

Laws of Her Majesty's Province of United Canada, passed in the year 1851. York: Stewart Derbyshire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 13

An Act for the further amendment of the Administration of the Criminal Law. 2d August, 1851.

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

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

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

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

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

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

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

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

Schedule.

Whereas at the Session of the Peace, for the County (or united Counties or City) of held on _____ before _____ and others, their fellows (or at the Session of Oyer and Terminer

and Gaol Delivery, held for the County (or united Counties) of _____, on _____ before the Honorable _____, one of the Justices of the Court of _____, and others his fellows, Justices of Oyer and Terminer and Gaol Delivery,) A. B., late of _____ having been found guilty of felony, and judgment thereon given, that (state the substance,) the Court before whom he was tried reserved a certain question of law for the consideration of the Justices of one of the Superior Courts of Common Law, and execution was thereupon respited in the mean time; This is to certify that the Justices of the Court of Queen's Bench (or Common Pleas) having met at Toronto, in _____ Term (or the sittings after _____ Term,) it was considered by the said Justices there, that the Judgment aforesaid should be annulled, and an entry made on the record, that the said A. B. ought not, in the judgment of the said Justices, to have been convicted of the felony aforesaid; and you are therefore hereby required forthwith to discharge the said A. B. from your custody.

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

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