CAP. XXXII.

An Act to make further Provision for staying Execution of Judgment for Misdemeanors upon giving Bail in Error. [28th *June* 1853.]

'WHEREAS by an Act passed in the Ninth Year of the Reign of Her present Majesty, intituled *An Act to stay Execution of Judgment for Misdemeanors upon giving Bail in Error*, it is amongst other things provided that no Execution upon any such Judgment shall be stayed unless and until the Defendant or Defendants shall become bound by Recognizance to prosecute the Writ of Error with Effect, and in case the Judgment shall be affirmed forthwith to render the Defendant or Defendants to Prison, according to the said Judgment, where Imprisonment shall have been adjudged: And whereas it is expedient to make further Provision for securing the Render of a Defendant to Prison, according to the Judgment given against him, when such Judgment shall have been affirmed, or such Writ of Error shall have been quashed:' Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows: 8 & 9 Vict. c. 68.

No Execution to be stayed or Defendant discharged from Custody till Recognizance given for Defendant's personal Appearance, except when Writ brought by Attorney General.

I. In every Case in which a Writ of Error shall be brought to reverse any Judgment for Misdemeanor, except when the same shall be brought by Her Majesty's Attorney General, no Execution thereupon shall be stayed, nor shall any Defendant be discharged from Imprisonment as to such Execution, unless and until he shall become bound by Recognizance, to be acknowledged in manner in the said Act mentioned, to prosecute the Writ of Error with Effect, and personally to appear in the Court wherein such Writ may be returnable on the Day whereon Judgment shall be given upon the said Writ of Error, and also, if so ordered by the Court or by a Judge thereof, Four Days Notice being given either to the Defendant or his Attorney or to the Bail personally, or by leaving the same at his or their last known Place of Abode on the Days and Times appointed for any Proceeding upon the said Writ, and so from Day to Day, and not to depart that Court without Leave, and forthwith to render the said Defendant to Prison, according to the said Judgment, in case the said Judgment shall be affirmed.

Defendant not appearing, &c., Court may order Recognizance to be estreated, and Writ of Error to be quashed.

II. In every Case in which a Defendant shall make default in prosecuting such Writ of Error with Effect, or in personally appearing in the Court of Error upon any Proceeding to be had upon such Writ of Error as aforesaid, it shall be lawful for the said Court to order the said Recognizance to be estreated into the Court of Exchequer in a summary Way, and without the issuing of any Writ of Scire facias in that Behalf, and also to order the said Writ of Error to be quashed, without any Argument being had thereupon; and in every such Case the Defendant shall forthwith be liable to Execution upon the Judgment.

No Judgment for Defendant for Want of a Joinder in Error, except by special Order in open Court; Judgment may be given though no Assignment of Errors filed.

III. Whenever any Writ of Error shall be brought, under the Provisions of the said Act, for reversing any Judgment in Misdemeanor, and Error shall be assigned thereon, no Judgment of Reversal shall be entered, either for Want of a Joinder in Error or otherwise, without the special Order of the Court in which such Writ of Error shall be pending, pronounced in open Court; and upon a Certificate, signed by or on behalf of the Attorney or Solicitor General, that Notice has been given to One of them of such intended Application, and in the event of there being no Joinder in Error, such Court of Error may proceed to examine the Record in Error, and may give such Judgment thereon as the Court from which Error is brought ought to have done, although no Joinder in Error may have been filed.

Where Judgment affirmed, Defendant, if present in Court, may be committed in execution.

IV. In every Case in which a Defendant shall personally appear in Court upon any Proceeding had upon any such Writ of Error, and Judgment thereupon shall be affirmed, or such Writ of Error shall be quashed, it shall be lawful for such Court of Error forthwith to commit the said Defendant to the Keeper of the Queen's Prison, and to order the said Keeper to deliver such Defendant to the Keeper of the Gaol or Prison in which he may have

have been adjudged to be imprisoned; and the said Keeper of the Queen's Prison shall thereupon deliver such Defendant to the Keeper of such Gaol or Prison, and the Keeper of such last-mentioned Gaol or Prison shall thereupon cause such Defendant to be kept in safe Custody in such Gaol or Prison, in pursuance of and in execution of the said Judgment.

Where Recognizance estreated, or Judgment affirmed, or Writ of Error quashed, a Judge may issue Warrant for Defendant, and render him to Prison.

V. And whenever it shall be made appear to any One of the Judges of the Superior Courts of Record at *Westminster*, either by Affidavit or by Certificate of the proper Officer of the Court of Error, that the Recognizance of a Defendant given under the Provisions of this Act hath been ordered to be estreated, or that Judgment upon the said Writ hath been affirmed, or that such Writ of Error hath been quashed, and that Default hath been made by the Space of Four Days in rendering the Defendant to Prison in execution of the Judgment, it shall be lawful for such Judge to issue his Warrant under his Hand and Seal, and thereby to cause such Defendant to be apprehended, and conveyed to the Gaol or Prison in which such Defendant may have been adjudged to be imprisoned, pursuant to and in execution of the Judgment given against such Defendant.

How Time of Imprisonment shall be reckoned when Defendant rendered in execution.

VI. In every Case in which a Defendant shall be committed by any Court of Error in execution of the Judgment given against such Defendant, and in every Case in which a Defendant shall, by virtue of any Warrant or in other Manner, be rendered to Prison in execution of such Judgment, the Imprisonment of such Defendant (if Imprisonment shall not have commenced under such Execution) shall be reckoned to begin from the Day when such Defendant shall be in actual Custody in the Gaol or Prison in which he may have been adjudged to be imprisoned under such Judgment; and if the Defendant shall have been discharged from Imprisonment on giving Bail in Error, as is herein-before mentioned, such Defendant shall be imprisoned for such further Period in the same Prison as, with the Time during which such Defendant may already have been imprisoned under such Execution, shall be equal to the Period for which he was adjudged to be imprisoned as aforesaid.

If Default be made in rendering Defendant to Prison, and Warrant be issued against him, he shall pay the Costs and Charges of the Render.

VII. Whenever Default shall have been made in rendering a Defendant to Prison in execution of a Judgment for Misdemeanor, and a Warrant shall have been issued against such Defendant to enforce such Render to Prison, according to the Provisions of this Act, such Defendant shall be liable to pay the Costs and Charges of such Render; and if the Prosecutor shall, before the Expiration of the Defendant's Imprisonment, have caused the Amount of such Costs and Charges to be ascertained by One of the Masters or the Assistant Master on the Crown Side of the Court of Queen's Bench, and shall have left with the said Defendant and with the Keeper of the Prison or his Deputy, a Certificate, under the Hand of such Master or Assistant Master, of the Amount of such Costs so ascertained, then and in every such last-mentioned Case the Defendant shall not be discharged out of Custody until such Costs and Charges have been paid, or until an Order has been made by the Court for the Relief of Insolvent Debtors or of Bankruptcy for such Discharge.

Where Default made by Defendant in proceeding to Trial in Queen's Bench, Court may estreat Recognizance without Scire facias.

VIII. 'And whereas in Cases of Default made by Parties in performing the Conditions of 'Recognizances into which they may have entered to proceed to the Trial of Issues joined upon 'any Indictment or Information filed in Her Majesty's Court of Queen's Bench it hath been 'the Usage and Practice to enforce the Forfeiture of such Recognizances by Writ of Scire 'facias, and the Course of Procedure by Scire facias in such Cases is dilatory, inconvenient, 'and expensive:' Be it therefore enacted, That in every such Case of Default it shall be lawful for the said Court, or a Judge thereof, to call upon the Parties who have entered into such Recognizance, by Rule or Order to show Cause why such Recognizance should not be estreated into the Exchequer, and thereupon, unless Cause shall be shown to the Satisfaction of the said Court or Judge, in excuse of such Default, such Court or Judge may order such Recognizance to be estreated into the Exchequer.