

ACTS OF LAST SESSION.

prebending and bringing before him or some other Judge of the said Courts, of the person or persons so wilfully disobeying the said writ, in order to his, her or their being bound to the Queen's Majesty, with two sufficient sureties, in such sum as in the warrant shall be expressed, with the condition to appear in the Court under the seal of which the writ was issued, at a day in the same or any ensuing term to be mentioned in the said warrant, to answer the matter of contempt with which he, she or they are charged; and in case of neglect or refusal to become bound as aforesaid, it shall be lawful for such Judge or Court to commit such person or persons so neglecting or refusing, to the common gaol of the county wherein such person resides, or may be found, there to remain until he, she or they shall have become bound as aforesaid, or shall be discharged by order of the Court in term time, or by order of a Judge in vacation; and the recognizance and recognizances to be taken thereupon shall be returned and filed in the same Court, and shall continue in force until the matter of such contempt shall have been heard and determined, unless sooner ordered by the Court to be discharged; Provided that if such writ shall be awarded so late in the vacation by any one of the said Judges, that in his opinion obedience thereto cannot be conveniently paid during such vacation, the same shall and may, at his discretion, be made returnable in the Court wherein the application is made, at a day certain in the next term; and the said Court shall and may proceed thereupon, and award process of contempt in case of disobedience thereto, in like manner as upon disobedience to any writ originally awarded by the said Court; and if such writ shall be awarded in term time so late that, in the judgment of the Court, obedience thereto cannot be conveniently paid during such term, the same shall and may, at the discretion of the said Court, be made returnable at a day certain in the then next vacation, before a Judge in Chambers, who shall and may proceed thereupon in such manner as by this Act is directed concerning writs issuing in and made returnable during the vacation.

3. In all cases provided for by this Act, although the return to any writ of *Habeas Corpus* shall be good and sufficient in law, it shall be lawful for the Court or for any Judge before whom such writ may be returnable to proceed to examine into the truth of the facts set forth in such return, by affidavit or by affirmation (in cases where an affirmation is allowed by law,) and to do therein as to justice shall appertain; and if upon such return it shall appear doubtful on such examination, whether the material facts set forth in the said return, or any of them, be true or not, in such case it shall and may be lawful for the said Judge of the Court to let to bail the said person so confined or restrained, upon his or her entering into a recognizance, with one or more sureties or in case of infancy or coverture, or

other disability, upon security by recognizance in a reasonable sum to appear in the Court wherein the application is made, upon a day certain in the term following, and so from day to day as the Court shall require, and to abide such order as the Court shall make in and concerning the premises; and any Judge before whom such writ shall be returned shall transmit into the same Court the said writ and return, together with such recognizance, affidavits and affirmations; and thereupon it shall and may be lawful for the said Court to proceed to examine into the truth of the facts set forth in the return, in a summary way by affidavit or affirmation (in cases where by law affirmation is allowed), and to order and determine touching the discharging, bailing, or remanding the party.

4. The like proceeding may be had in the Court for controverting the truth of the return to any such writ of *Habeas Corpus* awarded as aforesaid, although such writ shall be awarded by the said Court itself, or be returnable therein.

5. In all cases, in which a writ of *Habeas Corpus* shall be issued under the authority of this Act or of the said Act of the thirty-first year of the reign of King Charles the Second or otherwise, it shall and may be lawful for the Judge or Court ordering the issue of such writ, or for the Judge before whom such writ shall be returnable, either in term time or vacation, to direct the issuing of a writ of *certiorari* out of the Court from which such writ of *Habeas Corpus* shall have issued, directed to the person or persons by whom or by whose authority any such person shall be confined or restrained of his or her liberty, or other person having the custody or control thereof, requiring him to certify and return to any Judge in Chambers or to the Court, as by the said writ shall be provided, all and singular the evidences, depositions, convictions, and all proceedings had or taken, touching or concerning such confinement or restraint of liberty, to the end that the same may be viewed and considered by such Judge or Court, and to the end that the sufficiency thereof to warrant such confinement or restraint, may be determined by such Judge or Court.

6. In case any person confined or restrained of his or her liberty, as aforesaid, shall be brought before the Court in term time upon a writ of *Habeas Corpus*, and shall be remanded to custody again upon the original order or warrant of commitment, or by virtue of any warrant, order or rule of such Court, it shall and may be lawful for such person to appeal from the decision or judgment of the said Court, to the Court of Error and Appeal; and it shall be the duty of the Clerk of the Court whose decision or judgment shall be appealed from, upon notice to be given by or on behalf of the person so remanded to custody, to certify under the seal of the Court, the writ of *Habeas Corpus* the return thereto, and all