

An Act to improve the proceedings in Prohibition and on Writs of Mandamus, in Upper Canada.

**W**HEREAS the filing a Suggestion of Record on application for a Writ of Prohibition is productive of unnecessary expense, and the allegation of contempt in a declaration in Prohibition filed before Writ issued, is an unnecessary form; and it is expedient to make some better provision for payment of costs in cases of Prohibition: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1. It shall not be necessary to file a suggestion on any application for a Writ of Prohibition, but such application may be made on affidavit only; and in case the party applying shall be directed to declare in Prohibition before writ issued, such declaration shall be expressed to be on behalf of such party only, and not, as heretofore, on behalf of the party and of Her Majesty, and shall contain and set forth in a concise manner so much only of the proceeding in the Court below as may be necessary to shew the ground of the application, without alleging the delivery of a writ or any contempt, and shall conclude by praying that a Writ of Prohibition may issue: to which declaration the party defendant may demur, or plead such matters, by way of traverse or otherwise, as may be proper to shew that the Writ ought not to issue, and conclude by praying that such writ may not issue; and judgment shall be given, that the Writ of Prohibition do or do not issue, as justice may require, and the party in whose favor judgment shall be given, whether on Non-suit, Verdict, Demurrer, or otherwise, shall be entitled to the costs attending the application and subsequent proceedings, and have judgment to recover the same; and in case a verdict shall be given for the party plaintiff in such declaration, it shall be lawful for the Jury to assess damages, for which judgment shall also be given, but such assessment shall not be necessary to entitle the plaintiff to costs.
- Application for prohibition may be made on affidavit only.  
If the applicant be directed to declare before the writ issues.  
Proceedings.  
Judgment.  
Damages.  
Costs.
2. And whereas the provisions contained in a certain Act of Parliament passed in the Ninth year of the Reign of Queen Anne, intituled “An Act for rendering the Proceedings upon Writs of Mandamus and Information in a nature of *Quo Warrento* more speedy and effectual, and for the more easy trying and determining the rights of Offices and Franchises in Corporations and Boroughs,” relating to the Writs of Mandamus therein mentioned, have been found useful and convenient, and the same ought to be extended to the proceedings on other such writs; it is therefore enacted, that the several enactments contained in the said Statute relating to the Return of Writs of Mandamus, and the proceedings on such returns, and to the recovery of damages and costs, shall be and the same are hereby extended and made applicable to all other Writs of Mandamus, and the proceedings thereon, except so far only as the same may be varied or altered by this Act.
- Act of 9 Queen Anne cited.  
Its provisions extended to all other Writs of Mandamus.