

PROVINCIAL STATUTES OF LAST SESSION.

tariff. Sec. 12 provides that any Judge of the High Court of Justice or any County Court Judge may order witnesses to be examined in relation to any matter pending before a foreign tribunal, where it appears that a commission for the taking of such testimony has been duly issued by order of any court or tribunal of competent jurisdiction in such foreign country. This portion of the Act would appear to be *in eadem materia* with the Dominion Statute, 31 Vict. c. 76, and may have been suggested by the doubts cast upon the constitutionality of the latter Act in *re Wetherell & Jones*, 4 O. R. 713. Lastly, secs. 13 and 14 makes certain alterations in the tariff of Sheriff's fees.

Chapter 11 is an Act respecting the distribution of estates of which the Attorney-General is administrator or trustee, under R. S. O. c. 60, and provides that the provisions of R. S. O. c. 107, s. 34, as amended by 46 Vict. c. 9, s. 1, relating to the notice to claimants required to be given by executors and administrators, and assignees for creditors, in order to exonerate the latter from liability in administering the assets, or proceeds of the trust estate, shall apply to the Attorney-General where he is such administrator as aforesaid; and after such notice the Attorney-General may forthwith pay any money remaining in his hands unclaimed into the consolidated revenue fund of Ontario, notwithstanding the ten years' limit provided for in R. S. O. c. 60, s. 8, or may pay the same over under direction of the Lieutenant-Governor in Council, pursuant to s. 6 of the last mentioned Act, and no claim can afterwards be made against the Province in respect of moneys so paid over under s. 6.

We have next to notice chapter 16, being an Act respecting proceedings on Mortgages, on which there has already been a decision in *Perry v. Perry*, noted in the last number of this Journal at p. 210, where it is decided that it is not necessary in order

to come within the statute, that the notice of sale should be served prior to the other proceedings being commenced. In that case a notice of sale and a writ in an action on the covenant were served the same day. The object of the Act is stated to be to prevent the making of unnecessary and vexatious costs in respect of mortgages. It then provides that, where a demand for payment or a notice of sale under the powers in a mortgage, has been made or given, "no further proceedings at law or in equity, and no suit or action either to enforce such mortgage, or with respect to any clause, covenant, or provision, therein contained, or the lands or any part thereof, thereby mortgaged shall, until after the lapse of the time at or after which, according to such demand or notice, payment of said money is to be made, or said power of sale is to be exercised or proceeded under, be commenced or taken, unless or until an order permitting the same, shall first be had and obtained, either from the Judge or any County Court or from any Judge of the High Court." This is not to apply to proceedings to stay waste or other injury to the mortgaged premises. It would seem, however, that to enable a mortgagee to commence proceedings in ejectment concurrently with the exercise of the power of sale, an order will have to be obtained under this Act. Sec. 3 enacts that "when any such demand or notice requires payment of all moneys secured to be paid by or under a mortgage, the party making such demand or giving such notice, shall accept and receive payment of the same, if made, as required by the terms of such notice or demand," thus apparently preventing any such question as arose in *Cruso v. Bond*, 1 O. R. 384.

Chapter 17 is our old friend, the Act for protecting the public interest in Rivers, Streams and Creeks, with an important alteration as to the fixing of tolls. Sec. 4 takes away the function of fixing the