

SESSIONAL PAPER No. 18

wilfulness or partiality) it is certain that a real injury is done to the losing party, whose right it is, according to the laws of England, to have the points of law, upon which his cause depends, determined by the learned and able judges whom your Majesty has appointed to fill your courts of justice, as much as it is to have the matters of fact in the cause determined by a jury of honest freeholders in the neighbourhood.

Examination
of witnesses.

The witnesses examined in the trial of a cause should be examined *vivâ voce* in open court, in the presence of both parties, or their attornies and advocates; and cross-examined, if the adverse party thought proper: and should not be allowed to deliver their testimony by written depositions or affidavits taken in private; not even in those trials which were carried on without a jury; unless by the consent of both the parties, or by the particular direction of the judge, upon very strong reasons for so doing, moved and debated in open court.

Execution
against the
defendant's
goods and
lands.

When judgment was given for the plaintiff in a civil action, a writ of execution should go against the goods and lands of the defendant, but not against his person; directing the ministerial officer that executed the process of the court, to levy the sum of money awarded to the plaintiff by the judgment, upon the defendant's moveable goods and chattels; and, in case they are not sufficient for the purpose, then, but not otherwise, to sell part of his lands, to produce the remainder of the sum. And if the executive officer could not find a sufficient quantity of either moveable or immoveable property belonging to the defendant to raise the sum awarded, and the judge was of opinion, upon affidavits made before him to that purpose, that there was reasonable grounds to suspect that the defendant had secreted or concealed some of his effects, he might require him to deliver in to the court, upon oath, an exact schedule of all his estates and effects of every kind; and if he refused so to do, might commit him to prison till he complied. And if he omitted any part of his effects to the amount of twenty pounds sterling, in the schedule so delivered in to the court, he should be liable to the penalties of perjury.

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grounds the
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oath.

Costs.

The judge should have a power of awarding reasonable costs to either party, according to his discretion.

Sheriffs to
the three
several shires,
or districts.

It would be convenient to have a separate ministerial, or executive, officer, to each of the three districts of Quebec, Three Rivers, and Montreal, to be called a Sheriff, which is the common name for such an officer in England, instead of one Provost-marshal for the whole province.

King's at-
tornies each
of the three
courts.

And it would be necessary for your Majesty to have an attorney in each of these courts, to prosecute for your Majesty in all