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No. 99.

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2nd Session, 5th Parliament, 19 Victoria 1856.

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## BILL.

An Act to amend the Prerogative Writs Act  
and to make new provisions respecting  
Writs of *scire facias*.

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Received<sup>1</sup> and read, first time, Friday, 14th  
March, 1856.

Second reading, Monday, 24th March, 1856.

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MR. SANBORN.

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TORONTO :

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to amend the Prerogative Writs Act, and to make new provision respecting Writs of *Scire facias*.

**W**HEREAS it is expedient to amend the Act passed in the 12th year Preamble.  
of Her Majesty, Reign, intituled: "*An Act to define the mode of*  
*proceeding before the Courts of Justice in Lower Canada in matters relat-*  
*ing to the protection and regulation of Corporate Rights and to Writs of* 12 Vict. cap.  
5 *Prerogative, and for other purposes therein mentioned,*" to adapt the 41.  
remedy by *Scire facias* to the Laws of Lower Canada, and to provide a  
mode of recovering costs in cases instituted under the said Act, and to  
repeal the Act passed in the 16th year of Her Majesty's Reign, intituled,  
"An Act to amend the Act, intituled *An Act to define the mode of proceed-* 16 Vict. cap.  
10 *ing before the Courts of Justice in Lower Canada in matters relating* 199.  
*to the protection and regulation of Corporate Rights and to Writs of Pre-*  
*rogative, and for other purposes therein mentioned ;*" Therefore Her  
Majesty, &c., enacts as follows :

I. The said last mentioned Act shall be and the same is hereby wholly 16 Vict. cap.  
15 repealed ; Provided that nothing in this Act contained shall be held to 199, repealed.  
revive the 20th section of the Act herein firstly recited, so as to give a Proviso.  
right of appeal in any cause determined since the repeal of the said 20th  
section.

II. Hereafter whenever any judgment shall have been rendered in vaca- Rehearing on  
20 tion under the provisions of the first recited Act, any party deeming cases under  
himself aggrieved thereby, may, on or before the third juridical day after 12 Vict. cap.  
that on which such judgment shall have been given, file in the office of the 41, decided in  
Prothonotary of the Superior Court an exception to such judgment with the Vacation.  
25 the sum of £2 10s. to secure the costs on the re-hearing of the case upon Conditions.  
such exception, the said judgment shall not be executed against such  
party, but either party may forthwith, after giving notice thereof to the  
opposite party, inscribe the said cause or matter for re-hearing before the  
Superior Court at the next term thereof, in the same District, after which  
30 such judgment shall be given thereon and such order made as to the costs  
of the re-hearing as the Court shall think right ; but no Judge who shall  
have sat in the said cause or matter in vacation shall be competent to sit  
upon such re-hearing.

III. In any cause or matter in which judgment has been heretofore or Recovery of  
35 shall be hereafter rendered, any party to whom costs shall have been there- costs.  
by awarded, may obtain a writ of execution in the usual manner, which  
execution shall be addressed to and executed by the Sheriff of the District,  
and shall issue out of the Superior Court at any time after 15 days after  
judgment, and be returned into the Superior Court, where all subsequent

proceedings may and shall be had thereon in the usual course, whether the said cause or matter shall have been heard and determined by the said Court or by any Judge or Judges in vacation.

Proceedings by either party for obtaining a decision after the return of a writ of certiorari.

IV. In all cases in which a writ of *certiorari* shall have been or shall be issued, and a regular return thereof shall have been made, it shall be lawful for any party interested to inscribe the cause on the *roll de droit* without giving notice to the opposite party, and judgment may be rendered upon any motion to quash the conviction, order or judgment, returned with such *certiorari*, without notice to such opposite party when no appearance has been filed; provided notices of the application of such *certiorari* shall have been served upon the opposite party interested in such order, judgment or conviction prior to the granting of such writ; And provided further that when an appearance shall be filed by such opposite party, notice of such inscription and motion served at his elected domicile or upon his attorney shall be sufficient.

Proviso.

Section 19 of 12 Vict. cap. 41, and section 17 of 12 Vict. 24 repealed.

V. The nineteenth section of the Act first above cited, and the seventeenth section of the Act passed in the twelfth year of Her Majesty's reign, intituled, "*An Act to consolidate and amend the Laws of Patents for Inventions in this Province,*" shall be and are hereby repealed and the following provisions substituted instead thereof.

New provisions substituted.

Duty of Attorney General for Lower Canada, when Letters Patent have been unduly obtained, in cases of public interest.

VI. Whenever any Letters Patent may have been obtained, firstly by means of some fraudulent suggestion or concealment of a material fact or facts made by the person to whom the same were issued or made with his consent or knowledge, or secondly when it shall be alleged that such Letters Patent were issued through and in ignorance of some material fact or facts, or thirdly when the Patentee or those acting under him shall have done or omitted any act, in violation of the terms and conditions upon which such Letters Patent were granted, or shall by any other means have forfeited the interest acquired under the same, it shall be the duty of Her Majesty's Attorney General for Lower Canada, whenever he shall have good reason to believe that the same can be established by proof in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the Government of this Province against all costs incurred therein, to apply for and on behalf of Her Majesty to the Superior Court in any District where the rights secured by such letters Patent can be exercised, by information, declaration or petition (*requête libellée*) accompanied by such Letters Patent or authentic exemplification thereof supported by affidavit to the satisfaction of such Court, complaining of the erroneous issuing of such Letters Patent or of the improper exercise of the rights secured or intended to be secured thereby, and setting forth all grounds and reasons for the vacating and annulling of such Letters Patent and praying for judgment thereon as may be authorized by law; whereupon it shall be lawful for such Court to order a writ of summons to issue from the Court to be served in the ordinary and customary manner of other writs issuing from such Court, upon the patentee or patentees or his or their heirs or assigns or upon any person or persons claiming to have or to exercise any rights under the same, and to hear and adjudicate thereon, and upon legal proof to the satisfaction of said Court to adjudge and declare such Letters Patent null and void in law, with costs.

Proceedings in Court, and judgment.

Private parties injured may proceed

VII. It shall be lawful for the Superior Court or any Judge thereof in vacation, it being established before such Court or Judge in the manner

required by the preceding section of this Act, that Letters Patent of any description whatsoever have erroneously or illegally issued, to the prejudice of any party, to allow the party claiming to be so prejudiced by such Letters Patent to proceed in his own name by petition (*requête libellée*) in the manner prescribed by the preceding section of this Act, without the intervention of the Attorney General, against the patentee, his heirs, assigns or representatives or any person or persons holding such Letters Patent or claiming to exercise rights by virtue thereof, and the Superior Court shall have power to annul such Letters Patent and adjudicate and determine all matters connected therewith, with costs, according to law.

without the intervention of the Attorney General.

VIII. The power hereinabove conferred upon the Superior Court to issue writs and proceedings for annulling Letters Patent, shall be vested in and exercised by any one Judge of that Court in vacation, so far as the issuing of such writs and proceedings are concerned; and writs so granted by one Judge of the said Court in vacation, shall be returned into the office of the Prothonotary of the Superior Court on such days as other writs are now returnable and returned into said Court, and the declaration, information or petition (*requête libellée*) shall be annexed to such writ, and service thereof shall be made and all subsequent proceedings shall be had thereon and respecting the same, in the same manner as other ordinary writs of summons are served and proceedings are thereon had in the said Court; and the rules of law and of the Court respecting the pleadings and delays for pleading in other such ordinary suits, shall apply to proceedings under this Act.

Certain powers under this Act may be exercised by any one Judge of the Superior Court.

IX. Whenever the patentee or patentees to whom such Letters Patent as are sought to be annulled or vacated have been granted, or his or their assigns, or person or persons claiming to have or exercise rights or privileges by virtue of such Letters Patent, reside and have his or their domicile elsewhere than in the District where the rights secured by such Letters Patent exist or are sought to be exercised, then the writs of summons and declaration, information or petition (*requête libellée*) may issue out of the District where such rights exist, and may be served in any other District in the same manner as other writs of summons are by law served in Districts other than that from whence the same issue; Provided that if such patentee or patentees, or party or parties interested have or has no domicile in Lower Canada, then the said writ of summons may be served by advertisement in the usual manner adopted for the recovering of debts against absentees.

Provision when the Patentee does not reside in the rights are to be exercised.

X. The trial of the matters in issue in writs relating to Letters Patent may be submitted to a special jury, if either contesting party shall desire the same, in the same manner and under the same rules of law and the practice of the Superior Court, as jury trials are now had in other civil suits in the said Court.

Trial by special Jury may be had.

XI. If a judgment be obtained annulling Letters Patent, a copy of such judgment shall be sent to the Registrar of the Province and by him entered and noted in the margin of the enrolment of such Letters Patent; and such Registrar's certificate shall be evidence of the entry thereof, and such Letters Patent shall from the date of such entry and noting of such said judgment be null and void in Law.

Judgment annulling Letters Patent to be noted by the Provincial Registrar.

XII. It shall be lawful for the Superior Court, in the case of any information or petition (*requête libellée*) seeking to annul any Letters Patent

Letters Patent for inventions

may be annulled in part only.

issued under the laws of this Province relating to Patents for Inventions, by judgment to vacate and annul such Letters Patent in part only, when it shall appear by the evidence adduced that only a part or portion of the rights secured by such Letters Patent have secured to the prejudice and infringement of the rights of others; and such enregistration and noting as in this Act is before mentioned of such judgment shall operate to annul and render inoperative such Letters Patent in so far as is specified in such judgment and no farther. 5

Act limited to Lower Canada.

XIII. This Act shall apply to Lower Canada only.