

ACTS OF LAST SESSION.

shall annex to his issue book, and on the day of service of the same file in the office from which the writ of summons issued, a notice in the words following: The claimant or the defendant (as the case may be) requires that the issue in this cause be tried, and the damages (if any) be assessed by a jury."

2. And the said sub-section shall be construed as if the said words had originally formed a part of the same.

An Act to amend the law respecting the issue of the Prerogative Writ of Mandamus.

Whereas, &c.:

1. In all cases in which the Court has jurisdiction to issue the Writ of Peremptory Mandamus, it shall be the duty of the judge, provided he be of opinion that the case is a proper one for the issue of the same, either in term time or in vacation, to make an order for the issue of the said writ under this Act from the Court in the first instance, and without a writ *nisi*, and the said writ, when issued, shall have the same force and effect as if it had been issued by rule of the Court.

2. The application for the said writ shall be made upon affidavit to a judge, who shall have authority to issue a summons calling upon any person who may, in his judgment, be affected by the writ if issued, to show cause why the same should not be issued.

3. Such summons may be served upon the person or party named therein, either personally or by substitution, as may be directed by the judge, in the same manner as a writ of summons.

4. The application may be made upon hearing by the parties, either in person or by counsel.

5. Affidavits may be filed in answer to the application, and in reply, according to the present practice on chamber applications.

6. Every deponent whose affidavit is so filed shall be liable to cross-examination and re-examination upon the same, in presence of counsel for, or after notice to all parties, either before the judge or before any officer of the said Court to be named by the judge, and the evidence shall be reduced to writing, returned into Court, and used on the hearing of the application.

7. Upon hearing the parties who appear, or their counsel, and after service of the said summons upon all proper persons as hereinbefore provided, the judge shall, if in his opinion it is a proper case for the issue of the said writ, order the issue of the same, and shall by his order direct what is to be done and performed by the person or party to whom the writ is directed, and the writ shall conform to the order; but if in his opinion the application should be refused, the said summons shall be discharged.

8. The judge shall have the same power in vacation to enforce obedience to the said writ

by attachment, to be issued from the Court, as the Court has in term time to enforce obedience to a writ issued from the Court upon a rule thereof.

9. The costs of every application under this Act, and incidental thereto, shall be in the discretion of the judge who shall dispose of the application, and he shall make such order as to the same as to him shall seem just; and a writ of *feri facias* may be issued from the Court to compel payment of the said costs without making the judge's order a rule of Court.

10. [Judges to make rule.]

11. No part of the jurisdiction hereby conferred upon the judges shall be exercised by the Clerk of the Crown sitting in Chambers; and nothing in this Act contained shall prevent any person from applying to the Court for the said writ according to the present practice.

12. Any order made by a judge under this Act shall be subject to appeal to the Court; and the judgment of the Court upon such shall be subject to a further appeal to the Court of Error and Appeal.

13. The affidavits upon which the application is made shall be entitled either in the Queen's Bench or in the Common Pleas, and all subsequent proceedings shall be entitled in the Court in which the affidavits on which the application is made were entitled; and the word "Court" in this Act shall in each such mean either the Court of Queen's Bench or the Court of Common Pleas, as the case may be.

14. The word "judge" in this Act shall mean a judge of either of the Superior Courts of law.

An Act to amend the Act of the Province of Ontario respecting Superior and County Courts, passed in the thirty-fourth year of Her Majesty's reign, and chaptered twelve, and to declare the true meaning of section sixteen of the said Act.

Whereas, &c.:

1. Section 3 of the said Act is hereby amended by inserting immediately after the word "commenced" in the third line of the said section the following words, "or to one of the judges of the Superior Courts of Law sitting at Chambers."

2. Section 5 of the said Act, chaptered 12, is hereby amended by adding to the said section the words following, "or to any suit wherein the attorney for the defendant, or in the case of two or more defendants, where the attorney for any one or more of them resides in a county or union of counties different from that in which the attorney for the plaintiff, or, if he prosecutes in person, in which the plaintiff resides."

3. Notwithstanding the provisions and enactments in the said section 16 of the said Act, chaptered 12, contained, the 7th section of the Act passed in the 33rd year of Her