

And to take away all doubts and scruples with respect to the Right of Appeal in any Cause before the said Courts of Common Pleas,

§4. Be it enacted and declared by the same authority, that the Court of Appeals shall be deemed and adjudged to have an Original Appellate Jurisdiction with all the Power necessarily annexed to such Jurisdiction, and *that it shall henceforth belong to the provincial Court of Appeals to determine the Question when security shall be requisite and the sufficiency thereof*, and the Admission, Dismission or Remission of Appeals, and the supply of the *Defects of the Record*, and of the effect of the Appeal as a Supersedeas of all or any Proceedings in the lower Courts for the stay of Execution on the Judgements of the same, or any Process of the nature of Execution, with *authority also to make rules and orders to regulate, effectuate and accelerate the Proceedings in all causes of Appeal* for the advancement of Justice, and to prevent unnecessary delays and expence in the same.

And to strengthen the security of the subject for his Estate and Rights, even in the said Court of Appeals ;

§5. Be it further enacted and ordained, by the same authority, That none of the Members of the Court of Appeals shall presume to sit upon the Bench thereof, until he shall have taken an Oath before the Governor for the time being, that he will faithfully serve our Lord the King and his People, in the Office of Judge of the Court of Appeals in this Province, and that he will do equal Law and Execution of Right to all the King's Subjects, rich and poor, without any regard to any person, that he will not take gift or reward of any man that shall have Plea or Process before him, and that he will deny no man common right by the King's letters, or any other man's, and that in case any letters come to him contrary to the Law, that he will do nothing by such letters, but certify the King thereof, and proceed to execute the Law according to the best of his Knowledge and Judgement.

§6. And be it also enacted by the same authority, That it shall be *sufficient to disqualify* any Member of the Legislative Council from sitting as *Judge in any Cause of Appeal*, that he is interested in the event of it, or related to either of the parties interested in the same, or that he is a Judge of *either of the Courts of Common Pleas*, or that he was absent at any former hearing in such Cause of Appeal.

And because his Majesty's Canadian Subjects *cannot suffer* detriment by trials *according to the English Laws* and course of practice in controversies *in which they are not concerned*, between his Majesty's natural born subjects, *who have also their predilection* and attachments to the modes of trial conformed to their own customs, and in deference to his Majesty's instruction above recited ;¹

¹ In connection with this clause there is inserted the following marginal note:—"To introduce the Com. Law of England as y^e Rule &^e between y^e old Subjects conformable to opinion & Judgt in Appeal ded. 1786. Case Grant v Gray and conform y^e new Subjects or Canadians to y^e Coutume de Paris & Civil Laws." This refers to the judgment delivered by the Chief Justice and which gave rise to much discussion. It is referred to in the letter from Chief Justice Smith to Nepean, see p. 841, also in that of Finlay to Nepean, see p. 845. The judgment of the Court of Common Pleas is given in Q 27-1, p. 28, and the judgment in appeal at p. 26.