

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

12 Victoria – Chapter 63

**An Act to make further provision for the Administration of Justice, by the establishment of an additional Superior Court of Common Law and also a Court of Error and Appeal, in Upper-Canada, and for other purposes. 30th May, 1849.**

Whereas the establishment of an additional Superior Court of Common Law jurisdiction would facilitate the satisfactory disposal of business, and would otherwise tend to promote the public advantage by affording the means of constituting an efficient Court of Appeal within 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 there be constituted and established and there is hereby constituted and established a Court of Common Law jurisdiction in that portion of this Province formerly called Upper-Canada, which shall be called "The Court of Common Pleas," and the same Court shall be holden at the City of Toronto, and shall be and constitute a Court of Common Law, and shall together with every Judge thereof, have, use and exercise all the rights, incidents and privileges of a Court of Record, or a Judge of a Court of Record, and all other rights, incidents and privileges, as fully to all intents and purposes as the same are used, exercised and enjoyed by any of Her Majesty's Superior Courts of Common Law or Judges at Westminster.

II. And be it enacted, That the said Court shall be presided over by a Chief Justice and two Puisné Justices, any one or more of whom, in the absence of the other or others of them may lawfully hold the said Court: And that it shall and may be lawful for Her Majesty to appoint by Letters Patent under the Great Seal of this Province, one person being a Barrister of at least ten years' standing in Upper-Canada to be Chief Justice of the said Court, and two persons being Barristers of not less than ten years' standing in Upper-Canada to be Puisné Judges thereof, and from time to time to supply any vacancy in the number of the said Judges; and the Chief Justice of the said Court of Common Pleas shall have rank and precedence next to the Chancellor of Upper-Canada, and the Puisné Judges of the Superior Courts of Common Law and Equity in Upper-Canada shall have rank and precedence as between themselves according to seniority of appointment to their respective offices.

III. And whereas in an Act of the Parliament of the late Province of Upper-Canada, passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to increase the present number of Judges of His Majesty's Court of King's Bench in this Province, to alter the terms of sitting of the said Court, and for other purposes therein mentioned*, it is recited, that an addition to the number of the Judges of the said Court had become indispensable owing to the great increase of population and the formation of new Districts; And whereas two additional

Judges were appointed under the said Act: And whereas it appears that the business of the said Court of Queen's Bench may be effectually performed by a Chief Justice and two Puisné Judges, in consequence of the erection of the Court of Common Pleas hereby established and the erection of an efficient Court of Appeal as hereinafter provided: Be it therefore enacted, That notwithstanding any thing in the said last recited Act contained, the said Court of Queen's Bench shall from and after the passing of this Act, be presided over by a Chief Justice and two Puisné Justices; and it shall and may be lawful for Her Majesty to transfer such two of the Puisné Justices of the said Court of Queen's Bench as to Her Majesty may seem meet from the said Court of Queen's Bench to the said Court of Common Pleas, and by Letters Patent under the Great Seal of this Province to appoint such two Puisné Justices of the said Court of Queen's Bench to be Justices of the said Court of Common Pleas, to which appointment such, two Justices of the said Court of Queen's Bench are hereby declared entitled.

IV. And be it enacted, That the Judges to be appointed under this Act shall hold their offices during their good behaviour: Provided always, that it may be lawful for the Governor, Lieutenant-Governor, or person administering the Government of this Province, to remove any Judge or Judges of the said Court upon the address of both Houses of the Provincial Parliament; and in case any Judge so removed shall think himself aggrieved thereby, it shall and may be lawful for him within six months to appeal to Her Majesty in Her Privy Council, and such a motion shall not be final until determined by Her Majesty in Her Privy Council.

V. And be it enacted, That from and after the passing of this Act, there shall and may be paid and payable out of the Consolidated Revenue Fund of this Province, (after paying or reserving sufficient to pay all such sums as have been directed by any former Act of the Legislature of this Province to be paid out of the same, but with preference to all other payments which shall hereafter be charged upon the same,) the yearly sums following, as and for the salaries of the said Judges, viz: to the Chief Justice of the said Court, the sum of One thousand two hundred and fifty pounds, and to each of the Puisne Justices, the sum of One thousand pounds; which said sums shall be paid from time to time quarterly, free and clear from all taxes and deductions whatsoever, on the first day of January, the first day of April, the first day of July, and the first day of October, by equal portions; the first payment to be made on the first of such days respectively as shall occur after the appointment of the Judge entitled to receive the same; and that if any person hereafter appointed to any of such Offices shall die or resign the same, the executor or administrator of the person so dying, or the person so resigning shall be entitled to receive such proportionable part of the salary aforesaid as shall have accrued during the time that such person shall have executed such Office since the last payment, and that the successor of such person so dying or resigning shall be entitled to receive such portion of the salary as shall be accruing or shall accrue from the day of his appointment.

VI. And be it enacted, That it shall and may be lawful for Her Majesty, by any Letters Patent under the Great Seal of this Province, to give and grant unto any of the Judges, appointed in pursuance of this Act, an annuity equal to two-thirds of the salary annexed to such Judge under the provisions of this Act, to commence and take effect immediately after the period when the person to whom such annuity shall be granted shall resign his said office of Judge of the said Court, and to continue

from thenceforth during the natural life of the person to whom the same shall be granted; and such annuity shall be issued and payable out of and charged and chargeable upon the Consolidated Revenue Fund of this Province next in order of payment to, and after paying or reserving sufficient to pay all such sums of money as by any Act or Acts of the Parliament of this Province now in force have been directed to be paid thereout, but with preference to all other payments which shall hereafter be charged upon or payable out of the same fund; and such annuity shall be paid quarterly free from all taxes and deductions whatsoever on the four usual days of payment aforesaid in each year; and the first quarterly payment, or a proportionate part thereof, to be computed from the time of the resignation of his said Office shall be made on such of the said days as shall next happen after the resignation of the said Office; and that the executors or administrators of the person to whom the said annuity shall be granted as aforesaid, shall be paid such proportionate part of the said annuity as shall accrue from the commencement, or the last quarterly payment thereof, as the case may be, to the day of his death: Provided always, that no annuity granted to any Judge appointed under this Act shall be valid, unless such person shall have continued in the said Office, or in the said Office and the Office of a Judge of one or more of Her Majesty's Superior Courts of Common Law or Equity in Upper-Canada for the period of fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his Office, which shall be recited in the Grant.

VII. And be it enacted, That every Judge to be appointed in pursuance of this Act, shall, previous to his executing the duties of his Office, take the following oath:

"I, \_\_\_\_\_ do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me (as Chief Justice or one of the Puisné Judges) of the Court of Common Pleas. So help me God."

Which said oath shall be administered to the Chief Justice of the said Court before the Governor, Lieutenant-Governor, or person administering the Government of this Province in Council, and to the Puisné Judges of the said Court, in open Court, in presence of the Chief Justice thereof.

VIII. And whereas it is desirable that the jurisdiction, practice and mode of proceeding of the said Court of Common Pleas should be similar to the jurisdiction, practice and course of proceeding of the said Court of Queen's Bench: Be it enacted, That the said Court of Common Pleas may and shall hold plea in all and all manner of actions, causes or suits, as well criminal as civil, arising, happening or being within the said late Province of Upper-Canada; and may and shall proceed in such actions, causes or suits, by such process and course as is now used, or is by this Act directed to be used in the said Court of Queen's Bench, save only that all Writs and proceedings shall be styled in the said Court of Common Pleas; and the said Court of Common Pleas may and shall hear and determine all matters of Law, and shall also hear and, by and with an inquest of good and lawful men, determine all issues of fact that may be joined in any such action, cause or suit as aforesaid, and judgment thereon give, and execution thereof award, in as full and ample a manner as can or may be done in Her Majesty's said Court of Queen's Bench: And the same jurisdiction, powers, authorities and privileges exercised and enjoyed by the said Court of Queen's Bench, or by the Judges thereof, shall be exercised and enjoyed by the said Court of Common Pleas and by the

Judges thereof respectively: And all laws, orders and authorities touching the practice and manner of proceeding in the said Court of Queen's Bench, shall be in force and applicable to the said Court, of Common Pleas until otherwise provided by rule of the said Court.

IX. And be it enacted, That the Chief Justices and Judges of the said Courts of Queen's Bench and Common Pleas shall sit in rotation, or otherwise, as they shall agree amongst themselves, and every Judge of either Court, to whatever Court he may belong, shall be, and he is accordingly hereby authorized to transact such business at Chambers or elsewhere, depending in either of such Courts, as may according to the course and practice of the said Courts be transacted by a single Judge: Provided always, that nothing herein contained shall be construed to deprive any party interested of the right to appeal to the full Court in which the matter brought before such single Judge may be depending, for the purpose of having the decision of such Judge rescinded or altered, as fully as such right is now enjoyed according to the practice of the Court of Queen's Bench.

X. And whereas by the said Act of the Legislature of the late Province of Upper-Canada, passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to increase the present number of Judges of His Majesty's Court of King's Bench in this Province; to alter the terms of sitting of the said Court, and for other purposes therein mentioned*, it was deemed expedient for the more convenient despatch of business to enable one of the Judges of the said Court of Queen's Bench to sit apart during term for the decision of certain matters therein specified; and whereas under the present arrangement the continuance of the said provision is inexpedient: Be it enacted, That so much of the fifth clause of the said last recited Act as provides for the formation of a Practice Court is hereby repealed from the time that this Act takes effect.

XI. And whereas it is expedient to alter the office of the Clerk of the Crown and Pleas in the said Court of Queen's Bench in Upper-Canada, and to alter the manner of remunerating the said Clerk, and to place the said Office on the same footing as the Office of the Clerk of the Crown and Pleas in the said Court of Common Pleas hereby established: Be it enacted, That it shall and may be lawful for Her Majesty, by Letters Patent under the Great Seal of this Province, to appoint a Clerk of the Crown and Pleas in the said Courts of Queen's Bench and Common Pleas, respectively, to hold Office during Her Majesty's pleasure, and from time to time to supply any vacancy in the said offices; and that it shall be lawful for each of the said Clerks of the Crown and Pleas, to appoint, subject to the approval of the Judges of their respective Courts, a Senior and Junior Clerk; and the said Clerks of the Crown and Pleas, with the like approval, may remove at pleasure any of the Clerks so appointed: And that the several Clerks of the County Courts in Upper-Canada, shall be *ex-officio* Deputy-Clerks of the Crown and Pleas in the said Courts of Queen's Bench and Common Pleas: Provided always, that the parties who at the time of the passing of this Act shall hold the offices of Deputy-Clerks of the Crown in the several Districts shall continue to hold the same at the pleasure of the Crown, and that while so holding the same they shall respectively discharge the duties of Deputy-Clerks of the Pleas for their several Districts and that they shall hold such Offices as Deputy-Clerks of the Crown and Pleas subject to the provisions and receiving the remuneration mentioned in this Act.

XII. And be it enacted, That the said Clerk of the Crown and Pleas in the said Court of Queen's Bench, and his Deputies shall perform the duties of their several Offices in the same manner and under the same regulations as the said Clerk of the Crown and Pleas and his Deputies in the said Court of Queen's Bench have heretofore performed the same, and that all sums and fees shall continue to be payable and receivable by the like persons as the same have heretofore been paid and received in respect of any matter in the said Court of Queen's Bench; and that the said Clerk of the Crown and Pleas in the said Court of Common Pleas and his Deputies shall respectively perform in the said Court the like duties as are performed by the Clerk of the Crown and Pleas and his Deputies in the said Court of Queen's Bench; and all orders, rules and regulations in force respecting the said Clerk of the Crown and Pleas of the said Court of Queen's Bench and his Deputies, and respecting the regulation of their several Offices, shall be in force and applicable to the said Clerk of the Crown and Pleas in the said Court of Common Pleas and his Deputies respectively, and that the like sums and fees payable and receivable in the said Court of Queen's Bench shall be payable and receivable by the like persons in the said Court of Common Pleas in respect of any matters in the said Court.

XIII. And be it enacted, That from and after the passing of this Act, there shall and may be paid and payable out of the Consolidated Revenue Fund of this Province, (after paying or reserving sufficient to pay all such sums as have been directed by any former Act of the Parliament of this Province to be paid out of the same, but with preference to all other payments which shall hereafter be charged upon the same,) the yearly sums following, as for the salaries of the said Clerks, viz: To the Clerk of the Crown and Pleas, in each of the said Courts, the sum of four hundred pounds; to each of the Senior Clerks, the sum of two hundred and fifty pounds; to each of the Junior Clerks, the sum of one hundred and fifty pounds; and that the Deputy-Clerks of the Crown in the several Districts shall be paid by a certain salary in no case more than one hundred pounds or less than twenty pounds; and the Governor, Lieutenant-Governor, or person administering the Government of this Province for the time being in Council shall fix the remuneration to be paid to the Deputy-Clerks of the Crown respectively; which said sums shall be paid from time to time quarterly, free and clear from all taxes and deductions whatsoever on the four usual quarterly days hereinbefore mentioned, provided that the payment to be made in each case on the first of the said quarterly days which shall happen after the accrual of the right thereunto of the person receiving the same under this Act, shall be a rateable proportion of a quarter's salary According to the time then elapsed since the accrual of such right: and in case of a vacancy in the Office of any such Clerk, the person making the vacancy, his executors or administrators shall be entitled to a proportional part of his salary according to the time elapsed between the vacancy and the last quarterly payment.

XIV. And be it enacted, That neither the Clerk of the Crown and Pleas in the said Court of Queen's Bench, nor the said Clerk of the Crown and Pleas in the said Court of Common Pleas, nor any of their Deputies, shall be entitled to, or take for his own use or benefit, directly or indirectly, any fee or emolument whatsoever save the salary to which he shall be entitled by virtue of this Act; and that all the fees, dues, emoluments, perquisites and profits received by or on account of the said Clerks of the Crown and their Deputies, respectively, shall form part of the Consolidated Revenue Fund of this Province, and shall be accounted for to Her Majesty, Her Heirs and Successors through

the Lords Commissioners of Her Treasury for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall direct.

XV. And be it enacted, That the said Clerks of the Crown and Pleas, in each of the said Courts respectively, shall, on the four quarterly days hereinbefore mentioned, make up and render to the Inspector-General of Public Accounts of this Province, a true Account in writing of all the fees, dues, emoluments, perquisites and profits received by or on account of the said Officers respectively, in such form and with such particulars as the said Inspector-General shall from time to time require; which said Accounts shall be signed by the Officer rendering the same, and shall be declared before one of the Judges of the Court to which he belongs; and such Officers respectively shall, within ten days after the rendering of such Account pay over the amount of all such fees, dues, emoluments, perquisites and profits to the Receiver-General of this Province, and if default shall be made in such payment, the amount due by the Officer making such default shall be deemed a specialty debt to Her Majesty.

XVI. And be it enacted, That the Clerks of the County Courts in Upper-Canada, acting as the Deputies of the Clerks of the Crown and Pleas in the said several Courts of Queen's Bench and Common Pleas, shall make up and render to the Inspector General of this Province the like Accounts, in like manner, and at the same periods hereinbefore appointed for the said Clerks of the Crown and Pleas respectively, which said Accounts shall be signed by the Officer rendering the same, and shall be declared before the Judge, of the County. Court to which he belongs; and every such Officer shall, within ten days after the rendering such Account, pay over the amount of all fees, dues, emoluments, perquisites and profits received by him as such Deputy-Clerk of the Crown to the Receiver-General of this Province, and if default shall be made in such payment, the amount due by the Officer making such default shall be deemed a specialty debt to Her Majesty.

XVII. And whereas the Office of Clerk of the Crown and Pleas of the said Court of Queen's Bench has for some time been filled by Charles Coxwell Small, Esquire, who has been remunerated for his services in such Office by fees and emoluments hereafter to be paid to the Receiver-General of this Province, and carried to the account of the Consolidated Revenue Fund thereof; And whereas it is thought right that the said Charles Coxwell Small should be continued in his said Office, and should receive compensation in addition to the salary hereby provided: Be it therefore enacted, That the said Charles Coxwell Small shall be entitled to be appointed, if he so desire it, to the Office of the Clerk of the Crown and Pleas of the said Court of Queen's Bench, and that in lieu of the salary of Four hundred pounds per annum by this Act provided for the said Officer, there shall and may be paid and payable out of the Consolidated Revenue Fund of this Province, to the said Charles Coxwell Small, (after paying or reserving sufficient to pay all former charges as hereinbefore provided) the yearly sum of Seven hundred and fifty pounds; which said sum shall be paid from time to time, quarterly, free and clear from all taxes and deductions whatsoever, on the four usual quarterly days hereinbefore mentioned, provided that the payment to be made on the first of the said quarterly days shall be a rateable proportion of a quarter's salary according to the time then elapsed since the accrual of the right of the said Charles Coxwell Small, under this Act; and in case of the death of the said Charles Coxwell Small, or of his resigning the said Office, the said Charles Coxwell Small, or his executors or administrators, shall be entitled to a proportionate

part of his salary according to the time elapsed between his death or resignation and the last quarterly payment.

XVIII. And be it enacted, That so soon as this Act shall come into force, the Act of the Parliament of this Province, passed in the eighth year of Her Majesty's reign, intituled, *An Act to make further regulations for holding the Courts of Assize and Nisi Prius, and Oyer and Terminer and General Gaol Delivery, in Upper-Canada, and to provide for the trial of prisoners under certain circumstances*, be, and the same shall be hereby repealed; but all Acts and provisions of law thereby repealed shall nevertheless remain repealed.

XIX. And be it enacted, That so soon as this Act shall come into force, the times and terms of sittings of the said Courts of Queen's Bench and Common Pleas in Upper-Canada, shall be as follows, that is to say: Hilary Term shall begin on the first Monday in February and end on the Saturday of the ensuing week: Easter Term shall begin on the first Monday in June and end on the Saturday of the ensuing week; Trinity Term shall begin on the last Monday in August and end on the Saturday of the ensuing week; and Michaelmas Term shall begin on the third Monday in November and end on the Saturday of the ensuing week.

XX. And be it enacted, That after the end of Easter Term next, as appointed by this Act, it shall and may be lawful for the Governor, Lieutenant-Governor, or person administering the Government of this Province, to issue yearly and every year, in the vacation between Hilary and Easter Terms, and also in the vacation between Trinity and Michaelmas Terms, such Commissions of Assize and Nisi Prius into the several Counties of Upper-Canada as may be necessary for the purpose of trying all issues joined in the Superior Courts of Common Law, which, according to the practice of the said Courts, ought to be tried in such Counties respectively; and that in like manner, Commissions of Oyer and Terminer and General Gaol Delivery shall be issued into the several Counties of Upper-Canada twice in the year within the periods aforesaid; Provided always, that nothing in this clause shall extend to the County of York, for which special provision is hereinafter made; And provided also, that it shall be in the power of the Governor, Lieutenant-Governor, or person administering the Government of this Province, to issue a Special Commission or Special Commissions into every County of this Province for the trial of one or more offenders upon extraordinary occasions, when he shall deem it necessary or expedient that such Commissions should issue.

XXI. And be it enacted, That it shall and may be lawful for the Governor, Lieutenant-Governor, or person administering the Government of this Province, to issue yearly and every year in the vacation between Michaelmas and Hilary Terms, and also in the vacation between Hilary and Easter Terms, and also in the vacation between Trinity and Michaelmas Terms, such Commissions of Assize and Nisi Prius into the County of York as may be necessary for the purpose of trying issues joined in the Superior Courts of Common Law, in any suit or action which, according to the practice of such Courts, ought to be tried in such County: And that in like manner, Commissions of Oyer and Terminer and General Gaol Delivery shall be issued into the said County of York three times in the year within the periods last aforesaid: And the said Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, in and for the said County of York, shall open and

be holden on the first Monday in January, the first Monday in May, and the first Monday in November, in each and every year.

XXII. And be it enacted, That the Process in all actions commenced in the said Courts of Queen's Bench and Common Pleas, in cases where it is not intended to hold the defendant to special bail, shall, whether the action be brought by or against any person entitled to the privilege of Parliament, or of the Court wherein such action shall be brought, or of any other Court, or to any other privilege, or by or against any other person, be according to the form contained in the Schedule to this Act annexed, marked No. 1, and which Process may issue from either of the said Courts, and shall be called a Writ of Summons; and in every such Writ or copy thereof, the City, Town, or Township and County of the residence or supposed residence of the party defendant, or wherein the defendant shall be or be supposed to be, shall be mentioned; and such Writ shall be issued by the Clerks of the Crown and Pleas of such Courts respectively and their Deputies; and every such Writ may be served in the manner heretofore used in the County therein mentioned, or within two hundred yards of the border thereof, and not elsewhere; and the person serving the same shall and is hereby required to endorse on the Writ the day of the month and week of the service thereof.

XXIII. And be it enacted, That the mode of appearance to every such Writ, or under the authority of this Act, shall be by delivering a Memorandum in writing according to the form contained in the said Schedule, and marked No. 2; such Memorandum to be delivered to such officer or person as the Court out of which the Process issued shall direct, and to be dated on the day of the delivery thereof.

XXIV. And be it enacted, That in all such actions wherein it shall be intended to arrest and hold any person to special bail, the Process shall be by a Writ of Capias, according to the form contained in the said Schedule and marked Number three, and so many copies of such Process, together with every Memorandum or Notice subscribed thereto, and all endorsements thereon, as there may be persons intended to be arrested thereon or served therewith, shall be delivered therewith to the Sheriff or other officer who may have the execution and return thereof, and who shall upon or forthwith after the execution of such Process, cause one such copy to be delivered to every person upon whom such Process shall be executed by him, whether by service or arrest, and shall endorse on such Writ the true day of the execution thereof, whether by service or arrest; and if any defendant be taken or charged in custody upon any such Process and imprisoned for want of sureties for his appearance thereto, the Plaintiff in such Process may, before the end of the next term after the arrest of such defendant, declare against such defendant and proceed thereon in the manner and according to the directions contained in the third and fourth rules of the said Court of Queen's Bench made in Easter Term in the fifth year of Her Majesty's reign: Provided always, that it shall be lawful for the Plaintiff or his attorney to order the Sheriff or other officer to whom such Writ shall be directed, to arrest one or more of the defendants therein named, and to serve a copy thereof on one or more of the others, which order shall be duly obeyed by such Sheriff or other officer, and such service shall be of the same force and effect as the service of the Writ of Summons hereinbefore mentioned, and no other.



XXV. And be it enacted, That no Writ issued by authority of this Act, shall be in force for more than four calendar months, from the day of the date thereof, including the day of such date, but every Writ of Summons and *capias*, may be continued by *alias* and *pluries*, as the case may require, if any defendant therein named may not have been arrested thereon or served therewith: Provided always, that no first Writ shall be available to prevent the operation of any Statute, whereby the time for the commencement of any action may be limited; unless the defendant shall be arrested thereon, or served therewith; or unless such Writ and every Writ, if any, issued in continuation of a preceding Writ, shall be returned *non est inventus*, and entered of record within one calendar month next after the expiration thereof, including the day of such expiration, and unless every Writ issued in continuation of a preceding Writ shall be issued within one calendar month after the expiration of the preceding Writ, and shall contain a Memorandum endorsed thereon, or subscribed thereto, specifying the day of the date of the first Writ; and return to be made inailable Process by the Sheriff or other officer to whom the Writ shall be directed, or his successor in office, and in Process notailable by the Plaintiff or his attorney suing out the same, as the case may be.

XXVI. And be it enacted, That if any Writ of Summons or *capias* issued by authority of this Act shall be served or executed on any day whether in term or in vacation, all necessary proceedings to judgment and execution may, except as hereinafter provided, be had thereon without delay at the expiration of eight days, from the service or execution thereof, on whatever day the last of such eight days may happen to fall, whether in terra or in vacation: Provided always, that it the last of such eight days shall in any case happen to fall on a Sunday, Christmas-day or Good-Friday, in either of such cases the following day, or the following Monday when Christmas-day falls on a Saturday, shall be considered as the last of such eight days: Provided also, that if such Writ shall be served or executed on any day between the first day of July and the twenty-first day of August in any year, special Bail may be put in by the defendant inailable Process, or appearance, entered either by the defendant or the Plaintiff on Process notailable, at the expiration of such eight days: Provided also, that no declaration or pleading, after declaration, shall be filed or delivered between the said first day of July and the said twenty-first day of August.

XXVII. And be it enacted, That every Writ issued by the authority of this Act shall bear date on the day on which the same shall be issued and shall be tested in the name of the Chief Justice, or in case of a vacancy of such office, then in the name of the Senior Puisné Judge of the Court issuing the same, and shall be endorsed with the name and place of business of the Attorney actually suing out the same; but in case no Attorney shall be employed for that purpose, then with a Memorandum expressing that the same has been sued out by the Plaintiff in person, mentioning the City, Town or Township in which such Plaintiff resides.

XXVIII. And be it enacted, That every such Writ of Summons issued against a corporation aggregate, may be served on the Mayor, President, or other Head Officer, or on the Town Clerk, Clerk, Cashier, Manager, Treasurer or Secretary of such corporation, or branch or agency thereof.

XXIX. And be it enacted, That it shall and may be lawful to and for the Judges of the said Courts and they are required from time to time to make all such general rules and orders for the effectual

execution of this Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters herein contained, and the performance thereof, as in their judgment shall be deemed necessary or proper, and for that purpose to meet as soon as conveniently may be after the passing hereof.

XXX. And be it enacted, That all such proceedings as are mentioned in any Writ, Notice or Warning issued under this Act shall and may be had and taken in default of a defendant's appearance, or putting in special Bail, as the case may be.

XXXI. And be it enacted, That every Attorney whose name shall be endorsed on any Writ issued by authority of this Act, shall, on demand in writing made by or on behalf of any defendant, declare forthwith whether such Writ has been issued by him or with his authority or privity, and if he shall answer in the affirmative, then he shall, also in case the Court or any Judge of the same, or of any other Superior Court, shall so order and direct, declare in writing within a time to be allowed by such Court or Judge, the profession, occupation or quality and place of abode of the Plaintiff, on pain of being guilty of a contempt of the Court from which such Writ shall appear to have been issued; and if such Attorney shall declare that the Writ was not issued by him or with his authority or privity, the said Court or Judges shall and may, if it shall appear reasonable so to do, make an order for the immediate discharge of any defendant or defendants who may have been arrested on any such Writ, on entering a common appearance.

XXXII. And be it enacted, That it shall and may be lawful to and for the Judges of each of the Courts from time to time to make such rules and orders for the government and conduct of the Ministers and Officers of their respective Courts, in and relating to the distribution and performance of the duties and business to be done and performed in the execution of this Act, as such Judges may think lit and reasonable: Provided always, that no additional charge be thereby imposed on the suitors.

XXXIII. Provided always, and be it enacted, That nothing in this Act contained shall subject any person to arrest, who by reason of any privilege, usage or otherwise, may now by law be exempt therefrom.

XXXIV. And be it enacted, That from the time when this Act shall commence and take effect, the Writs hereinbefore authorized shall be the only Writs for the commencement of personal actions in the Courts aforesaid, and the costs to be allowed and charged for such Writs shall be the same as for Writs of *Capias ad Respondendum*; and that all the provisions of an Act of the Parliament of this Province, passed in the eighth year of Her Majesty's Reign, intituled, *An Act to alter the issuing of Testatum Writs of Capias ad Respondendum in the severed Districts of Upper-Canada, and for other purposes therein mentioned*, shall, continue in force and be applicable to the Writs directed by this Act, except in so far as the provisions of the said Act are inconsistent herewith, and shall apply to the practice to be observed in the Court of Common Pleas as well as the Court of Queen's Bench.

XXXV. And whereas it is expedient to authorize and require the Judges of the several County Courts in Upper-Canada, to make orders in relation to certain matters of practice in cases depending in the Superior Courts of Common Law, which may be conveniently disposed of in the several Counties: Be it enacted, That it shall and may be lawful for any Plaintiff or defendant in any suit depending in the Superior Courts of Common Law in Upper-Canada, to make application for time to plead, reply or rejoin, for particulars of demand and set off, and for summonses and orders to compute, to the Judge of the County Court for the County in which the suit is brought, or the venue laid; and the Judge of such County Court is hereby authorized and required to hear and determine such applications and to grant such summonses, to impose such terms, and make such orders as are granted, imposed and made in the like cases by a Judge of the Superior Courts of Common Law sitting in Chambers; Provided always, that the provisions of this clause shall not apply to any suit wherein the venue is laid in the County of York, or in any suit wherein the Attorney for the defendant, or in case of two or more defendants where the Attorney for any one or more of them, resides in a County different from that in which the Attorney for the Plaintiff, or if he prosecutes in person the Plaintiff, resides: Provided also, that either party interested may appeal from any such order to the Court in which the action is pending, or to one of the Judges of the Superior Courts at Chambers, and such Court or Judge may affirm, reverse or modify such order, or make such other order upon the subject matter of appeal, and the proceedings had thereon, and with or without costs, as to such Court or Judge may seem meet; Provided also, that nothing herein contained shall prevent any party from making any such application in the first instance, according to the practice of the Superior Courts of Common Law, instead of to the Judge of the County Court.

XXXVI. And be it enacted, That it shall and may be lawful for the Deputy-Clerks of the Crown of the Queen's Bench and the Common Pleas in each County, to issue such rules to compute, and thereupon to tax costs and enter final judgment, and issue Writs of *Fieri Facias* or *Capias ad Satisfaciendum* according to the practice of the Superior Courts, in all suits where an order for rule to compute has been lawfully issued by the Judge of the County Court under the authority of the preceding section; and also, that it shall and may be lawful for such Deputy-Clerks to tax costs and enter judgments in cases where *Cognovits* have been given in the first instance, and thereupon to issue Writs of *Fieri Facias* and *Capias ad Respondendum* thereon according to the practice aforesaid; and also, generally, to issue *alias* and *pluries* Writs of *Fieri Facias* and *Capias ad Respondendum*, and also original *alias* and *pluries* Writs of Execution against Lands and Tenements.

XXXVII. And whereas by an Act passed in the thirty-fourth year of the Reign of His late Majesty King George the Third, intituled, *An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal*, a tribunal was established for determining all appeals from such judgments or sentences of His Majesty's Court of King's Bench thereby established, as might be lawfully brought before it; and whereas by an Act passed in the seventh year of the Reign of His late Majesty King William the Fourth, intituled, *An Act to establish a Court of Chancery in this Province*, Appeals are permitted to the said Court of Appeals from the judgments and decrees of the said Court of Chancery; and whereas the appellate tribunal thus established has been found unsatisfactory: Be it enacted, That the thirty-third, thirty-fourth, thirty-

fifth and thirty-sixth clauses of the said Act in this clause first above recited, and the sixteenth and seventeenth clauses of the Act in this clause secondly above recited, be, and the same are hereby, from the time this Act takes effect, repealed.

XXXVIII. And be it enacted, That there be constituted and established, and there is hereby constituted and established, a Court of Judicature in that part of this Province formerly called Upper-Canada, which shall be called the "Court of Error and Appeal."

XXXIX. And be it enacted, That the said Court of Error and Appeal shall be composed of the Judges of the said Court of Queen's Bench, the Judges of the said Court of Common Pleas, and the Judges of the said Court of Chancery, who shall sit together at a place certain, that is to say: at the City of Toronto; and the Chief Justice of the said Court of Queen's Bench, for the time being, shall preside in the said Court of Error and Appeal, and in his absence the Judge of the said Court of Error and Appeal, entitled to precedence next after the Chief Justice of the said Court of Queen's Bench, who shall be present.

XL. And be it enacted, That the said Court of Error and Appeal shall have, hold and exercise an appellate civil and criminal jurisdiction within and throughout Upper-Canada, with full power and authority to hear and determine in due course of law, all matters which may lawfully be brought before it; and that an appeal shall lie to the said Court of Error and Appeal from all judgments of the said Courts of Queen's Bench and Common Pleas, and that an appeal shall lie to the said Court of Error and Appeal from all judgments, orders and decrees of the said Court of Chancery; Provided nevertheless, that no such appeal shall be allowed until the party appellant shall have given proper security to the extent of One hundred pounds, to the satisfaction of the Court from whose order, decree or judgment he is about to appeal, that he will effectually prosecute his appeal, and pay such costs and damages as shall be awarded in case the judgment or decree appealed from shall be affirmed; and that upon the perfecting such security, execution shall be stayed in the original cause, except in the cases hereinafter provided, that is to say:

Firstly. That where the appeal is from a judgment, order or decree, directing the payment of money, the perfecting the security hereinbefore provided shall not stay the execution of the judgment unless the party appellant shall have further given proper security to the satisfaction of the Court from whose judgment he is about to appeal, that if the judgment appealed from, or any part thereof be affirmed, the appellant will pay the amount directed to be paid by the judgment or the part of such amount as to which the judgment shall be affirmed if it be affirmed only in part, and all damages which shall be awarded against the appellant on the appeal.

Secondly. Provided always, That if the judgment or decree appealed from, direct the assignment or delivery of documents or personal property, the execution of the judgment or decree shall not be stayed by the perfecting of the security hereinbefore firstly required, unless the things directed to be assigned or delivered be brought into Court or placed in the custody of such Officer or Receiver, as the Court shall appoint, or unless security be given to the satisfaction of the Court appealed from, and in such sum as that Court shall direct, that the Appellant will obey the order of the Appellate Court on the appeal.

Thirdly. Provided always, That if the judgment or decree appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or decree shall not be stayed by the appeal until the instrument shall have been executed and deposited with the proper Officer of the Court appealed from, to abide the judgment of the Appellate Court.

Fourthly. Provided always, That when the judgment or decree appealed from, directs the sale or delivery of possession of real property or chattels real, the execution of the same shall not be stayed unless proper security be entered into to the satisfaction of the Court appealed from, that during the possession of such property by the Appellant, he will not commit or suffer to be committed any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, the amount of which said security shall be fixed by the said Court.

Fifthly. Provided also, That when the judgment or decree is for the sale of property and the payment of a deficiency arising upon the sale, the security shall also provide for the payment of such deficiency.

XLI. And whereas the practice heretofore adopted in appeal is in many respects unsettled and inconvenient, and the costs in some matters of appeal excessive, and it is expedient that powers should be given to the Judges of the said Court of Appeal to make rules and regulations in respect of the same: Be it therefore enacted, That it shall be lawful for the said Judges of the Court of Appeal, at any time within two years from the time when this Act shall take effect, to make all such General Rules and Orders as to them may seem expedient for the purpose of adapting the said Court of Appeal to the circumstances of this Province, as well in regard to the Writs of Error or other Process by which Appeals should be commenced, the form and mode of suing out such Process, as in respect to the practice and proceedings of the said Court; and also to regulate the allowance and amount of costs, and from time to time to make other rules and orders, amending, altering or rescinding the same: Provided always, that no such rules or orders shall have the effect of altering the principles or rules of decision of the said Court, or any of them, or of abridging or affecting the right of any party to such remedy as before the passing of this Act might have been obtained in the Court of Appeal hereby abolished, but may in all respects extend the manner of obtaining such remedy by regulating the practice of the said Court in whatever way may to them seem expedient for better attaining the ends of justice; and all such Rules, Orders or Regulations shall be laid before both Houses of the Provincial Parliament, if then in Session, immediately upon the making of the same, or if the Parliament be not then in Session, then within five days after the meeting thereof; and no such Rule, Order or regulation shall have effect until six weeks after the same shall have been so laid before both Houses of the Legislature; and any rule or order so made, shall, from and after such time aforesaid, be binding and obligatory on the said Court, and all other Courts in the said Province of Upper-Canada to which the same shall be made expressly to extend.

XLII. And be it enacted, That all appeals which at the time of the passing of this Act, shall be depending in the said Court of Appeal hereby abolished, shall be by force of this Act, transferred with all the proceedings thereon to the said Court of Error and Appeal hereby established there to

be carried on and prosecuted and dealt with, and decided according to the practice of the said Court of Appeal, in the same manner in every respect as if such suits and matters had been originally commenced in the said Court of Error and Appeal hereby established.

XLIII. And be it enacted, That the Registrar of the Court of Chancery in Upper-Canada, shall *ex officio* be Clerk of the said Court of Error and Appeal, and that the like sums and fees payable and receivable in the said Court of Appeal hereby abolished shall be payable and receivable by the like persons in the Court of Error and Appeal hereby established in respect of any matters in the said Court, but the said Clerk of the Court of Appeal shall not be entitled to take for his own use or benefit, directly or indirectly, any fee or emolument whatsoever save the salary to which he shall be entitled as Registrar of the said Court of Chancery, and that all fees, dues, emoluments, perquisites and profits received by or on account of the said Registrar, as Clerk of the Court of Appeal, shall form part of the Consolidated Revenue Fund of this Province, and shall be accounted or to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of Her Treasury, for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall appoint.

XLIV. And be it enacted, That the said Clerk of the Court of Error and Appeal shall, on the four quarterly days hereinbefore mentioned, make up and render to the Inspector-General of Public Accounts in this Province, a true Account in writing, of all the fees, dues, emoluments, perquisites and profits received by or on account of the said office of Clerk of the Court of Error and Appeal, in such form, and with such particulars as the said Inspector-General shall from time to time require; which said Accounts shall be signed by the said Clerk of the Court of Error and Appeal, and shall be declared before one of the Judges of the said Court; and the said Clerk of the Court of Error and Appeal shall, within ten days after the rendering of such Account, pay over the amount of all such dues, fees, emoluments, perquisites and profits, to the Receiver-General of this Province, and if default shall be made in such payment, the amount due by the said Clerk of the Court of Error and Appeal shall be deemed a specialty debt to Her Majesty.

XLV. And be it enacted, That every Attorney and Solicitor admitted to practice in the said Court of Queen's Bench, or in the said Court of Common Pleas, or in the Court of Chancery in Upper-Canada, shall be permitted and have full power to practice in the said other Court or Courts, upon such Attorney or Solicitor being sworn in and enrolled as an Attorney or Solicitor of such other Court or Courts: and the said Courts are hereby authorised upon the production of his certificate of admission to swear in and enrol any such Attorney or Solicitor as aforesaid, and upon the payment of Five shillings: Provided always, that every Attorney and Solicitor already admitted to practice in the said Court of Queen's Bench or in the Court of Chancery in Upper-Canada at the time this Act shall come into force, shall be entitled to have his name inserted on the roll of Attornies of the said Court of Common Pleas gratis, upon filing a written request for the same in the office of the Clerk of such Court, and all such Solicitors in Chancery, shall in like manner be entitled to have their names inserted on the roll of Attornies of the said Court of Queen's Bench on filing a like request.

XLVI. And be it enacted, That the judgment of the said Court of Error and Appeal shall be final in all cases where the matter in controversy shall not exceed the sum or value of One thousand

pounds, but in cases exceeding that amount, as well as in all cases where the matter in question shall relate to the taking of any annual or other rent, customary or other duty, or fee, or any other such like demand of a general and public nature affecting future rights, of what value or amount soever the same maybe, an Appeal may lie to Her Majesty, in Her Privy Council: Provided always, that no such Appeal shall be allowed until the party appellant shall have given proper security to the extent of Five hundred pounds, to the satisfaction of the Court from whose order he is about to appeal, that he will effectually prosecute the appeal and pay such costs and damages as shall be awarded in case the judgment or decree appealed from shall be affirmed, and that upon the perfecting such security, execution shall be stayed in the original cause: Provided always, that the provisions of the first, second, third, fourth and fifth Provisos in the Fortieth Clause of this Act contained, shall be in force and apply to the Appeal hereby granted, and the completion of the security hereby required shall not have the effect of staying execution in the original cause, in the different cases excepted out of the said Fortieth Clause, unless the provisions in the said Provisos contained shall have been complied with.

XLVII. And be it enacted, That in all cases where appeals now lie or shall be hereafter appointed to lie from any District or County Courts to the Court of Queen's Bench, such appeals shall and may at the option of the appellant be appealed to and prosecuted in like manner in the said Court of Common Pleas.

XLVIII. And be it enacted, That the Court of Common Pleas shall have power to appoint Commissioners for taking affidavits and recognizances of Bail in the said Court of Common Pleas in the like manner as is now done by the Court of Queen's Bench, and with the like powers, and all such Commissioners appointed or to be appointed by either Court shall have full power to act in matters depending in the other to all intents as if such Commissioner had been appointed thereby, and in all matters depending in the District Courts and in all other matters whatsoever. And that any affidavit sworn before or recognizance of Bail taken by any such Commissioner appointed under the authority of this Act shall be as valid and effectual as if taken before a Commissioner for taking affidavits in the Court of Queen's Bench in any District in Upper-Canada.

XLIX. And be it enacted, That this Act may be amended, altered or repealed, during the present Session.

L. And be it enacted, That this Act shall come into force on the first day of January next, or at such earlier day as shall be appointed for that purpose by Proclamation under the Great Seal of this Province.

Schedule  
(To which this Act Refers.)  
No. 1.—Writ of Summons.

Victoria by the Grace of God, &c. Greeting:  
To C. D. of \_\_\_\_\_ in the County of \_\_\_\_\_

We Command you (nr as before or often, we have commanded you) that, within eight days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Queen's Bench (or Common Pleas) at Toronto, by filing your appearance in the office of the Clerk of the Crown (or "Deputy," as the case may be) in the County of \_\_\_\_\_ in an action on promises \_\_\_\_\_ at the suit of A. B. And take notice that in default of your so doing, the said A. B. may cause an appearance to be entered for you, and proceed thereon to judgment and execution.

Witness \_\_\_\_\_ at \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_  
A. D. 184 \_\_\_\_\_.

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within four calendar months from the date thereof, including the day of such date, and not afterwards.

Endorsement to be made on Writ before the service thereof.

This Writ was issued by E. F. of \_\_\_\_\_ Attorney for the said Plaintiff,

or

This Writ was issued in person by A. B. who resides at (mention the City, Town or Township, also name of Street or No. of Lot and Concession.)

Endorsement to be made on the Writ after service thereof.

This Writ was served by me X. Y. on C. D., on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ A.  
D. 184 \_\_\_\_\_.  
X. Y.



No. 2.  
Forms of Entering Appearance.

A. Plaintiff, vs. C. }  
D. } The Defendant C. D. appears in person.

A. Plaintiff, vs. C. }  
D. and another } E. F. Attorney for C. D., appears for him.

A. Plaintiff, vs. C. }  
D. and others. } G. H. Attorney for the Plaintiff, appears for the Defendant C. D.  
according to the Statute.

Entered the \_\_\_\_\_ day of \_\_\_\_\_, A. D., 184 \_\_\_\_.

No. 3.  
Writ of Capias.

Victoria, &c.,  
To the Sheriff of \_\_\_\_\_

We command you (or as before or often, we have commanded you) that you take C. D. if he shall be found in your County, and him safely keep until he shall have given you bail, according to Law, in an action on promises (or of debt, &c.) at the suit of A. B. or until the said C. D. shall by other lawful means be discharged from your custody. And we do further command you, that on execution hereof, you do deliver a copy hereof to the said C. D., and we hereby require the said C. D. to take notice, that within eight days after execution hereof on him, inclusive of the day of such execution, he should cause special bail to be put in for him, in our Court of Queen’s Bench (or Common Pleas, as the case may be) to the said action. And that in default of his so doing, such proceedings may be had and taken as are mentioned in the warning hereunder written (or endorsed hereon); And we do further command you, the said Sheriff, that immediately after the execution hereof, you do return this Writ to our said Court, together with the manner in which you shall have executed the same, and the day of the execution hereof, or that if the same shall remain unexecuted, then that you do so return the same at the expiration of four calendar months from the date hereof, or sooner if you shall be thereto required by order of the said Court, or by any Judge thereof.

Witness, \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_ A. D., 184 \_\_\_\_\_.

A Warning to the Defendant.

1. If a defendant being in custody shall be detained on this Writ, or if a defendant being arrested thereon shall go to prison for want of bail, the Plaintiff may declare against any such defendant

before the end of the term next after such arrest, .and proceed thereon to judgment and execution.

2. If a defendant having given bail on the arrest shall omit to put in special bail as required, the Plaintiff may proceed against the Sheriff or on the hail bond.

3. If a defendant having been served only with this Writ, and not arrested thereon, shall not enter a common appearance within eight days after such service, the Plaintiff may enter a common appearance for such defendant, and proceed thereon to judgment and execution.

Endorsement to be Made on the Writ of Capias.

Bail for £ \_\_\_\_\_ by affidavit.

or,

Bail for £ \_\_\_\_\_ by order of (naming the Judge making the order.)

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 184 \_\_\_\_\_.

This Writ was issued by E. F. of \_\_\_\_\_, Attorney for the Plaintiff (or Plaintiffs) within named.

or,

This Writ was issued in person by the Plaintiff within named, who resides at (mention the City, Town, or Township.)