

BILL.

An Act to make further provision for the Administration of Justice, by the establishment of an additional Superior Court of Common Law and also a Court of Error and Appeal, in Upper Canada, and for other purposes.

Received and read a first time,

Second reading,

[500 Copies.]

Honble Mr.

UPPER CANADA,
ADMINISTRATION OF JUSTICE BILL.

B I L L .

An Act to make further provision for the Administration of Justice, by the establishment of an additional Superior Court of Common Law and also a Court of Error and Appeal, in Upper Canada, and for other purposes.

WHEREAS the establishment of an additional Superior Court of Common Law jurisdiction would facilitate the satisfactory disposal of business, and would otherwise tend to promote the public advantage by affording the means of constituting an efficient Court of Appeal within Upper Canada: Be it therefore enacted, &c. Preamble.

And it is hereby enacted by the authority of the same, That there be constituted and established and there is hereby constituted and established a Court of Common Law jurisdiction in that portion of this Province formerly called Upper Canada, which shall be called "The Court of Common Pleas," and the same Court shall be holden at the City of Toronto, and shall be and constitute a Court of Common Law, and shall together with every Judge thereof, have, use and exercise all the rights, incidents and privileges of a Court of Record, or a Judge of a Court of Record, and all other rights, incidents and privileges, as fully to all intents and purposes as the same are used, exercised and enjoyed by any of Her Majesty's Superior Courts of Common Law or Judges at Westminster. Court of common pleas established in Upper Canada; Powers of the court and Judges.

II. And be it enacted, That the said Court shall be presided over by a Chief Justice and two Puisné Justices: And that it shall and may be lawful for Her Majesty to appoint by Letters Patent under the Great Seal of this Province, one person being a Court to consist of a chief Justice and two puisné Judges. Who may be appointed.

Rank and precedence of Judges.

Barrister of at least ten years' standing in Upper Canada to be Chief Justice of the said Court, and two persons being Barristers of not less than ten years' standing in Upper Canada to be Puisné Judges thereof, and from time to time to supply any vacancy in the number of the said Judges; and the Chief Justice of the said Court of Common Pleas shall have rank and precedence next to the Chancellor of Upper Canada, and the Puisné Judges of the Superior Courts of Common Law and Equity in Upper Canada shall have rank and precedence as between themselves according to seniority of appointment to their respective offices.

Recital.

Act of U. C. 7. W. 4. c. 1.

Court of Q. B. to consist hereafter of a chief Justice and two puisné Judges.

Two of the puisné Judges of Q. B. to be transferred to the court C. P.

III. And whereas in an Act of the Parliament of the late Province of Upper Canada passed in the seventh year of the 18 Reign of His late Majesty King William the Fourth, intituled, *An Act to increase the present number of Judges of His Majesty's Court of King's Bench in this Province, to alter the terms of sitting of the said Court, and for other purposes therein mentioned,* it is recited, That an addition to the number of the Judges of the said Court had become indispensable owing to the great increase of population and the formation of new Districts; and whereas two additional Judges were appointed under the said Act: And whereas it appears that the business of the said Court of Queen's Bench may be effectually performed by a Chief Justice and two Puisné Judges, in consequence of the erection of the Court of Common Pleas hereby established and the erection of an efficient Court of Appeal as hereinafter provided: Be it enacted, That notwithstanding any thing in the said last recited Act contained, the said Court of Queen's Bench shall from and after the passing of this Act, be presided over by a Chief Justice and two Puisné Justices; and it shall and may be lawful for Her Majesty to transfer such two of the Puisné Justices of the said Court of Queen's Bench as to Her Majesty may seem meet from the said Court of Queen's

Bench to the said Court of Common Pleas,
 2 and by Letters Patent under the Great Seal
 of this Province to appoint such two Puisné
 4 Justices of the said Court of Queen's Bench
 to be Justices of the said Court of Common
 6 Pleas, to which appointment such two Jus-
 tices of the said Court of Queen's Bench
 8 are hereby declared entitled.

IV. And be it enacted, That the Judges
 10 to be appointed under this Act shall hold
 their offices during their good behaviour :
 12 Provided always, that it may be lawful for
 the Governor, Lieutenant-Governor, or per-
 14 son administering the Government of this
 Province, to remove any Judge or Judges
 16 of the said Court upon the address of both
 Houses of the Provincial Parliament ; and
 18 in case any Judge so removed shall think
 himself aggrieved thereby, it shall and may
 20 be lawful for him within six months to
 appeal to Her Majesty in Her Privy Council,
 22 and such amotion shall not be final until
 determined by Her Majesty in Her Privy
 24 Council.

Tenure of of-
 fice, and provi-
 sion for remo-
 val on address
 of both houses.

Appeal given.

V. And be it enacted, That from and
 26 after the passing of this Act, there shall and
 may be paid and payable out of the Conso-
 28 lidated Revenue Fund of this Province,
 (after paying or reserving sufficient to pay
 30 all such sums as have been directed by any
 former Act of the Legislature of this Pro-
 32 vince to be paid out of the same, but with
 preference to all other payments which shall
 34 hereafter be charged upon the same,) the
 yearly sums following, as and for the sala-
 36 ries of the said Judges, viz : to the Chief
 Justice of the said Court, the sum of *one*
 38 *thousand, two hundred and fifty pounds*,
 and to each of the Puisné Justices, the sum
 40 of *one thousand pounds* ; which said sums
 shall be paid from time to time quarterly,
 42 free and clear from all taxes and deductions
 whatsoever, on the first day of January,
 44 the first day of April, the first day of July,
 and the first day of October, by equal por-
 46 tions; the first payment to be made on the first

Salaries of the
 chief Justice
 and Judges of
 the court of
 C. P.

How to be
 paid, &c.

Case of death,
&c. provided
for.

of such days respectively as shall occur after the appointment of the Judge entitled to receive the same ; and that if any person hereafter appointed to any of such Offices shall die or resign the same, the executor or administrator of the person so dying, or the person so resigning shall be entitled to receive such proportionable part of the salary aforesaid as shall have accrued during the time that such person shall have executed such Office since the last payment, and that the successor of such person so dying or resigning shall be entitled to receive such portion of the salary as shall be accruing or shall accrue from the day of his appointment. 2
4
6
8
10
12
14

Annuity may
be granted to
Judges appointed
under this
Act in certain
cases.

How payable,
&c.

VI. And be it enacted, That it shall and may be lawful for Her Majesty, by any Letters Patent under the Great Seal of this Province, to give and grant unto any of the Judges, appointed in pursuance of this Act, 20 an annuity equal to two-thirds of the salary annexed to such Judge under the provisions 22 of this Act, to commence and take effect immediately after the period when the person to whom such annuity shall be granted shall resign his said office of Judge of the 26 said Court, and to continue from thenceforth during the natural life of the person to whom 28 the same shall be granted ; and such annuity shall be issued and payable out of and charged 30 and chargeable upon the Consolidated Revenue Fund of this Province next in order 32 of payment to, and after paying or reserving sufficient to pay all such sums of money as 34 by any Act or Acts of the Parliament of this Province now in force have been 36 directed to be paid thereout, but with preference to all other payments which shall 38 hereafter be charged upon or payable out of the same fund ; and such annuity shall 40 be paid quarterly free from all taxes and deductions whatsoever on the four usual 42 days of payment aforesaid in each year ; and the first quarterly payment, or a pro- 44 portionate part thereof, to be computed from the time of the resignation of his said Office, 46 shall be made on such of the said days as

shall next happen after the resignation of
 2 the said Office; and that the executors or
 administrators of the person to whom the
 4 said annuity shall be granted as aforesaid,
 shall be paid such proportionate part of the
 6 said annuity as shall accrue from the com-
 mencement or the last quarterly payment
 8 thereof, as the case may be, to the day of his
 death: Provided always, that no annuity
 10 granted to any Judge appointed under this
 Act shall be valid, unless such person shall
 12 have continued in the said Office, or in the
 said Office and the Office of a Judge of one
 14 or more of Her Majesty's Superior Courts of
 Commor Law or Equity in Upper Canada
 16 for the period of fifteen years, or shall be
 afflicted with some permanent infirmity dis-
 18 abling him from the due execution of his
 Office which shall be recited in the Grant.

Case of death
 provided for.

Proviso: in
 what cases an-
 nuity may be
 granted.

20 VII. And be it enacted, That every
 Judge to be appointed in pursuance of this
 22 Act, shall, previous to his executing the
 duties of his Office, take the following oath:

Judges ap-
 pointed under
 this Act to
 take an oath
 of office.

24 " I, do solemnly and sincerely
 " promise and swear, that I will duly and
 26 " faithfully, and to the best of my skill and
 " knowledge, execute the powers and trusts
 28 " reposed in me (as Chief Justice, or one of
 " the Puisné Judges) of the Court Com-
 30 " mon Pleas: So help me God." Which
 said oath shall be administered to the
 32 Chief Justice of the said Court before the
 Governor, Lieutenant-Governor, or person
 34 administering the Government of this Pro-
 vince in Council, and to the Puisné Judges
 36 of the said Court, in open Court, in presence
 of the Chief Justice thereof.

The oath.

How adminis-
 tered.

38 VIII. And whereas it is desirable that
 the jurisdiction, practice and mode of pro-
 40 ceeding of the said Court of Common Pleas
 should be similar to the jurisdiction, practice
 42 and course of proceeding of the said Court
 of Queen's Bench: Be it enacted, That the
 44 said Court of Common Pleas may and shall
 hold plea in all and all manner of actions,

Recital.

Jurisdiction
 and powers of
 and mode of
 proceeding in

the court of
C. P. to be the
same as in the
court of Q. B.

Laws, orders,
&c. applicable
to court of Q.
Bench, to
apply to court
of C. P. until
it be otherwise
provided,

Judges of the
two courts to
sit in rotation:
provision as to
things which
may be done
by a single
Judge.

Proviso: Ap-
peal to the full
court saved.

causes or suits, as well criminal as civil, arising, happening or being within the said late Province of Upper Canada; and may and shall proceed in such actions, causes or suits, by such process and course as is now used, or is by this Act directed to be used in the said Court of Queen's Bench, save only that all Writs and proceedings shall be styled in the said Court of Common Pleas; and the said Court of Common Pleas may and shall hear and determine all matters of Law, and shall also hear and, by and with an inquest of good and lawful men, determine all issues of fact that may be joined in any such action, cause or suit as aforesaid, and judgment thereon give, and execution thereof award, in as full and ample a manner as can or may be done in Her Majesty's said Court of Queen's Bench: And the same jurisdiction, powers, authorities and privileges exercised and enjoyed by the said Court of Queen's Bench, or by the Judges thereof, shall be exercised and enjoyed by the said Court of Common Pleas and by the Judges thereof respectively: And all Laws, orders and authorities touching the practice and manner of proceeding in the said Court of Queen's Bench, shall be in force and applicable to the said Court of Common Pleas until otherwise provided by rule of the said Court.

IX. And be it enacted, That the Judges of the said Courts of Queen's Bench and Common Pleas shall sit in rotation, or otherwise as they shall agree amongst themselves, and every Judge of either Court to whatever Court he may belong, shall be, and he is accordingly hereby authorized to transact such business at Chambers or elsewhere, depending in either of such Courts, as may according to the course and practice of the said Court of Queen's Bench be transacted by a single Judge: Provided always, that nothing herein contained shall be construed to deprive any party interested of the right to appeal to the full Court in which the matter brought before such single Judge

may be depending, for the purpose of having
 2 the decision of such Judge rescinded or
 altered as fully as such right is now enjoyed
 4 according to the practice of the Court of
 Queen's Bench.

6 X. And whereas by the said Act of the Recital.
 Legislature of the late Province of Upper
 8 Canada, passed in the seventh year of the
 Reign of His late Majesty King William the
 10 Fourth, intituled, "*An Act to increase the*
 "*present number of Judges of His Majesty's*
 12 "*Court of King's Bench in this Province ;*
 "*to alter the terms of sitting of the said*
 14 "*Court, and for other purposes therein*
 "*mentioned;*" it was deemed expedient for
 16 the more convenient despatch of business
 to enable one of the Judges of the said
 18 Court of Queen's Bench to sit apart during
 term for the decision of certain matters
 20 therein specified; and whereas under the
 present arrangement the continuance of the
 22 said provision is inexpedient: Be it enacted,
 That so much of the fifth clause of the
 24 said last recited Act as provides for the
 formation of a Practice Court is hereby
 26 repealed.

Act of U. C. 7
 W. 4 c. 1.

Part of sect. 5.
 of the said Act
 repealed.

XI. And whereas it is expedient to alter Recital.
 28 the office of the Clerk of the Crown and
 Pleas in the said Court of Queen's Bench
 30 in Upper Canada, and to alter the manner
 of remunerating the said Clerk, and to place
 32 the said Office on the same footing as the
 Office of the Clerk of the Crown and Pleas
 34 in the said Court of Common Pleas hereby
 established: Be it enacted, That it shall and
 36 may be lawful for Her Majesty, by Letters
 Patent under the Great Seal of this Province,
 38 to appoint a Clerk of the Crown and Pleas
 in the said Courts of Queen's Bench and
 40 Common Pleas, respectively, to hold Office
 during Her Majesty's pleasure, and from
 42 time to time to supply any vacancy in the
 said offices; and that it shall be lawful for
 44 each of the said Clerks of the Crown and
 Pleas to appoint, subject to the approval of
 46 the Judges of their respective Courts, a

A clerk of the
 crown and
 pleas to be ap-
 pointed in
 each court.
 Tenure of
 office, &c.

Clerks to be
 appointed by
 them.

Clerks of
county courts
to be their de-
puties.

Senior and Junior Clerk; and the said
Clerks of the Crown and Pleas, with the
like approval, may remove at pleasure any
of the Clerks so appointed: And that the
several Clerks of the County Courts in
Upper Canada, shall be *ex officio* Deputy-
Clerks of the Crown and Pleas in the said
Courts of Queen's Bench and Common
Pleas.

Duties of the
said clerks of
the crown and
pleas: in Q. B.

In C. P.

Certain orders,
rules, &c. of
Q. B. to apply
to the clerk of
the crown and
pleas in C. P.

Fees.

Salaries to be
paid to the
said clerks out
of the public
monies.

XII. And be it enacted, That the said
Clerk of the Crown and Pleas in the said
Court of Queen's Bench, and his deputies, shall perform the duties of their several
Offices in the same manner and under the
same regulations as the said Clerk of the
Crown and Pleas and his Deputies in the
said Court of Queen's Bench have hereto-
fore performed the same, and that all
sums and fees shall continue to be payable
and receivable by the like persons as the
same have heretofore been paid and received
in respect of any matter in the said Court
of Queen's Bench; and that the said Clerk
of the Crown and Pleas in the said Court
of Common Pleas and his Deputies shall
respectively perform in the said Court the
like duties as are performed by the Clerk
of the Crown and Pleas and his deputies in
the said Court of Queen's Bench; and all
orders, rules and regulations in force respec-
ting the said Clerk of the Crown and Pleas
of the said Court of Queen's Bench and his
deputies, and respecting the regulation of
their several Offices, shall be in force and
applicable to the said Clerk of the Crown
and Pleas in the said Court of Common
Pleas and his deputies respectively, and that
the like sums and fees payable and receiv-
able in the said Court of Queen's Bench
shall be payable and receivable by the like
persons in the said Court of Common Pleas
in respect of any matters in the said Court.

XIII. And be it enacted, That from and
after the passing of this Act, there shall
may be paid and payable out of the Con-
solidated Revenue Fund of this Province,

(after paying or reserving sufficient to pay
 2 all such sums as have been directed by any
 former Act of the Parliament of this Pro-
 4 vince to be paid out of the same, but with
 preference to all other payments which
 6 shall hereafter be charged upon the same,)
 the yearly sums following, as and for the
 8 salaries of the said Clerks, viz: To the
 Clerk of the Crown and Pleas, in each of
 10 the said Courts, the sum of ; to each
 of the Senior Clerks, the sum of ;
 12 to each of the Junior Clerks, the sum of
 ; and that the Deputy-Clerks of the
 14 Crown in the several Districts shall be paid
 by a certain salary in no case more than
 16 or less than ; and the Governor,
 Lieutenant-Governor, or person administer-
 18 ing the Government of this Province for
 the time being in Council, shall fix the remu-
 20 neration to be paid to the Deputy-Clerks of
 the Crown respectively; which said sums
 22 shall be paid from time to time quarterly,
 free and clear from all taxes and deductions
 24 whatsoever on the four usual quarterly days
 hereinbefore mentioned, provided that the
 26 payment to be made on each case on the first
 of the said quarterly days which shall happen
 28 after the accrual of the right thereunto of
 the person receiving the same under this
 30 Act, shall be a rateable proportion of a
 quarter's salary according to the time then
 32 elapsed since the accrual of such right:
 and in case of a vacancy in the Office of any
 34 such Clerk, the person making the vacancy,
 his executors or administrators shall be
 36 entitled to a proportional part of his salary
 according to the time elapsed between the
 38 vacancy and the last quarterly payment.

The salaries.

£400.

£250.

£125.

£50. £15.

Governor in council to fix the salaries of the deputy-clerks.

Times of pay-ment, &c.

Case of vacan-cy by death, &c.

XIV. And be it enacted, That neither the
 40 Clerk of the Crown and Pleas in the said
 Court of Queen's Bench, nor the said
 42 Clerk of the Crown and Pleas in the said
 Court of Common Pleas, nor any of their
 44 deputies, shall be entitled to, or take for his
 own use or benefit, directly or indirectly, any
 46 fee or emolument whatsoever save the salary
 to which he shall be entitled by virtue of

The said clerks and deputies to take no fee or emolument for themselves, except their salaries.

Fees, dues,
&c. received
by them to
belong to the
Province.

this Act; and that all the fees, dues, emolu- 2
ments, perquisites and profits received by 2
or on account of the said Clerks of the 4
Crown and their deputies, respectively, shall 4
form part of the Consolidated Revenue 6
Fund of this Province, and shall be account- 6
ed for to Her Majesty, Her Heirs and Suc- 8
cessors through the Lords Commissioners of 8
Her Treasury for the time being, in such man- 10
ner and form as Her Majesty, Her Heirs and 10
Successors shall direct.

Accounts to
be rendered
quarterly by
the said clerks.

XV. And be it enacted, That the said 12
Clerks of the Crown and Pleas, in each of 12
the said Courts respectively, shall, on the 14
four quarterly days hereinbefore mentioned, 14
make up and render to the Inspector Gene- 16
ral of Public Accounts of this Province, a 16
true Account in writing of all the fees, dues, 18
emoluments, perquisites and profits received 18
by or on account of the said Officers res- 20
pectively, in such form and with such parti- 20
culars as the said Inspector General shall 22
from time to time require; which said 22
Accounts shall be signed by the Officer ren- 24
dering the same, and shall be declared before 24
one of the Judges of the Court to which he 26
belongs; and such Officers respectively shall, 26
within ten days after the rendering of such 28
Account pay over the amount of all such fees, 28
dues, emoluments, perquisites and profits to 30
the Receiver General of this Province, and 30
if default shall be made in such payment, 32
the amount due by the Officer making such 32
default shall be deemed a specialty debt to 34
Her Majesty. 34

How attested.

Money to be
paid over.

Deputy-clerks
to render ac-
counts, &c. in
like manner.

XVI. And be it enacted, That the Clerks 36
of the County Courts in Upper Canada, 36
acting as the Deputies of the Clerks of the 38
Crown and Pleas in the said several Courts 38
of Queen's Bench and Common Pleas, shall 40
make up and render to the Inspector Gene- 40
ral of this Province the like Accounts, in 42
like manner, and at the same periods here- 42
inbefore appointed for the said Clerks of the 44
Crown and Pleas respectively, which said 44
Accounts shall be signed by the Officer ren- 46

How attested.

dering the same, and shall be declared before
 2 the Judge, of the County Court to which he
 belongs; and every such Officer shall, within
 4 ten days after the rendering such Account,
 pay over the amount of all fees, dues, emolu-
 6 ments, perquisites and profits received by
 him as such Deputy-Clerk of the Crown to
 8 the Receiver General of this Province, and
 if default shall be made in such payment,
 10 the amount due by the Officer making such
 default shall be deemed a specialty debt to
 12 Her Majesty.

Money to be
paid over.

XVII. And whereas the Office of Clerk
 14 of the Crown and Pleas of the said Court
 of Queen's Bench has for some time been
 16 filled by Charles Coxwell Small, Esquire,
 who has been remunerated for his services
 18 in such Office by fees and emoluments
 hereafter to be paid to the Receiver Gene-
 20 ral of this Province, and carried to the
 account of the Consolidated Revenue Fund
 22 thereof; And whereas it is thought right
 that the said Charles Coxwell Small should
 24 be continued in his said Office, and should
 receive compensation in addition to the
 26 salary hereby provided: Be it therefore
 enacted, That the said Charles Coxwell
 28 Small shall be entitled to be appointed, if he
 so desire it, to the Office of the Clerk of the
 30 Crown and Pleas of the said Court of
 Queen's Bench, and that in lieu of the
 32 salary of per annum by this Act pro-
 vided for the said Officer, there shall and
 34 may be paid and payable out of the Con-
 solidated Revenue Fund of this Province,
 36 to the said Charles Coxwell Small, (after
 paying or reserving sufficient to pay all
 38 former charges as hereinbefore provided)
 the yearly sum of ; which said sum
 40 shall be paid from time to time, quarterly,
 free and clear from all taxes and deductions
 42 whatsoever, on the four usual quarterly days
 hereinbefore mentioned, provided that the
 44 payment to be made on the first of the said
 quarterly days shall be a rateable proportion
 46 of a quarter's salary according to the time
 then elapsed since the accrual of the right

Case of C. C.
Small recited.

C. C. Small to
be appointed
clerk of the
crown and
pleas in Q. B.
if he desire it,
with additional
salary as com-
pensation.

£400.

£750.

Fines and
mode of pay-
ment, &c.

Case of his
death, &c.
provided for.

of the said Charles Coxwell Small, under
this Act; and in case of the death of the 2
said Charles Coxwell Small, or of his re- 4
signing the said Office, the said Charles 6
Coxwell Small, or his executors or admin- 8
istrators, shall be entitled to a proportion-
ate part of his salary according to the time
elapsed between his death or resignation
and the last quarterly payment.

Act of Canada
8 V. c. 14. re-
pealed from
the time this
Act shall be
in force.

XVIII. And be it enacted, That so soon 10
as this Act shall come into force, the Act
of the Parliament of this Province, passed 12
in the eighth year of Her Majesty's reign,
intituled, *An Act to make further regula-* 14
tions for holding the Courts of Assize and
Nisi Prius, and Oyer and Terminer and 16
General Gaol Delivery in Upper Canada,
and to provide for the trial of prisoners under 18
certain circumstances, be, and the same
shall be hereby repealed; but all Acts and 20
provisions of law thereby repealed shall
nevertheless remain repealed. 22

Terms of
courts of Q. B.
and C. P. ap-
pointed.

XIX. And be it enacted, That so soon^s as
this Act shall come into force, the times and 24
terms of sitting of the said Courts of Queen's
Bench and Common Pleas in Upper Canada, 26
shall be as follows, that is to say: Hilary
Term shall begin on the first Monday in 28
February and end on the Saturday of the
ensuing week; Easter Term shall begin on 30
the first Monday in June and end on the
Saturday of the ensuing week; Trinity 32
Term shall begin on the last Monday in
August and end on the Saturday of the en- 34
suing week; and Michaelmas Term shall
begin on the third Monday in November 36
and end on the Saturday of the ensuing
week. 38

Commissions
of assize and
nisi prius to be
issued yearly
at certain times

XX. And be it enacted, That after the 40
end of Easter Term next, as appointed by
this Act, it shall and may be lawful for the 42
Governor, Lieutenant-Governor, or person
administering the Government of this Pro- 44
vince, to issue yearly and every year, in the
vacation between Hilary and Easter Terms, 46

and also in the vacation between Trinity
 2 and Michaelmas Terms, such Commissions
 of Assize and Nisi Prius into the several
 4 counties of Upper Canada as may be neces-
 sary for the purpose of trying all issues
 6 joined in the Superior Courts of Common
 Law, which, according to the practice of
 8 the said Courts, ought to be tried in such
 counties respectively; and that in like man-
 10 ner, Commissions of Oyer and Terminer
 and General Gaol Delivery shall be issued
 12 into the several Counties of Upper Canada
 twice in the year within the periods afore-
 14 said; provided always, that nothing in this
 clause shall extend to the County of York,
 16 for which special provision is hereinafter
 made: And provided also, that it shall be
 18 in the power of the Governor, Lieutenant-
 Governor, or person administering the
 20 Government of this Province, to issue a Spe-
 cial Commission or Special Commissions
 22 into every County of this Province for the
 trial of one or more offenders upon extraor-
 24 dinary occasions, when he shall deem it
 necessary or expedient that such commission
 26 should issue.

And also com-
 missions of
 oyer and ter-
 miner and
 general gaol
 delivery.
 Proviso as to
 county of
 York.

Proviso as to
 special com-
 missions.

XXI. And be it enacted, That it shall
 28 and may be lawful for the Governor, Lieu-
 tenant-Governor, or person administering
 30 the Government of this Province, to issue
 yearly and every year in the vacation be-
 32 tween Michaelmas and Hilary Terms, and
 also in the vacation between Hilary and
 34 Easter Terms, and also in the vacation be-
 tween Trinity and Michaelmas Terms, such
 36 Commissions of Assize and Nisi Prius into
 the County of York as may be necessary for
 38 the purpose of trying issues joined in the
 Superior Courts of Common Law, in any
 40 suit or action which, according to the prac-
 tice of such Courts, ought to be tried in
 42 such county: And that in like manner,
 Commissions of Oyer and Terminer and
 44 General Gaol Delivery shall be issued into
 the said County of York three times in the
 46 year within the periods last aforesaid: And
 the said Courts of Assize and Nisi Prius,

Commissions
 of assize and
 nisi prius into
 the county of
 York.

Commissions
 of oyer and
 terminer and
 general gaol
 delivery into
 the said county.
 Times of hold-
 ing the courts.

Oyer and Terminer and General Gaol Delivery, in and for the said County of York, shall open and be holden on the first Monday in January, the first Monday in May, and the first Monday in November in each and every year.

First process where the defendant is not to be holden to special bail, to be a writ in form No. 1 of the Schedule.

Particulars in such writ.

By whom to be issued.

Service of such writ in the proper county, &c.

Form of appearance to as in No. 2 of Schedule.

XXII. And be it enacted, That the process in all actions commenced in the said Courts of Queen's Bench and Common Pleas, in cases where it is not intended to hold the defendant to special bail, shall, whether the action be brought by or against any person entitled to the privilege of Parliament, or of the Court wherein such action shall be brought, or of any other Court, or to any other privilege, or by or against any other person, be according to the form contained in the Schedule to this Act annexed, marked No. 1, and which process may issue from either of the said Courts, and shall be called a Writ of Summons; and in every such Writ or copy thereof, the City, Town, or Township and County of the residence or supposed residence of the party defendant, or wherein the defendant shall be or supposed to be, shall be mentioned; and such Writ shall be issued by the Clerks of the Crown and Pleas of such Courts respectively and their Deputies; and every such Writ may be served in the manner heretofore used in the County therein mentioned, or within two hundred yards of the border thereof, and not elsewhere; and the person serving the same shall and is hereby required to indorse on the Writ the day of the month and week of the service thereof.

XXIII. And be it enacted, That the mode of appearance to every such Writ, or under the authority of this Act, shall be by delivering a Memorandum in writing according to the form contained in the said Schedule, and marked No. 2, such Memorandum to be delivered to such officer or person as the court out of which the process issued shall direct, and to be dated on the day of the delivery thereof.

XXIV. And be it enacted, That in all
 2 such actions wherein it shall be intended to
 arrest and hold any person to special bail,
 4 the process shall be by Writ of Capias, ac-
 cording to the form contained in the said
 6 Schedule and marked No. 3, and so many
 copies of such process, together with every
 8 Memorandum or notice subscribed thereto,
 and all endorsements thereon as there may
 10 be persons intended to be arrested thereon
 or served therewith, shall be delivered there-
 12 with to the Sheriff or other officer who may
 have the execution and return thereof, and
 14 who shall upon or forthwith after the execu-
 tion of such process, cause one such copy to
 16 be delivered to every person upon whom such
 process shall be executed by him, whether
 18 by service or arrest, and shall endorse on
 such Writ the true day of the execution
 20 thereof, whether by service or arrest; and
 if any defendant be taken or charged in cus-
 22 tody upon any such process and imprisoned
 for want of sureties for his appearance there-
 24 to, the plaintiff in such process may, before
 the end of the next term after the arrest of
 26 such defendant, declare against such defend-
 ant and proceed thereon in the manner and
 28 according to the directions contained in the
 third and fourth rules of the said Court of
 30 Queen's Bench made in Easter Term in the
 fifth year of Her Majesty's reign: Provided
 32 always, that it shall be lawful for the plain-
 tiff or his attorney to order the Sheriff or
 34 other officer to whom such Writ shall be
 directed, to arrest one or more of the defend-
 36 ants therein named, and to serve a copy
 thereof on one or more of the others, which
 38 order shall be duly obeyed by such Sheriff
 or other officer, and such service shall be
 40 of the same force and effect as the service
 of the Writ of Summons hereinbefore men-
 42 tioned, and no other.

Form of writ
 where defend-
 ant is to be
 held to special
 bail to be as in
 No. 3, of
 Schedule.

How the de-
 fendant may
 declare, if the
 defendant be
 in custody for
 want of sure-
 ties.

Plaintiff may
 cause one or
 more of any
 number of de-
 fendants to be
 arrested and
 others to be
 merely served
 with process.

XXV. And be it enacted, That no Writ
 44 issued by authority of this Act, shall be in
 force for more than four calendar months,
 46 from the day of the date thereof, including
 the day of such date, but every Writ of

No writ to be
 in force more
 than four
 months.

But may be continued. Summons and *capias*, may be continued by *alias* and *pluries*, as the case may require, if any defendant therein named may not have been arrested thereon or served therewith: Provided always, that no first Writ shall be available to prevent the operation of any Statute, whereby the time for the commencement of any action may be limited, unless the defendant shall be arrested thereon, or served therewith; or unless such Writ and every Writ, if any, issued in continuation of a preceding Writ, shall be returned *non est inventus*, and entered of record within one calendar month next after the expiration thereof, including the day of such expiration, and unless every Writ issued in continuation of a preceding Writ shall be issued within one calendar month after the expiration of the preceding Writ, and shall contain a Memorandum endorsed thereon, or subscribed thereto, specifying the day of the date of the first Writ; and return to be made in bailable process by the Sheriff or other Officer to whom the Writ shall be directed, or his successor in Office, and in process not bailable by the plaintiff or his Attorney suing out the same, as the case may be.

When further proceedings may be had after service of first process. XXVI. And be it enacted, That if any Writ of Summons or *capias* issued by authority of this Act shall be served or executed on any day whether in term or in vacation, all necessary proceedings to judgment and execution may, except as hereinafter provided, be had thereon without delay at the expiration of eight days, from the service or execution thereof, on whatever day the last of such eight days may happen to fall, whether in term or in vacation: Provided always, that if the last of such eight days shall in any case happen to fall on a Sunday, Christmas-day or Good-Friday, in either of such cases the following day shall be considered as the last of such eight days: Provided also, that if such Writ shall be served in execution on any day between the first day of July and the twenty-first

Proviso as to conditions on which the operation of the statute of limitations shall be interrupted by the issue of process.

As to returns to process.

Proviso as to holidays.

Proviso as to writs served between 1st July and 21st August.

day of August in any year, special Bail
 2 may be put in by the defendant in bailable
 process, or appearance entered either by
 4 the defendant or the plaintiff on process
 not bailable, at the expiration of such
 6 eight days: Provided also, that no de-
 claration or pleading, after declaration,
 8 shall be fyled or delivered between the said
 first day of July and the said twenty-first
 10 day of August.

Proviso: no
 pleading to be
 fyled between
 the said days.

XXVII. And be it enacted, That every
 12 Writ issued by the authority of this Act
 shall bear date on the day on which the
 14 same shall be issued and shall be tested in
 the name of the Chief Justice, or in case of
 16 a vacancy of such Office, then in the name of
 the Senior Puisné Judge of the Court issuing
 18 the same, and shall be endorsed with the
 name and place of business of the Attorney
 20 actually suing out the same; but in case no
 Attorney shall be employed for that purpose,
 22 then with a Memorandum expressing that
 the same has been sued out by the plaintiff in
 24 person, mentioning the City, Town or
 Township in which such plaintiff resides.

How writs
 shall be tested.

And indorsed.

If no attorney
 be employed.

26 XXVIII. And be it enacted, That every
 such Writ of Summons issued against a cor-
 28 poration aggregate, may be served on the
 Mayor, President, or other Head Officer, or
 30 on the Town Clerk, Clerk, Cashier, Manager,
 Treasurer or Secretary of such corporation.

How services
 may be made
 on corporation.

32 XXIX. And be it enacted, That it shall
 and may be lawful to and for the Judges of
 34 the said Courts and they are required from
 time to time to make all such general rules
 36 and orders for the effectual execution of this
 Act, and of the intention and object hereof,
 38 and for fixing the costs to be allowed for
 and in respect of the matters herein con-
 40 tained, and the performance thereof, as in
 their judgment shall be deemed necessary
 42 or proper, and for that purpose to meet as
 soon as conveniently may be after the pas-
 44 sing hereof.

Judges of the
 said courts to
 make rules for
 carrying this
 Act into
 effect.

Proceedings in
default of ap-
pearance or
bail.

XXX. And be it enacted, That all such
proceedings as are mentioned in any Writ, 2
Notice or Warning issued under this Act
shall and may be had and taken in default 4
of a defendant's appearance, or putting in
special Bail, as the case may be. 6

The attorney
whose name is
indorsed on
any writ shall
declare certain
particulars on
being thereun-
to required by
the defendant.

And defendant
may in certain
cases be dis-
charged on
entering an
appearance.

Judges may
make rules for
the conduct of
the officers and
ministers of
their courts.

Proviso.

Privilege from
arrest not to

XXXI. And be it enacted, That every
Attorney whose name shall be endorsed on 8
any Writ issued by authority of this Act,
shall, on demand in writing made by or on 10
behalf of any defendant, declare forthwith
whether such Writ has been issued by him 12
or with his authority or privity, and if he
shall answer in the affirmative, then he shall, 14
also in case the Court or any Judge of the
same, or of any other Superior Court, shall 16
so order and direct, declare in writing within
a time to be allowed by such Court or Judge, 18
the profession, occupation or quality and
place of abode of the plaintiff, on pain of 20
being guilty of a contempt of the Court from
which such Writ shall appear to have been 22
issued; and if such Attorney shall declare that
the Writ was not issued by him or with his 24
authority or privity, the said Court or
Judges shall and may, if it shall appear 26
reasonable so to do, make an order for the
immediate discharge of any defendant or 28
defendants who may have been arrested on
any such Writ, on entering a common 30
appearance.

XXXII. And be it enacted, That it shall 32
and may be lawful to and for the Judges of
each of the Courts from time to time to 34
make such rules and orders for the
government and conduct of the Ministers 36
and Officers of their respective Courts, in
and relating to the distribution and perfor- 38
mance of the duties and business to be done
and performed in the execution of this Act, 40
as such Judges may think fit and reasonable:
Provided always, that no additional charge 42
be thereby imposed on the suitors.

XXXIII. Provided always, and be it fur- 44
ther enacted, That nothing in this Act con-

tained shall subject any person to arrest, who by reason of any privilege, usage or otherwise, may now by Law be exempt therefrom.

be impaired by this Act.

XXXIV. And be it enacted, That from the time when this Act shall commence and take effect, the Writs hereinbefore authorized shall be the only Writs for the commencement of personal actions in the Courts aforesaid, and the costs to be allowed and charged for such Writs shall be the same as for Writs of *Capias ad Respondendum*; and that all the provisions of an Act of the Parliament of this Province, passed in the eighth year of Her Majesty's Reign, intituled, *An Act to alter the issuing of Testatum Writs of Capias ad Respondendum in the several Districts of Upper Canada, and for other purposes therein mentioned*, shall continue in force and be applicable to the Writs directed by this Act, except in so far as the provisions of the said Act are inconsistent herewith, and shall apply to the practice to be observed in the Court of Common Pleas as well as the Court of Queen's Bench; and that this Act shall take effect from and after the last day of Easter Term next after the passing hereof.

Writs before mentioned to be the only writs for commencing actions in the said courts.

Provisions of Act 8. V c. 36. extended to such writs.

Commencement of this Act.

XXXV. And whereas it is expedient to authorize and require the Judges of the several County Courts in Upper Canada, to make orders in relation to certain matters of practice in cases depending in the Superior Courts of Common Law, which may be conveniently disposed of in the several Counties: Be it enacted, That it shall and may be lawful for any plaintiff or defendant in any suit depending in the Superior Courts of Common Law in Upper Canada, to make application for time to plead, reply or rejoin, for particulars of demand and sett off, and for summonses and orders to compute, to the Judge of the County Court for the County in which the suit is brought, or the venue laid; and the Judge of such County Court is hereby authorized and required to hear

Recital.

Judges of the county courts to make orders as to certain matters in cases depending in superior courts.

Proviso as to suits in the county of York; or where the parties reside in different counties, &c.

Proviso: appeal allowed from the order of the county Judge.

Proviso: not to prevent application to a Judge of the superior court.

Deputy-clerks of the crown may issue rules to compute tax costs, enter judgments, and issue executions, &c. in certain cases.

and determine such applications and to grant such summonses, to impose such terms, and make such orders as are granted, imposed and made in the like cases by a Judge of the Superior Courts of Common Law sitting in Chambers; Provided always, that the provisions of this clause shall not apply to any suit wherein the venue is laid in the County of York, or in any suit wherein the Attorney for the defendant, or in case of two or more defendants where the Attorney for any one or more of them, resides in a County different from that in which the Attorney for the Plaintiff, or if he prosecutes in person the Plaintiff, resides: Provided also, that either party interested may appeal from any such order to the Court in which the action is pending, or to one of the Judges of the Superior Courts at Chambers, and such Court or Judge may affirm, reverse or modify such order, or make such other order upon the subject matter of appeal, and the proceedings had thereon, and with or without costs, as to such Court or Judge may seem meet; Provided also, that nothing herein contained shall prevent any party from making any such application in the first instance, according to the practice of the Superior Courts of Common Law, instead of to the Judge of the County Court.

XXXVI. And be it enacted, That it shall and may be lawful for the Deputy-Clerks of the Crown of the Queen's Bench and the Common Pleas in each County, to issue such rules to compute, and thereupon to tax costs and enter final judgment, and issue Writs of *feri facias* or *capias ad satisfaciendum* according to the practice of the Superior Courts, in all suits where an order for rule to compute has been lawfully issued by the Judge of the County Court under the authority of the preceeding section; and also, that it shall and may be lawful for such Deputy-Clerks to tax costs and enter judgments in cases where cognovits were given in the first instance, and there-

upon to issue Writs of *feri facias* and *capias*
 2 *ad respondendum* thereon according to the
 practice aforesaid; and also, generally, to
 4 issue *alias* and *pluries* Writs of *feri facias*
 and *capias ad respondendum*, and also origi-
 6 nal, *alias* and *pluries* Writs of execution
 against lands and tenements.

And generally
 to issue *alias*
 and *pluries*
 writs of execu-
 tion.

8 XXXVII. And whereas by an Act passed
 in the thirty fourth year of the Reign of His
 10 late Majesty King George the Third, intituled,
An Act to establish a Superior Court of
 12 *Civil and Criminal Jurisdiction, and to re-*
gulate the Court of Appeal, a tribunal was
 14 established for determining all appeals from
 such judgments or sentences of His Ma-
 16 jesty's Court of King's Bench thereby esta-
 blished, as might be lawfully brought before
 18 it; and whereas by an Act passed in the
 seventh year of the Reign of His late Ma-
 20 jesty King William the Fourth, intituled,
An Act to establish a Court of Chancery in
 22 *this Province*, Appeals are permitted to
 the said Court of Appeals from the judg-
 24 ments and decrees of the said Court of
 Chancery; and whereas the appellate tri-
 26 bunal thus established has been found
 unsatisfactory: Be it enacted, That the
 28 thirty-third, thirty-fourth, thirty-fifth and
 thirty-sixth clauses of the said Act in this
 30 clause first above recited, and the sixteenth
 and seventeenth clauses of the Act in this
 32 clause secondly above recited, be, and the
 same are hereby, from the time this Act
 34 takes effect, repealed.

Recital.

Act of U. C.
 34 Geo. 3. c. 2.

Act of U. C.
 7 W. 4. c. 2.

Sec. 33, 34, 35,
 & 36 of 34 G.
 3. c. 2. and
 Sec. 16 & 17
 of 7 W. 4. c. 2.
 repealed.

XXXVIII. And be it enacted, That
 36 there be constituted and established, and there
 is hereby constituted and established, a
 38 Court of Judicature in that part of this Pro-
 vince formerly called Upper Canada, which
 40 shall be called the "Court of Error and
 Appeal."

Court of error
 and appeal
 constituted.

42 XXXIX. And be it enacted, That the
 said Court of Error and Appeal shall be
 44 composed of the Judges of the said Court
 of Queen's Bench, the Judges of the said

Of what Jud-
 ges the said
 court shall
 consist.

Place of sitting. 2
 Who shall preside. 4
 Court of Common Pleas, and the Judges of the said Court of Chancery, who shall sit together at a place certain, that is to say : at the City of Toronto; and the Chief Justice of the said Court of Queen's Bench, for the time being, shall preside in the said Court of Error and Appeal, and in his absence the Judge of the said Court of Error and Appeal, entitled to precedence next after the Chief Justice of the said Court of Queen's Bench. 6
 8
 10

Jurisdiction of the said court. 12
 From what courts appeal shall lie. 14
 Proviso : Security in appeal for costs and damages. 16
 Execution to be stayed by appeal. 18
 XL. And be it enacted, That the said Court of Error and Appeal shall have, hold and exercise an appellate civil and criminal jurisdiction within and throughout Upper Canada, with full power and authority to hear and determine in due course of law, all matters which may lawfully be brought before it; and that an appeal shall lie to the said Court of Error and Appeal from all judgments of the said Courts of Queen's Bench and Common Pleas, and that an appeal shall lie to the said Court of Error and Appeal from all judgments, orders and decrees of the said Court of Chancery; Provided nevertheless that no such appeal shall be allowed until the party appellent shall have given proper security to the extent of *one hundred pounds*, to the satisfaction of the Court from whose order, decree or judgment he is about to appeal, that he will effectually prosecute his appeal, and pay such costs and damages as shall be awarded in case the judgment or decree appealed from shall be affirmed; and that upon the perfecting such security, execution shall be stayed in the original cause, except in the cases hereinafter provided, that is to say : 20
 22
 24
 26
 28
 30
 32
 34
 36
 38

Execution ; further security in certain cases:— For paying the amount of judgment if affirmed, &c. 40
 1. That where the appeal is from a judgment, order or decree, directing the payment of money, the perfecting the security hereinbefore provided shall not stay the execution of the judgment unless the party appellent shall have further given proper security to the satisfaction of the Court from whose judgment he is about to appeal, that if the 42
 44
 46

judgment appealed from, or any part thereof of be affirmed, the appellant will pay the amount directed to be paid by the judgment or the part of such amount as to which the judgment shall be affirmed if it be affirmed only in part, and all damages which shall be awarded against the appellant on the appeal;

2. Provided always, That if the judgment or decree appealed from, direct the assignment or delivery of documents or personal property, the execution of the judgment or decree shall not be stayed by the perfecting of the security hereinbefore firstly required, unless the things directed to be assigned or delivered be brought into Court or placed in the custody of such officer or receiver, as the Court shall appoint, or unless security be given to the satisfaction of the Court appealed from, and in such sum as that Court shall direct, that the appellant will obey the order of the Appellate Court on the appeal ;

For delivering documents or personal property, if the judgment be affirmed.

3. Provided always, That if the judgment or decree appealed from direct the execution of a conveyance or other instrument, the execution of the judgment or decree shall not be stayed by the appeal until the instrument shall have been executed and deposited with the proper officer of the Court appealed from, to abide the judgment of the Appellate Court ;

Deposit of an instrument ordered to be executed.

4. Provided always, That when the judgment or decree appealed from, directs the sale or delivery of possession of real property or chattels real, the execution of the sum shall not be stayed unless proper security be entered into to the satisfaction of the Court appealed from, that during the possession of such property by the appellant, he will not commit or suffer to be committed any waste thereon, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, the amount of which said security shall be fixed by the said Court ;

Security that waste shall not be committed on the property in dispute, &c.

Security for
a deficiency or
sale ordered by
a judgment.

5. Provided also, That when the judgment or decree is for the sale of property and the payment of a deficiency arising upon the sale, the security shall also provide for the payment of such deficiency.

Recital.

Judges of the
court of ap-
peals to make
general rules
and orders.

And regulate
costs.

Proviso: to
what such
rules may or
may not ex-
tend.

Rules to be
laid before the
provincial par-
liament.

When to have
effect.

XLI. And whereas the practice heretofore adopted in appeal is in many respects unsettled and inconvenient, and the costs in some matters of appeal excessive, and it is expedient that powers should be given to the judges of the said Court of Appeal to make rules and regulations in respect of the same: Be it therefore enacted, that it shall be lawful for the said Judges of the Court of Appeal, at any time within two years from the time when this Act shall take effect, to make all such general rules and orders as to them may seem expedient for the purpose of adapting the said Court of Appeal to the circumstances of this Province as well in regard to the Writs of Error or other process by which Appeals should be commenced, the form and mode of suing out such proceedings of the said Court; and also to regulate the allowance and amount of costs, and from time to time to make other rules and orders, amending, altering or rescinding the same: Provided always, that no such rules or orders shall have the effect of altering the principles or rules of decision of the said Court, or any of them, or of abridging or affecting the right of any party to such remedy as before the passing of this Act might have been obtained in the Court of Appeal hereby abolished, but may in all respects extend the manner of obtaining such remedy by regulating the practice of the said Court in whatever way may to them seem expedient for better attaining the ends of justice; and all such rules, orders or regulations shall be laid before both Houses of the Provincial Parliament, if then in session, immediately upon the making of the same, or if the Parliament be not then in session, then within five days after the meeting thereof; and no such rules, order or regula-

tion shall have effect until six weeks after
 2 the same shall have been so laid before
 both Houses of the Legislature ; and any
 4 rule or order so made, shall, from and after
 such time aforesaid, be binding and obliga-
 6 tory on the said Court, and all other Courts
 in the said Province of Upper Canada to
 8 which the same shall be made expressly to
 extend.

10 XLII. And be it enacted, That all ap-
 peals which at the time of the passing
 12 of this Act, shall be depending in the said
 Court of Appeal hereby abolished, shall
 14 be by force of this Act, transferred with all
 the proceedings thereon to the said Court of
 16 Error and Appeal hereby established there
 to be carried on and prosecuted and dealt
 18 with, and decided according to the practice
 of the said Court of Appeal, in the same
 20 manner in every respect as if such suits
 and matters had been originally commenced
 22 in the said Court of Error and Appeal
 hereby established.

Present cases
 in appeal
 transferred to
 the said court.

24 XLIII. And be it enacted, That the
 Registrar of the Court of Chancery in
 26 Upper Canada, shall *ex officio* be Clerk of
 the said Court of Error and Appeal, and
 28 that the like sums and fees payable and
 receivable in the said Court of Appeal
 30 hereby abolished shall be payable and
 receivable by the like persons in the Court
 32 of Error and Appeal hereby established in
 respect of any matters in the said Court,
 34 but the said Clerk of the Court of Appeal
 shall not be entitled to take for his own
 36 use or benefit, directly or indirectly, any fee
 or emolument whatsoever save the salary to
 38 which he shall be entitled as Registrar of
 the said Court of Chancery, and that all
 40 fees, dues, emoluments, perquisites and
 profits received by or on account of the said
 42 Registrar, as Clerk of the Court of Appeal,
 shall form part of the Consolidated Revenue
 44 Fund of this Province, and shall be account-
 ed for to Her Majesty, Her Heirs and Suc-
 46 cessors, through the Lords Commissioners

Registrar of
 the court of
 chancery to be
 clerk of the
 court of
 appeal.

Not to take
 fees for his
 own use, or
 have any emo-
 lument except
 his salary.

Fees, &c. to
 belong to the
 Province.

of Her Treasury, for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall appoint.

The said clerk to account quarterly to the Inspector general.

Accounts how attested.

And pay over all public monies in his hands.

Who may practice in the said court.

Judgment to be final in certain cases; in others, an appeal to lie to H. M. in Her privy council.

XLIV. And be it enacted, That the said Clerk of the Court of Error and Appeal shall, on the four quarterly days hereinbefore mentioned, make up and render to the Inspector General of Public Accounts, in this Province, a true Account in writing, of all the fees, dues, emoluments, perquisites and profits received by or on account of the said office of Clerk of the Court of Error and Appeal, in such form, and with such particulars as the said Inspector General shall from time to time require; which said Accounts shall be signed by the said Clerk of the Court of Error and Appeal, and shall be declared before one of the Judges of the said Court; and the said Clerk of the Court of Error and Appeal shall, within ten days after the rendering of such Account, pay over the amount of all such dues, fees, emoluments, perquisites and profits, to the Receiver General of this Province, and if default shall be made in such payment, the amount due by the said Clerk of the Court of Error and Appeal shall be deemed a specialty debt to Her Majesty.

XLV. And be it enacted, That all Barristers, Attornies and Solicitors, admitted to practice in the Courts of Queen's Bench, in the Province of Upper Canada, shall be permitted, and have full power to practice in the Court of Common Pleas, and Court of Error and Appeal in the said Province, as Counsel or Solicitor respectively.

XLVI. And be it enacted, That the judgment of the said Court of Error and Appeal shall be final in all cases where the matter in controversy shall not exceed the sum or value of one thousand pounds, but in cases exceeding that amount, as well as in all cases where the matter in question shall relate to the taking of any annual or other rent, customary or other duty, or fee, or

any other such like demand of a general
 2 and public nature affecting future rights,
 of what value or amount soever, the same
 4 may be an Appeal may lie to Her Majesty,
 in Her Privy Council: Provided always,
 6 that no such Appeal shall be allowed until
 the party appellant shall have given proper
 8 security to the extent of *five hundred pounds*,
 to the satisfaction of the Court, from whose
 10 order he is about to appeal, that he will effec-
 tually prosecute the appeal and pay such
 12 costs and damages as shall be awarded in
 case the judgment or decree appealed from
 14 shall be affirmed, and that upon the per-
 forming such securing, execution shall be
 16 stayed in the original cause: Provided
 always, that the provisions of the first,
 18 second, third, fourth and fifth Provisos in
 the Fortieth Clause of this Act contained,
 20 shall be in force and apply to the Appeal
 hereby granted, and the completion of the
 22 security hereby required shall not have the
 effect of staying execution in the original
 24 cause, in the different cases excepted out of
 the said Fortieth clause, unless the pro-
 26 visions in the said Provisos contained shall
 have been complied with.

Proviso: secu-
 rity to be given
 on such
 appeal.

Proviso: cer-
 tain provisions
 of section 40 of
 this Act to ap-
 ply to such
 appeal.

28 XLVII. And be it enacted, That this
 Act may be amended, altered or repealed,
 30 during the present Session.

Act may be
 amended this
 session.

SCHEDULE

To WHICH THIS ACT REFERS.

No. 1.

WRIT OF SUMMONS.

VICTORIA by the Grace of God, &c.

Greeting:

To C. D. of in the County of

32 We Command you (or as before or often,
 we have commanded you) that, within eight
 34 days after the service of this Writ on you,

inclusive of the day of such service, you
do cause an appearance to be entered for 2
you in our Court of Queen's Bench (or
Common Pleas) at Toronto, by filing your 4
appearance in the office of the Clerk of the
Crown (or "deputy" as the case may be) 6
in the County of _____ in an action on
promises 8

Issued by L.
M. (officer's
name.)

at the suit of
A. B. And take notice that in default of 10
your so doing, the said A. B. may cause an
appearance to be entered for you, and pro- 12
ceed thereon to judgment and execution.

Witness _____ at

the _____ day of _____ A. D. 184 14

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within 16
four calendar months from the date thereof,
including the day of such date, and not af- 18
terwards.

*Indorsement to be made on Writ before the
service thereof.*

This Writ was issued by E. F. of 20
Attorney for the said Plaintiff,

or

This Writ was issued in person by A. B. 22
who resides at (*mention the City, Town or
Township, also name of Street or No. of 24
Lot and Conccssion.*)

*Indorsement to be made on the Writ after
service thereof.*

This Writ was served by me X. Y. on C.
D., on _____ the
day of _____ A. D. 184

X. Y.

No. 2.

FORMS OF ENTERING APPEARANCE.

A. Plaintiff, vs. C. D.	}	The Defendant C. D.
D.		appears in person.
A. Plaintiff, vs. C. D. and another.	}	E. F. Attorney for C. D., appears for him.
A. Plaintiff, vs. C. D. and others.		G. H. Attorney for the Plaintiff, appears for the Defendant C. D. according to the Statute.

Entered the _____ day of _____
 A. D. 184



No. 3.

WRIT OF CAPIAS.

VICTORIA, &c
 To the Sheriff of

We Command you (*or as before or often,*
 2 we have commanded you) that you take C.
 D. if he shall be found in your County, and
 4 him safely keep until he shall have given
 you bail, according to Law, in an action
 6 on promises (*or of debt, etc.*) at the suit
 of A. B. or until the said C. D. shall by
 8 other lawful means be discharged from
 your custody. And we do further com-
 10 mand you, that on execution hereof, you
 do deliver a copy hereof to the said
 12 C. D., and we hereby require the said
 C. D. to take notice, that within eight
 14 days after execution hereof on him, inclu-
 sive of the day of such execution, he should
 16 cause special bail to be put in for him, in
 our Court of Queen's Bench (*or Common*
 18 Pleas, *as the case may be*) to the said action.
 And that in default of his so doing, such
 20 proceedings may be had and taken as are
 mentioned in the warning hereunder writ-
 22 ten (*or indorsed hereon*) ; And we do further
 command you, the said Sheriff, that imme-
 24 diately after the execution hereof, you do
 return this Writ to our said Court, together

Issued by A.
B. (name of
officer.

with the manner in which you shall have
executed the same, and the day of the 2
execution hereof, or that if the same shall
remain unexecuted, then that you do so re- 4
turn the same at the expiration of four
calender months from the date hereof, or 6
sooner if you shall be thereto required by
order of the said Court, or by any Judge 8
thereof.

Witness, the 10
day of A. D. 184

A WARNING TO THE DEFENDANT.

1. If a defendant being in custody shall 12
be detained on this Writ, or if a defendant
being arrested thereon shall go to prison for 14
want of bail, the plaintiff may declare
against any such defendant before the end 16
of the term next after such arrest, and
proceed thereon to judgment and execution 18

2. If a defendant having given bail on
the arrest shall omit to put in special bail 20
as required, the plaintiff may proceed
against the Sheriff or on the bail bond. 22

3. If a defendant having been served only
with this Writ, and not arrested thereon, 24
shall not enter a common appearance within
eight days after such service, the plaintiff 26
may enter a common appearance for such
defendant, and proceed thereon to judgment 28
and execution.

INDORSEMENT TO BE MADE ON THE WRIT
OF CAPIAS.

Bail for £ by affidavit. 30

or,
Bail for £ by order of [naming] 32
the Judge making the order].

Dated the day of 184 34

This Writ was issued by E. F. of
Attorney for the Plaintiff [or Plaintiffs] 36
within named.

or,
This Writ was issued in person by the 38
Plaintiff within named, who resides at
[mention the City, Town, or Township.] 40