rules of Practice as shall be requisite for regulating the due conduct of the causes, matters and business before the said Court or the Judges thereof, or any of them, and in Term or out of Term, and all Process and Proceedings therein or thereunto relating; which Tariff of Fees and Rules of Practice the said Court shall have full power and authority to repeal, alter and amend from time to time: Provided always, that no such Rule of Practice shall be contrary to or inconsistent with this Act, or any other Act or Law in force in Lower-Canada, otherwise the same shall be null and void: And provided also, that until such Tariff of Fees and Rules of Practice shall be made and duly established by the said Court, the Tariff of Fees and Rules of Practice in force immediately before the coming of this Act into full effect, with regard to the "Court of Appeals for Lower-Canada," established by the Act hereinbefore cited and repealed, shall continue to be in force and shall apply to the Court hereby established and the proceedings therein, subject to such amendments and alterations as shall be from time, to time made therein by the said Court.

XVIII. And be it enacted, That all final judgments rendered by the said Court shall contain a summary statement of the points of fact and law, and the reasons upon which such judgments shall be founded, and the names of the Judges who shall have concurred therein or entered their dissent therefrom.

XIX. And be it enacted, That an appeal shall be from the judgments of the said Court, to Her Majesty, Her Heirs and Successors, in Her or their Privy Council in that part of the United Kingdom of Great Britain and Ireland called England, in all, each and every of the cases in and with respect to which an appeal, immediately before the commencement of the Act hereinbefore cited and

repealed, would lie from the judgments of the Provincial Court of Appeals thereby abolished, to Her Majesty in Her Privy Council, upon the terms and conditions, and in the manner and form, and under and subject to the restrictions, rules and regulations established with regard to Appeals from the said Provincial Court of Appeals to Her Majesty in Her Privy Council.

XX. And be it enacted, That all and every the Records, Registers, Documents and proceedings of the said Provincial Court of Appeals and of the Court of Appeals for Lower-Canada, shall henceforth after this Act shall come fully into effect, be transmitted into and make part of the Records, Registers, Documents and proceedings of the Court hereby established.

XXI. And be it enacted, That no Judgments, Order, Rule or Act of the said Provincial Court of Appeals, or of the said Court of Appeals for Lower-Canada, legally pronounced, given, had or done before this Act shall come fully into effect, shall be hereby avoided, but shall remain in full force and virtue as if this Act had not been passed; nor shall any Cause, Appeal, Writ of Error or Proceeding depending in the said Court of Appeals for Lower-Canada be abated, discontinued or annulled, but the same shall in their then present condition, be respectively transferred to and subsist and depend in the Court hereby established, to all intents and purposes as if they had respectively been commenced, brought or recorded in the said last mentioned Court, which shall have full power and authority to proceed accordingly in and upon all such Causes, Appeals, Writs of Error and Proceedings, to judgment and execution, and to make such Rules and Orders respecting the same as the said Court of Appeals for Lower-Canada might but for this Act have made, or as the Court hereby established, is hereby empowered to make in Causes, Appeals, Writs of Error and Proceedings commenced in and depending before the said last mentioned Court.

XXII. And be it enacted, That every Writ, Rule, Process or Order, which shall have been made returnable into the said Court of Appeals for Lower-Canada, or by or under which any thing shall have been ordered or ought to be done in or before the said Court, on any day subsequent to the time when this Act shall come fully into effect, shall be returnable into the Court hereby established, or the thing so required to be done shall be done in or before the same, (as the case may be,) on that juridical day in Term which shall be next after the day on which such Writ, Rule, Process or Order shall have been made returnable, or on which such thing shall have been ordered to be done: Provided always, that after the passing of this Act, but before it shall come fully into effect, it shall be lawful for the said Court of Appeals for Lower-Canada, to make any Writ, Rule or Process returnable into the Court hereby established, or to order any thing to be done in or before the same, or before any Judge or Officer thereof by his name of office, on any day after this Act shall come fully, into effect, in the same manner as if the said Court were one and the same with the said Court of Appeals for Lower-Canada, and the name and the times of holding the terms thereof were alone altered.

XXIII. And be it enacted, That the eighteen next preceding Sections of this Act, shall apply to the Court hereby established in the exercise of its jurisdiction and functions as a Court of Appeal and Error only, or the "Appeal Side" of the said Court.

XXIV. And whereas by an Act of this Session, to come fully into effect at the same time with this Act, the several Courts of Queen's Bench in Lower-Canada will be abolished: Be it therefore enacted, That the Court of Queen's Bench hereby established, and the Judges thereof, shall have original criminal jurisdiction throughout Lower-Canada and in the several Districts thereof in like manner as the several Courts of Queen's Bench in Lower-Canada now have and may exercise original criminal jurisdiction within their respective Districts, with full power and authority to take cognizance of, hear, try and determine, in due course of law, all pleas of the Crown, treasons, murders, felonies and misdemeanors, crimes and criminal offences whatsoever, heretofore had, done or committed, or hereafter to be had, done or committed, or whereof cognizance may lawfully be taken within Lower-Canada, save and except such as are cognizable only by the jurisdiction of the Admiralty.

XXV. And be it enacted, That all and every the powers, authorities and jurisdictions in pleas of the Crown, crimes and criminal offences, of what kind or nature soever, which by law are required to be exercised, and may or might be exercised by and are vested in the several Courts of Queen's Bench in the several Districts of Lower-Canada, as now constituted, or any or either of them, and by the several Justices of the said Courts or any or either of them, as well in term as out of term, or in vacation, shall from and after the time when this Act shall come fully into effect, become and be vested in the Court hereby established, and shall and may be as effectually exercised by the said Court, and the Judges thereof severally and respectively, as the same may now be exercised and enjoyed by the said several Courts of Queen's Bench, or any or either of them, and the several Justices thereof, or any or either of them, excepting always such powers, authorities and jurisdictions as may, by any Act of this Session, be vested in the Superior Court for Lower-Canada; and provided always, that no cause, matter or thing shall be removed into the Court hereby established, from any other Court or jurisdiction, except cases pending before any Court of General or Quarter Sessions of the Peace, in which a Trial by Jury is by law allowed, which cases may be removed into the Court hereby established, by certiorari, in the same manner (except in so far as it may be otherwise provided by any Act of this Session) as they may now be removed into the proper Court of Queen's Bench: and provided also, that nothing in this Act shall be construed to interfere with the exercise or the powers, authorities and jurisdiction in criminal matters vested by an Act of this Session in the Superior Court, when sitting in the District of Gaspé.

XXVI. And be it enacted, That all and every the laws of Lower-Canada, which immediately before the time when this Act shall come fully into effect, shall be in force to govern and direct the proceedings and practice of the several Courts of Queen's Bench in Lower-Canada, in the exercise of their powers, authorities and jurisdictions in pleas of the Crown, crimes and criminal offences, or the Sheriffs or other Officers of, or the Jurors, Witnesses or other parties, attending the same, and which are not repealed or varied by this Act, or by any other Act of this Session, or inconsistent with the provisions of such Act or of this Act, shall continue to be in force and shall apply to and be observed in and by the Court hereby established, and the Sheriffs or other Officers of, and Jurors attending the same, in the same manner as they would have applied to, and been observed in and by the said several Courts of Queen's Bench, and the Sheriffs or other Officers thereof, or the Jurors, Witnesses or other parties attending the same, if this Act had not been passed.

XXVII. And be it enacted, That the Judges of the Court hereby established shall severally and respectively be, and they are hereby appointed to be, Justices and Conservators of the Peace and Coroners in and throughout Lower-Canada.

XXVIII. And be it enacted, That all Writs and Process of the said Court, issued in the exercise of its jurisdiction in criminal matters, shall be distinguished as being so issued, and shall be signed by the Clerk of the Crown in and for the District in which they shall issue, and shall run and be sealed and attested in the manner hereinbefore provided with regard to the Writs and Process thereof issued in the exercise of its jurisdiction as a Court of Appeal and Error.

XXIX. And be it enacted, That there shall be appointed, from time to time, a Clerk of the Crown, in and for each of the Districts where terms or sittings of the said Court shall be held for the exercise of its jurisdiction in criminal matters, who shall be the Clerk of the said Court, in and for such District, with regard to all matters dependent upon its jurisdiction in such matters; and each such Clerk of the Crown, may, by an Instrument under his hand and seal, appoint a Deputy, who is hereby empowered to perform any duty of such Clerk of the Crown, and shall continue to perform all the duties of that office, in case of the death, -dismissal, suspension from office or resignation of such Clerk of the Crown, until the appointment of his successor in the said office; and the Instrument by which such Deputy Clerk is appointed, shall be entered at full length in the Register of the Court; but it shall be at all times lawful for such Clerk of the Crown to remove such Deputy, and to appoint another.

XXX. And be it enacted, That nothing herein- contained shall prevent any Prothonotary of the Superior Court, or any Clerk of the Circuit Court, from being appointed Clerk of the Crown, in and for any District; but no Clerk of the Crown shall, while he remains such practise as an Advocate, Proctor, Solicitor, Attorney or Counsel, in Lower-Canada.

XXXI. And be it enacted, That two terms or sittings of the Court hereby established, in the exercise of its jurisdiction in criminal matters, shall be held in each year, in and for each and every of the Districts into which Lower-Canada is now or may be hereafter divided, other than the District of Gaspé; except that in the District of Ottawa and the District of Kamouraska respectively, no such term shall be held until the Governor shall by proclamation have declared, that a proper Gaol and Court House have been erected in such District, until which time the District of Ottawa shall for all the purposes of this Act, be held to form part of the District of Montreal, and the District of Kamouraska to form part of the District of Quebec; and provided also, that notwithstanding any such proclamation as aforesaid, all cases, proceedings, matters and things theretofore commenced, or pending before the said Court, or where the offender shall, before the said proclamation, have been committed for trial to the Gaol at Quebec or Montreal, or bound to appear at some Term of the Court to be held at either of the said Cities, shall be proceeded with, heard, tried and determined by the said Court, sitting at Quebec or at Montreal, (as the case may be,) as if the said proclamation had not issued; but all other cases arising in the new District, shall be heard, tried and determined therein.

XXXII. And be it enacted, That such Terms or Sittings of the said Court in the exercise of its criminal jurisdiction, shall respectively be held by any one or more Judges of the said Court; and any one or more of them shall, at such Terms or Sittings, form a quorum, and may exercise all the powers and jurisdiction of the Court.

XXXIII. And be it enacted, That if at any time during any such Term or Sitting of the said Court, there shall not be a Judge thereof present and able to hold the same, any Judge or Judges of the Superior Court, may sit in and hold the Court hereby established, as if he was or they were a Judge or Judges thereof; but it shall always be the duty of the Judges of the said Court, or some of them, to hold the said Court, unless prevented by circumstances beyond their control, and it shall not be the duty of any of the Judges of the Superior Court so to do, except in the case above provided for.

XXXIV. And be it enacted, That the said Terms or Sittings of the Court hereby established, in the exercise of its jurisdiction in criminal matters, as aforesaid, shall respectively commence:

At Quebec, for the District of Quebec, on the twentieth of January and on the fourteenth of July: at Montreal, for the District of Montreal, on the fourteenth of March and on the fourteenth of October: at Three-Rivers, for the District of Three-Rivers, on the second of February and on the eleventh of September: at Sherbrooke, for the District of Saint Francis, on the twelfth of February and on the first of September: at Aylmer, for the District of Ottawa, on such two days, respectively, in each year as the Governor shall for that purpose appoint in and by his proclamation declaring that a proper Gaol and Court House have been erected and completed in the said District: at Kamouraska, for the District of Kamouraska, on such two days, respectively, in each year as the Governor shall for that purpose appoint in and by his proclamation declaring that a proper Gaol and Court House have been erected and completed in the said District: and if any of the said days be a Sunday or Holy-day, the Term or Sitting shall commence on the next juridical day thereafter.

XXXV. And be it enacted, That the said Terms or Sittings shall respectively continue and be holden until the said Court shall declare the same closed, which shall not be done until the Court shall be of opinion that there remains no trial, matter or proceeding to be had or done by or before it, which cannot more conveniently remain over until the then next Term; and the Court shall have full power, if it be deemed advisable, or if the attendance of the Judge or Judges holding the same, shall be required at any other place or Court, to adjourn from day to day, or to any day before the first day of the then next Term.

XXXVI. And be it enacted, That the Governor may, at any time and from time to time, by Proclamation, direct an extraordinary Term of the said Court to be held in and for any District, and to commence on the day to be named for that purpose in such Proclamation, which shall be issued at least thirty days before such day; and to such extraordinary Term all the provisions of this Act and of the law, with regard to the ordinary Terms of the said Court, shall apply.

XXXVII. And be it enacted, That all and every the Records, Registers, muniments and judicial and other proceedings and documents of the several Courts of Queen's Bench in and for the several Districts of Lower-Canada, except the District of Gaspé, in criminal matters, and appertaining to

the original Criminal jurisdiction of the said Courts, or to any case removed thereto from any Court of Quarter Sessions or General Sessions of the Peace, and in which a trial by Jury is by law allowed, shall forthwith after the time when this Act shall come fully into effect, be transmitted into and make part of the Records, Registers, muniments, judicial and other proceedings and documents of the Court hereby established, in the Districts and at the places in and at which the said Courts of Queen's Bench are now respectively established and held; that is to say, the Records, Registers, muniments, judicial and other proceedings of the present Court of Queen's Bench for the District of Montreal, shall be transmitted into the Court hereby established, and shall be kept in the Office of the Clerk of the Crown for the said District, at the City of Montreal; and the Records, Registers, muniments, judicial and other proceedings of the present Court of Queen's Bench for the District of Quebec, shall be transmitted into the Court hereby established, and shall be kept in the Office of the Clerk of the Crown for the said District, at the City of Quebec; and the Records, Registers, muniments, and judicial or other proceedings of the present Court of Queen's Bench for the District of Three-Rivers, shall be transmitted into the Court hereby established, and shall be kept in the Office of the Clerk of the Crown for the said District, at the Town of Three-Rivers [Trois-Rivières]; and the Records, Registers, muniments, judicial or other proceedings of the present Court of Queen's Bench for the District of Saint Francis, shall be transmitted into the Court hereby established, and shall be kept in the Office of the Clerk of the Crown for the said District, at the Town of Sherbrooke.

XXXVIII. And be it enacted, That no Judgment, Order, Rule, or Act of the said Courts of Queen's Bench in the several Districts of Lower-Canada, respectively, in criminal matters, and appertaining to the criminal jurisdiction of the said Courts, legally pronounced, given, had or done before the time when this Act shall come fully into effect, shall be hereby avoided, but shall remain in full force and effect; nor shall any indictment, information, suit or proceeding depending in the said Courts of Queen's Bench respectively, be abated, discontinued or annulled, but the same shall be transferred in their then present condition respectively, to, and shall subsist and depend in the Court hereby established on the Crown side thereof, severally and respectively to all intents and purposes as if they had been respectively commenced, brought, found, presented or recorded in the said Court; and the said Court shall have full power and authority to proceed accordingly on and in all such indictments, informations, suits and proceedings, to judgment and execution, and to make such rules and orders respecting the same, as the said Courts of Queen's Bench, might have made, or as the Court hereby established is hereby empowered to make in cases, suits and proceedings commenced in or depending before the said Court.

XXXIX. And be it enacted, That every Writ or Process, Recognizance or other Document, which is or shall be returnable into any of the several Courts of Queen's Bench as now constituted, (except as aforesaid the Court of Queen's Bench for the District of Gaspé) in the exercise of their jurisdiction in criminal matters, or by which any party shall be bound to appear or attend at any such Court of Queen's Bench, or any thing shall have been ordered to be done in or before any such Court, in the exercise of its jurisdiction aforesaid, on any day subsequent to the time when this Act shall come fully into effect, shall be returned into the Court hereby established, on the Crown side, and shall be held and considered to be returnable, or such party shall be held to appear or attend, or such thing shall be done, in or before the said Court, on that juridical day in

term, which shall be next after the day on which such Writ, Process, Recognizance or Document shall have been made returnable, or on which such party shall have been bound to appear or attend, or on which such thing shall have been ordered to be done: Provided always, that after the passing of this Act, but before it shall come fully into effect, it shall be lawful for the said several Courts of Queen's Bench respectively to make any Writ or Process returnable into the Court hereby established, or to order any thing to be done in or before the same, or any Judge or Officer thereof by his name of office, or for any Judge or Justice of the Peace, to bind over any party to appear before the said Court, on any day after this Act shall come fully into effect, in the same manner as if the said Court were, as regards its jurisdiction in criminal matters, one and the same with the said several Courts of Queen's Bench, respectively, and the times of holding the terms of such Courts of Queen's Bench were alone altered.

XL. And be it enacted, That the sixteen next preceding sections of this Act shall apply to the Court hereby established in the exercise of its functions as a Court of Criminal Jurisdiction only, or the "Crown Side" of the said Court.

XLI. And be it enacted, That all and every the powers and authorities which immediately before the time when this Act shall come fully into effect, shall be by law vested in the several Courts of Queen's Bench in the several Districts of Lower-Canada, and in the Chief Justices and the Justices thereof respectively, relating in any manner or way to the Writ of Habeas Corpus, as well in criminal as in civil cases, and to the awarding or issuing or return thereof, and to the hearing and determining in due course of law, of any question, issue or matter thence arising or incident thereto, shall be and the same are hereby vested in the said Court hereby established (concurrently with the other Courts and Judges in whom like powers may by any Act of this Session be vested) and in each and every of the Judges of the said Court respectively, as well in term as in vacation; which said Judges shall respectively be subject and liable to the same penalty, for denying in vacation time any Writ or Writs of Habeas Corpus, as is by law provided for the denial of a Writ of Habeas Corpus in vacation time by any Judge or Justice; and the said penalty shall be recovered from the Judges of the Court hereby established, respectively, in the like cases and circumstances, and in the same manner as is by law provided, with respect to any Judge or Justice.

XLII. And be it enacted, That nothing in this Act shall be construed to prevent the issuing of any General or Special Commission of Oyer and Terminer or of General Gaol Delivery, for any District, City or place, or to derogate from, abridge or affect any right or prerogative of the Crown not herein expressly mentioned.

XLIII. And be it enacted, That all Acts or Enactments or Provisions of Law inconsistent with this Act shall be and are hereby repealed.

XLIV. And be it enacted, That the Interpretation Act shall apply to this Act.

XLV. And be it enacted, That the foregoing sections of this Act shall come into force and effect, upon, from and after the day which shall be appointed for that purpose in any Proclamation to be

issued by the Governor of this Province, by and with the advice of the Executive Council thereof, and not before, except in so far as it may be herein otherwise provided: and upon, from and after the said day, any Judge or Officer then appointed under this Act, shall and may perform all or any of the duties or functions of his office although the Court hereby established may not have met or sat.