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# RULES OF COURT,

OF

MICHAELMAS TERM, 1850.

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TORONTO:  
HENRY ROWSELL,  
KING STREET.

IN THE  
COURTS OF QUEEN'S BENCH AND COMMON PLEAS.

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MICHAELMAS TERM, 14TH VICTORIA.

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WHEREAS by an Act passed by the Parliament of this Province in the twelfth year of her Majesty's reign, (chap. 81), entitled, "An Act to provide by one general law for the erection of Municipal Corporations, and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada," power was given to her Majesty's Court of Queen's Bench in Upper Canada, and the several Judges thereof, to try and decide all matters relating to contested Municipal Elections as therein provided; And whereas by the Act of the last Session of Parliament, (chapter 64), entitled, "An Act for correcting certain errors and omissions in the Act of the Parliament of this Province, passed in the last Session thereof, intituled, '*An Act to provide by one general law for the erection of Municipal Corporations and the establishment of Regulations of Police, in and for the several Counties, Cities, Towns, Townships and Villages in Upper Canada,*' for amending certain of the provisions of the said Act, and making some further provisions for the better accomplishment of the object thereof," the powers conferred on the said Court and Judges have been extended to the Court of Common Pleas and the Judges thereof, and additional powers have been thereby given in the premises to the said Courts and Judges respectively; and it being among other things in effect enacted, that it should and might be lawful for the Judges of her Majesty's two Super-

rior Courts of Common Law at Toronto, or the majority of them, by any rule or rules to be by them for that purpose made, from time to time in term time, as occasion may require, to settle the forms of all such writs, whether of summons, certiorari, mandamus, execution, or of or for whatever other kind or purpose, as are authorised by the said Act—therefore, in order to settle the said forms, and to regulate the practice and proceedings in the said Courts in the matters aforesaid, IT IS ORDERED, that the following Rules be substituted for the Rules made in Hilary term last by the Judges of the said Court of Queen's Bench for the trial of such elections; and that the forms of such writs and the practice to be observed with respect to the matters aforesaid shall be as follows, that is to say:—

I. The relator entitled to complain of any election shall in person or by attorney, by written motion, apply to one of the said Courts of Queen's Bench or Common Pleas in term time, or to the Judge presiding in Chambers in vacation, for a writ of summons in the nature of a *quo warranto*, which motion must, according to the statute, be made within six weeks after the election complained against, or within one month after the person whose election is questioned shall have accepted the office, and not afterwards.

II. Such motion shall be founded—1st. On a written statement, which shall be annexed to the motion-paper, setting forth the interest which the relator has in the election, as candidate or voter, and setting forth also specifically, under distinct heads separately numbered, (if there be more than one), all such grounds of objection as he intends to urge against the validity of the election complained against and in favour of the validity of the election of the relator or another, or other person or persons, when he shall claim that he or they or any of them have been duly elected; and at the foot of such statement there shall be an affidavit made and signed by the relator, that he believes such grounds to be well founded: And 2ndly. On an affidavit or affidavits of the relator, or other person or persons, setting forth fully and in detail the facts and circumstances which shall support the application.

The statement of the relator may be after the following form, *mutatis mutandis* :—

## STATEMENT OF THE RELATOR.

**In the Queen's Bench (or Common Pleas).**

The statement and relation of \_\_\_\_\_, of \_\_\_\_\_, who complaining that \_\_\_\_\_, of \_\_\_\_\_, (*here inserting the names and additions of all, if more than one person*), hath (*or have*) not been duly elected, and hath (*or have*) unjustly usurped and still doth (*or do*) usurp the office of \_\_\_\_\_, in the Town of \_\_\_\_\_, (*or Township of \_\_\_\_\_, as the case may be*), in the County (*or United Counties*) of \_\_\_\_\_, under pretence of an election held on \_\_\_\_\_, at \_\_\_\_\_, in the said County (*or United Counties*). [And (*when it is claimed that the relator, or the relator and another, or others, ought to have been returned*), that (*here name the party or parties so entitled*) was (*or were*) duly elected thereto, and ought to have been returned at such election], and declaring that he the said relator hath an interest in the said election as a \_\_\_\_\_, states and shews the following causes why the election of the said \_\_\_\_\_ to the said office should be declared invalid and void. [And (*when so claimed*) the said \_\_\_\_\_ (*naming the party or parties*) be duly elected thereto].

*First*—That (*for example*) the said election was not conducted according to law in this, that, &c.

*Second*—That the said \_\_\_\_\_ was not duly or legally elected or returned in this, that, &c.

*Third*—That, &c.

Signed by the relator in person, or by C. D. his attorney.

NOTE.—Where the intention of the relator is to impeach the election as altogether void, in which event, as the office cannot be claimed for any other or others, the portion of the above and succeeding forms relating thereto should be omitted.

III. If the Court or Judge applied to shall find sufficient ground for issuing a writ of summons in the nature of a *quo warranto*, then, upon such recognizance being entered into as the Act directs and a proper affidavit of justification made, and the sufficiency of the sureties allowed by such

Court or Judge, a writ shall issue, sealed and tested as other writs of summons in cases between party and party, and attached thereto shall be a copy of the relator's statement of objections and grounds, and of the names and additions of the persons who shall have made the affidavits upon which the writ was moved.

The recognizance and fiat for summons, and the writ of summons in these Rules mentioned, may be in the following forms:—

FORM OF RECOGNIZANCE.

In the Queen's Bench (or Common Pleas).

UPPER CANADA, } Be it remembered, that on the  
 County (or United } ——— day of ———, in the  
 Counties) of ———. } year of our Lord one thousand eight  
 hundred and ———, before me ——— of ———, Chief Justice  
 (or a Justice, or a Commissioner for taking bail) in her  
 Majesty's Court of Queen's Bench (or Common Pleas) for  
 Upper Canada, cometh ———, of ———, of ———,  
 and ———, of ———, and acknowledge themselves  
 severally and respectively to owe to ———, of ———,  
 (here inserting the name or names of the person whose elec-  
 tion is complained against), as follows—that is to say, the  
 said ———, the sum of fifty pounds, and the said  
 ——— and ——— the sum of twenty-five pounds  
 each, upon condition that if the said ——— do prosecute  
 with effect the writ of summons in the nature of *quo war-  
 ranto* to be issued on an order or fiat to be made at the  
 instance and upon the relation of the said ———, against  
 the said ———, to shew by what authority he (or they)  
 the said ——— claims (or claim) to be (here state the  
*office so claimed*) and why he (or they) the said ———  
 should not be removed therefrom, [and (where so claimed  
 by the relator) why he the said relator (or the party or parties  
 entitled) should not be declared duly elected, and be ad-  
 mitted to the said office]; and if the said ——— do pay  
 to the said ——— all such costs as the said Court of  
 ——— (or the Judge presiding in Chambers, at the City  
 of Toronto, in the County of York,) shall direct in that

behalf, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the }  
 day and year first above }  
 mentioned, }  
 Before me \_\_\_\_\_.

FORM OF A JUDGE'S FIAT ORDERING A WRIT TO ISSUE IN VACATION IN THE QUEEN'S BENCH (OR COMMON PLEAS.)

Upon reading the statement of \_\_\_\_\_, of \_\_\_\_\_, in the County of \_\_\_\_\_, complaining of the undue election and usurpation of the office of \_\_\_\_\_, by \_\_\_\_\_, [and (*if so, stating*) that the said \_\_\_\_\_ (*relator or other person named*) was (*or were*) duly elected, and ought to have been returned to the said office], and upon reading the affidavits filed in support of the said statement; and also upon reading the recognizance of the said \_\_\_\_\_, and sureties therein named, and the same being allowed as sufficient: I do order that a writ of summons do issue, calling upon the said \_\_\_\_\_ (*the party whose election is complained of*) to shew by what authority he (*or they*) the said \_\_\_\_\_ (*the party whose election is complained of*) now exercises or enjoys (*or exercise and enjoy*) the said office [and why (*if so claimed*) he (*or they*) the said \_\_\_\_\_, should not be removed therefrom, and the said \_\_\_\_\_ (*relator or other person or persons named*) should not be declared duly elected, and be admitted thereto].

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_\_.

NOTE.—If by Rule of Court, the above form should be modified accordingly.

FORM OF WRIT OF SUMMONS.

UPPER CANADA.

VICTORIA, by the Grace of God, &c.

To \_\_\_\_\_, of \_\_\_\_\_, &c. in the County (*or United Counties*) of \_\_\_\_\_.

WE command you (*and each of you*) that you (*and each of you*) be and appear before the Chief Justice or other Justice of our Court of Queen's Bench or Common Pleas

for Upper Canada, presiding in Chambers, at the Judges' Chambers in our City of Toronto, on the eighth day after the day on which you shall be served with this writ, then and there to answer and shew to such Chief Justice or Justice by what authority you claim to use, exercise or enjoy the office of \_\_\_\_\_, which office, upon the relation of \_\_\_\_\_, having as he says an interest in the election to the said office as a \_\_\_\_\_, we are informed that you have usurped and do still usurp [and that (*if so claimed*) the said \_\_\_\_\_ (*relator or party or parties mentioned*) was (*or were*) and should have been declared duly elected and admitted thereto], and further to do and receive all those things which our said Chief Justice, or Justice, shall thereupon order concerning the premises.

WITNESS, the Honorable \_\_\_\_\_, Chief Justice of our said Court of \_\_\_\_\_ (*or other Justice in whose name the writ is tested*), at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_ 18—, and in the \_\_\_\_\_ year of our reign.

—

**FORM OF NOTICE TO BE INDORSED ON OR ANNEXED TO THE WRIT OF SUMMONS.**

• **In the Queen's Bench (or Common Pleas).**

The Queen, upon the relation of \_\_\_\_\_,  
against \_\_\_\_\_.

To \_\_\_\_\_ and \_\_\_\_\_, named in the within (*or annexed*) writ of summons.

The within (*or annexed*) writ of summons has been issued at my instance and relation; and a statement concerning the premises, whereof a copy is hereunto annexed, is filed in the office of the Clerk of the Crown in this Court (*or with the Clerk in Chambers, at the City of Toronto*), together with affidavits supporting the same; and the names and additions of the deponents to the said affidavits are hereunder written. And you are served with the said writ of summons to the intent that you do appear and answer, as therein commanded, or otherwise judgment will be given against you by your default, and your election to the therein mentioned office will be declared invalid, and you



will be removed therefrom [and the said \_\_\_\_\_ (*the relator, or \_\_\_\_\_, the party or parties, if any, alleged to be entitled*) therein named be declared duly elected, and will be admitted thereto in your place].

A. B. in person,  
or by  
C. D. his Attorney.

The above mentioned deponents are :—

\_\_\_\_\_, of \_\_\_\_\_.  
\_\_\_\_\_, of \_\_\_\_\_.

MINUTE OF THE DAY OF SERVICE TO BE WRITTEN ON THE  
SUMMONS.

Served this \_\_\_\_\_ day of \_\_\_\_\_ 185\_\_\_\_\_.

IV. A copy of such summons, and of the paper attached thereto, with a notice on the back of the copy of summons, according to the foregoing form, may be served by any literate person, who shall, within twenty-four hours after such service, make a minute on the writ of the time of serving the same; and upon the return of the writ, the party or parties summoned may appear either in person or by attorney; and the manner of appearance shall be by indorsing on the back of the relator's statement attached to the motion paper :—"the within named C. D. &c. appears in person (*or by attorney, as the case may be*) to answer the grounds of objection to his election, which are stated within."

V. If upon the return day of the summons the party or parties, having been duly served, shall not appear, then, on proof of such service by affidavit, according to the form subjoined, the Judge sitting in Chambers may, before rising on that day, direct an entry to be made as to such party or parties as make default, on the back of the relator's statement, thus :—"The within named C. D. (*and E. F.*) being duly summoned hath (*or have*) not appeared to answer to the matters within objected." Which entry shall be dated on the day of the return, and may be made on any subsequent day, if omitted to be made on that day.

## FORM OF AFFIDAVIT OF SERVICE,

*When made personally, if service special under the 148th clause of the Statute (12 Vic. ch. 81), the Affidavit to be modified accordingly.*

In the Queen's Bench (or Common Pleas).

The Queen, on the relation of \_\_\_\_\_, against \_\_\_\_\_, } \_\_\_\_\_, of \_\_\_\_\_, in the } \_\_\_\_\_, maketh oath and saith, that he did, on the \_\_\_\_\_ day of \_\_\_\_\_, personally serve the above named defendant (or defendants) with the annexed writ of summons, by delivering to him (or each of them) a true copy thereof, on which said copy was indorsed a written notice, a copy whereof is hereto annexed, and to which said copy (or copies respectively) of the said writ was annexed a written copy of a statement of the above named relator, a copy of which said copy of statement is also hereunto annexed: and the deponent further saith, that the minute (or minutes) of the said service, written on the said writ of summons, was (or were) so written by this deponent within twenty-four hours after such service.

Sworn at \_\_\_\_\_, in the County of \_\_\_\_\_, this day of \_\_\_\_\_ 185—.

Before me \_\_\_\_\_.

VI. When it shall appear to the Court or Judge that the Returning Officer should be made a party, a writ of summons shall issue to him, in the following form, upon a rule of Court to issue for that purpose, or upon the fiat of the Judge, which summons shall be served with the like papers annexed, and the service thereof proved in like manner as is provided for other writs of summons, as aforesaid: and the party served shall appear and enter his appearance within the same time after service and in the same manner; and in default thereof, he shall be liable to have judgment pass against him in his absence as in the case of any other defendant making a like default, and be dealt with by attachment, execution or otherwise, as the circumstances of the case may require:

FORM OF WRIT OF SUMMONS TO A RETURNING OFFICER,  
UPPER CANADA.

VICTORIA, *by the Grace of God, &c.*

Whereas upon the relation of \_\_\_\_\_, in our Court of (*Queen's Bench or Common Pleas*), \_\_\_\_\_, it hath been ordered that a writ of summons should issue to \_\_\_\_\_, to shew by what authority he (*or they*) claims or exercises (*or claim or exercise*) the office of \_\_\_\_\_. And whereas it appears to our Justices of our Court of (*Queen's Bench or Common Pleas*), before whom the said writ hath been made returnable, (*or as the case may be*), that you were the Returning Officer by whom the said \_\_\_\_\_ hath (*or have*) been returned as duly elected to the said office, and that it is proper you should be made a party to the proceeding aforesaid; these are therefore to summon you to be and appear before the Chief Justice or other Justice of our Court of (*Queen's Bench or Common Pleas*) for Upper Canada presiding in Chambers, at the Judges' Chambers, in our City of Toronto, on \_\_\_\_\_, then and there to answer such matters and things as shall then and there be objected against you, and further to do and receive all those things which said Court or said Justice shall thereupon order concerning you in the premises.

Witness, &c.

VII. In case of default of appearance by any party summoned as aforesaid, the judge recording the same may, as to such as make default, proceed *ex-parte*; and as to such as shall have appeared, as is herein provided, proceed to determine the validity of the election or elections complained of, and also (if so claimed) of the election of the person or persons alleged to have been duly elected, and give judgment thereon; or he may in his discretion, with or without any application for that purpose, and having regard to the distance of the place where the party was served, or other circumstances, appoint a further day for the appearance of the party or parties summoned, of which an entry shall be made and signed by the judge to the following effect, at the foot of the entry of non-appearance on the back of the relator's statement:—"Whereupon a further day is given to the

said \_\_\_\_\_ (or *the said* \_\_\_\_\_ *and* \_\_\_\_\_), to appear on," &c.

On which day, or as soon after as may be convenient, if no further postponement shall be in like manner granted, the case may be heard and disposed of in like manner as if the same had been determined and judgment given thereon, without granting a further day for appearance.

VIII. At any time before the hearing, any party may have copies of the affidavits filed, on paying for the same.

IX. At the hearing the relator shall not be allowed to object to the election of the party or parties complained against, or to support the election or elections of the person or persons alleged to have been duly elected on any ground not specified in the statement on which the summons was moved; but it shall nevertheless be in the discretion of the judge, if he shall think fit, to entertain upon his own view of the case any substantial ground of objection to or in support of the validity of the election of either or any of the parties which may appear in the evidence before him.

X. When the party or parties summoned has or have appeared, no more formal answer need be made by him or them to the relator's case than by affidavits filed in answer; but the judge before whom the case shall be pending may in his discretion require from either or any party further affidavits or the production of any such evidence as the law allows.

XI. In case of disclaimer under the statute 13 & 14 Vic., chap. 64, schedule A., No. 23, the provisions therein contained and in sub-proviso No. 6 are to be observed.

XII. In case a necessity shall appear for sending an issue to be tried by a jury, the writ for that purpose may be in the following form, and shall issue on the *fiat* of the judge directing the same, and bear date on the day of its issuing:

WRIT OF TRIAL.

[*£. S.*] VICTORIA, *by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.*

To the Judge of the County Court of the County of \_\_\_\_\_

GREETING:

Whereas, upon the trial of the validity of an election of \_\_\_\_\_, chosen upon the \_\_\_\_\_ day of \_\_\_\_\_, to

be \_\_\_\_\_ for the township of \_\_\_\_\_, (*or as the case may be*), in the county of \_\_\_\_\_, and which election hath been complained of by E. F., as the relator, alleging (*as the case may be*) that he himself, or that he and C. D., &c. or that C. D., &c. was or were duly elected, and ought to have been returned, it hath become material to ascertain whether (*here state concisely the issues to be tried*); and whereas it is desired by \_\_\_\_\_, our Chief Justice (*or Justice*) of our Court of Queen's Bench (*or Common Pleas*), before whom the same is pending, that the truth of such matters as aforesaid may be found by a jury: We do therefore, pursuant to the statute in such case made and provided, command you, that by twelve good and lawful men of the county of \_\_\_\_\_, who are in nowise akin to the said E. F. the relator in the said case, or to the said (*the other party or parties, naming him or them*), and who shall be sworn truly to try the truth of the said matters, you do proceed to try the same accordingly; and when the jury shall have given their verdict on the matters aforesaid, we command you that you do forthwith make known to our said Chief Justice (*or Justice*) what shall have been done by virtue of this writ, with the finding of the jury hereon indorsed.

WITNESS, the Honorable \_\_\_\_\_, Chief Justice (*or Justice*) of our said Court, at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of our reign.

FORM OF ENDORSEMENT OF VERDICT THEREON.

I hereby certify, that on the \_\_\_\_\_ day of \_\_\_\_\_, before me, L. M., Judge of the County Court of the County (*or United Counties*) of \_\_\_\_\_, came as well the within named relator as the within named (*the other party or parties*) by their attorneys (*or as the case may be*), and the jurors of the jury, by me duly summoned as within, commanded, also came, and being sworn to try the matters within mentioned on their oath, said that, &c.

XIII. When the judge before whom any such case shall be pending shall have determined the same either *ex-parte*

in case of default, or on hearing the parties, or partly *ex parte* and partly on hearing the parties, he shall make up and annex to the statement of the relator, and to the affidavits and other papers filed in the case, a written judgment attested by his signature, and dated on the day of the same being signed, in which it shall be sufficient to state concisely the ground and effect of the judgment, which judgment may be at any time amended by the same judge, in regard to any matter of form. And the following may be the form of judgment when in favour of the relator :

IN THE QUEEN'S BENCH, (OR COMMON PLEAS).

The Queen, on the relation ) Be it remembered, that on  
of \_\_\_\_\_, } the \_\_\_\_\_ day of \_\_\_\_\_,  
against \_\_\_\_\_. } in the year of our lord one  
thousand eight hundred and \_\_\_\_\_, at the Judge's  
Chambers in the city of Toronto, before me \_\_\_\_\_ Chief  
Justice (*or Justice*) of Her Majesty's Court of Queen's  
Bench (*or Common Pleas*), came as well the above named  
relator by \_\_\_\_\_, his attorney, as the above named  
\_\_\_\_\_ by his (*or their*) attorney, and service of the writ  
of summons hereunto annexed having been duly proved  
upon affidavit, and upon the said day and upon other days  
thereafter, at his chambers aforesaid, having heard and read  
the statement and proofs of the said relator, touching and  
concerning the usurpation by him alleged against the said  
\_\_\_\_\_ of the office of \_\_\_\_\_ in the said writ of sum-  
mons mentioned [and (*if so*) the election of (the party or  
parties named) thereto], and the answers and proofs of the  
said \_\_\_\_\_, and having heard the said parties by their  
counsel (*or as the case may be*), and upon due consideration  
of all and singular the premises now, that is to say, this  
\_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, I do ad-  
judge and determine :

First.—That the said relator had, at the time of his making his aforesaid complaint, an interest in the election to the said office of \_\_\_\_\_ as a \_\_\_\_\_.

Second.—That, &c.

Third.—That, &c.

Fourth.—That the said ——— hath (*or have*) usurped, and doth (*or do*) still usurp the said office, and that he (*or they*) be removed therefrom [or that the election of ——— to the said office was void, and that he (*or they*) be removed therefrom (*as the judgment may be*)]. And that the said relator (*or* the said [naming the party or parties whose election is affirmed, when he or they are adjudged to be entitled to the said office]) was (*or were*) duly elected thereto, and ought to have been returned, and is (*or are*) entitled in law to be received into, and to use, exercise and enjoy the said office. And I do adjudge and determine that the said ——— do not in any manner concern himself (*or themselves*) in or about the said office, but that he (*or they*) be absolutely forejudged and excluded from further using or exercising the same, under pretence of the said election [and further that the said (naming the relator or parties whose election is affirmed) be (*or be respectively*) admitted to the said office in his (*or their*) place or places]; And I do further order, adjudge and determine, that the said relator do recover against the said ——— his costs and charges by him in and about the said relation and the prosecution thereof expended, to be taxed in the said Court.

All which the said writ of summons, and the said judgment, and the statements, answers and proofs of the said relator and of the said ———, and all other things had before me touching the same, I do hereby certify and deliver into the said Court, according to the form of the statute in such case made and provided.

E. F., J.

And the following may be the conclusion of a judgment for the defendant, to follow the word *affidavit*, in the foregoing form :

Thereupon now at this day, that is to say, on the ——— day of ——— aforesaid, at the Judges' Chambers, at Toronto aforesaid, all and singular the relation and proofs of the said relator, and the answers and proofs of the said ———, being seen and fully understood, I do consider and adjudge that the said office of ———, so claimed by him (*or them*) the said ———, be allowed

and adjudged to him (*or them*), that the said ——— be dismissed and discharged of and from the premises above charged upon him (*or them*), and also that he (*or they*) the said ——— do recover against the said relator his (*or their*) costs by him (*or them respectively*) laid out and expended in defending himself (*or themselves*) in this behalf. All which, &c. (*as in the judgment for the relator*).

When the Returning Officer is made a party, the judgment to be modified accordingly.

XV. When the judgment of the Judge in Chambers shall have been returned into Court, according to the statutes, and after the end of four days after such return, and if no rule shall have been granted to set aside or amend the judgment, the relator or person (*or persons*) in whose favor the judgment shall have been given, shall be at liberty to tax his or their costs, and the following entry shall be made under or upon the record of the judgment, after which execution may issue:—

“Afterwards, that is to say, on the ——— day of ———, in the ——— year of the reign of our Lady the Queen, cometh the said ———, and prayeth that his (*or their*) said costs, so as aforesaid adjudged to him (*or them*), be taxed and assessed according to the form of the statute in such case made and provided, and the said costs of the said ———, in and about his (*or their*) prosecution (*or defence*) aforesaid, [and (*when the Returning Officer is a party*) of the said ———, in and about his defence aforesaid], so as aforesaid adjudged to him (*or them*), are now here accordingly taxed and assessed as follows, that is to say, the costs of the said ——— at the sum of ———, [and the costs of the said ——— (*when Returning Officer entitled thereto*), at the sum of ———], and the said ———, in mercy, &c.”

XVI. The writs of certiorari and mandamus which it may become necessary to issue in any such case, will be in the common form of such writs, the command therein contained being suited to the circumstances of each case, and when applicable, the following form may be used:—



## FORM OF A WRIT OF MANDAMUS,

To remove the person (or persons, being less than the whole number of members of any Municipal Corporation) whose election is adjudged invalid, and to admit the person or persons adjudged lawfully elected.

VICTORIA, &c.

To the Municipal Corporation of ———— (the Town, Township, or City of).

Whereas, on the ———— day of ————, in the year of our Lord one thousand eight hundred and ————, at the Judge's Chambers, in the City of Toronto, before ————, Chief Justice (or one of the Justices) of our Court of Queen's Bench (or Common Pleas) for Upper Canada, it was by the said Chief Justice (or Justice) adjudged and determined that ————, of ————, had usurped, and did then usurp, the office of ———— [and that ———— was (or were) duly elected thereto, and ought to have been returned, and was (or were) entitled in law to be received into and to use, exercise and enjoy the said office], all which has by the said Chief Justice (or Justice) been duly certified into our Court of Queen's Bench (or Common Pleas), pursuant to the statute in that behalf. Now, we being willing that speedy justice be done in this behalf, as it is reasonable, command that the said (the person or persons, naming him or them, whose election has been declared invalid) do not in any manner concern himself (or themselves) in or about the said office, but that he (or they) be absolutely forejudged, removed and excluded from further using or exercising the same, under pretence of his (or their) election thereto.\* [And we do further command that the said (the person or persons, naming him or them, who has or have been adjudged lawfully elected) be forthwith admitted, received and sworn into the said office, to use, exercise and enjoy the same.] And we do hereby command you and every of you to obey, observe, and do all and every act, matter and thing that may be necessary, on the part of you or any of you in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf, and that

you make known to our Court of Queen's Bench (*or Common Pleas*) at Toronto, on the \_\_\_\_\_ day of \_\_\_\_\_, how this writ shall have been executed.

Witness, &c.

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FORM OF A WRIT OF MANDAMUS,

*When neither the election of the person or persons (less than the whole number of members of the Municipal Corporation) who has (or have) been returned, nor the person or persons claiming to be returned is (or are) held valid, and for a new election.*

VICTORIA, &c.

To the Municipal Corporation of \_\_\_\_\_, and to any Returning Officer or other person or persons to whom it shall of right belong to do any act necessary to be done, touching the election hereinafter commanded to be held :

Whereas (*as in the last precedent to the asterisk, omitting the part between brackets, and then proceed as follows*). And we do further command that you, the said Municipal Corporation, and any Returning Officer or other person or persons, or such of you to whom the same shall of right belong, that you do, pursuant to and according to the statute in that behalf, cause an election to be as speedily held as shall be lawful, for the election of a person (*or persons*) in the place or stead of the said \_\_\_\_\_, who has (*or have*) been removed as aforesaid ; and that you, or such of you to whom the same doth of right belong, do administer to the person (*or persons*) who shall be so elected, the oath (*or oaths*), if any, in that behalf by law directed ; and that you admit, or cause to be admitted such person (*or persons*) so elected into the said office, and that you, the said Municipal Corporation, do shew how this writ shall have been executed to our Court of Queen's Bench (*or Common Pleas*), at Toronto, on the \_\_\_\_\_ day of \_\_\_\_\_.

Witness, &c.

## FORM OF A WRIT OF MANDAMUS,

*Directed to the Sheriff, where the elections of all the members of any Municipal Corporation have been adjudged invalid, and for the admission of those adjudged to have been legally elected.*

VICTORIA, &c.

To the Sheriff of the County (or United Counties) of \_\_\_\_\_, Greeting:

Whereas (the same as in the first precedent of a Mandamus, to the end of the words "adjudged and determined," then say) that the election (or elections) of all the members of the Municipal Corporation of \_\_\_\_\_, returned as elected at the election (or elections) of members of the said Corporation held (describing the time or times and place or places of such election [or elections]) was (or were) invalid or void in law, and that (naming them all) had usurped (proceeding as in the first precedent, adopting the plural form, to the asterisk, and then as follows); and we do hereby further command you the said Sheriff, that you do, pursuant to the statute in that behalf, admit or return and swear into, or cause the said (naming the persons adjudged to have been duly elected) to be forthwith admitted or returned, and sworn into the said office, to use, exercise and enjoy the same, and that you do and perform, or cause to be done and performed, all and every act or acts, thing or things necessary to be done and performed in the premises; and we hereby command and strictly enjoin all and every person or persons to whom the same shall lawfully belong, to be aiding and assisting you, and to do all and every lawful and necessary act to be done by him or them in the premises, according to the purport, true intent and meaning of these presents, and of the statutes in that behalf; and how you shall have executed this writ make known to our Court of Queen's Bench (or Common Pleas), at Toronto, on the \_\_\_\_\_ day of \_\_\_\_\_ next, and have then there this writ.

Witness, &c.

## FORM OF A MANDAMUS

*To the Sheriff, when the elections of all the members of any Municipal Corporation have been adjudged invalid, and requiring others to be elected.*

VICTORIA, &c.

To the Sheriff, &c. (as in the last precedent to the asterisk, omitting the part between the brackets, and adopting the plural form, then concluding as follows) : and that you do every act necessary to be done by you in order to the due election and admission of members of the said Corporation, in the place and stead of the persons whose elections have been so declared invalid ; and we hereby command and strictly enjoin all and every person and persons (continuing as in the last precedent to the end).

Witness, &c.

The form of Writs of Execution for costs in any such case may be as follows :—

FI. FA. AGAINST THE DEFENDANT FOR RELATOR'S COSTS.

UPPER CANADA.

VICTORIA, &c.

To the Sheriff of the County of ———, Greeting :

We command you that you levy, or cause to be levied, of the goods and chattels of C. D., late of ——— [add the description of the Returning Officer, where the execution is against him], the sum of ———, which hath been lately adjudged to A. B. of ———, in our Court of Queen's Bench (*or Common Pleas*), at Toronto, according to the form of the statute in such case made and provided, for his costs by him laid out and expended in the prosecuting of a certain writ of summons in the nature of a *quo warranto*, issued out of our said Court against ———, at the relation of the said A. B., for usurping the office of ———, in our ———, of ———, in your county, [add, when the Returning Officer is a party, "to which proceeding the said ——— was made a party"], and whereof the said C. D. (&c.) is (*or are*) convicted, as in our said Court appears of record, and that you have that money before our Court of Queen's Bench (*or Common Pleas*), at Toronto,

On the \_\_\_\_\_ day of \_\_\_\_\_ Term, to satisfy the said  
A. B. for his costs aforesaid, and have you then there this  
writ.

Witness, &c. \_\_\_\_\_

FI. FA. AGAINST THE RELATOR FOR THE DEFENDANT'S COSTS.

UPPER CANADA.

VICTORIA, &c.

To the Sheriff of the County (or United Counties) of  
\_\_\_\_\_, Greeting:

We command you that you levy, or cause to be levied,  
of the goods and chattels of A. B., late of \_\_\_\_\_, the  
sum of \_\_\_\_\_, which hath lately been adjudged to  
C. D. of \_\_\_\_\_, in our Court of Queen's Bench (or  
*Common Pleas*), at Toronto, according to the form of the  
statute in such case made and provided, for his costs by  
him laid out and expended in his defence upon a certain  
writ of summons in the nature of a *quo warranto*, issued  
out of our said Court against the said C. D., upon the  
relation of the said A. B., for usurping the office of \_\_\_\_\_,  
in our \_\_\_\_\_ of \_\_\_\_\_, in your County (or Counties),  
[If the Returning Officer has been made a party, add here,  
"to which proceeding E. F., the Returning Officer, at the  
election of the said C. D. to the said office, was made a  
party"], whereof the said A. B. is convicted, as in our  
said Court appears of record; and that you have that  
money before our said Court, at Toronto, on the \_\_\_\_\_  
day of \_\_\_\_\_ Term, to satisfy the said C. D. for his  
costs aforesaid, and have you then there this writ.

Witness, &c.

N. B.—When the Returning Officer has been made a party, and  
is entitled to costs, the *feri facias* must be framed accordingly.

XVII. Contempts in disobeying writs of summons, cer-  
tiorari, mandamus or other process, rule or order of either  
Court, or of any Judge thereof acting in the execution of the  
powers conferred by the statutes<sup>n</sup> of 12 Victoria, ch. 81, and  
13 & 14 Victoria, ch. 64, are to be certified into the Court  
from which the writ of summons issued, to be dealt with  
like other contempts of such Court in other cases.

XVIII. If any of the forms given in the foregoing Rules shall not be found adapted to a case which may arise in reference to proceedings connected with or resulting from the trial of the validity of municipal elections, changes are to be made therein when necessary, at the discretion of the Judge who shall try or determine the case, to adapt the same to such particular case.

XIX. None of the proceedings which shall be had in any case for trying the validity of any election, or which shall follow the determination thereof, shall be set aside or held void on account of any irregularity or defect, which shall not in the opinion of the Court or Judge before whom the objection is made, be deemed such as to interfere with the just trial and adjudication of the case upon the merits.

XX. *Costs.*—The same table as authorized by the fifteenth Rule of Hilary term last, and any disbursements necessarily made and not allowed for in the said table, may be taxed according to the table of fees generally established in the Court in which the proceedings shall be conducted.

JNO. B. ROBINSON, C. J.  
 J. B. MACAULAY, C. J. C. P.  
 A. McLEAN, J.  
 WM. H. DRAPER, J.  
 R. B. SULLIVAN, J.  
 ROBERT BURNS, J.

The costs which will be taxable under the foregoing orders may be stated as follows:—

	£	s.	d.
<i>Instructions</i> —To apply for a writ of summons or to defend against.....	0	5	0
<i>Statement</i> —Of the grounds of complaint, including fair copy .....	0	5	0
<i>Affidavits</i> —Whether special or common, per folio of 100 words, and copies thereof when necessary.....	0	0	6
<i>Recognizance</i> —Drawing.....	0	2	6

	£	s.	d.
<i>Attendances, Special</i> —at Chambers, for writ of summons, to serve writ, upon the argument, or to hear judgment .....	0	2	6
<i>Attendances, Common</i> —all other attendances not mentioned as special, each .....	0	1	3
<i>Writs</i> —Preparing writ of summons, writ of certiorari, mandamus, trial or writ of execution, each .....	0	2	6
Fee on each writ .....	0	5	0
<i>Notices</i> —Indorsement on writ of summons, every other indorsement upon writ when required to be made, and all common notices, each .....	0	1	3
<i>Copies</i> —Of statement or other papers and documents when required to be made or served, half the amount allowed for the original, and when no specific sum is allowed, then copies of papers required, or which may be directed to be made, furnished or served, to be allowed per folio of 100 words .....	0	0	6
<i>Issues</i> —When directed to be tried, preparing same .....	0	5	0
<i>Disbursements</i> —Postages actually paid, mileage where it is necessary to employ parties to serve writs, papers, &c., the actual number of miles travelled to perform the service, per mile .....	0	0	6

The affidavit must state the number of miles actually travelled, and also that the charge has been paid.

N.B.—No instructions to be allowed nor attendances to swear affidavits. No instructions to be allowed for briefs or charge for briefs.

## COUNSEL.

<i>Fee</i> —For argument upon the return of the writ of summons, if argued by counsel .....	1	5	0
To be increased at the discretion of the Judge, according to the importance of the case.			
<i>Fee</i> —Upon the trial of issues upon writ of trial at the County Court .....	1	10	0

## CLERKS OF THE CROWN AND PLEAS AND THEIR DEPUTIES.

For taking recognizance .....	0	2	6
For signing and sealing each writ .....	0	1	3
For each order or rule of court .....	0	2	6
For filing each paper .....	0	0	4
Copies of papers, per folio of 100 words .....	0	0	6

## COMMISSIONER.

For taking recognizance .....	0	2	6
Swearing each affidavit .....	0	1	0

## CLERK IN CHAMBERS.

For each fiat granted by a Judge for a writ .....	0	1	3
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## RULES OF COURT.

	£	s.	d.
For filing each paper.....	0	0	4
For making up each final judgment of the Judge and returning the same into court .....	0	5	0
Copies of papers, per folio of 100 words.....	0	0	6
Witnesses, jurors, sheriff and other officers, the same fees and allowances as for similar services at Nisi Prius, and in the Courts of Queen's Bench and Common Pleas.			

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