

*Laws of Her Majesty's Province of United Canada*, passed in the year 1854. Quebec: Stewart Derbyshire and George Desbarts, 1854.

18 Victoria – Chapter 123

**An Act to explain and amend the Act establishing the Court of Error and Appeal in Upper Canada. Assented to 30th May, 1355.**

Whereas in appeals under the Act passed in the twelfth year of the reign of Her Majesty Queen Victoria, and intituled, *An Act to make further provision for the administration of Justice, by the establishment of an additional Superior Court of Common Laic, and also a Court of Error and Appeal in Upper Canada, and for other purposes*, from judgments, orders or decrees directing the payment of money, the perfecting of the security for such appeal may be deemed, notwithstanding the provisions of the said Act, not to be a stay of execution in the original cause, if execution shall have issued and a levy shall have been made by the Sheriff under the same, before the said security shall be perfected as directed by the said Act; And whereas it is proper that the perfecting of such security should operate to save the party or parties so appealing and desiring to stay execution, from being compelled to pay the said judgments, orders or decrees in the meantime: 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, as follows:

- I. So soon as the security for appeal from judgments, orders or decrees directing the payment of money, shall be perfected according to the said Act and the rates of Court framed under the same, and such security shall have been allowed as thereby directed, it shall and may be lawful for the Appellant or Appellants, his or their Attorney, to apply to any Judge of either of the Superior Courts of Common Law or of the Court of Chancery of Upper Canada, and upon proof before such Judge that such security has been allowed under the said rules, it shall be lawful for such Judge, in his discretion, to issue his *fiat* to the Sheriff to whom any such execution may have issued, to stay the execution thereof, and the said execution shall thereby be deemed to be stayed whether a levy shall have been made under it or not.
- II. If, at the time of the receipt by such Sheriff of such fiat or a copy thereof, the money shall have been made or received by him under any execution in such original cause as aforesaid, but not paid over by him to the party who issued the execution, his Attorney or Agent, it shall be lawful for the party or parties so appealing and desiring to stay such execution, to demand back from such Sheriff the amount he may have made or received under such execution, or so much thereof as may be in his hands not paid over as aforesaid, and in default of payment by the said Sheriff upon such demand, to recover the same from him in an action for money had and received.

III. This Act shall take effect from and after the first day of June next after its passing, and shall not in any manner affect any suit at Law or in Equity instituted before its passing.