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No. 198.

1st Session, 4th Parliament, 16 Victoria, 1853.

BILL.

An Act to provide for the more equal distribution of business in the Superior Courts of Common Law in Upper Canada, and for other purposes therein mentioned.

Received and Read a first time, Friday, 5th November, 1852.

Second Reading, Tuesday, 15th February, 1853.

Hon. W. B. RICHARDS,
Atty. Gen., West.

QUEBEC:

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

An Act to provide for the more equal distribution of business in and to improve the practice of the Superior Courts of Common Law in Upper Canada, and for other purposes therein mentioned.

5 **W**HEREAS it is desirable that the offices for issuing Writs Preamble.
of Summons and Capias, and other Writs of mesne or first
process in the Courts of Queen's Bench and Common Pleas in Upper
Canada, in the County of York, be united; Be it therefore enacted,
10 &c.,

That from and after the commencement of this Act, the Clerk of the
Crown and Pleas in the said Court of Queen's Bench, and the Clerk
of the Crown and Pleas in the said Court of Common Pleas, shall,
15 subject to the approval of the Judges of the said Courts, from time
to time, select one of their Clerks, whose duty it shall be to issue all
Writs of Summons, *Capias*, and other Writs of mesne or first
process in the said Courts, that may be required to be issued at the
City of Toronto, and which Clerk shall be called the Clerk of the
20 Summonses, and he shall be the Clerk of the said Clerks of the
Crown and Pleas in the Courts of Queen's Bench and Common
Pleas, and act under their direction, not only in issuing such writs
but in discharging such other duties in connection with their office,
as they or either of them may require of him.

25 **II.** And whereas much public inconvenience arises from the
unequal distribution of the business between the said Courts,
whereby one Court is often insufficiently employed, while the other
is unduly pressed, to the great delay and injury of suitors and detri-
30 ment of Justice, and it is expedient to adopt means to equalize
the business of the said Courts so far as the same can be effected:
be it therefore enacted, That from and after the commencement of
this Act, the said Clerk of the Summonses, and the respective
Deputy Clerks of the Crown and Pleas, in the said Courts of
35 Queen's Bench and Common Pleas, in their respective Counties and
United Counties in Upper Canada, shall issue out of their respective
offices all Writs of Summons, *Capias* and other process for the

Clerks of Q.
B. and C. P.
at Toronto to
appoint a
Special Clerk
to issue writs
of mesne pro-
cess.

Recital.

The said Clerk
to issue such
writs out of
each Court al-
ternately by
twelves, be-
ginning with
Court of C. P.

commencement of actions in the said Courts of Queen's Bench and Common Pleas, in rotation by twelves, that is to say, the first twelve out of the Court of Common Pleas, and the next twelve out of the Court of Queen's Bench, and so on in continuous rotation of twelves for the said Courts, so as to produce and keep up an equal distribution of business in the same. 5

Recital.

Masters and taxing officers of either Court may tax costs in the other.

Judges to make Rules.

III. And whereas it would facilitate the transaction of business in the said Courts if the respective Masters or Taxing Officers thereof, at Toronto, were allowed to tax costs in either Court; be it therefore enacted, That from and after the commencement of this Act, the respective Masters and Taxing Officers of the said Courts of Queen's Bench and Common Pleas, shall and may tax costs in cases or matters pending in either of the said Courts, and shall possess and exercise all other powers incident to such taxation, to the same extent as are now possessed and exercised by them in relation to matters and suits in their respective Courts; and that the Judges of the said Courts may from time to time make rules for better carrying into effect the provisions of this and the preceding Sections of this Act. 10 15

Clerks of Q. B. and C. P. to supply their Deputies with blank certificates of entry of judgment. Effect of entry of judgment by any such Deputy, &c.

IV. And be it enacted, That the Clerks of the Crown and Pleas in the said Courts of Queen's Bench and Common Pleas shall, from time to time, supply and keep supplied, the respective Deputy Clerks of the Crown and Pleas in the said Courts of Queen's Bench and Common Pleas, in Upper Canada, with blank certificates of the entry of judgments in the said Courts, under their respective hands, and the seals of the said Courts respectively, and when any such Deputy Clerk of the Crown shall have entered any judgment in either of the said Courts, he shall and may issue to any party requiring the same, a certificate of the entry of such judgment, and such certificate, and the registration thereof when registered in the Registry Office of any County in Upper Canada, shall have the same force and effect in binding or operating as a charge upon lands, tenements and hereditaments situated within such County, as if such certificate had been issued out of the principal office at Toronto, and such Deputy Clerk of the Crown shall write upon the margin thereof, by whom and at what place the same was issued, as follows:— 20 25 30 35
 “ Issued at by ”

Recital.

All writs to be tested on the day they issue.

V. And whereas by the present practice in the Courts of Common Law in Upper Canada, some Writs are tested on the day on which they are issued, and others are tested in Term, which frequently causes confusion, for remedy thereof; be it enacted, That from and after the commencement of this Act, all Writs of Summons, Capias and Executions, and all other Writs and orders issuing out of the Courts of Queen's Bench, Common Pleas and the several 40 45

County Courts in Upper Canada, whether in Term or vacation, may be tested and bear date on the day on which they are actually issued.

VI. And whereas it frequently happens that parties in custody, Recital.
 5 entitled to the benefits of the Gaol limits, are compelled to go to prison until a rule or order for the allowance of the recognizance of bail entered into by such parties, under and by virtue of the fifth Section of the Act passed in the Session of the Parliament of this Province, held in the tenth and eleventh years of the Reign of Her
 10 present Majesty, intituled, "*An Act to amend the Law of Imprisonment for Debt in Upper Canada,*" shall have been first made; for remedy thereof, be it enacted, That when any party entitled to the benefit of the Gaol limits, under the said Act, shall be arrested, and in custody of the Sheriff of the County or United Counties in which such arrest is made, it shall and may be lawful
 15 for such Sheriff to take from such party so arrested, a bond with two or more good and sufficient sureties, for double the amount for which such party shall have been arrested, conditioned that such party shall not depart the Gaol limits of the said County or United Counties, and shall forthwith surrender himself to the custody of
 20 such Sheriff for re-committal to close custody, upon a rule of Court or Judge's Order for that purpose being made, and shall in other respects well and truly observe and obey all rules of Court and Judge's Orders in relation to such party, and upon the receipt of such bond, such Sheriff shall forthwith allow such party the benefit
 25 of the Gaol limits in his County or United Counties.

10 and 11 V.
c. 15.

Defendant entitled to Gaol limits may give bond, upon which he shall immediately have the benefit of such limits.

VII. And be it enacted, That if any defendant, after giving such bond to any Sheriff, shall deliver to such Sheriff the certificate of the proper officer of the Court, that the recognizance of bail, and
 30 affidavit of justification mentioned in the fifth Section of the said in part recited Act, have been duly fyled in his office, such defendant as well as his sureties, shall thereupon be released and discharged from all damages on occasion of any breach of the condition of such bond, which shall be committed subsequent to the date of such certificate: Provided, that if such certificate be not produced within
 35 one month from the execution of such bond, it shall be lawful for the Sheriff to commit such defendant to close custody, there to remain as if no such bond had been given.

Defendant and his sureties, relieved on complying with the said Act.

Proviso.

VIII. And be it enacted, That if any breach shall occur of the condition of the said bond, by departure from the limits or otherwise, it shall and may be lawful for the Sheriff by whom said party was so arrested, to sue for and recover from such party and his said sureties or either of them, upon such bond, such sum or sums of
 45 money as such party may have been so arrested for, together with

Sheriff may sue on such bond for breach thereof.

all such costs and damages as he the said Sheriff may have sustained or be liable for by reason of such departure from the said limits or other breach of the said bond.

Sheriff must assign such bond, if requested, to the party arresting.

IX. And be it enacted, That the Sheriff, upon such party so arrested withdrawing or departing from the said limits, or committing a breach of the condition of the said bond, shall be bound, upon request, to assign over the said bond to the party in the cause, at whose instance the arrest took place, and such Sheriff shall thereupon be discharged from any claim such arresting party may have on him the said Sheriff for or on account of the party so arrested. 5 10

And such party may sue in his own name as aforesaid.

X. And be it enacted, That upon such assignment of the said bond to the said party so causing such arrest, he, she or they may, as Assignee or Assignees, sue thereon in his, her or their own name or names, and it shall not be in the power of the Sheriff in whose name such bond was taken, to release the same or any action brought thereon. 15

Party giving such bond to be liable to interrogatories, &c., under the said Act.

XI. And be it enacted, That the said party so arrested as aforesaid, shall, after the execution of the said bond, and such admittance to the limits under the same, be subject to interrogatories, committal to close custody and recommittal, with all other privileges and liabilities, in like manner as if he had been upon the said limits under a recognizance, as mentioned in the fifth section of the said in part recited Act. 20 25

Mileage to be taxed only to Sheriff, Bailiff or Coroner.

XII. And be it enacted, That in the taxation of costs in any cause in either of the said Superior Courts of Common Law or in the County Courts in Upper Canada, no fees shall be allowed for the mileage or service of Writs of Summons, or other mesne process, unless served by the Sheriff, his Deputy or Bailiff, (or by a Coroner when the Sheriff is a party to a suit) and sworn to in the affidavit of service as served by such Sheriff, Deputy Sheriff, Bailiff or Coroner as aforesaid, except as hereinafter provided. 30

On what days Sheriffs shall keep their offices open.

XIII. And be it enacted, That the Sheriff of each County or United Counties in Upper Canada, shall keep his office open each day except Sunday, Christmas Day, Good Friday, and the Birth day of the Sovereign, from ten o'clock in the forenoon, until four o'clock in the afternoon, and during all that time the said Sheriff, his Deputy or some Clerk competent to do business for him, shall be present to transact the business of the office, and that upon the delivery of any Writ of Summons at the said office to be served by the Sheriff, he, his Deputy or Clerk, shall indorse thereon the time it was so delivered, and in case such Summons shall not be fully and completely served within *ten* days after such 40

delivery, then the plaintiff, his Attorney or agent shall be entitled to receive back the said Writ, and such Sheriff, Deputy Sheriff or Clerk, shall indorse thereupon the time of such re-delivery of such Writ, and in the taxation of costs, the costs of the mileage and service of such Writ by any literate person afterwards, shall be allowed as if the same had been served by the Sheriff or his officer.

XIV. And be it enacted, That in cases of attachments sued out under the Absconding Debtors' Acts, the Sheriff having the execution thereof, with leave of the Court out of which any such attachment shall issue or of a Judge thereof, may at the request of the attaching Creditor, in his own name as such Sheriff sue and recover from any person or persons any debt, claim, demand or right of action attachable under the said Acts due and owing to or recoverable by the Absconding Debtor—and the said Sheriff shall deposit the monies received or recovered in any such action, as such Court or a Judge thereof shall order and direct in the rule granting the leave aforesaid, until such monies shall be eventually applied or distributed according to law; Provided, that the Sheriff shall not be bound to sue any party as aforesaid, unless the attaching Creditor shall enter into a bond with two sufficient sureties, indemnifying him from all costs and expenses to be incurred in the prosecution of such action or to which he may become liable in consequence thereof.

Sheriff may sue in certain cases under Absconding Debtors, Acts for debts, &c., attached.

Deposit of monies recovered.

Provido.

XV. And be it enacted, That in the event of any Clerk of Assize being absent, or being prevented by illness or other cause from performing his duties as such Clerk, the presiding Judge of Assize may authorize some person to act as Clerk of Assize; Provided that if such Clerk, so absent, or prevented from performing his duties as aforesaid, be not a Clerk of a County Court the Clerk of the County Court of the County or United Counties as the case may be, (except the United Counties of York, Ontario and Peel,) may perform the duties of Clerk of Assize, and such County Court Clerk, or other person so substituted, shall be entitled to receive the remuneration payable for the performance of such duties.

In case of absence of Clerk of Assize to substitute to act.

County Court Clerk may act: exception.

Provido.

XVI. And be it enacted, That in addition to the duties authorized and required to be performed by the Judges of the County Courts in Upper Canada, by the 35th Section of the Act of the Parliament of this Province, passed in the 12th year of Her Majesty's Reign, and chaptered amongst the Public Acts of the Session as chapter 63, the said Judges are hereby authorized and required to hear and determine applications, and to grant Summonses and orders for the payment of monies into Court, and also Summonses and Orders for the admission of documents in evidence under the 28th Rule of the Rules, Orders and Regulations referred to in the Act

Judges of County Courts may hear applications and grant summonses for certain purposes.

of the Parliament of this Province, passed in the 5th year of Her Majesty's Reign, and chaptered amongst the public general Acts as chapter 19, in suits depending in the Superior Courts of Common Law in Upper Canada—subject to the same provisions, restrictions and right of appeal as other applications made under the said 35th Section of the Act in this Section first above mentioned. 5

Sec. 10 of 14 and 15 V. c. 118, suspended, while W. A. Campbell holds certain offices.

XVII. And be it enacted, That the tenth Section of the Act of the Parliament of this Province, passed in the Session held in the fourteenth and fifteenth years of Her Majesty's Reign, and chaptered amongst the public general Acts of the Session in which the same was passed, as chapter one hundred and eighteen, in so far as the same relates to certain duties to be discharged under them by the several Clerks of Assize in Upper Canada, shall be and is hereby suspended, so long as William Alexander Campbell shall continue to hold the Office of Marshal and Clerk of Assize for the County of York. 10 15

Certain duties imposed on W. A. Campbell while he holds the said offices.

XVIII. And be it enacted, That William Alexander Campbell, so long as he shall continue to be the Marshal and Clerk of Assize of the County of York, shall procure from the Judges of the Superior Courts, the several precepts for the return of Panels of Grand and Petit Jurors for any Sittings or Sessions of Assize, Nisi Prius, Oyer and Terminer, and Gaol Delivery, and transmit the same to the several Sheriffs or other Officers to whom the return of such precepts shall severally belong, as soon as conveniently may be after the commission, or other day upon which the Jurors to be returned upon such precepts are to be summoned to attend, shall or may be known, and where such day is fixed by law, then as soon as conveniently may be after the close of the last preceding sittings of the same Courts; and for preparing, procuring and transmitting each precept, he shall be entitled to receive *five shillings*, payable out of the fee fund. 20 25 30

No action for an Attorney's or Solicitor's Bill, to be commenced until the expiration of one month after a copy shall have been sent to the party charged.

XIX. And be it enacted, That from and after the passing of this Act no Attorney or Solicitor, nor any Executor, Administrator, or Assignee of any Attorney or Solicitor, in Upper Canada, shall commence or maintain any action or suit for the recovery of any fees, charges or disbursements for any business done by such Attorney or Solicitor, until the expiration of one month after such Attorney or Solicitor, or the Executor, Administrator, or Assignee of such Attorney or Solicitor, shall have delivered unto the party to be charged therewith, or sent by the Post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, a Bill of such fees, charges, and disbursements, and which Bill shall either be subscribed with the proper hand of 35 40

- such Attorney or Solicitor, (or, in the case of a partnership, by any of the partners, either with his own name, or with the name or style of such partnership,) or of the Executor, Administrator, or Assignee of such Attorney or Solicitor, or be enclosed in or accompanied by a letter subscribed in like manner, referring to such Bill; and upon the application of the party chargeable by such Bill within such month it shall be lawful for any of the superior Courts of Law or Equity, or any Judge of either of them, or any Judge of a County Court, in Upper Canada, and they are hereby respectively
- 10 required, to refer such Bill, and the demand of such Attorney or Solicitor, Executor, Administrator, or Assignee, thereupon to be taxed and settled by the proper officer of any of the Courts in which any of the business charged for in such Bill may have been done, without any money being brought into Court; and the Court
- 15 or Judge making such reference shall restrain such Attorney or Solicitor, or Executor, Administrator, or Assignee of such Attorney or Solicitor, from commencing any action or suit touching such demand pending such reference; and in case no such application as aforesaid shall be made within such month as aforesaid, then it shall
- 20 be lawful for such reference to be made as aforesaid, either upon the application of the Attorney or Solicitor, or the Executor, Administrator, or Assignee of the Attorney or Solicitor, whose Bill may have been so as aforesaid delivered, sent, or left, or upon the application of the party chargeable by such Bill, with such directions and subject to such conditions as the Court or Judge making
- 25 such reference shall think proper; and such Court or Judge may restrain such Attorney or Solicitor, or the Executor, Administrator, or Assignee of such Attorney or Solicitor, from commencing or prosecuting any action or suit touching such demand pending such
- 30 reference, upon such terms as shall be thought proper: Provided always, that no such reference as aforesaid shall be directed upon an application made by the party chargeable with such Bill after a verdict shall have been obtained or a Writ of Inquiry executed in any action for the recovery of the demand of such Attorney or
- 35 Solicitor, or Executor, Administrator, or Assignee of such Attorney or Solicitor, or after the expiration of twelve months after such Bill shall have been delivered; sent, or left as aforesaid, except under special circumstances, to be proved to the satisfaction of the Court or Judge to whom the application for such reference shall be made;
- 40 and upon every such reference, if either the Attorney or Solicitor, or Executor, Administrator, or Assignee of the Attorney or Solicitor, whose Bill shall have been delivered, sent, or left, or the party chargeable with such Bill having due notice, shall refuse or neglect to attend such taxation, the Officer to whom such reference shall be
- 45 made may proceed to tax and settle such Bill and demand *ex parte*; and in case any such reference as aforesaid shall be made upon the

Party charged may have the Bill referred for taxation.

No suit to be brought on it pending such reference.

The Attorney &c., may apply for such reference after a certain time.

No suit to be brought pending such reference.

Proviso: such reference not to be made in certain cases. Exceptions

Taxation may be *ex parte* if either party fail to attend.

Costs of re-

ference how
paid.

application of the party chargeable with such Bill, or upon the application of such Attorney or Solicitor, or the Executor, Administrator, or Assignee of such Attorney or Solicitor, and the party chargeable with such Bill shall attend upon such taxation, the costs of such reference shall, except as hereinafter provided for, be paid 5 according to the event of such taxation; that is to say, if such Bill when taxed be less by a sixth part than the Bill delivered, sent, or left, then such Attorney or Solicitor, or Executor, Administrator, or Assignee of such Attorney or Solicitor, shall pay such costs; and if such Bill when taxed shall not be less by a sixth part than the Bill 10 delivered, sent, or left, then the party chargeable with such Bill, making such application or so attending, shall pay such costs; and every order to be made for such reference as aforesaid shall direct the Officer to whom such reference shall be made to tax such costs of such reference to be so paid as aforesaid, and to certify what, upon such 15 reference, shall be found to be due to or from such Attorney or Solicitor, or Executor, Administrator, or Assignee of such Attorney or Solicitor in respect of such Bill and demand, and of the costs of such reference, if payable: Provided also, that such Officer shall in all cases be at liberty to certify specially any circumstances relating to 20 such Bill or taxation, and the Court or Judge shall be at liberty to make thereupon any such Order as such Court or Judge may think right respecting the payment of the costs of such taxation: Provided also, that where such reference as aforesaid shall be made when the same is not authorized to be made except under special circum- 25 stances, as hereinbefore provided, then the said Court or Judge shall be at liberty, if it shall be thought fit, to give any special directions relative to the costs of such reference: Provided also, that it shall be lawful for the said respective Courts and Judges, in the same cases in which they are respectively authorized to refer a Bill which has 30 been so as aforesaid delivered, sent or left, to make such Order for the delivery by any Attorney or Solicitor, or the Executors, Administrator, or Assignee of any Attorney or Solicitor, of such Bill as aforesaid, and for the delivery up of deeds, documents or papers in his possession, custody, or power, or otherwise touching the same, 35 in the same manner as has heretofore been done as regards such Attorney or Solicitor, by such Courts or Judges respectively, where any such business had been transacted in the Court in which such Order was made: Provided also, that it shall not in any case be necessary in the first instance for such Attorney or Solicitor, or the 40 Executor, Administrator or Assignee of such Attorney or Solicitor, in proving a compliance with this Act, to prove the contents of the Bill he may have delivered, sent or left, but it shall be sufficient to prove that a Bill of fees, charges or disbursements subscribed in the manner aforesaid, or enclosed in or accompanied by such letter as 45 aforesaid, was delivered, sent or left in manner aforesaid; but never-

Proviso: Taxing officer may certify special circumstances.

Proviso.

Proviso: order may be made in like manner for delivery of Deeds, &c.

Proviso: in the first instance contents of the Bill need not be proved, &c.

theless it shall be competent for the other party to shew that the Bill so delivered, sent or left was not such a Bill as constituted a *bonâ fide* compliance with this Act: Provided also, that it shall be lawful for any Judge of the Superior Courts of Law or Equity or a County Judge to authorize an Attorney or Solicitor to commence an action or suit for the recovery of his fees, charges or disbursements against the party chargeable therewith, although one month shall not have expired from the delivery of a Bill as aforesaid, on proof to the satisfaction of the said Judge that there is probable cause for believing that such party is about to quit Upper Canada.

Proviso:
Judge may give leave to commence an action when Defendant is about to leave U. C.

XX. And be it enacted, That where any person, not the party chargeable with any such Bill within the meaning of the provisions hereinbefore contained, shall be liable to pay or shall have paid such Bill either to the Attorney or Solicitor, his Executor, Administrator, or Assignee, or to the party chargeable with such Bill as aforesaid, it shall be lawful for such person his Executor, Administrator, or Assignee to make such application for a reference for the taxation and settlement of such Bill as the party chargeable therewith might himself make, and the same reference and order shall be made thereupon, and the same course pursued in all respects, as if such application was made by the party so chargeable with such Bill as aforesaid: Provided always, that in case such application is made when, under the provisions herein contained, a reference is not authorized to be made except under special circumstances, it shall be lawful for the Court or Judge to whom such application shall be made to take into consideration any additional special circumstances applicable to the person making such application; although such circumstances might not be applicable to the party so chargeable with the said Bill as aforesaid, if he was the party making the application.

Provision where a party other than the party first chargeable, shall become liable to pay any Bill.

Proviso.

XXI. And be it enacted, That for the purpose of any such reference upon the application of the person not being the party chargeable within the meaning of the last preceding Section, or of a party interested as aforesaid, it shall be lawful for such Court or Judge to order any such Attorney or Solicitor, or the Executor, Administrator, or Assignee of any such Attorney or Solicitor, to deliver to the party making such application a copy of such Bill, upon payment of the costs of such copy: Provided always, that no Bill which shall have been previously taxed and settled shall be again referred unless, under special circumstances, the Court or Judge to whom such application is made shall think fit to direct a retaxation thereof.

Judge may order delivery of a copy of the Bill to the party not originally chargeable.

Proviso.

XXII. And be it enacted, That the payment of any such Bill as aforesaid, shall in no case preclude the Court or Judge to whom application shall be made from referring such Bill for taxation; if

Payment of Bill not to preclude reference, if

special circumstances require it.

the special circumstances of the case shall in the opinion of such Court or Judge appear to require the same, upon such terms and conditions and subject to such directions as to such Court or Judge shall seem right; Provided the application for such reference be made within twelve calendar months after payment.

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Proviso.

Taxing Officer may require the assistance of an officer of any other Court.

XXIII. And be it enacted, That in all cases in which such Bill shall have been referred to be taxed and settled, the Officer to whom such reference is made shall be at liberty to request the proper Officer of any other Court having such an Officer to assist him in taxing and settling any part of such Bill, and such Officer so requested shall thereupon proceed to tax and settle the same, and shall have the same powers, and may receive the same fees in respect thereof, as upon a reference to him by the Court of which he is such Officer, and shall return the same, with his opinion thereon, to the Officer who shall have so requested him to tax and settle the same.

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Fees.

Applications how entitled.

XXIV. And be it enacted, That all applications made under the foregoing provisions to refer any such Bill as aforesaid to be taxed or settled, and for the delivery of such Bill, and for the delivering up of deeds, documents, and papers, shall be made in the matter of such Attorney or Solicitor; and upon the taxation and settlement of any such Bill, the certificate of the Officer by whom such Bill shall be taxed shall (unless set aside or altered by Order of a Judge, Decree or Rule of Court,) be final and conclusive as to the amount thereof, and payment of the amount certified to be due and directed to be paid may be enforced according to the course of the Court in which such reference shall be made.

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Certificate of taxing officer to be conclusive unless set aside.

Plaintiff in trespass, or trespass on the case recovering less than £2, not entitled to recover costs: unless the Judge, &c., shall certify certain particulars.

XXV. And be it enacted, That if the Plaintiff in any action of Trespass, or of trespass on the case, brought or to be brought in any of the Superior Courts of Common Law, or in any County Court in Upper Canada, shall recover by the verdict of a Jury less damages than forty shillings, such Plaintiff shall not be entitled to recover or obtain from the Defendant, in respect of such verdict, any costs whatever, whether it shall be given upon any issue or issues tried, or judgment shall have passed by default, unless the Judge or Presiding Officer before whom such verdict shall be obtained, shall immediately afterwards certify on the back of the record, or on the writ of trial, that the action was really brought to try a right besides the mere right to recover damages for the trespass or grievance for which the action shall have been brought, or that the trespass or grievance in respect of which the action was brought was wilful and malicious; Provided always, and be it enacted, That nothing herein contained shall extend or be construed to extend to deprive the Plaintiff of costs in any action or actions brought for a trespass or

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Proviso: section not to extend to trespasses of certain kinds.

trespasses over any lands, commons, wastes, closes, woods, plantations, or enclosures, or for entering into any dwellings, outbuildings, or premises in respect of which any notice not to trespass thereon or therein, shall have been previously served, by or on behalf of the
5 owner or occupier of the land trespassed over, upon or left at the last reputed or known place of abode of the Defendant or Defendants in such action or actions: Provided also, that nothing in this Section shall be construed to entitle any Plaintiff to recover costs as
10 law his action might properly have been brought in an Inferior Court. Proviso.