

SUPREME COURT ACT.

so much thereof as is in his hands not paid over, and in default of payment by the Sheriff, upon such demand, the appellant or plaintiff in Error may recover the same from him in action for money had and received, or by means of an order or rule of the Court appealed from.

33. An appeal, but not a writ of error, shall lie from a judgment of a Court of common law, and from a judgment of the common law side of the said Supreme Court sitting in special term as hereinafter provided for, upon a special case, unless the parties agree to the contrary; and the proceedings for bringing a special case before the said Supreme Court shall as nearly as possible be the same as in the case of a special verdict, and the said Court shall draw any inferences of fact from the facts stated in the special case which the Court of original jurisdiction ought to have drawn.

34. An appeal shall lie from the decision of any Court of common law, and from the common law side of the said Supreme Court sitting in special term, in the case of a rule to enter a verdict or nonsuit upon a point reserved at the trial, whether a rule to shew cause has been refused or granted, or has been discharged or made absolute.

35. In all cases of motion for a new trial upon the ground that the Judge has not ruled according to law, if the rule to shew cause be refused, or if granted be afterwards discharged or made, absolute, the party decided against may appear provided any one of the Judges dissent from the rule being refused, or when granted, from its being discharged or made absolute, as the case may be, or provided the Court in its discretion think fit that an appeal should be allowed.

36. No appeal shall be allowed under the three next preceding sections, unless notice thereof be given in writing to the opposite party, or his attorney of record, within twenty days after the decision complained of, or within such further time as the Court appealed from or Judge thereof may allow.

37. When the application for a new trial is upon matter of discretion only, as on the ground that the verdict is against the weight of evidence or otherwise, no appeal shall be allowed.

38. The four next preceding sections shall apply to informations *in rem.* and to informations for penalties for the infraction of any Revenue Law.

39. Any appeal shall lie in ejectment in the same manner and to the same extent as in any other case.

40. An appeal shall, in addition to proceedings in Error, where the same are applicable, lie to the said Supreme Court in all cases of proceedings

for or upon a Writ of Mandamus, and [to] all proceedings upon Habeas Corpus, and in all cases upon which a by-law of Municipal Corporation has been quashed by rule of Court after argument.

41. A person convicted of treason, felony or misdemeanor before the Court of Queen's Bench or Common Pleas, in the Province of Ontario, or before the Court of Queen's Bench in the Province of Quebec, or before the Supreme Court in either of the said Provinces of Nova Scotia or New Brunswick, or who has been convicted as aforesaid before any Court of Oyer and Terminer or Gaol Delivery, and whose conviction has been affirmed by any of the hereinbefore mentioned Provincial Courts, may appeal against the conviction or affirmation, and the Supreme Court shall make such rule or order therein either in affirmance of the conviction or for granting a new trial, or otherwise, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect; but no such appeal shall be made unless allowed by the Superior Court appealed from, or by two of the Judges thereof in term or vacation, nor unless such allowance has been granted and the appeal has been heard within six months after the conviction was affirmed, unless otherwise ordered by the said Supreme Court, and any rule or order of the said Supreme Court shall be final.

42. No other appeal from a decision of any Court of common law shall be allowed; but in any case, either civil or criminal, in which the judgment, decision or other matter appealed against shall appear of record, a Writ of Error shall notwithstanding lie.

43. A Writ of Error shall lie where the matters complained of appear of record, from all judgments of the Court of Queen's Bench in the Province of Quebec in criminal cases; but in all other cases in which any judgment or order of the said Court of Queen's Bench, or of the Superior Court of the said Province of Quebec, is sought to be reversed in the said Supreme Court the proceedings shall be by way of appeal only and no Writ of Error shall lie.

44. In the case of the death of one of several appellants pending the appeal to the said Supreme Court, a suggestion may be filed of his death and the proceedings may thereupon be continued at the suit of and against the surviving appellant as if he were the sole appellant, and such suggestion, if untrue, may be set aside on motion made to the said Supreme Court, or a Judge thereof in Chambers.

45. In case of the death of a sole appellant, or of all the appellants, the legal representative of the sole appellant, or of the last surviving app