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No. 142.

1st Session, 5th Parliament, 18 Victoria, 1854.

BILL.

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

Received and Read First Time, Wednesday, 18th
Oct., 1854.

Second Reading, Wednesday, 1st Nov., 1854.

MR. SANBORN.

QUEBEC :

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

(142)

1854.]

BILL.

[No. 142.

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

WHEREAS it is expedient to amend the Act passed in the 12th year of Her Majesty, Reign, intituled: "*An Act to define the mode of proceeding before the Courts of Justice in Lower Canada in matters relating to the protection and regulation of Corporate Rights and to Writs of Prerogative, and for other purposes therein mentioned,*" to adapt the remedy by *Scire facias* to the Laws of Lower Canada, and to provide a mode of recovering costs in cases instituted under the said Act, and to repeal the Act passed in the 16th year of Her Majesty's Reign, intituled, "*An Act to amend the Act, intituled An Act to define the mode of proceeding before the Courts of Justice in Lower Canada in matters relating to the protection and regulation of Corporate Rights and to Writs of Prerogative, and for other purposes therein mentioned,*" Be it therefore enacted, &c., as follows :

15 I. The said last mentioned Act shall be and the same is hereby wholly repealed; Provided that nothing in this Act contained shall be held to revive the 20th section of the Act herein firstly recited, so as to give a right of appeal in any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

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

35 III. In any cause or matter in which judgment has been heretofore or shall be hereafter rendered, any party to whom costs shall have been thereby awarded, may obtain a writ of execution in the usual manner, which execution shall be addressed to and executed by the Sheriff of the District, and shall issue out of the Superior Court at any time after 15 days after judgment, and be returned into the Superior Court where all subsequent proceedings may and shall be had thereon in the usual course, whether the said cause or matter shall have been heard and determined by the said Court or by any Judge or Judges in vacation.

Proceedings
for obtaining
a decision, af-
ter the Return
of a writ of
certiorari.

Proviso.

IV. In all cases in which a writ of *certiorari* shall have been or shall be issued, and a regular return thereof shall have been made, it shall be lawful for any party interested to inscribe the cause on the *roll de droit* without giving notice to the opposite party, and judgment may be rendered upon any motion to quash the conviction, order or judgment, returned with such *certiorari*, without notice to such opposite party when no appearance has been filed; Provided notices of the application of such *certiorari* shall have been served upon the opposite party interested in such order, judgment or conviction prior to the granting of such writ; And provided further that when an appearance shall be filed by such opposite party, notice of such inscription and motion served at his elected domicile or upon his attorney shall be sufficient. 5

Sect. 19 of 12
V., c. 41, re-
pealed.

Duty of the
Attorney Gen-
eral for L. C.
when Letters
Patent have
been unduly
obtained.

V. The nineteenth section of the Act first above cited shall be and is hereby repealed and the following provisions substituted instead thereof.

VI. Whenever any Letters Patent may have been obtained, firstly by means of some fraudulent suggestion or concealment of a material fact or facts made by the person to whom the same were issued or made with his consent or knowledge, or secondly when it shall be alleged that such Letters Patent were issued through and in ignorance of some material fact or facts, or thirdly when the Patentee or those acting under him shall have done or omitted any act, in violation of the terms and conditions upon which such Letters Patent were granted, or shall by any other means have forfeited the interest acquired under the same, it shall be the duty of Her Majesty's Attorney General for Lower Canada, whenever he shall have good reason to believe that the same can be established by proof in every case of public interest, and also in every other case in which satisfactory security shall be given to indemnify the Government of this Province against all costs incurred therein, to apply for and on behalf of Her Majesty to the Superior Court in any District where the rights secured by such letters Patent can be exercised, by information, declaration or petition (*requête libellée*) supported by affidavit to the satisfaction of such Court complaining of the erroneous issuing of such Letters Patent or of the improper exercise of the rights secured or intended to be secured thereby, and setting forth all grounds and reasons for the vacating and annulling of such Letters Patent and praying for judgment thereon as may be authorized by law; whereupon it shall be lawful for such Court to order a writ of summons to issue from the Court to be served in the ordinary and customary manner of other writs issuing from such Court, upon the patentee or person holding such Letters Patent, or to any person claiming to have or to exercise any rights under the same, and to hear and adjudicate thereon, and upon legal proof to the satisfaction of said Court to adjudge and declare such Letters Patent null and void in law with costs. 15 20 25 30 35 40

Proceedings
and Judgment

Certain pow-
ers under the
Act may be
exercised by
any one Judge
of the S. Court

VII. The power hereinabove conferred upon the Superior Court to issue writs and proceedings for annulling Letters Patent, shall be vested in and exercised by any one judge of that Court in vacation, so far as the issuing of such writs and proceedings are concerned; and writs so granted by one Judge of the said Court in vacation, shall be returned into the office of the Prothonotary of the Superior Court on such days as other writs are now returnable and returned into said Court, and the declaration, information or petition (*requête libellée*) shall be annexed to such writ, and service thereof shall be made and all subsequent proceedings shall be had thereon and respecting the same, in the same manner as other ordinary writs of summons are served and proceedings are thereon had in the said Court; and the rules of law and of the Court respecting the pleadings and delays for pleading in other such ordinary suits, shall apply to this. 45 50

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

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

IX. This Act shall apply to Lower Canada only.

Extent of Act.