

made, when Defendant is imprisoned for want of bail.

Proviso :

Some Defendants may be arrested, and others not.

Effect of service as to those not arrested.

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 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. 5 10

Affidavit for suing out *Capias*.

XXIII. It shall not be lawful to issue or sue out any such writ of *capias*, unless an affidavit be first made by such Plaintiff, his servant or agent, of the Plaintiff's cause of action, and that the amount thereof (being in no case less than ten pounds) is justly and truly due to the Plaintiff, and also that such Plaintiff, his servant or agent hath good reason to believe and verily doth believe that the Defendant is immediately about to leave Upper Canada with intent and design to defraud the Plaintiff of the said debt : Provided always, that where the cause of action is other than a debt certain, a writ of *capias* may be issued and sued out to arrest and hold the Defendant to special bail, a Judge's order having been first obtained for that purpose, in such cases and in such manner as has heretofore been the practice ; Provided also, 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 ; Provided also, that it shall not be necessary that any such affidavit shall be at the time of the making thereof, entitled of or in any Court, but that the style and title of the Court may be added at the time of suing out the process, and shall be that of the Court out of which the process is issued, and that such style and title when so added, shall be for all purposes and in all proceedings whether civil or criminal, taken and adjudged to have been part of the affidavit *ab initio*. 15 20 25 30 35

Proviso :

Where the cause of action is other than a debt certain.

Proviso ; Act not to subject to arrest persons now exempted.

Proviso : as to entitling the affidavit.

Special bail.

XXIV. Special bail may be put in and perfected according to the practice now in force ; and after special bail is so put in, the plaintiff may proceed by filing a declaration or otherwise to judgment, in like manner as if the action had been commenced by writ of summons, and the Defendant had appeared thereto. 40

Declaration, and further proceedings.

Attorney whose name is indorsed on the writ to declare whether he sued it out, and if so, Plaintiff's

XXV. Every Attorney whose name shall be endorsed on any writ issued for the commencement of any action 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 a Judge shall so order, declare in writing, within a time to be limited by such 45 50