

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

12 Victoria – Chapter 68

An Act to amend and extend the provisions of the Act of this Province, intituled, *An Act to allow the issuing of Testatum Writs of Capias ad respondendum, in the several Districts of Upper-Canada, and for other purposes therein mentioned.* 30th May, 1849.

Whereas it is expedient to extend the provisions of the Act of the Parliament of this Province, passed in the eighth year of the Reign of Her Majesty Queen Victoria, intituled, *An Act to allow the issuing of Testatum Writs of Capias ad respondendum in the several Districts of Upper-Canada, and for other purposes therein mentioned*: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That it shall and may be lawful for the Deputy-Clerk of the Crown, in each of the Districts of Upper-Canada, at the election of the party entitled to judgment, to tax costs, and enter final judgment in all suits in which the venue shall be laid, and the proceedings carried on, and the original pleadings filed within such District, whether such judgment be upon verdict, computation, *cognovit*, warrant of attorney or otherwise, and whether such *cognovit* be given in the first instance or after other proceeding had in the suit or cause wherein the same shall have been taken; and to issue all original or *testatum* writs, or *alias* or *pluries* writs of *feri facias*, or *Capias ad satisfaciendum*, according to the practice of the Court of Queen's Bench, which said Writs shall be supplied to the said Deputies respectively, in the same manner as other Writs are now supplied to them from the chief office at Toronto; Provided always, that it shall be lawful for the opposite party, in any case, to sue out a rule from the principal office at Toronto, for the taxation of costs in such suit by the Master thereat, and thereupon such costs shall be taxed, and final judgment entered at the principal office at Toronto.

II. And whereas in some instances judgments in outer Districts have been held to be irregular, and the same and proceedings thereupon have been set aside in consequence of the *cognovits* upon which the same were entered having been taken in the first instance, and before other proceeding had in the cause: For remedy thereof—Be it enacted, That every judgment upon *cognovit actionem*, heretofore entered by the Deputy-Clerk of the Crown in any District of Upper-Canada, and regular in other respects, and not already set aside or in which proceedings shall not have been instituted to dispute the validity of such judgment or to set aside the same before the passing of this Act, shall be deemed and held to be regular to every intent, whether the *cognovit* upon which the same was so entered was given in the first instance or otherwise.