

An Act to repeal part of and amend the Laws now in force respecting the practice of His Majesty's Court of King's Bench in this Province.

[Passed 17th January, 1822.]

WHEREAS, it is expedient to make certain amendments in the practice of His Majesty's Court of King's Bench in this Province. Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and Assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, entitled "An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province" and by the authority of the same, That the Ninth Clause of an Act passed in the thirty-fourth year of His late Majesty's Reign, entitled, "An Act for the regulation of Juries," and An Act passed in the thirty-fourth year of His late Majesty's Reign, entitled "An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal" with the exception of the first, thirty-third, thirty-fourth, thirty-fifth and thirty-sixth Clauses, and the second Clause of an Act passed in the thirty-fifth year of His late Majesty's Reign, entitled "An Act to explain and amend an Act passed in the thirty-fourth year of His Majesty's Reign, entitled, "An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal", and an Act passed in the thirty-seventh year of His late Majesty's Reign, entitled, "An Act for regulating the practice of the Court of King's Bench" and an Act passed in the thirty-eighth year of His late Majesty's Reign, entitled "An Act to amend part of an Act passed in the thirty-fourth year of the Reign of His Majesty, entitled, "An Act to establish a Superior Court of Civil and Criminal Jurisdiction, and to regulate the Court of Appeal, and also to amend and repeal part of an Act passed in the thirty-seventh year of the reign of His Majesty, entitled, "An Act for regulating the practice of the Court of King's Bench, and to make further provision respecting the same." and an Act passed in the forty-first year of His late Majesty's Reign, entitled, "An Act the better to adapt the establishment of the Court of King's Bench to the present situation of this Province," and the third and fourth Clauses of an Act passed in the forty-ninth year of His late Majesty's Reign, entitled, "An Act for the more effectual preventing

Preamble.

9 Sec. of 34 Geo. 3.
c. 1.
34 Geo. 3 c. 2, except the 1st 33d 34th, 35th and 36th sec.—2d sec. of 35 Geo. 3d c. 4.
—87 Geo. 3d c. 4.—33 Geo. 3d c. 4.—41 Geo. 3d c. 9—3d & 4th sec. of 49th Geo. 3d. c. 4.—51 Geo 3d c. 3d repealed.

of frivolous and vexatious suits, and to authorise the levying of Poundage upon Executions in certain cases, and to regulate the sales by Sheriffs and other Officers," and also, an Act passed in the fifty-first year of His late Majesty's Reign, entitled, "An Act to extend personal arrest to the sum of forty shillings, and otherwise to regulate the practice in cases of personal arrest," be and the same are hereby repealed.

Terms of Sitting.
At what periods the same shall commence respectively.

II. *And be it further enacted by the authority aforesaid,* That four periods of Session or Terms be appointed in each year successively, to be known by the names of Hilary, Easter, Trinity and Michaelmas Term. That the Hilary do commence on the Third Monday in January, and end on the Saturday of the ensuing week, that Easter Term do commence on Monday next after the sixteenth day of April, and end on the Saturday of the ensuing week, That the Trinity Term do commence on the First Monday in July and end on the Saturday of the ensuing week, And that the Michaelmas Term do commence on the First Monday in November, and end on the Saturday of the next ensuing week, And that the first and last days of every Term and every alternate day from the first, not including Sunday, be return days.

Court may adjourn from one Return Day to another.

III. *Provided always and be it further enacted by the authority aforesaid.* That when the Court shall have good reason to believe there will not be sufficient business to require their daily attendance throughout the Term, they may be at liberty to adjourn the Court on any return day to the next immediate return day.

Original Process.
A Writ of Capias ad Respondendum.

IV. *And be it further enacted by the authority aforesaid.* That the original process for compelling the appearance of the Defendant or Defendants in any suit hereafter, to be brought in His Majesty's Court of King's Bench, shall be a Writ of Capias ad respondendum, tested in the name of the Chief Justice or Senior Puisne Judge of the said Court for the time being, a copy of which process in actions not bailable shall be personally served on the Defendant or Defendants by the Sheriff to whom the process shall be directed, or his lawful Deputy or Bailiff being a literate person, and that upon every copy of such process to be served upon any Defendant, there shall be written a notice to such Defendant of the intent and meaning of such service to the effect following:

Copy whereof to be served on Defendant in actions not bailable.

English Notice on Process not Bailable.

A. B. You are served with this process to the intent that you may either in person, or by your Attorney appear in His Majesty's Court of King's Bench, by filing your appearance in the Office of the Clerk of the Crown (or Deputy as the case may be.) in the _____ District, at the return thereof, being the _____ day of _____ or within eight days thereafter, in order to your defence in this action.

And that in all actions hereafter to be brought wherein the Defendant or Defendants shall not be arrested and held to special Bail, if the Defendant or Defendants do not appear at the return of such process or within eight days after the return thereof, it shall and may be lawful for the Plaintiff or Plaintiffs upon Affidavit being made and filed of the personal service of such process, to enter common Bail for the Defendant or Defendants, and to proceed thereon as if such Defendant or Defendants had put in and perfected bail to the action.

V. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for each and every Defendant personally or by Attorney, to enter his, her, or their appearance at the Office, from which such process not bailable has issued, at any time within eight days after the return of such process or Writ. And that in all actions or suits where the Defendant or Defendants have appeared as aforesaid, the Plaintiff or his Attorney, shall, after filing a Declaration in the Office from whence the Writ issued, and service of a copy thereof on the Defendant by a demand in writing, call for a Plea, and that if after the expiration of eight days from the service of such demand, no plea be filed, it shall and may be lawful for the Plaintiff or Plaintiffs to sign Judgment in the cause.

Manner of proceeding on Process not Bailable.

VI. *And be it further enacted by the authority aforesaid,* That for and notwithstanding any thing in this Act contained, it shall and may be lawful to proceed by bill in any case where by reason of any privilege such proceeding is practised in the Court of King's Bench in England, and that the like proceeding shall be had in actions so commenced as in the said Court, unless otherwise altered by the rules of His Majesty's Court of King's Bench in this Province.

Privileged persons may proceed by Bill, unless altered by Rule of Court.

VII. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any Defendant or Defendants in any action or suit in the said Court to plead as many several matters thereto, as he shall think necessary without leave of the said Court, where he would be entitled to do so by obtaining such leave under the same regulations and restrictions as are declared by the British Statute, passed in the fourth year of the reign of Queen Ann. Chap. 16. sec. 4. any thing in the said clause to the contrary notwithstanding.

Defendants may plead several Matters without leave of the Court.

VIII. *And whereas,* much inconvenience is felt by conscientious creditors in the recovery of their just debts, from the difficulty of ascertaining whether any person or persons design leaving the Province with an intent to defraud their creditors, an Affidavit of which is required by the Laws now in force, before a Capias ad Respondendum could issue, *Be it therefore enacted by the authority aforesaid,* That no person shall be arrested or holden to Special Bail upon any process issuing out of the said Court in a Civil suit where the cause of action shall not amount to Five pounds of Lawful Money of this Province, and where the cause of action shall amount to Five Pounds and upwards, it shall not be lawful for the Plaintiff to proceed to arrest the body of the Defendant or Defendants unless an Affidavit be first made by such Plaintiff, his servant or agent, of such cause of action, and the amount justly and truly due to the said Plaintiff from the said Defendants, and also that such Plaintiff, his servant or agent is apprehensive that the Defendant will leave this Province without satisfying the said debt, and that the said Plaintiff, his servant or agent, does not sue out such process from any vexatious or malicious motive whatever, which Affidavit shall be filed, and may be made before any Judge or Commissioner of the Court, out of which such process shall issue, authorised to take Affidavits in such Court, or before the Officer who shall issue such process, or his Deputy which Oath, such Officer or his Deputy is hereby authorised to administer and for the said Affidavit, One Shilling shall be paid and no more, and the sum or sums specified in such

No person to be arrested for a sum under £5.

Affidavit to be made by Plaintiff previous to arrest,

and may be sworn before any Judge, &c. and 1s. to be paid for Oath.

Sum sworn to shall be endorsed on Bailable Process.

Affidavit shall be endorsed on such Writ or Process, which sum or sums so endorsed, the Sheriff or other Officer to whom such Writ or Process shall be directed, shall take Bail, and for no more.

Commissioners for taking Affidavits and Deputy Clerks of the Court to issue Bailable Process.

IX. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for any Plaintiff his Servant or Agent having made such affidavit as aforesaid to sue out from any Commissioner of His Majesty's Court of King's Bench for taking affidavits in each and every District a Writ of Capias ad respondendum with which the said Commissioners as well as the several Deputies appointed by the Clerk of the Crown shall be from time to time supplied, signed by the proper Officer of the Court, on which shall be endorsed the sum sworn to, and to which the said affidavit shall be annexed, whereupon it shall and may be lawful for any Constable in the District to arrest the said Defendant and deliver him or them over to the Sheriff in order that he she or they may be held to bail for the amount of the sum so endorsed.

Judges may order Arrest in certain Cases.

X. *And be it further enacted by the authority aforesaid,* That in all cases in which the cause of action shall be other than a debt certain of which affidavit may be made as herein before mentioned, it shall and may be lawful to hold the Defendant or Defendants to bail, a Judge's order having been first obtained for that purpose in such cases and in such manner as is provided by the Law and practice of the Court of King's Bench in England.

Condition of Recognizances of Bail.

XI. *And be it further enacted by the authority aforesaid,* That each and every recognizance of bail to be taken in cases of personal arrest as herein before mentioned shall be that if the Defendant or Defendants shall be condemned in the action at the suit of the Plaintiff or Plaintiffs he she or they will satisfy the costs and condemnation money or render himself herself or themselves to the custody of the Sheriff of the District in which such action shall be brought, or that the Cozitors shall do so for such Defendant or Defendants.

Bail may surrender their Principal to the Sheriff of the respective District where Defendants are held to Bail, and Sheriffs to give Certificates of surrender, and Judge to order an Exoneratur on production thereof.

XII. *And be it further enacted by the authority aforesaid,* That whenever any bail in any action or suit now pending or hereafter to be brought in any District shall be desirous of surrendering their principal in discharge of themselves it shall and may be lawful for the Sheriff of such District and he is hereby required to receive such principal into his custody at the Gaol of his District and to give such bail a certificate under his hand and seal of office of such surrender which certificate shall be a sufficient authority for any Judge of the Court in which such action shall be pending, and he is hereby required on production thereof to order an Exoneratur to be entered on the bail piece in the same manner as if such principal had been surrendered in person before him at his chambers for which certificate the said Sheriff shall receive the sum of five shillings and no more.

Defendants may put in Special Bail in vacation.

XIII. *And be it further enacted by the authority aforesaid,* That if any Defendant or Defendants shall be taken or detained in custody in any District of this Province on mesne process issuing out of any Court of Record in this Province at the suit of any Plaintiff or Plaintiffs and shall be detained or imprisoned thereon after the return of such process, it shall and may be lawful for such Defendant or Defendants except in Term time within the same District of this Province or District where the Court shall be holden, and upon due notice thereof given to the Attorney of the Plaintiff or

Plaintiffs in such process to put in and justify bail before any of the Justice of the Court out of which such process shall have issued, or before any Commissioner duly appointed for taking bail in such Court, which Justice or in case bail shall have been put in and justified before a Commissioner, any Justice of the said Court upon receipt of the said bail piece and recognizance from such Commissioner, may if he shall think fit, order a rule to issue for the allowance of such bail and may further order such Defendant or Defendants to be discharged out of custody by Writ of Supersedeas in the like manner as may be done by order of Court in Term time.

Rule for allowance thereof may be issued by a Judge.

XIV. *And be it further enacted by the authority aforesaid,* That in case the Plaintiff in any action now pending or hereafter to be brought in the said Court his Servant or Agent shall at any time after action brought, and before final judgment, be apprehensive that the Defendant will leave this Province without paying his debt it shall and may be lawful to and for the said Plaintiff his Servant or Agent having made and filed such affidavit as aforesaid, to sue out an alias Writ of Capias ad respondendum and to cause the said Defendant to be thereupon arrested and holden to bail, which bail, if the said Writ shall have been sued out after common bail being filed, shall be bail to the action.

Defendants may be held to Bail in Actions previously pending.

XV. *And be it further enacted by the authority aforesaid,* That in all cases in which the party has been held to special bail, it shall not be necessary to make or file any further or other affidavit before suing out a Capias ad satisfaciendum upon the Judgment obtained in the same action, and that in cases where the party has not been held to special bail a Writ of Capias ad satisfaciendum may issue after Judgment upon an affidavit of the same form as is hereby required to be made for the purpose of suing out a Capias in mesne process or upon affidavit by the Plaintiff his Servant or Agent that he hath reason to believe that the Defendant hath parted with his property or made some secret or fraudulent conveyance thereof in order to prevent its being taken in Execution.

No further Affidavit required in Bailable action previous to suing out Ca sa. otherwise in Actions not Bailable.

XVI. *And be it further enacted by the authority aforesaid.*—That upon all issues joined in the Court in any suit or action that shall arise or be triable in the Home District or in the District where the court shall be holden under any Commission of Assize and Nisi Prius issued after the Terms of Hilary and Trinity respectively and tested on the last day of each of those Terms, the Chief Justice or any other Judge of the said Court shall as Judge of Assize and Nisi Prius for the said District try all manner of issues Joined in the said Court which ought to be tried by a Jury of the said District, and that the Chief Justice or any other Judge of the said Court shall as Judge of Assize and Nisi Prius issue his precept to the Sheriff of the said District, for the summoning of Jurors for the trying of all such issues as may be joined in the said Court and arise and be triable in the said District, so that the same may be in no instance holden sooner than thirty days from the end of the Hilary and Trinity Terms respectively.

Issues joined in the Home Dist may be tried before any Judge.

Chief Justice or other Judge to issue his Precept to the Sheriff to summon Jurors to try such issues not less than 30 days after Hil. & Trin Terms.

XVII. *And be it further enacted by the authority aforesaid,* That when the Plaintiff or Plaintiffs, Defendant or Defendants in any action now pending or hereafter to be brought, shall be desirous of procuring the testimony of

such suit or suits of any aged or infirm person resident within the Jurisdiction of His Majesty's Court of King's Bench in this Province, or any person who is about to withdraw himself or herself beyond such Jurisdiction, or who is residing without the limits of this Province, it shall and may be lawful to and for His Majesty's said Court, or for any Judge thereof in vacation upon hearing the parties upon the motion of such Plaintiff or Plaintiffs, Defendant or Defendants, to issue one or more Commission or Commissions under the Seal of the said Court to one or more Commissioner or Commissioners, to take the examination of such person or persons respectively, due notice being given to the adverse party, to the end that he, she, or they may cause such Witnesses to be cross examined.

Commissions may be issued for the examination of witnesses.

XVIII. *And be it further enacted by the authority aforesaid.*—That in cases of Witnesses residing without the limits of this Province such Commission or Commissions with the examination of the Witness or Witnesses taken pursuant thereto returned to the said Court, with an affidavit of the due taking thereof thereto annexed, sworn before and certified by the Mayor or Chief Magistrate of the City or place where the same shall or may be taken close under the hand and seal or hands and seals of one or more of such Commissioners shall be taken prima facie to have been duly executed and returned and shall be received as evidence in the said cause, *Provided always*, that such examination or examinations shall not be read or given in evidence in the said cause, in case the Depoent or Depoents respectively shall be living within the Jurisdiction of the said Court and of sound mind and understanding at the time such examination or examinations shall be offered to be given in evidence and provided it is made appear to the Court before which such examination or examinations is or are put in that the same has or have not been duly taken.

And when executed in a foreign country to be returned under the hands and seals of Commrs.

Examination not to be read if Depoent is living within the Jurisdiction of the Court at the time of trial & of sound mind,

XIX. *And be it further enacted by the authority aforesaid.*—That it shall and may be lawful in any execution against the Person, lands or goods of any Debtor or Debtors for the Sheriff to levy the poundage fees and the expence of the said execution over and above the sum recovered by the Judgment, together with the legal interest upon the amount so recovered from the time of entering the said Judgment.

Poundage fees, expences of execution & interest to be levied.

XX. And whereas it is expedient to provide for the more public and certain notification of Sales of Lands, under execution in order that all persons having claims thereto may be apprised thereof,

Sales of Lands to be advertised in the U C Gazette.

Be it further enacted by the authority aforesaid. That before the sale of any Real Estate be had upon any execution to be sold out, after the passing of this Act, the Sheriff shall cause an advertisement to be inserted in the Upper Canada Gazette, at least six times before such sale specifying the particular property to be sold, the names of the Plaintiff or Plaintiffs and Defendant or Defendants and the time and place at which it is intended to proceed to the sale thereof, and the same shall also be advertised in any one public Newspaper of the District in which the Lands lie, or by notice put up in the Office of the Clerk of the Peace, or on the Door of the Court House or place in which the Court of General Quarter Sessions for such District are usually holden for three months before such sale: *Provided always, never the less,*

and in any Newspaper where land lies.



That nothing herein contained shall be taken to prevent such a judgment of such sale to a future day.

XXI. *And be it further enacted by the authority aforesaid,* That from and after the first day of July next ensuing, it shall not be lawful for any Sheriff or his Deputy in any District of this Province directly or indirectly to trade traffic sell or vend goods, wares or merchandize either by wholesale or retail or keep a shop or expose for sale any such Goods, Wares, or Merchandize, or to maintain any action at Law for the recovery of any debt, the amount, consideration or account, being for such goods, wares or merchandizes, excepting always such as by the duties of his office he is legally commanded to do.

Sheriff not to trade as Merchants or Shop-keeper.

XXII. *And be it further enacted by the authority aforesaid,* That the first and last days of all periods of time limited by this Act or hereafter to be limited by any rules or orders of Court for the regulation of practice be inclusive.

First and last days of all periods limited by this Act and Rules of Court inclusive.

XXIII. *And be it further enacted by the authority aforesaid* That the form of proceeding in the said Court shall be by a course of pleading to issue in a most expeditious manner, and that in all actions founded on a common undertaking the following form of declaration may be adopted.

A. B. complains of C. D. late of for that whereas the said C. D. on the day of at was indebted to the said A. B. in the sum of (the consideration advanced, and being so indebted, he the said C. D. then and there undertook, and faithfully promised the said A. B. to pay him the said sum, when he the said C. D. should be requested, and though since requested, doth now refuse so to do, to the said A. B. his damage of £ who therefore brings his suit.

Form of Declaration.

XXIV. *And be it further enacted by the authority aforesaid,* That each and every of the statutes of jeofails, and each and every of the statutes of limitations, and each and every of the statutes for the amendment of the Law excepting those of mere local expediency which from time to time have been provided and enacted respecting the Law of England be adopted and declared to be valid and effectual for the same purposes in this Province.

Statutes of Jeofails limitation and Amendments declared to be in force in this Province.

XXV. And in order to discourage vexatious suits and to prevent additional charges upon any Defendant or Defendants who may be willing to pay the sum which he or they shall admit to be justly due. *As it enacted by the authority aforesaid,* That in all cases where the sum demanded by any Plaintiff or Plaintiffs is a sum certain or is capable of being ascertained by computation of numbers, it shall and may be lawful for any Defendant or Defendants to move that he or they may be at liberty to pay into Court such sum as he or they shall propose to pay in full discharge of the said demand: whereupon the Court may order a rule to be drawn up to such effect, or in time of vacation such order may be made by a Judge of the Court, and in case the Plaintiff shall be willing to accept, and shall accept the same together with all costs accruing to that time to be taxed by the proper officer, the same shall be in full satisfaction of such his demand, and all further proceedings in the said action shall cease: and to the end that every Plaintiff or his Attorney may know of such proceeding the Defendant or Defendants shall, and are hereby required to serve a Copy of the Rule authorizing such payment to be made, upon the Plaintiff or his Attorney at the time filing his plea of the general issue to such Plaintiff's declaration.

Defendants may pay money into Court.

Officer to receive one per cent on monies paid into Court.

XXVI. *Provided always*, That upon payment of money into Court, it shall and may be lawful for the Officer receiving the same to demand and take a sum not exceeding twenty shillings for every hundred pounds so paid into Court, and at and after the same rate and proportion for every sum of money so paid, and also to demand and take the sum of one shilling for every receipt by him given on account of money so paid in as aforesaid.

Commissions of Assize & Nisi Prius to be issued yearly & when circumstances require it twice a year.

XXVII. And for the more convenient administration of Justice throughout the Province, *Be it enacted by the authority aforesaid*, That it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, to issue yearly and every year in the vacation between the Michaelmas and Thrinity Terms, such Commissions of Assize, and Nisi Prius into the several Districts, as may be necessary for the purpose of trying all issues joined in the said Court, in any suit or action arising in the said Districts respectively; and that when a suitable communication by land shall be opened from the City, Town, or place which shall be the seat of Government into the respective Districts, and the circumstances of the Province may require it, it shall and may be lawful for the Governor, Lieutenant Governor, or Person Administering the Government of this Province, likewise to issue yearly and every year in the vacation between the Hilary and Easter Terms, such Commissions of Assize and Nisi Prius into each of the several Districts as may be necessary for the trial of all issues joined in manner aforesaid.

Special Commissions may also be issued to try Offenders.

XXVIII. *Provided always and be it further enacted by the authority aforesaid*, That nothing herein contained shall prevent or be construed to prevent the Governor, Lieutenant Governor, or Person Administering the Government of this Province, from issuing a special Commission or Commissions for the trial of one or more offender or offenders, upon extraordinary occasions when he shall deem it requisite or expedient that such Commission should issue.

No Writ of Enquiry to issue to any Sheriff, but damages to be ascertained as if Parties had pleaded to issue.

XXIX. *And be it further enacted by the authority aforesaid*, That no Writ of enquiry shall issue to the Sheriff in cases where Judgment shall have gone by default, but in all such cases the damages shall be ascertained at the same time and in like manner as if the parties had pleaded to issue, and that an entry thereof be made on the Roll accordingly.

Jurors allowed 1s.3d. each.

XXX. *And be it further enacted by the authority aforesaid*, That every common Juror shall be allowed the sum of one shilling and three pence in every cause in which he shall be sworn as a Juror, to be paid by the Plaintiff or his Attorney and to be accounted for in costs by the party charged with the payment thereof.

Sheriffs to return Writs of Nisi Prius and attend the Judges on their Circuits

XXXI. *And be it further enacted by the authority aforesaid*, That the Sheriffs of the several Districts shall and they are hereby required to make return of all Writs of Nisi Prius which shall be delivered to them or their sufficient Deputy, before the said Chief Justice, and every other Judge who shall be assigned to execute such Commissions of Assize and Nisi Prius, and shall give their attendance upon the said Chief Justice and each other Justice as well for the returning of such tales de circumstantibus as shall be prayed for the trial of such issues as for the maintenance of good order in the King's Court, and for the doing and executing of all other things to the office of Sheriff in such case belonging and appertaining.

XXXII. *And be it further enacted by the authority aforesaid,* That it shall any may be lawful for the Clerk of the Crown and Pleas to have and he is hereby required to have in each and every District of this Province except the Ottawa, an office, the duties of which shall be discharged by Deputy, in which actions in the said Court may be instituted and all necessary proceedings had before final Judgment, and a Writ of Capias ad satisfaciendum after such final Judgment may be issued in the same manner as the same may be done in the principal office of the said Clerk.

Clerk of the Crown to have an Office in each District.

XXXIII. *Provided always, and be it further enacted by the authority aforesaid,* That the precipe and affidavit (where one shall be required) filed in the said District office on issuing any Capias ad satisfaciendum shall be transmitted to the principal office within one month after the same shall have been filed as aforesaid.

Precipe & Affidavit filed in the said offices on suing out Capias to be transmitted to the principal office.

XXXIV. *And be it further enacted by the authority aforesaid,* That whenever either the Plaintiff or Defendant in any suit hereafter to be instituted in any District except the Home District, may think it necessary to produce to the Court, the Writ, Declaration, Plea or any other proceedings which may have been filed in such cause it shall and may be lawful for the said Plaintiff or Defendant to demand and receive from the Deputy Clerk of the Crown and Pleas in the District a Copy of such Writ, Declaration, Plea, or other proceeding in the cause certified by the said Clerk to be a true Copy of the original, which Copy shall be received by the Court in all cases in lieu of the original and as a proof thereof.

Deputy Clerks of the Crown to certify proceedings if required.

XXXV. *And be it further enacted by the authority aforesaid,* That before final Judgment the several proceedings that have been had in the cause shall be transmitted to the principal office of the said Clerk, and shall remain in his custody.

All proceedings to be transmitted to the principal office before final Judgment.

XXXVI. *And be it further enacted by the authority aforesaid,* That no indictment information or cause whatsoever shall be tried at Nisi Prius before any Judge or Justice of Assize or Nisi Prius in any District of this Province unless notice of trial, in writing, has been given at least eight days before such intended trial: and in case any party or parties shall have given such notice of trial as aforesaid, and shall not afterwards duly countermand the same in writing at least four days before such intended trial, every such party shall upon neglect of bringing such issue to trial, be obliged to pay unto the party or parties to whom such notice of trial shall have been given as aforesaid, the like costs and charges as if such trial had not been countermanded.

Eight days notice of trial to be given in all cases and four days notice of countermand.

XXXVII. *And be it further enacted by the authority aforesaid,* That whenever the Defendant in any action shall in term time, plead any dilatory plea, in case such plea shall be of a matter in Law and not of fact, it shall and may be lawful to and for the Plaintiff in the said action to set down such plea for argument on the next day on which the said Court shall sit, or on any other day in the term giving two days notice thereof to the Defendant or his Attorney; and in case such plea be filed in the time of vacation, or being filed in term time, the said Plaintiff shall neglect so to set down the same for argument as aforesaid, it shall and may be lawful to and for the said Plaintiff to apply to any Judge of the said Court to hear and determine the

Dilatory Pleas may be argued before a Judge in vacation.

issue joined thereon in like manner as the same may now be done in open Court ; and in case the said Judge shall give Judgment for the Plaintiff, he the said Judge shall by an order under his hand direct the said plea to be taken off the file with costs to be taxed by the proper Officer ; and the said Defendant shall within four days from the date of such order, plead an issuable plea, and shall rejoin gratis, and shall also be bound to go to trial, at such time as he would have been bound to go to trial in case he had pleaded such issuable plea in the first instance, and not such dilatory plea.

Costs in Civil Suits to be regulated by the Laws of England,

XXXVIII. *And be it further enacted by the authority aforesaid,* That the allowance of Costs to either party, Plaintiff or Defendant, in all Civil suits and penal actions be regulated by the Statutes and usages which direct the payment of costs by the Laws of England.

Commissioners to be appointed for taking Affidavits.

XXXIX. *And be it further enacted by the authority aforesaid,* That the Chief Justice and other the Justices of the said Court of King's Bench for the time being or any two or them whereof the Chief Justice for the time being to be one shall and may by one or more Commission or Commissions under the Seal of the said Court from time to time as need shall require, empower what and as many persons as they shall think fit and necessary in all the several Districts within this Province, to take and receive all and every such Affidavit and Affidavits as any person or persons shall be willing and desirous to make before any of the persons so empowered, in or concerning any cause, matter or thing, depending or hereafter to be depending or in any wise concerning any of the proceedings to be in the said respective Courts, and that it shall and may be lawful for any Judge of Assize in his Circuit to take and receive any Affidavit or Affidavits as any person or persons shall be willing and desirous to make before him, in or concerning any cause, matter or thing depending or hereafter to be depending or in any wise concerning any proceedings to be had in the said Court of King's Bench, which said Affidavits, taken as aforesaid, shall be filed in the Office of the said Court, and there be read and made use of in the said Court to all intents and purposes as other affidavits taken in the said Courts ought to be, and that all and every affidavit and Affidavits taken as aforesaid shall be of the same force as Affidavits taken in the said Court shall and may be ; and all and every person or persons forswearing him, her, or themselves in such Affidavit or Affidavits shall incur and be liable unto the same pains and penalties as if such Affidavit or Affidavits had been made and taken in open Court. *Provided always,* that for the taking of every such affidavit, the person or persons so empowered and taking the same shall for so doing receive only the sum or fee of twelve pence and no more.

Penalties of Perjury for false swearing.

1s. for Oath.

Commissioners may be appointed for taking bail.

XI. *And be it further enacted by the authority aforesaid,* That the Chief Justice for the time being and other the Justices of the said Court of King's Bench or any two of them whereof the said Chief Justice shall be one, shall or may by one or more commission or commissions under the seal of the said Court from time to time as need shall require, empower such and as many persons as they shall think fit and necessary in all and every the several Districts of this Province to take and receive all and every recognizance or recognizances of bail or bails as any person or persons shall be willing or desirous to acknowledge or make before any of the persons so empowered, in

any action or suit depending or hereafter to be depending in the said Court in such manner and form, and by such recognizance or bail as the Justices of the said Court may hereafter take or may think fit, which said recognizance or recognizances of bail or bail piece so taken as aforesaid shall be filed in the office of the Clerk of the Crown in the District where the same shall be taken together with an affidavit of the due taking the recognizance of such bail or bail piece by some credible person present at the taking thereof, which recognizance of bail or bail piece so taken and filed shall be of the like effect as if the same were taken in open Court, for the taking of which recognizance or recognizances of bail or bail piece, the person or persons so empowered shall receive only the sum or fee of two shillings and no more: *Provided always*, nevertheless that nothing herein contained shall extend to preclude any party from excepting to the bail in the manner and within the time prescribed by Law.

XXI. *And be it further enacted by the authority aforesaid*, That the Justices respectfully shall make such rules and orders for the justifying of such bails and making of the same absolute as to them shall seem meet, so as the Cognizor or Cognizers of such bail or bails be not compelled to appear in person in the said Court to justify him or themselves, but the same may and is hereby directed to be determined by affidavit or affidavits duly taken before the said Commissioners who are hereby empowered and required to take the same and also to be examined by the Justices upon oath touching the value of their respective estates.

Justices to take orders regulating the justifying of bail before Comair

XXII. *And be it further enacted by the authority aforesaid*, That any Judge of Assize in his Circuit shall and may take and receive all and every such recognizance or recognizances of bail or bails as any person shall be willing and desirous to make and acknowledge before him which being transmitted in like manner as aforesaid shall without oath be received in manner as aforesaid.

Judges of Assize may take bail.

XXIII. *And be it further enacted by the authority aforesaid*, That the several Acts and Ordinances of the Governor and Council of the late Province of Quebec whereby the several Courts of Common Pleas in this Province were constituted and from time to time continued, be, and each and every of them are hereby repealed.

Ordinances of Quebec repealed.

XXIV. *And be it further enacted by the authority aforesaid*, That after twelve months from the passing of this Act no Attorney of this Court being a Merchant or in any wise concerned by Partnership public or private in the purchasing and vending of Merchandize in the way of Trade as a Merchant shall be permitted to practise in the said Court during the time he may be such Merchant or so engaged as aforesaid, nor until twelve months after he shall have ceased to be such Merchant or so engaged as aforesaid.

No Attorney to trade as a Shop keeper.

XXV. *And be it further enacted by the authority aforesaid*, That from and after the first day of Easter Term next, it shall and may be lawful to and for the said Court of King's Bench and they are hereby required by order or rule, or orders or rules to be pronounced by the said Court during the said Term of Easter, determine, declare and adjudge all and singular the fees which shall and may be taken, or be allowed to be taken by any Clerk of the Crown, Counsel, Attorney, Sheriff, Officer or other person from or in respect of any business af-

Judges to establish fees to be taken by all Officers of the Court

ter the first day of Easter Term to be done or transacted in the Court of King's Bench, as well in civil causes as in criminal prosecutions as in all matters and things, causes and proceedings which thereafter shall or may be depending in the said Court which regards the King's Revenue or under any Commission of Oyer and Terminer and General Gaol Delivery or under any Special Commission of Oyer and Terminer, any former Law to the contrary notwithstanding.

No Commissions or proceedings to be hereby avoided.

XLVI. *And be it further enacted by the authority aforesaid,* That nothing in this Act contained shall extend to annul any existing Commission or authority of any Officer or Commissioner heretofore appointed to any Office which may require to be continued by the provisions of this Act or to make void any proceedings now depending in the said Court of King's Bench but that the said office shall be conducted, and the said proceedings be continued and carried on according to the several provisions herein contained

