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Pages 409-537, 558 and 1047 are incorrectly numbered pages 1-129, 560 and 1847.

THE

44/2
10

PUBLIC GENERAL STATUTES

WHICH APPLY EXCLUSIVELY

TO

1858

UPPER CANADA,

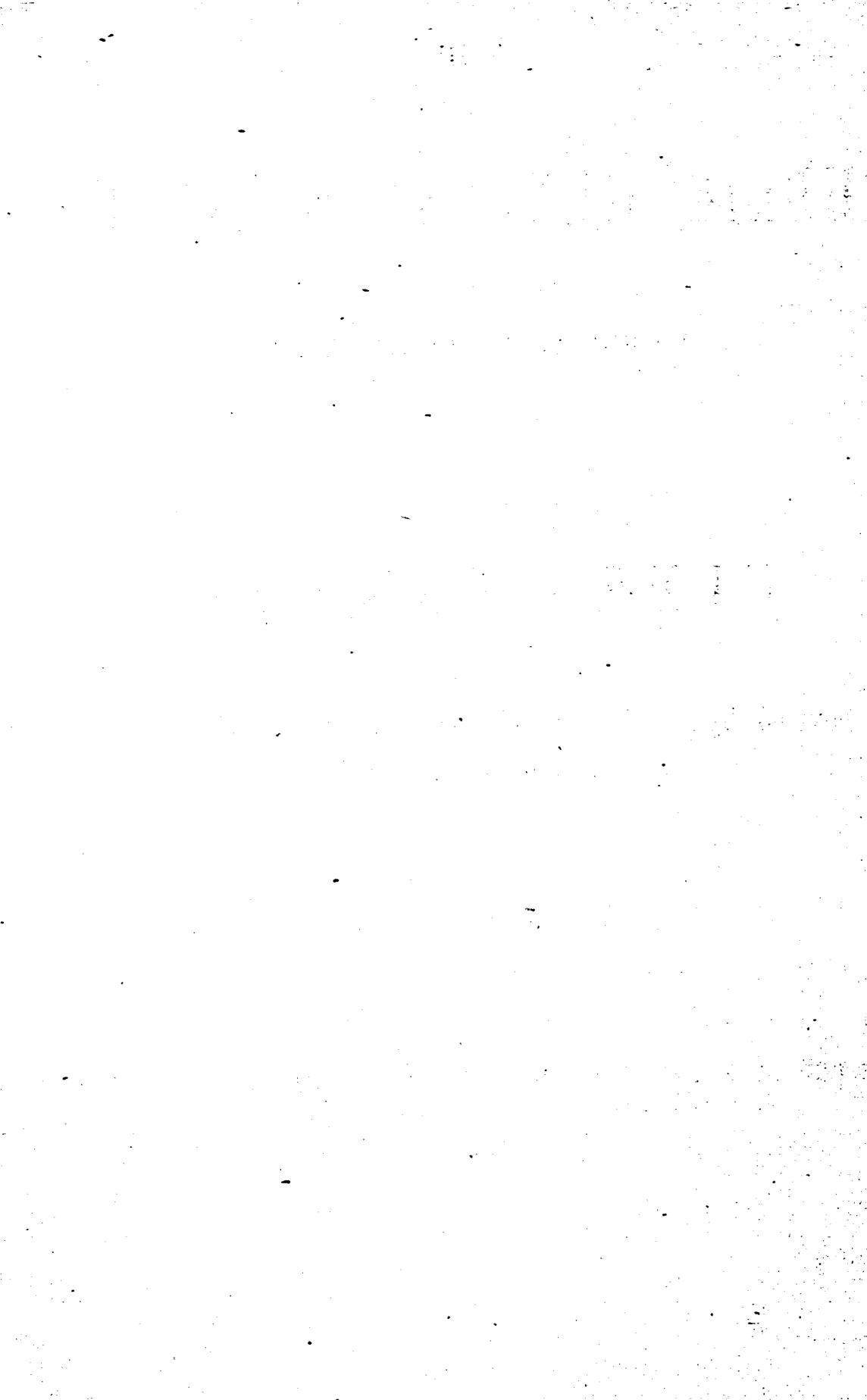
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of the Province.

TORONTO:

PRINTED BY STEWART DERBISHIRE AND GEORGE DESBARATS

LAW PRINTER TO THE QUEEN'S MOST EXCELLENT MAJESTY.

1858.



SCHEDULE OF ACTS

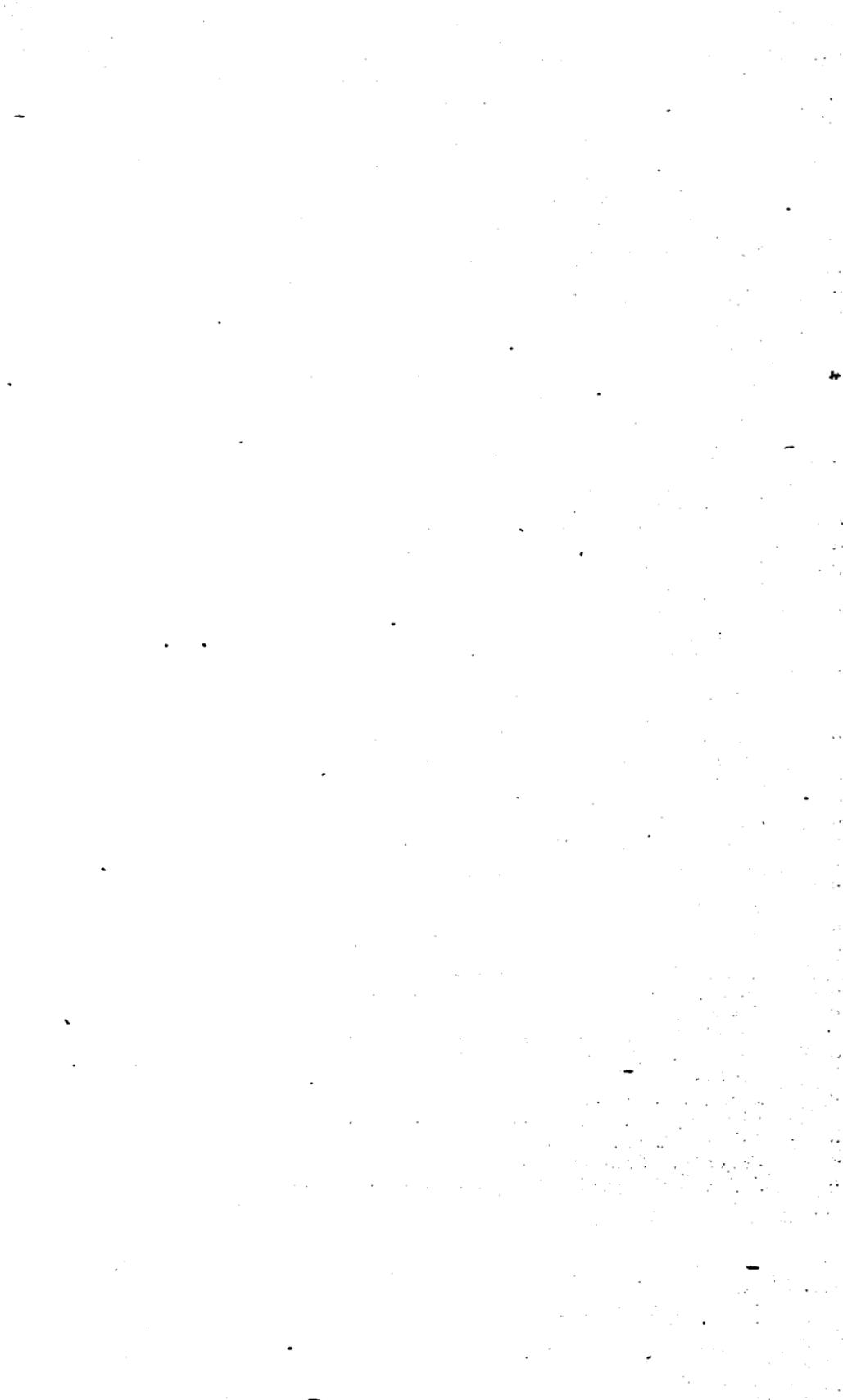
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ACTS

To revise, classify and consolidate the Public General Statutes which apply exclusively to Upper Canada.

CAP. I.

An Act to repeal certain Acts therein referred to.

WHEREAS it is expedient to revise, classify and consolidate the Public General Statutes which apply exclusively to Upper Canada, including both those passed by the Legislature of the late Province of Upper Canada, and those passed by the Parliament of Canada since the Union of the late Provinces of Upper and Lower Canada: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. This Act and the said Consolidated Statutes shall come into force on the day of , one thousand eight hundred and fifty , on and from which day the several Acts and parts of Acts (of the late Province of Upper Canada and of the Province of Canada) specified in the Schedule A to the said Consolidated Statutes annexed, are hereby repealed.

Commencement of the Consolidated Acts of U. C. Acts in Schedule A, repealed.

2. No Act nor part of an Act repealed by any of the Acts hereby repealed shall revive, but the same shall remain repealed.

Acts formerly repealed not to revive.

3. The repeal of the Acts hereby repealed is not to affect any penalty, forfeiture or liability incurred before this Act comes into force, or the proceedings for enforcing the same, nor to affect any act, right, matter or thing done, acquired, established, existing or pending under any of the said repealed Acts or parts of Acts: but every such penalty, forfeiture, liability and proceedings, and every such act, right, matter and thing so done, acquired, established, existing or pending, shall continue and be considered, dealt with, enjoyed, enforced and adjudged upon respectively as if such repeal had not taken place.

Penalties incurred. Pending proceedings, &c., saved.

CAP. II.

An Act respecting the Interpretation of certain words and terms therein mentioned.

TO prevent the unnecessary multiplication of words and to give fixed and definite meanings to certain words and expressions which may be provided for by a General Law : Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

What to constitute "The Consolidated Statutes of Upper Canada."

1. This and the following series of Acts shall constitute the Consolidated Statutes which apply to Upper Canada, exclusively ; and in pleading, citing or otherwise referring to them or any of them, it shall be sufficient to use the expression "The Consolidated Statutes of Upper Canada, Chapter . . ."

Meaning of the words "The Queen," "The Crown."

2. Unless otherwise declared or indicated by the context—The words "Her Majesty" "The Queen" or "The Crown," wherever used in the Consolidated Statutes of Upper Canada shall mean Her Majesty, Her Heirs and Successors.

Meaning of the words "The Governor."

3. The word "Governor" shall include the Governor, Lieutenant Governor, or person administering the Government.

Meaning of the word "Proclamation."

4. The word "Proclamation" when not otherwise expressed, shall mean a Proclamation under the Great Seal of Canada, and the word "Great Seal" shall mean the "Great Seal of this Province."

When Proclamation to be by order in Council.

5. When the Governor is authorized to do an Act by Proclamation it shall, unless otherwise expressed, mean a Proclamation issued under the Great Seal by order of the Governor in Council.

The words "Upper Canada."

6. The words "Upper Canada," shall mean that part of this Province which formerly constituted the Province of Upper Canada.

The words "Superior Courts."

7. The words "Superior Courts" shall mean the Court of Queen's Bench, the Court of Common Pleas and the Court of Chancery.

The words "Superior Court of Common Law."

8. The words "Superior Courts of Common Law" shall mean the two former, and "Court of Equity" shall mean the Court of Chancery.

9. Words importing the Singular Number or the Masculine Gender shall include more persons, parties or things of the same kind than one, and females as well as males—and the converse.

10. The word "Person" shall include any body corporate or politic, or party, and the heirs, executors, administrators or other legal representatives of such person to whom the context applies. The word "Person."

5 11. The word "Month" shall mean a Calendar month, and the word "Year" a Calendar year. The words "Month and Year."

12. The word "Oath" shall mean any oath lawfully administered, and shall include a Solemn Affirmation whenever an affirmation may be made instead of an oath, and in like cases the word "Sworn" shall include the word "Affirm." The words "Oath, Affirmation, &c."

13. In every case where an oath or affirmation is directed or authorized to be made before any Court, person or officer, such Court, person or officer shall have full power and authority to take and administer the oath or affirmation; and the wilful and corrupt making of any false statement in any such oath or affirmation, shall be wilful and corrupt perjury, and the wilful and corrupt making of any false statement in any declaration required or authorized by any of the Consolidated Statutes of Upper Canada, shall be a misdemeanor punishable as wilful and corrupt perjury. Who may administer oath, &c.

14. Every fine and penalty imposed by any such statute for the appropriation of which no other provision is therein made, and any duty or sum of money or the proceeds of any forfeiture by any such Statute given to the Crown, shall form part of "the Consolidated Revenue Fund," and be paid into the hands of Her Majesty's Receiver General to and for the public use of the Province, and be accounted for to Her Majesty through the Lords Commissioners of Her Majesty's Treasury, in such manner and form as Her Majesty may direct. Fines and penalties, how disposed of.

30 15. The words "Justice of the Peace," shall include Magistrate or two or more Justices of the Peace or Magistrates assembled or acting together; and if any thing be directed to be done by or before a Magistrate or a Justice of the Peace or other Public Functionary or Officer, it shall be done by or before one whose jurisdiction or powers extend to the place where such thing is to be done, and whenever power is given to any person, Officer or Functionary to do or enforce any Act or thing, all necessary powers to enable him to do or enforce such Act or thing shall be implied. The words "Justices of the Peace."

40 16. When any act or thing is required to be done by more than two persons, a majority of them shall be sufficient, unless otherwise specially provided. A majority to form a Quorum.

C A P . I I I .

An Act respecting the Territorial Division of Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

C O U N T I E S .

59 Geo. 3, c. 3.
14, 15 V. c. 5.
12 V. c. 11.

Existing or-
ganization
continued.

I. The Territorial Division of Upper Canada into Counties, shall continue as at present organized, and such Counties respectively shall consist of the several Townships, Cities (including former Liberties), Towns and Villages, according to the existing limits and boundaries thereof, and the other lands, as follows, that is to say :

Glengarry.

1.—THE COUNTY OF GLENGARRY,

Shall consist of the Townships of—

- | | |
|---------------------|-------------------|
| 1. Charlottenburgh, | 3. Lancaster, and |
| 2. Kenyon, | 4. Lochiel. |

Stormont.

2.—THE COUNTY OF STORMONT,

Shall consist of the Townships of—

- | | |
|-----------------------------------|----------------|
| 1. Cornwall, | 3. Osnabruck, |
| 2. Finch, | 4. Roxborough, |
| And the Town of..... 1. Cornwall. | |

Prescott.

3.—THE COUNTY OF PRESCOTT,

Shall consist of the Townships of—

- | | |
|------------------------------------|-----------------------|
| 1. Alfred, | 5. Longueuil, |
| 2. Caledonia, | 6. Plantagenet North, |
| 3. Hawkesbury East, | 7. Plantagenet South, |
| 4. Hawkesbury West, | |
| And the Town of..... 1. L'Orignal. | |

Russell.

4.—THE COUNTY OF RUSSELL,

Shall consist of the Townships of—

- | | |
|----------------|-------------------|
| 1. Clarence, | 3. Cambridge, and |
| 2. Cumberland, | 4. Russell. |

Carleton.

5.—THE COUNTY OF CARLETON,

Shall consist of the Townships of—

- | | |
|--------------------------------------|-----------------|
| 1. Fitzroy, | 6. March, |
| 2. Goulburn, | 7. Marlborough, |
| 3. Gower North, | 8. Nepean, |
| 4. Gloucester, | 9. Osgoode, |
| 5. Huntley, | 10. Tarbolton, |
| The City of..... 1. Ottawa, | |
| And the Village of..... 1. Richmond. | |

6.—THE COUNTY OF RENFREW,

Renfrew.

Shall consist of the Townships of—

- | | |
|------------------|------------------|
| 1. Admaston, | 15. McNab, |
| 2. Alice, | 16. Miller, |
| 3. North Algona, | 17. Matawatchan, |
| 4. South Algona, | 18. McKay, |
| 5. Blithfield, | 19. Pembroke, |
| 6. Bagot, | 20. Petawawa, |
| 7. Bromley, | 21. Ross, |
| 8. Buchanan, | 22. Rolph, |
| 9. Brougham, | 23. Stafford, |
| 10. Canonto, | 24. Sebastopol, |
| 11. Fraser, | 25. Westmeath, |
| 12. Grattan, | 26. Wylie, and |
| 13. Griffith, | 27. Wilberforce. |
| 14. Horton, | |

7.—THE COUNTY OF LANARK,

Lanark.

Shall consist of the Townships of—

- | | |
|-------------------------|-----------------------|
| 1. Burgess North, | 8. Lanark, |
| 2. Bathurst, | 9. Lavant, |
| 3. Beckwith, | 10. Montague, |
| 4. Drummond, | 11. Pakenham, |
| 5. Dalhousie, | 12. Ramsay, |
| 6. Darling, | 13. Sherbrooke North, |
| 7. Elmsley North, | 14. Sherbrooke South, |
| The Town of..... | 1. Perth, |
| And the Village of..... | 1. Smith's Falls. |

8.—THE COUNTY OF DUNDAS,

Dundas.

Shall consist of the Townships of—

- | | |
|-------------------------|-------------------|
| 1. Mountain, | 3. Winchester, |
| 2. Matilda, | 4. Williamsburgh, |
| And the Village of..... | 1. Iroquois. |

9.—THE COUNTY OF GRENVILLE,

Grenville.

Shall consist of the Townships of—

- | | |
|-------------------------|-------------------------|
| 1. Augusta, | 4. Oxford, (on Rideau.) |
| 2. Edwardsburgh, | 5. Wolford, |
| 3. Gower South, | |
| The Town of..... | 1. Prescott, |
| And the Village of..... | 1. Kemptville. |

10.—THE COUNTY OF LEEDS,

Leeds.

Shall consist of the Townships of—

- | | |
|-------------|------------------|
| 1. Burgess, | 3. Crosby North, |
| 2. Bastard, | 4. Crosby South, |

- | | |
|-------------------------------|-----------------------------|
| 5. Elmsley, | 2nd, 3rd, 4th, 5th and 6th |
| 6. Escott, | concessions of Lansdowne, |
| 7. Elizabethtown, | 10. Rear of Leeds and Lans- |
| 8. Kitley, | downe, comprising the re- |
| 9. Front of Leeds and Lans- | maining or rear concessions |
| downe, comprising the 1st, | thereof, |
| 2nd, 3rd, 4th and 5th conces- | 11. Yonge, |
| sions of Leeds, and the 1st, | |
| And the Town of..... | 1. Brockville. |

Frontenac.

11.—THE COUNTY OF FRONTENAC,

Shall consist of the Townships of—

- | | |
|-------------------|------------------------------|
| 1. Barrie, | 8. Loughborough, |
| 2. Bedford, | 9. Olden, |
| 3. Clarendon, | 10. Oso, |
| 4. Howe Island, | 11. Portland, |
| 5. Hinchinbrooke, | 12. Palmerston, |
| 6. Kennebec, | 13. Pittsburgh, |
| 7. Kingston, | 14. Storrington, |
| | 15. Wolfe Island, (including |
- Simcoe Island, Garden Island, Horse Shoe Island and Mud Island,)

And the City of..... 1. Kingston.

Addington.

12.—THE COUNTY OF ADDINGTON,

Shall consist of the Townships of—

- | | |
|--------------------|-----------------|
| 1. Anglesea, | 4. Ernesttown, |
| 2. Amherst Island, | 5. Kalader, and |
| 3. Camden East, | 6. Sheffield. |

Lennox.

13.—THE COUNTY OF LENNOX,

Shall consist of the Townships of—

- | | |
|---------------------------|--------------------------------|
| 1. Adolphustown, | 4. Fredericksburgh Additional, |
| 2. North Fredericksburgh, | 5. Richmond, |
| 3. South Fredericksburgh, | |

And the Village of..... 1. Napanee.

Prince Ed-
ward.

14.—THE COUNTY OF PRINCE EDWARD,

Shall consist of the Townships of—

- | | |
|------------------|------------------|
| 1. Athol, | 4. Hallowell, |
| 2. Ameliasburgh, | 5. Marysburgh, |
| 3. Hillier, | 6. Sophiasburgh, |

And the Town of..... 1. Picton.

Hastings.

15.—THE COUNTY OF HASTINGS,

Shall consist of the Townships of—

- | | |
|-----------------|----------------|
| 1. Elzevir, | 3. Huntingdon, |
| 2. Grimsthorpe, | 4. Hungerford, |

- 5. Lake,
- 6. Marmora,
- 7. Madoc,
- 8. Rawdon,
- 9. Sidney,
- 10. Tyendinaga,
- 11. Thurlow,
- 12. Tudor,
- The Town of..... 1. Belleville,
- And the Village of..... 1. Trenton.

16.—THE COUNTY OF NORTHUMBERLAND,

Northumber-
land.

Shall consist of the Townships of—

- 1. Alnwick,
- 2. Brighton,
- 3. Cramahe,
- 4. Haldimand,
- 5. Hamilton,
- 6. Murray,
- 7. Monaghan South,
- 8. Percy,
- 9. Seymour,
- And the Town of..... 1. Cobourg.

17.—THE COUNTY OF DURHAM,

Durham.

Shall consist of the Townships of—

- 1. Clarke,
- 2. Cavan,
- 3. Cartwright,
- 4. Darlington,
- 5. Hope,
- 6. Manvers,
- The Town of..... 1. Port Hope,
- 2. Bowmanville,
- And the Village of..... 1. Newcastle.

18.—THE COUNTY OF PETERBOROUGH,

Peterborough.

Shall consist of the Townships of—

- 1. Asphodel,
- 2. Anstruther,
- 3. Belmont,
- 4. Burleigh,
- 5. Cavendish,
- 6. Dummer,
- 7. Douro,
- 8. Ennismore,
- 9. Galway,
- 10. Harvey,
- 11. Monaghan North,
- 12. Methuen,
- 13. Smith,
- 14. Otonabee,
- And the Town of..... 1. Peterborough.

19.—THE COUNTY OF VICTORIA,

Victoria.

Shall consist of the Townships of—

- 1. Bexley,
- 2. Emily,
- 3. Eldon,
- 4. Fenelon,
- 5. Mariposa,
- 6. Ops,
- 7. Somerville,
- 8. Verulam,
- And the Town of..... 1. Lindsay.

20.—THE COUNTY OF SIMCOE,

Simcoe.

Shall consist of the Townships of—

- 1. Adjala,
- 2. Balaklava,
- 3. Essa,
- 4. Flos,

- | | |
|----------------------|------------------|
| 5. Gwillimbury West, | 14. Oro, |
| 6. Innisfil, | 15. Orillia, |
| 7. Muskako, | 16. Robinson, |
| 8. Matchedash, | 17. Sunnidale, |
| 9. Medonte, | 18. Tay, |
| 10. Mulmur, | 19. Tiny, |
| 11. Mono, | 20. Tecumseth, |
| 12. Nottawasaga, | 21. Tossorontio, |
21. Vespra, together with (exclusive of the Townships of Balaklava, Muskako and Robinson) the tract of land bounded on the east by the line between the late Home and Newcastle Districts prolonged to French River, on the west by Lake Huron, on the north by French River, and on the south by the River Severn and the Township of Rama, and the Islands in Lakes Simcoe and Huron, lying wholly or for the most part opposite to the said County of Simcoe, or any part thereof and contiguous thereto.

- And the Towns of.....
1. Barrie,
 2. Bradford, and
 3. Collingwood.

York.

21.—THE COUNTY OF YORK,

Shall consist of the Townships of—

- | | |
|-----------------------|-----------------|
| 1. Etobicoke, | 6. Markham, |
| 2. Gwillimbury East, | 7. Scarborough, |
| 3. Gwillimbury North, | 8. Vazughan, |
| 4. Georgina, | 9. Whitchurch, |
| 5. King, | 10. York, |

- The City of..... 1. Toronto,
And the Villages of.... 1. Newmarket,
2. Yorkville.

Peel.

22.—THE COUNTY OF PEEL,

Shall consist of the Townships of—

- | | |
|------------------|------------------|
| 1. Albion, | 4. Toronto, |
| 2. Caledon, | 5. Toronto Gore, |
| 3. Chinguacousy, | |

- And the Village of..... 1. Brampton.

Ontario.

23.—THE COUNTY OF ONTARIO,

Shall consist of the Townships of—

- | | |
|---------------|------------------|
| 1. Brock, | 6. Scugog, |
| 2. Mara, | 7. Scott, |
| 3. Pickering, | 8. Thora, |
| 4. Rama, | 9. Uxbridge, |
| 5. Reach, | 10. Whitby, |
| | 11. East Whitby, |

- The Town of..... 1. Whitby,
And the Village of.... 1. Oshawa.

24.—THE COUNTY OF HALTON,

Halton.

Shall consist of the Townships of—

- | | |
|-----------------------|---------------|
| 1. Esquesing, | 3. Nelson, |
| 2. Nassagaweya, | 4. Trafalgar, |
| And the Towns of..... | |
| 1. Milton, and | |
| 2. Oakville. | |

25.—THE COUNTY OF WATERLOO,

Waterloo.

Shall consist of the Townships of—

- | | |
|----------------------|----------------|
| 1. North Dumfries, | 4. Woodwich, |
| 2. Waterloo, | 5. Wellesley, |
| 3. Wilmot, | |
| The Town of..... | |
| 1. Galt, | |
| And the Villages of— | |
| 1. Berlin, | 3. Preston and |
| 2. New Hamburg, | 4. Waterloo. |

26.—THE COUNTY OF BRANT,

Brant.

Shall consist of the Townships of—

- | | |
|--------------------|---------------|
| 1. Brantford, | 4. Onondaga, |
| 2. Burford, | 5. Oakland, |
| 3. South Dumfries, | 6. Tuscarora, |
| And the Towns of— | |
| 1. Brantford and | 2. Paris. |

27.—THE COUNTY OF WELLINGTON,

Wellington.

Shall consist of the Townships of—

- | | |
|----------------------|-----------------|
| 1. Arthur, | 8. Maryborough, |
| 2. Amaranth, | 9. Minto, |
| 3. Erin, | 10. Nichol, |
| 4. Eramosa, | 11. Pilkington, |
| 5. Guelph, | 12. Puslinch, |
| 6. Garafraxa, | 13. Peel, |
| 7. Luther, | |
| The Town of..... | |
| 1. Guelph, | |
| And the Villages of— | |
| 1. Elora and | 2. Fergus. |

28.—THE COUNTY OF GREY,

Grey.

Shall consist of the Townships of—

- | | |
|-----------------|-----------------|
| 1. Artemesia, | 8. Holland, |
| 2. Bentinck, | 9. Keppel, |
| 3. Collingwood, | 10. Melancthon, |
| 4. Derby, | 11. Normanby, |
| 5. Euphrasia, | 12. Osprey, |
| 6. Egremont, | 13. Proton, |
| 7. Glenelg, | 14. Sydenham, |

15. Saint Vincent, 17. Sarawak, together with
 16. Sullivan, (exclusive of the Townships of Keppel and Sarawak) that portion of the Peninsular Tract of land known as the Indian Reserve, and situated between lines drawn northward from the north-east angle of Arran and the north-west angle of Derby, until they respectively strike Colpoy's Bay on the east side of the Indian Village, and waters of the Georgian Bay, and the Islands contiguous thereto,
 And the Town of.....1. Owen Sound.

Bruce.

29.—THE COUNTY OF BRUCE,

Shall consist of the Townships of—

- | | |
|---------------|-------------------------------|
| 1. Arran, | 9. Elderslie, |
| 2. Amable, | 10. Greenock, |
| 3. Albemarle, | 11. Huron, |
| 4. Brant, | 12. Kinloss, |
| 5. Bruce, | 13. Kincardine, |
| 6. Culross, | 14. Lindsay, |
| 7. Carrick, | 15. Sangeen, |
| 8. Eastnor, | 16. St. Edmund, together with |
- all that portion of the Peninsular Tract of land known as the Indian Reserve, and not included in the County of Grey, and the Islands in Lake Huron and the Georgian Bay contiguous thereto,
 And the Village of.....1. Walkerton.

Huron.

30.—THE COUNTY OF HURON,

Shall consist of the Townships of—

- | | |
|-----------------|------------------|
| 1. Ashfield, | 10. McKillop, |
| 2. Biddulph, | 11. Morris, |
| 3. Colborne, | 12. Stephen, |
| 4. Grey, | 13. Stanley, |
| 5. Goderich, | 14. Turnberry, |
| 6. Hay, | 15. Tuckersmith, |
| 7. Howick, | 16. Usborne, |
| 8. Hullett, | 17. Wawanosh, |
| 9. McGillivray, | |
- The Town of..... 1. Goderich,
 And the Village of..... 1. Clinton.

Perth.

31.—THE COUNTY OF PERTH,

Shall consist of the Townships of—

- | | |
|--|-----------------|
| 1. Blanchard, | 6. Elma, |
| 2. Downie, including the Gore of Downie, | 7. Fullarton, |
| 3. Ellice, | 8. Hibbert, |
| 4. Easthope North, | 9. Logan, |
| 5. Easthope South, | 10. Mornington, |
| | 11. Wallace, |
- And the Villages of—
 1. Mitchell, 3. St. Marys.
 2. Stratford, and

32.—THE COUNTY OF LAMBTON,

Lambton.

Shall consist of the Townships of—

- | | |
|----------------------|------------------------------|
| 1. Bosanquet, | 5. Sarnia, |
| 2. Brooke, | 9. Sombra, including Walpole |
| 3. Dawn, | Island, St. Anne's Island, |
| 4. Euphemia, | and the other Islands at the |
| 5. Enniskillen, | mouth of the River St. |
| 6. Moore, | Clair, |
| 7. Plympton, | 10. Warwick, |
| And the Town of..... | 1. Port Sarnia. |

33.—THE COUNTY OF KENT,

Kent.

Shall consist of the Townships of—

- | | |
|----------------------|-------------------|
| 1. Camden West, | 7. Orford, |
| 2. Chatham, | 8. Raleigh, |
| 3. Dover East, | 9. Romney, |
| 4. Dover West, | 10. Tilbury East, |
| 5. Howard, | 11. Zone, |
| 6. Harwich, | |
| And the Town of..... | 1. Chatham. |

34.—THE COUNTY OF ESSEX,

Essex.

Shall consist of the Townships of—

- | | |
|-------------------|------------------|
| 1. Anderdon, | 6. Malden, |
| 2. Colchester, | 7. Rochester, |
| 3. Gosfield, | 8. Sandwich, |
| 4. Mersea, | 9. Tilbury West, |
| 5. Maidstone, | |
| And the Towns of— | |
| 1. Amherstburgh, | 3. Windsor. |
| 2. Sandwich, and | |

35.—THE COUNTY OF ELGIN,

Elgin.

Shall consist of the Townships of—

- | | |
|----------------------|----------------------|
| 1. Aldborough, | 5. Southwold, |
| 2. Bayham, | 6. South Dorchester, |
| 3. Dunwich, | 7. Yarmouth, |
| 4. Malahide, | |
| And the Villages of— | |
| 1. St. Thomas, and | 2. Vienna. |

36.—THE COUNTY OF MIDDLESEX,

Middlesex.

Shall consist of the Townships of—

- | | |
|----------------------|--------------------|
| 1. Adelaide, | 7. London, |
| 2. Carradoc, | 8. Mosa, |
| 3. Dorchester North, | 9. Metcalfe, |
| 4. Delaware, | 10. Nissouri West, |
| 5. Ekfrid, | 11. Williams, |
| 6. Lobo, | 12. Westminster, |
| And the City of..... | 1. London. |

Norfolk.

37.—THE COUNTY OF NORFOLK,

Shall consist of the Townships of—

- | | |
|--------------------|--------------------------------------|
| 1. Charlotteville, | 5. Windham, |
| 2. Houghton, | 6. Woodhouse, |
| 3. Middleton, | 7. Walsingham, including Long Point, |
| 4. Townsend, | |
- And the Town of.....1. Simcoe.

Oxford.

38.—THE COUNTY OF OXFORD,

Shall consist of the Townships of—

- | | |
|-------------------|------------------|
| 1. Blenheim, | 7. Oxford North, |
| 2. Blandford, | 8. Oxford East, |
| 3. Dereham, | 9. Oxford West, |
| 4. North Norwich, | 10. Zorra East, |
| 5. South Norwich, | 11. Zorra West, |
| 6. Nissouri East, | |
- The Town of..... 1. Woodstock,
And the Village of..... 1. Ingersoll.

Haldimand.

39.—THE COUNTY OF HALDIMAND,

Shall consist of the Townships of—

- | | |
|------------------|----------------|
| 1. Cayuga North, | 6. Oneida, |
| 2. Cayuga South, | 7. Rainham, |
| 3. Canborough, | 8. Seneca, |
| 4. Dunn, | 9. Sherbrooke, |
| 5. Moulton, | 10. Walpole, |
- And the Village of..... 1. Caledonia.

Welland.

40.—THE COUNTY OF WELLAND,

Shall consist of the Townships of—

- | | |
|-----------------|----------------|
| 1. Bertie, | 5. Stamford, |
| 2. Crowland, | 6. Thorold, |
| 3. Humberstone, | 7. Willoughby, |
| 4. Pelham, | 8. Wainfleet, |
- The Town of..... 1. Clifton,
And the Villages of—
- | | |
|---------------|-----------------------|
| 1. Chippewa, | 3. Merrittsville, and |
| 2. Fort Erie, | 4. Thorold. |

Lincoln.

41.—THE COUNTY OF LINCOLN,

Shall consist of the Townships of—

- | | |
|--------------|------------------|
| 1. Clinton, | 5. Gainsborough, |
| 2. Caistor, | 6. Louth, |
| 3. Grimsby, | 7. Niagara, |
| 4. Grantham, | |
- And the Towns of—
- | | |
|-------------------|--------------------|
| 1. Niagara, | 3. St. Catherines. |
| 2. Queenston, and | |

42.—THE COUNTY OF WENTWORTH,

Wentworth.

Shall consist of the Townships of—

- | | |
|--------------|----------------------|
| 1. Ancaster, | 5. Flamborough East, |
| 2. Beverly, | 6. Flamborough West, |
| 3. Binbrook, | 7. Glanford, |
| 4. Barton, | 8. Saltfleet, |

The City of..... 1. Hamilton,
 And the Town of..... 1. Dundas.

UNITED COUNTIES.

2. For municipal, judicial, and all purposes not otherwise provided for by law, the following Counties, already united, shall continue to form Unions of Counties, that is to say :

1. Frontenac, Lennox and Addington ;
2. Stormont, Dundas and Glengarry ;
3. Leeds and Grenville ;
4. Huron and Bruce ;
5. Lanark and Renfrew ;
6. Northumberland and Durham ;
7. Peterboro' and Victoria ;
8. Prescott and Russell ;
9. York and Peel.

But, for municipal purposes, the Cities of—

1. Toronto,
2. Hamilton,
3. Kingston,
4. London, and
5. Ottawa,

Cities not to be
 part of Counties
 for municipal
 purposes.

5 shall not form parts of the Counties of York, Wentworth, Frontenac, Middlesex and Carleton, within the limits whereof they are respectively situate, but shall for municipal purposes, be Counties of themselves.

10 And each of such Unions, under the name of the United Counties of _____ and _____ (*naming them*), shall for all purposes (except as before excepted) have all Courts, Offices and Institutions established by Law, and now or hereafter pertaining to Counties, in common between them, so long as such Counties remain united.

Names of
 United Counties.

15 3. The Courts of Assize and Nisi Prius, of Oyer and Terminer and Gaol Delivery, of Quarter Sessions of the Peace, County Courts, Surrogate Courts and Division Courts, shall be held in and for the said Counties and United Counties as heretofore held in and for the several Counties and United Counties in Upper Canada.

Courts to be
 held as formerly

20 4. The Court-houses and Gaols, County Grammar School-houses, and all other property, real and personal, and all the Offices

The property,
 officers, &c.,
 continued.

Offices and Officers of the Counties and United Counties existing at the time this Act comes into force, shall belong to and continue in the Counties and United Counties respectively of the like names under this Act, and, as respects such Unions, until the dissolution thereof under the provisions of the Act for the "Regulation of Municipal Insitutions in Upper Canada." 5

14, 15 V. c. 5,
s. 11.

Limits of
Townships
bounded by
Lakes or
Rivers.

5. The limits of all the Townships lying on the River St. Lawrence, Lake Ontario, the River Niagara, Lake Erie, the River Detroit, Lake St. Clair, the River St. Clair, and Lake Huron, 10 shall extend to the boundary of the Province in such lake or river, in prolongation of the outlines of each Township respectively; and such Townships shall also include all the Islands not herein otherwise provided for, the whole or the greater part of which are comprised within the said outlines so prolonged. 15

Limits of
Townships on
the Ottawa.

6. The limits of the Townships lying on the River Ottawa shall in like manner extend to the middle of the main channel thereof, and such Townships shall also include all the Islands not herein otherwise provided for, the whole or the greater part of which are comprised within the said outlines so prolonged; 20 excepting always the Islands in front of the Seignior of La Petite Nation and the Grand Calumet, and Grand and Little Allumettes Islands, which belong to Lower Canada, the middle of the main channel between the last named Islands, and the southerly bank of the Ottawa River, being the boundary between 25 Upper and Lower Canada.

In Glengarry.

7. The limits of the Townships in the County of Glengarry shall in like manner extend to the middle of Lake St. Francis, and to the middle of the main channel of the River St. Lawrence, and shall also include all the Islands not herein otherwise provided for, the whole or the greater part of which are comprised 30 within the outlines of the said Townships so prolonged.

On Bay of
Quinté.

8. The limits of the Townships on the Bay of Quinté, the River Trent and its Lakes, Lake Simcoe, the River Severn, the River Rideau and its Lakes, the River Thames, the Grand 35 River, and any other rivers, lakes and bays not hereinbefore mentioned, shall in like manner extend to the middle of the said lakes and bays, and to the middle of the main channels of the said rivers respectively, and shall also include all the Islands not herein otherwise provided for, the whole or the 40 greater part of which are comprised within the outlines of the said Townships so prolonged:

The last four
sections not to
include Is-
lands being
townships of
themselves.

9. The last four preceding Sections shall not extend to any Islands or parts of Islands which are Townships by themselves, or which have been expressly included in other Townships in 45 the original surveys and plans thereof, remaining of record in the office of the Commissioner of Crown Lands, or by Statute, but the same shall remain parts of such Townships.

10. The Governor may, by Order in Council, issue a Proclamation under the Great Seal of the Province, to have force of law from a day to be named therein, and thereby constitute Townships, Counties, and Unions of Townships and Counties in those parts of Upper Canada in which Townships and Counties or Unions thereof, are not previously constituted, and fix the metes and boundaries thereof.

The Governor may constitute Townships and Unions, &c.

11. And may also, by Proclamation, annex any Gore, or small Tract of Land not included in the original survey or forming part of any Township, and not of sufficient extent to form a Township of itself, to any Township, or partly to each of more Townships than one, to which it may be adjacent; and such Gore or Tract shall thenceforward for all purposes form part of such Township or Townships.

The Governor may annex Gores.

CAP. IV.

An Act respecting certain sources of Public Revenue and Government Debentures.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

MARRIAGE LICENSE FUND.

Fees for Marriage Licenses. 1. The portion of the Marriage License Fund arising in Upper Canada, shall be at the disposal of the Legislature, for purposes of public interest in Upper Canada. 13 & 14 V. c. 70. 5

APPROPRIATION OF FINES AND PENALTIES.

Fines and penalties. 2. When by any Statute having force of law in Upper Canada only, any fine or penalty is imposed for the punishment of any offence prohibited by any Statute, and no provision is made therein for the appropriation of the fine or penalty, the same shall be paid to the Receiver General. 7 W. 4, c. 14, s. 5. 10

GOVERNMENT DEBENTURES.

Receiver General to pay money upon warrants of the Governor. 3. When by any such Statute any money is granted to be paid out of the public revenues, or when by any such Statute the Government is authorized to borrow money upon Debentures, such moneys shall be paid by the Receiver General, under Warrants for that purpose to be issued by the Governor or His Deputy. 7 W. 4, c. 14, s. 3-13.—I. S. 3 & 4 V. c. 35, s. 40. 15

How public money to be accounted for. 4. When by any such Statute any money is granted to be paid out of the Revenues at the disposal of the Legislature, or when any money comes into the hands of, or is paid out by the Receiver General under any such Statute, the same shall be accounted for by the Receiver General, through the Lords Commissioners of the Treasury as Her Majesty may direct. 7 W. 4, c. 14, s. 4-13—S4 G. 3, c. 5—12 V. c. 10, s. 5, No. 19. 20

Government Debentures to be signed by the Receiver General. 5. When any such Statute authorizes a loan to be raised, any Debentures issued by Government for that purpose shall, unless it is otherwise provided in the Statute, be signed by the Receiver General, and shall, with the interest and all charges attending the same, be chargeable upon and be repaid by or out of the moneys which come into his hands for the public uses of the Province, subject to be appropriated by the Legislature. 7 W. 4, c. 14, s. 6—12 V. c. 5, s. 1 & 2. 25 30

Debentures overdue to be received as cash by Collectors, &c. 6. The Debentures so issued, and from time to time remaining undischarged and uncanceled, shall, after the same become due and payable, be received and taken as cash by every Receiver and Collector of Customs, or of any revenue or tax whatsoever, granted, 35

granted, due or payable to Her Majesty by any Statute or otherwise, and shall also be received at the office of the Receiver General from the said Collectors and Receivers, or from any person there making any payment to Her Majesty, upon any account, or for any cause.

7. The Debentures aforesaid shall be charged against and credited to such Collector, Receiver, and other person, and such Receiver General, respectively, in their accounts with each other, and with Her Majesty, and the interest accrued upon any such Debentures shall be allowed to any person or body corporate or politic, paying the same to any Receiver or Collector as aforesaid, to the respective days upon which such Debentures are so paid; but no interest shall run or be paid or be chargeable upon or for any such Debentures during the time they remain in the hands of any of the said Receivers or Collectors.

And be received as cash by the Receiver General.

8. Every Receiver and Collector shall require the person paying him any Debenture bearing interest to write his name, and in words at full length, the day of the month and year in which the same is so paid, and to such day the interest which the Receiver or Collector has allowed as aforesaid shall be allowed to him as aforesaid, upon his paying such Debenture to the Receiver General. 7 W. 4, c. 14, s. 7.

Date of payment in as cash to be indorsed.

9. The Receiver General shall before each Session of the Legislature, transmit to the Governor, to be laid before the Legislature, a correct account,—

Return to be made to the Governor by Receiver General yearly.

(1). Of the numbers, amounts and dates, of the different Debentures issued by him under any such Act as aforesaid;

(2). Of the amount of the Debentures redeemed by him, and the interest paid thereon, respectively;

(3). And of the amount of the said Debentures outstanding and unredeemed at the periods aforesaid;

(4). And also of the expenses attending the issuing of the same, and of carrying into execution the several Acts for that purpose. 7 W. 4, c. 14, s. 9.

10. Unless otherwise provided, the interest accruing upon any such Debentures shall be demandable in half-yearly periods, computed from the date thereof, and shall be paid on demand by the Receiver General. 7 W. 4, c. 14, s. 10.

Interest on debentures to be paid half-yearly.

11. The Receiver General, at the time of the payment of the interest, shall take receipts for the same from the parties respectively, and shall endorse on each Debenture the amount of the interest paid thereon, and the period up to which the same is paid.

Receipts to be taken for interest—when paid.

Warrants to be issued for the payment of interest.

12. The Governor shall, after the thirtieth day of June, and thirty-first day of December in each year, issue warrants to the Receiver General for the payment of the amount of interest advanced, according to the receipts to be by him taken as aforesaid.

5

A separate warrant for payment of each debenture.

13. The Governor shall for each Debenture, when it becomes due and is presented for payment, issue a separate warrant to the Receiver General in favour of the lawful holder of such Debenture ; and the Receiver General shall cancel every such Debenture when discharged and paid off. 7 W. 4, c. 14, s. 11. 10

Debentures called in interest on to cease.

14. In case at any time after any such Debentures become due, the Governor directs a notice to be inserted in the Gazette, requiring the holders thereof to present the same for payment, according to the conditions of any Act ; and if after the insertion of such notice for three months, any such Debenture then payable remains out more than six months from the first publication of the notice, all interest thereon shall cease at the expiration of the said six months. 7 W. 4, c. 14, s. 12. 15

C A P. V.

An Act respecting the maintenance of persons disabled, and the Widows and Children of persons killed in the Military Service of the Crown.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Every person at present allowed a Pension shall, subject to the provisions of this Act, continue to receive the same; and every Officer, Non-commissioned Officer, and Private Militiaman, who acted as Provincial Artillery Driver, or in the Coloured Corps, or was employed with the Indians, or served in the Provincial Marine Establishment, whose name now stands on the Pension List of Upper Canada, or whose Widow or Children is or are now receiving a pension on his account, shall be deemed to have been a Militiaman. 53 G. 3, c. 3, s. 4. Present pensions continued.
2. In case any Officer, Non-commissioned Officer, Private Militiaman, or Teamster of the Militia, or of any such Corps or Detachment, has been, or is after the passing of this Act killed in any engagement with the Enemy, or by accident, or casualty while performing any duty on actual Service in the Militia, or did die, or hereafter dies while in captivity as a Prisoner of War, or of wounds received in Action with the Enemy, or of any disease contracted while on such Service, or within twelve months after such disease was contracted, and left or leaves a Widow, or a Child or Children; his Widow during her Widowhood, and in case of her death or marriage, his Child or Children, being under the age of sixteen years, and until they respectively attain that age, shall be allowed a pension of Twenty Pounds per annum, to be paid to such Widow, or, in case of her death or marriage, to be paid for the use of such Child or Children, to his or their Guardian, or to the Executor or Administrator of his or their Father, by the Receiver General, out of any moneys in his hands subject to the disposition of the Legislature, and in discharge of the Warrants of the Governor, who may order such pension to be paid in advance quarterly or half yearly. 53 G. 3, c. 4, s. 5, 7 G. 4, c. 5, s. 5. Description of persons entitled to pensions.
3. Every person who has been or is after the passing of this Act wounded, or in any way disabled while in the Public Service as a Militiaman, and is unable to maintain himself, may claim and be allowed a pension of Twenty Pounds per annum. 1 V. c. 44, s. 5, 3 V. c. 27. Persons wounded or disabled.
4. In the case of any person claiming such pension, as having been so wounded or disabled since the War with the United States of America, the Governor may appoint three Surgeons (legally authorized to practise Physic and Surgery, and The Governor may appoint local medical Boards to examine.

examine applicants for pensions.

and resident in the County in which the person resides,) to examine him, and the decision of such Surgeons, or of any two of them shall be final; and if they, or any two of them are satisfied upon examination, that such person is actually disabled from wounds or accident received in such Service, and certify the same, then, upon such certificate being submitted to the Governor, he may cause the name of such person to be placed on the Militia Pension List of Upper Canada, and such person shall from thenceforth receive a Pension of Twenty Pounds per annum, in the same manner as other Militia Pensioners. 7 W. 4, c. 103. 5 10

May appoint a General Board.

5. The Governor may from time to time appoint a Board, consisting of three or more persons, who shall sit in the City of Toronto, and examine any person claiming a Pension for wounds received while on actual Service as a Militiaman during the War with the United States, whom the Governor may require to appear before them, and the Board shall enquire into the nature of such wounds, and the circumstances under which they were received, and if such wounds be found and declared by the Board to have disabled the person inspected from maintaining himself by labour, the Governor may direct the name of such person to be placed on the Pension List, and such person shall from thenceforth receive a Pension of Twenty Pounds per annum, in the same manner as other Militia Pensioners. 3 V. c. 27, s. 1. 15 20 25

The Governor may require pensioner to appear before such Board.

6. The Governor may require any person who now is, or hereafter may be placed on the Pension List of Upper Canada as a disabled Militiaman, to present himself once in each year before the said Board, for examination; and if the Board reports that such person is then able to maintain himself by labour, the Governor may direct the name of such person to be erased from the Pension List, and his pension shall cease. 3 V. c. 27, s. 2. 30

What proof the Governor may require.

7. The Governor may require any person receiving a pension as the Widow of a deceased Militiaman, to adduce proof to the satisfaction of the Board hereinbefore last mentioned, that she is the Widow of such deceased Militiaman, which proof shall not be limited to the oath of the Pensioner; and if the said Board be of opinion that she is not the Widow of such deceased Militiaman, then her name shall be erased from the Pension List, and her Pension shall cease. 3 V. c. 27, s. 3. 35 40

More than the oath of a widow may be required.

8. The Governor may require any person hereafter claiming a pension as the Widow of a deceased Militiaman, to give, besides her own oath, such evidence of her being such Widow as he may deem expedient. 3 V. c. 27, s. 4. 45

The General Board may in-

9. In every case where a pension has been granted, or shall hereafter be applied for by or granted to any Widow or Child of 50

of a deceased Militiaman, who died after his discharge from actual service, the said last mentioned Board may inquire into all cases. inquire into the circumstances under which such Militiaman died, and whether his death was caused by disease contracted or wounds received while in actual service; and if the Board reports to the Governor that such Militiaman did not die from disease so contracted or wounds so received, the name of his Widow or Child shall be erased from the Pension List, and the pension shall cease, or the application shall be rejected, (as the case requires.) 3 V. c. 27, s. 4.

10. Every Pensioner on the Militia Pension List shall, as soon as convenient after the first day of January, and the first day of July in each year, transmit to the Receiver General an affidavit (or affirmation) such as the case requires, made before a Justice of the Peace having Jurisdiction in the County or place in which the same is administered, in one of the following forms: 2 Geo. 4, c. 4, s. 15, 3 V. c. 44, s. 3. Affidavits to be made by pensioners half-yearly.

1.—I, A. B., of _____, in the County of _____, late a _____, in the _____, Regiment of _____ Militia, do solemnly swear (or affirm) that I am the person whose name has been heretofore inserted in the Pension List of Upper Canada. Forms of.

Or,

2.—I, G. H., of _____, in the County of _____, do solemnly swear (or affirm) that I am the Widow of A. B., who was killed (or died of wounds received) in action with the enemy, (or was killed or died in any other manner hereinbefore mentioned, as the case may be.)

Or,

3.—I, G. H., of _____, in the County of _____, do solemnly swear (or affirm) that I am the Widow of A. B., who died from disease contracted whilst on Service.

Or, in the case of a Child or of Children,

4.—I, A. B., of _____, in the County of _____, Guardian of the Child (or Children) of _____, or Executor (or Administrator) of _____, (as the case may be,) do solemnly swear (or affirm) that I verily believe that G. H., K. L. and M. N. (naming all the Children under sixteen years of age), are Children of the said _____, who was killed in action with the enemy,—or, who died from wounds received in action,—or, who died from disease contracted whilst on Service (or as the case may be as aforesaid); and that each of them the said G. H., K. L. and M. N. is under the age of sixteen years. (2 Geo. 4, c. 4, s. 18.)

To be approved of by a Justice of the Peace or the Senior officer of Militia.

11. Any one of Her Majesty's Justices of the Peace, or the Senior Officer of the Regiment of Militia within whose limits the person making such affidavit (or affirmation) resides, is to certify, in confirmation of the same, in the form following :

I, C. D., one of Her Majesty's Justices of the Peace (or the Senior Officer of the Regiment of Militia, *as the case may be*), do hereby certify that the above named deponent (or affirmant) A. B. (or G. H.) is the person he (or she) alleges himself (or herself) to be ; and that I verily believe the facts alleged in his (or her) affidavit (or affirmation) to be just and true.

Dated day of , 18 .

Such affidavit and certificate sufficient to authorize payment.

And such affidavit (or affirmation) and certificate, with the receipt of the pensioner Widow, Guardian, Executor or Administrator, or his or her Agent (*as the case may be*), shall be a sufficient Voucher for the payment of the Pension.

Persons specially provided for not within this Act.

12. No person provided for by any special Act shall be allowed a pension under this Act. 1 V. c. 44, s. 4.

Persons otherwise provided for excluded.

13. No person receiving a Pension in any other of Her Majesty's dominions, by reason of wounds or injuries received on Military Service in Upper Canada, shall receive any additional Pension by virtue of this Act. 2 Geo. 4, c. 4, s. 22.

Warrants provided for.

14. To avoid the unnecessary multiplication of Warrants, the Governor may by one or more Warrant or Warrants order the appropriation and payment of the several sums therein named by the Receiver General to the purposes of this Act. 7 Geo. 4, c. 6, s. 7.

Notice of payment ordered to be given by Receiver General.

15. When the Governor, from time to time, orders the payment of the pensions aforesaid, or any of them, the Receiver General shall insert a notice thereof in the *Gazette* for three months immediately after such order. 7 Geo. 4, c. 6, s. 6.

CAP. VI.

An Act respecting Property and Civil Rights.

WHEREAS by the first Act passed in the first Session of the Parliament of Upper Canada, on the Fifteenth day of October one thousand seven hundred and ninety-two, it was among other things enacted that in all matters of controversy relative to property and civil rights the laws of England should be the rule for the decision of the same, and that all matters relative to testimony and legal proof in the investigation of fact should be regulated by the rules of evidence established in England, but that nothing therein contained should extinguish, release, discharge or affect any right, lawful claim or incumbrance to and upon any lands, tenements or hereditaments within Upper Canada, or should rescind, vacate or affect any contract or security then made and executed conformably to the laws of Canada under the Imperial Statute passed in the fourteenth year of the Reign of His Majesty King George the Third, intituled: *An Act for making more effectual provision for the Government of the Province of Quebec, in North America*, or vary or interfere with any subsisting provisions respecting Ecclesiastical Rights or Dues, or should introduce any of the laws of England respecting the maintenance of the poor, or respecting bankrupts: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Recited of Act
of U. C.
32 G. 3, c. 1

THE LAW OF ENGLAND TO BE THE RULE.

1. Subject to the exceptions and provisions above recited, in all matters of controversy relative to property and Civil Rights resort shall be had to the laws of England as they stood on the said fifteenth day of October one thousand seven hundred and ninety-two, as the rule for the decision of the same, and all matters relative to testimony and legal proof in the investigation of fact and the forms thereof in the several Courts of Law and Equity in Upper Canada, shall be regulated by the rules of evidence established in England, as they existed on the day and year last aforesaid, except so far as the same have since been repealed, altered, varied, modified or affected by any Act of the late Province of Upper Canada, or of the Province of Canada, still having force of law, or by judicial decisions of the Superior Courts of Law or Equity in Upper Canada. [32 Geo. 3, c. 1.]

The Law of
England to be
the rule of
decision.

STATUTES OF JEOPAILS ADOPTED.

2. The Statutes of jeofails, of limitations, and for the amendment of the law excepting those of mere local expediency which previous to the seventeenth day of January one thousand eight hundred and twenty-two had been enacted respecting the law of England and continued in force, shall be valid and effectual for the same purposes in Upper Canada, excepting

Statutes of
Jeofails, &c.,
adopted.

so far as the same have since the day last aforesaid, been repealed, altered, varied, modified or affected in the manner mentioned in the first section of this Act. 3 Geo. 4, c. 1, s. 24.

C. P.

CAP. VII.

An Act respecting the Superior Courts of Civil and Criminal jurisdiction in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Her Majesty's Court of Queen's Bench for Upper Canada, Courts of Q. B. and C. P. continued.
5 and the Court of Common Pleas for Upper Canada, shall continue under the names aforesaid. 3, 4 G. 3, c. 2, s. 1.
2. The said Court of Queen's Bench shall, during the reign Style or name of such Courts.
of a King, be called "His Majesty's Court of King's Bench for Upper Canada," and during the reign of a Queen "Her Majesty's Court of Queen's Bench for Upper Canada;" 2
10 V. c. 1. s. 1.
3. The said Courts shall be Courts of Record of Original Jurisdiction
and Coordinate jurisdiction, and shall respectively possess of
all such powers and authorities as by the law of England
15 are incident to a Superior Court of Civil and Criminal jurisdiction; and may and shall hold plea in all and all manner of actions, causes and suits as well Criminal as Civil, real, personal and mixed arising, happening, or being
20 within Upper Canada, and may and shall proceed in such Actions, Causes and Suits by such process and course as are provided by law, and as shall tend with justice and dispatch to determine the same; and may and shall hear and determine all issues of law; and may and shall also hear and (except in cases otherwise provided for) by and with an inquest of
25 twelve good and lawful men, determine all issues of fact that may be joined in any such Action, Cause or Suit, and Judgment thereon give, and execution thereof award in as full and ample a manner as can or may be done in Her Majesty's Courts of Queen's Bench, Common Bench, or in matters which regard
30 the Queen's revenue (including the Condemnation of Contraband or Smuggled Goods,) by the Court of Exchequer in England. 12 V. c. 63, s. 1.
4. The aforesaid Courts shall be held at the City of Toronto. Where to be held.
22 V. c. 63, s. 8.
5. The said Court of Queen's Bench shall be presided over Chief Justices and Judges of
by the Chief Justice of Upper Canada and two Puisne Justices, and the said Court of Common Pleas by a Chief Justice and two
Puisne Justices, and such Courts respectively may be holden
35 by any one or more of the Judges thereof in the absence of the others; and the Chief Justice and Justices of the said Courts respectively shall have, use and exercise all the rights, incidents, and privileges of a Judge of a Court of Record and all other
rights,

rights, incidents and privileges as fully to all intents and purposes as the same are used, exercised or enjoyed by any of the Judges of any of Her Majesty's Superior Courts of Common Law at Westminster in England. 34 G. 3, c. 2, s. 1, 12 V. c. 63, s. 1.

5

Rank of the Judges.

6. The Chief Justice of the said Court of Common Pleas, shall have rank and precedence next after the Chancellor of Upper Canada, and the Puisne Judges of the Superior Courts of Common Law and Equity in Upper Canada, shall have rank and precedence as between themselves according to the Seniority 10 of appointment to their respective Offices.

The Crown may supply vacancies.

7. Her Majesty may from time to time supply any vacancy in the number of the Judges in either of the said Courts of Common Law by appointing by Letters Patent under the Great Seal of this Province, a Barrister of the Upper Canada Bar of at 15 least ten years' standing to fill such vacancy.

Oath of office of the Judges.

8. Every Judge of the said Superior Courts of Common Law previous to entering upon the duties of his Office shall take the following oath, to be administered to the Chief Justice of the said Courts respectively, by the Governor in Council, and to the 20 Puisne Judges in open Court, by the Chief Justice of the Court for which such Puisne Judge is appointed. 12 V. c. 63, s. 7.

OATH.

" I, do solemnly and sincerely promise and
 " swear that I will duly and faithfully, and to the best of my
 " skill and knowledge, execute the powers and trusts reposed 25
 " in me (as Chief Justice or one of the Puisne Judges) of the
 " Court of . . . So help me God."

PRACTICE COURT.

Practice Court.

9. Any one Judge of either of such Superior Courts may sit in Banc apart from his brethren at any time when such Courts may by law sit in Banc, either while they are actually 30 so sitting, or while their sittings within such time are suspended or adjourned; and every such Judge so sitting apart in Banc, shall hold the Practice Court shall have the same powers and authority as belong to either of such Superior Courts in any way relating to the business of adding or justifying bail, 35 discharging insolvent debtors, administering oaths, hearing and determining matters on motion, and making rules and orders in causes and business depending in either of the said Courts, in the same manner and with the same force, validity and effect, as might be done by the Court in which such 40 causes or business are respectively depending. 13, 14 V. c. 51, s. 3, 12 V. c. 63, s. 10.

JUDGES'

JUDGES' CHAMBERS.

10. The Chief Justices and Judges of the said respective Courts, shall, in rotation or otherwise as they may agree among themselves, sit in Chambers or elsewhere, and there transact any such business as may be transacted by a single Judge out of Court, whether such business is in the Court of which such Judge is a member or not, subject to the right of appeal to the full Court in which such matter may be depending. 12 V. c. 63, s. 9, 13, 14 V. c. 51, s. 5.

A Judge to sit in Chambers.

TENURE OF OFFICE.

11. The Judges of the said Superior Courts of Common Law, shall hold their offices during good behaviour, and all future Commissions to the Judges of the said Courts shall be to hold during good behaviour, and the Commissions of Judges for the time being shall continue and remain in full force during good behaviour, notwithstanding the demise of the Crown. 12 V. c. 63, s. 4.

Tenure of office.

REMOVAL AND RIGHT OF APPEAL.

12. The Governor may, upon the address of both Houses of the Provincial Parliament, remove any such Judge; and in case any Judge so removed, thinks himself aggrieved by such removal, he may within six months appeal to Her Majesty in Her Privy Council, and in case of such appeal the motion shall not be final until such appeal has been determined by Her Majesty in Her Privy Council.

Removal of Judges and right to appeal.

APPOINTMENT OF A SUCCESSOR.

13. In case of the removal of any Judge of the said Courts in manner aforesaid, the Governor may appoint by Commission under the Great Seal of the Province, some fit and proper person to hold the said Office until Her Majesty's pleasure is made known, but such appointment shall be held to be superseded by the issuing of a Commission under the Great Seal of this Province in the terms first directed by this Act, to the same person or to such other person as Her Majesty appoints in the place of any Judge removed in manner aforesaid, or by the signification within the Province of the decision of Her Majesty in Her Privy Council restoring to his office any Judge so removed. 4 W. 4, c. 2, s. 2.

Appointment of Successor.

SALARIES.

14. There shall be charged upon and paid out of the Consolidated Revenue Fund of this Province, (after paying or reserving sufficient to pay all such sums as have been directed by any Act of the Parliament of this Province passed prior to the

Salaries charged on the Consolidated Revenue Fund.

the 30th May, 1849, to be paid out of the same, but with preference to all other payments after that date charged thereon,) the yearly sums following as and for the salaries of the said Judges, that is to say: to each of the said Chief Justices, one thousand two hundred and fifty pounds, and to each of the said 5
Puisne Justices, one thousand pounds, to be paid quarterly by equal portions on the first days of January, April, July and October in each year, free and clear from all taxes and deductions whatsoever, and so in proportion for any broken period 10
to a Judge newly appointed, resigning or removed, or to the executors or administrators of a Judge dying within the Quarter computed as aforesaid. But nothing in this clause contained shall affect the amount of the salary of the present Chief Justice of Upper Canada during this tenure of office.

**TRAVELLING EXPENSES AND FEES OF THE SHERIFF WHO
ATTENDS IN TERM TIME.**

Travelling
expenses.

15. From and out of the rates and duties raised levied and collected for the uses of the Province, there is hereby 15
granted to Her Majesty, a sufficient sum annually to enable Her Majesty to pay to the Judges of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, the sum of Twenty-five pounds for each time they hold any such Court or Courts in any County, except the County of York, for the 20
purpose of defraying their travelling expenses; and also to pay to the Sheriff of the County of York, the sum of eleven shillings and eight pence per day for attending the said Court of Queen's Bench during its sittings in each Term. 7 W. 4, c. 1, s. 10.

RETIRING ANNUITY.

Retiring an-
nuities.

16. In case any Judge of the said Superior Courts of 25
Common Law has continued in the office of a Judge of either or both of the said Courts, or of the Court of Chancery in Upper Canada for fifteen years, or becomes afflicted with some permanent infirmity disabling him from the due execution of his office, and in case such Judge resigns his said office of 30
Judge, Her Majesty may by Letters Patent under the Great Seal of this Province, reciting such period of service or permanent infirmity, grant unto such Judge an annuity equal to two thirds of the salary annexed to the office of such Judge, to commence immediately after the period of his resignation and to continue thenceforth during his natural life. 12 V. c. 63, s. 35
6.

To be paid out
of the Consol-
idated Revenue
Fund.

17. Such annuity shall be charged upon and paid out of the Consolidated Revenue Fund of this Province, and shall (after paying and reserving sufficient to pay all such sums as have been directed by any Act of the Parliament of this Province 40
passed prior to the thirtieth day of May, in the year of our Lord, one thousand eight hundred and forty-nine, to be paid out of the same, but with preference to all other payments after that date charged thereon,) be paid quarterly by equal portions on the first days

days of January, April, July and October in each year, free and clear from all taxes and deductions whatsoever, and so in proportion for any broken period when such Judge resigns or dies within the Quarter computed as aforesaid; and the executors or administrators of such Judge shall be paid the amount that had accrued at the time of his death computed from the next preceding quarter day.

TERMS.

18. The Terms of the said Courts of Queen's Bench and Common Pleas respectively shall annually be as follows: Terms of the Courts of Law.
 10 Hilary Term shall begin on the first Monday in February; Easter Term on the third Monday in May; Trinity Term, on the Monday next after the twenty-first day of August; and Michaelmas Term on the third Monday in November; and each of the said Terms shall end on the Saturday of the week 15 next after its commencement.

19. The first and last days of each such Term and every alternate day from the first not including Sunday shall be a return day; and the said Courts may in their discretion adjourn from any such return day to the next immediate return day. Duration of the Terms.
 20 2 G. 4, c. 1, s. 3.

JUDGMENT MAY BE DELIVERED AFTER TERM.

20. The Judges of the said Superior Courts may during each Term appoint one or more days within three weeks next ensuing the last day of such term, on which they will give Judgment; and such Superior Courts on the days so appointed may sit in Banc for the purpose only of giving Judgments and of making Rules and Orders in matters previously moved and argued in such Courts respectively; and all Judgments, Rules and Orders pronounced and made on such days shall have the same effect as if pronounced or made in Term 30 time.

TRIALS AT BAR.

21. The plaintiff or demandant, and the defendant or tenant, respectively, in any action in either of the said Superior Courts may, in the Term next after issue joined, apply to the said Courts respectively for a trial *at bar*, and each of the said 35 Courts respectively may, in its discretion, upon hearing the parties, grant or refuse the same. Trials at Bar.

22. In all cases in which the Crown may be actually or immediately interested, a trial *at bar* may be had as of right upon and shall be regulated and governed by the same principles, as in similar cases in England.
 40

23. In case any trial *at bar* is directed, the Judges of either of said Courts may appoint such day or days for the trial thereof as they think fit, and the time so appointed, if in vacation, shall, for the purposes of such trial, be deemed and taken to be a part of the preceding term. 5

CLERKS.

Clerks of the Crown and Process Clerk. 24. Her Majesty, by Letters Patent under the great seal of this Province, from time to time, appoint to each of the said Superior Courts of Common Law separately, a Clerk of the Crown and Pleas, and to both of the said Courts jointly, a Clerk of the Process, which Clerks shall hold office during Her Majesty's pleasure. 12 V. c. 63, s. 11 & 12. 10

Assistant-Clerk. 25. Each of the said Clerks of the Crown and Pleas may, appoint subject to the approval of the Judges of his Court, a Senior and Junior Clerk; and with the like approval, may remove at pleasure any Clerk so appointed by him. 15

Deputy Clerk of the Crown. 26. Except in the County of York the several Clerks of the County Courts shall be *ex-officio* Deputy Clerks of the Crown and Pleas in each of the said Superior Courts.

Salaries, &c. 27. There shall be charged upon and paid out of the Consolidated Revenue Fund of this Province, (after paying or reserving sufficient to pay all such sums as have been directed by any Act of the Parliament of this Province passed prior to the thirtieth day of May, one thousand eighth hundred and forty-nine, to be paid out of the same, but with preference to all other payments after that date charged thereon), the yearly sums following as and for the salaries of the Clerks of the said Courts that is to say: 12 V. c. 63, s. 13. 25

To each Clerk of the Crown and Pleas.....£	400	0	0	
(except Charles Coxwell Small, Esquire, the Clerk of the Crown and Pleas, in the Court of Queen's Bench, whose Salary, while he continues to hold the said office, shall be per year.£	750	0	0	30
To the Process Clerk.....£	350	0	0	
To each Senior Clerk.....£	250	0	0	
To each Junior Clerk.....£	150	0	0	35

19 V. c. 43.

To each Deputy Clerk of the Crown, such sum as the Governor in Council appoints, not in any case exceeding one hundred pounds, nor less than twenty pounds.

To be paid quarterly. 28. All the said salaries shall be paid quarterly on the first 40 days of January, April, July and October in each year, free and clear from all taxes and deductions whatever, and so in proportion for any broken period, to any of the said Clerks newly appointed,

appointed, resigning or removed or to the executors or administrators of a Clerk dying within the Quarter computed as aforesaid.

29. Neither of the Clerks of the Crown and Pleas nor
5 any of their Deputies, nor the said Process Clerk shall take for his own use or benefit directly or indirectly any fee or emolument whatever save the salary aforesaid to which he is entitled by virtue of this Act; and all the fees, dues, emoluments, perquisites and profits received by or on account of the said Clerks of
10 the Crown and their Deputies and the said process Clerk respectively, shall form part of the Consolidated Revenue Fund of this province. 12 V. c. 63, s. 14.

The taking of fees prohibited.

30. The Clerks of the Crown and Pleas, the Clerk of the
15 Process, and the Deputy Clerks of the Crown and Pleas in the said Superior Courts, shall, within one month next after their appointment, give security to Her Majesty, in such sum, and with so many sureties, and in such form as the Governor in Council directs, conditioned respectively, for the due performance of the duties of their office, and for the rendering of the quarterly ac-
20 counts and returns required from them by law, and for the due payment to the Receiver General of this Province, of all the fees, dues, emoluments, perquisites and profits received by them on account of their said offices respectively, and for and on account of any duty or service done and performed by them
25 respectively, in their said several offices.

The Clerks to give securities.

31. The neglect by any such Clerk or Deputy Clerk, to give
such security or to render quarterly returns, or to pay over all such moneys within twenty days next after each quarterly day, shall *ipso facto* render his appointment void, and vacate his
30 office: but such avoidance shall not affect any act done by him during the time he actually continues to hold his appointment.

Consequences of neglecting to do so.

32. The Judge of the County Court having first certified his
approval in writing of the security and sureties to be given by the Deputy Clerk of the Crown for his County, the Governor
35 may approve of the security and sureties so to be given by such Clerks and Deputy Clerks respectively, and such securities shall, as soon as they are executed and approved, be duly recorded in the manner provided by the Statute regulating the securities to be given by Public Officers, and then deposited in
40 the office of the Inspector General.

Who to approve of the securities.

33. If any surety in any such security dies or ceases to
reside in Upper Canada, or becomes insolvent, the Clerk or Deputy Clerk, shall, within one month after his knowledge
45 of the fact, or after being thereto required by the Inspector General, give a new security in manner hereinbefore provided, and the omission to give such new security shall render the appointment of the Clerk or Deputy Clerk so omit-
ting

The death or removal of a surety provided for.

ting, void and vacate his Office, but such avoidance shall not affect any act done by him during the time he actually continues to hold his appointment.

34. The Clerks of the Crown and Pleas and the Clerk of the Process respectively shall keep their Offices in Usgoode Hall. 5

35. The Clerk of the Process shall have a seal for sealing Writs in each of the said Courts, to be approved by the Chief Justice of each Court respectively, and he shall seal therewith and sign all Writs and Process whatsoever issued from such Courts respectively. 10

36. The Clerk of the Process shall keep each Deputy Clerk of the Crown and Pleas supplied with Blank Writs and Process of all descriptions sealed and signed by him to be by them filled up and issued; and he shall in like manner supply the Clerks of the Crown and Pleas with all Writs and Process 15 other than those which he is himself required to issue; and he shall have a reasonable allowance for printing, procuring and transmitting blank forms of Writs and Process, and for necessary books and stationery.

37. Each Deputy Clerk of the Crown and Pleas shall, 20 if proper accommodation be afforded him, keep his office in the Court House of his County, and until he can obtain such accommodation he shall keep his office in some convenient place in the County Town.

38. Every Deputy Clerk's office shall (except between the 25 first day of July and the twenty-first day of August) be kept open from ten o'clock in the morning until three o'clock in the afternoon, Sundays, Christmas Day, Good Friday, Easter Monday, the birth-day of the Sovereign, and any day appointed by Royal proclamation for a general fast or thanksgiving, 30 excepted; and between the first day of July and the twenty-first day of August, such offices shall be kept open from nine in the morning until noon.

39. The Clerk of the Process shall make to the Inspector General, quarterly returns, verified by his affidavit, of all Writs 35 and process issued by him in suits brought at Toronto or supplied by him, to the Clerks and Deputy Clerks of the Crown to be issued by them; and such Clerks and Deputy Clerks shall account for and pay over all fees receivable by them on such Writs and Process, as they are now bound by law to do in 40 respect to other fees receivable by them.

40. The Clerk of the Process shall receive the fees on Writs and process issued by him at Toronto as aforesaid, and shall in like manner, account for and pay over such fees.

41.

41. All such fees shall form part of the Consolidated Revenue Fund of the Province. To be applied to consolidated Revenue fund.

42. The Clerks of the Crown and Pleas in each of the said Courts, the Process Clerk and the Deputy Clerks of the Crown respectively, shall, on the four quarterly days herein before mentioned, make up and render to the Inspector General a true account in writing of all the fees, dues, emoluments, perquisites and profits received by or on account of the said Officers respectively, in such form and with such particulars as the Inspector General from time to time requires. 12 V. c. 63, s. 15. The Clerks of the Crown and Deputy Clerks to make quarterly returns.

43. Such accounts shall be signed by the Officer rendering the same, and shall, in the case of the said principal Clerks and Process Clerk respectively, be declared before one of the Judges of the Court to which he belongs, and in the case of the Deputy Clerks shall be declared before the Judge of the County Court to which he belongs. To be signed and declared before a Judge.

44. Each such Officer shall, within ten days after the rendering of such account, by him, pay over the amount of all such fees, dues, perquisites and profits to the Receiver General, and if default be made in such payment, the amount due by the Officer making such default, shall be a specialty debt to Her Majesty. To pay over balances.

45. The Clerks of the Crown, the Clerk of the Process, and the Deputy Clerk of the Crown respectively, shall perform the duties of their several offices as the same are regulated by any Act of Parliament, or by the rules and practice of the said Courts, and all sums and fees shall continue to be payable to and receivable by them accordingly. To obey the Statutes and rules of Court.

THE CLERK IN CHAMBERS TO BE CLERK OF THE PRACTICE COURT.

46. The Clerk of the Judges' Chambers, at Osgoode Hall, shall perform the duties of the Clerk of the Practice Court. 13, 14 V. c. 51, s. 4. 30

CAP. VIII.

An Act respecting Courts of Oyer and Terminer and General Gaol Delivery and of Assize and Nisi Prius.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- Courts of Assize and Nisi Prius, Oyer and Terminer and Gaol Delivery.** **1.** Courts of Assize and Nisi Prius, and of Oyer and Terminer and General Gaol Delivery, shall be held in every County or Union of Counties in Upper Canada (except in that County or Union of Counties within which the City of Toronto is situate) in each and every year in the vacations between Hilary and Easter Terms and between Trinity and Michaelmas Terms, and in the County or Union of Counties within which the City of Toronto is situate, three times in each year, to commence on the Thursday next after the holding the Municipal Elections in January, on the second Monday in April, and on the second Monday in October, in each year, with or without commissions, as to the Governor may seem best, and (except as to the County in which the City of Toronto is situated) on such days as the Chief Justices and Judges of the Superior Courts of Common Law respectively shall name. 7 W. 4, c. 1. 14, 15 V. c. 118. 16 V. c. 175. 20 V. c. 57.
- Commissions dispensed with.** **2.** In case commissions are issued, such commissions shall always contain the names of the Chief Justices and Judges aforesaid, some one of whom, if any one of them be present, shall preside in the said Courts respectively, and to whom may, be added in such commissions such of the Judges of the County Courts, and of Her Majesty's Counsel learned in the Law of the Upper Canada Bar as may be named therein, and one of whom shall preside in the absence of the Chief Justices and of all the other Judges of the Superior Courts.
- If any present the Judges of the Superior Courts of Law to preside.** **3.** If no such commissions are issued, the said Courts shall be presided over by one of the Chief Justices or of the Judges of the said Superior Courts, or in their absence, then by some one Judge of a County Court, or by some one of Her Majesty's Counsel learned in the Law of the Upper Canada Bar, upon such Judge or Counsel being requested by any one of the said Chief Justices or Judges of the Superior Courts to attend for that purpose.
- Their absence provided for.** **4.** Each of the said Chief Justices and Judges and of such Judges of the County Court and of such Counsel learned in the Law, presiding at any Court of Assize and Nisi Prius, or of Oyer and Terminer and General Gaol Delivery, shall possess, exercise and enjoy all and every the like powers and authorities heretofore set forth and granted in commissions issued for holding all or any of the said Courts.
- The Judge or Officer presiding to possess the same jurisdiction as under Commissions.** **5.**

5. It shall not be necessary hereafter to name any associate Justices in any commissions of Oyer and Terminer and General Gaol Delivery, or that any associate Justices should be nominated to, or attend, or be present, at any Court of Oyer and Terminer and General Gaol Delivery to be held hereafter.

Associate Justices dispensed with.

6. The Governor may issue special commissions of Oyer and Terminer or of Gaol Delivery for the trial of offenders, whenever he deems it expedient to issue any such commissions.

Special Commissions may issue.

7. Whenever from illness of the Judge, or from unavoidable detention at the last Assize town, or from other casualty, the Judge whose duty it may be to hold any Court of Assize and Nisi Prius, or of Oyer and Terminer or General Gaol Delivery, shall not arrive in time, or shall not be able to open such Court on the day appointed for that purpose, the Sheriff of the County in which such Court should be holden, or, in his absence, his Deputy, may, after the hour of eight of the clock in the afternoon of such day, adjourn by his proclamation, the Court or Courts which should have been opened on that day, to an hour on the following day to be by him named, and so from day to day until the Judge arrives to open such Court or Courts, or until such Sheriff receives other direction from the Judge in that behalf.

Course to be pursued by the Sheriff if the Judge of Assize does not arrive or the day appointed for opening the Courts.

8. When any Session of Oyer and Terminer and Gaol Delivery for the Counties of York and Peel has begun to be holden before the first day of any term the said Session shall be continued and the business thereof finally concluded notwithstanding the sitting of the Superior Courts of Common Law within the said Counties; and all trials, proceedings and judgments had at such Session, shall be good and effectual to all intents and purposes. 57 G. 3, c. 9.

The Assizes in the County of York not superseded by the sitting of the Queen's Bench at Toronto.

CLERKS OF ASSIZE.

9. The Deputy Clerks of the Crown in the several Counties or Union of Counties in Upper Canada except the County in which the City of Toronto is situated shall *ex officio* be and act as Clerks of Assize and Marshals at the Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery, to be holden in their respective Counties or Unions of Counties, and shall have all the powers and perform all the functions incident to the same as such Clerks of Assize and Marshals; and the said Deputy Clerks of the Crown respectively, shall immediately after each sitting of such Courts, forward by post to the Clerk of the Crown and Pleas of the Court of Queen's Bench at Toronto, every recognizance, indictment, paper or proceeding in any criminal matter, in their custody as such officers respectively, and also the usual and proper returns as such Clerks of Assize and Marshals. 16 V. c. 175, s. 16.

Who to officiate as Clerks of Assize.

No to receive
fees on the
Criminal side.

10. No charge whatever shall be made by any of the said Clerks of Assize or Marshals upon any criminal trial or proceeding in any Court at which they may act as such Clerks of Assize and Marshals respectively. 14, 15 V. c. 118, s. 5.

To transmit
Indictments,
&c., to the
Clerk of the
Crown,
Queen's
Bench.

11. The Deputy Clerks of the Crown shall pay the postage 5
on the transmission to Toronto of the indictments and other
proceedings in criminal cases, and take credit for such post-
ages in accounting for the fees received under this Act, or for
any other fees received and to be accounted for by them,
in case the fees under this Act prove insufficient for that 10
purpose. 14, 15 V. 118, s. 7.

Absence of
Clerk provid-
ed for.

12. In the event of any Clerk of Assize being absent, or being
prevented by illness or other cause from performing his duties as
such Clerk, the presiding Judge of Assize may authorize some
person to act as Clerk of Assize. 16 V. 175, s. 16. 15

Wm. A. Camp-
bell, Esquire,
to prepare the
precepts.

13. William Alexander Campbell, so long as he continues
to be the Marshal and Clerk of Assize of the County of York,
shall procure from the Judges of the Superior Courts, the several
Precepts for the return of Panels of Grand and Petit Jurors from
time to time required for the Courts of Assize and Nisi Prius, 20
Oyer and Terminer and Gaol Delivery, and transmit the same
to the several Sheriffs or other Officers to whom the return of
such precepts severally belong. 16 V. c. 175, s. 19.

At what
periods pre-
cepts to be
issued.

14. When the day is not fixed by law he shall procure such
precepts as soon as conveniently may be after the commission, 25
or other day has been appointed upon which the Jurors to be
returned upon such precepts are to be summoned to attend, and
where such day is fixed by law, then as soon as conveniently
may be after the close of the last preceding sittings of the same
Courts; and for preparing, procuring and transmitting each 30
precept, he shall be entitled to receive five shillings, payable
out of the Fee Fund. 14, 15 V. c. 118, s. 11.

Deputy
Clerks, &c., to
prepare pre-
cepts after the
demise of Mr.
Campbell.

15. From the time that the said William Alexander Camp-
bell ceases to be such Marshal and Clerk of Assize as aforesaid,
the several Clerks of Assize hereinbefore mentioned shall pre- 35
pare and issue the precepts to the several Sheriffs of their
respective Counties in the same manner and with the same
effect as such precepts may now by law be issued by the said
William Alexander Campbell, or any Marshal or Clerk of
Assize. 14, 15 V. c. 118, s. 10. 40

The case of
Mr. Campbell
provided for.

16. William Alexander Campbell, so long as he continues
to be the Marshal and Clerk of Assize for the County of York,
shall hold office during good behaviour, and be removeable
by the Judges of the Superior Courts of Common Law, or a
majority of them, and shall act as Marshal and Clerk of Assize 45
at the Courts of Assize and Nisi Prius, Oyer and Terminer and
General Gaol Delivery for the said County of York.

17.

17. He shall receive as such Marshal and Clerk of Assize, His salary. the salary of three hundred pounds per annum, which shall be charged upon and payable out of the Fee Fund.

18. He shall as Marshal and Clerk of Assize for the said To be Clerk of Assize in Toronto. 5 County of York, be subject to all the provisions relating to records, exhibits and other documents in this Act contained.

19. In the event of the death or removal of the said William Alexander Campbell from his said office, the Clerks of the Crown and Pleas for the time being of the said Superior Courts 10 respectively shall, alternately (commencing with the senior in office of such Clerks) personally or by Deputy, act as such Marshal and Clerk of Assize for the said County of York, and shall have all the powers and exercise all the functions that are by law had and exercised by the Clerks of Assize. When he ceases to be such Clerk, the Clerk of the Crown or their Deputies to officiate.

15 20. The sum of five shillings shall be paid to each Clerk of assize upon each record entered with him whether the cause be tried or not, and the said fee shall be by him accounted for, paid over and applied under the provisions of the Act to provide for the further accommodation of the Superior 20 Courts in Upper Canada, as part of the fund thereby created. 14, 15 V. c. 118, s. 3. A sum of five shillings to be paid upon the entering of each Nisi Prius record.

21. Every Clerk of Assize being a Deputy Clerk of the Crown may retain out of such fees a sum equal to one pound for each day's attendance as Clerk of Assize, and postage as 25 hereinbefore provided. Remuneration of Deputy Clerks of the Crown when they act as - Clerks of Assize.

22. The Marshal and Clerk of Assize of the County of York shall take and receive the same fees only as are taken by the other Marshals and Clerks of Assize under this Act, and such fees shall be by him accounted for, paid over and applied 30 in the same manner as the other fees taken under the authority of this Act. 14, 15 V. c. 118, s. 16. The Clerk of Assize County of York to be placed upon the same footing.

CAP. IX.

An Act respecting the Court of Chancery in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

The Court of Chancery continued. 1. The Court of Chancery now existing in Upper Canada is hereby continued, and shall be called the Court of Chancery for Upper Canada. 7 W. 4, c. 2, s. 1. 5

RULES OF DECISION.

Rules of decision. 2. The rules of decision in the Court shall, except when otherwise provided, be the same as governed the Court of Chancery in England in like cases on the 4th day of March, 1837, and the Court shall possess power to enforce obedience to its orders, judgments and decrees, to the same extent as was then possessed by the Court of Chancery in England. 7 W. 4, c. 2, s. 6. 10

GENERAL JURISDICTION.

Jurisdiction. 3. The Court shall have the like jurisdiction, and power as by the laws of England were at the said date possessed by the Court of Chancery in England, in respect of the matters, hereinafter enumerated, that is to say ; in all cases of fraud, and accident, and in all matters relating to trusts, executors and administrators, copartnership and account mortgages, awards, dower, infants, idiots, lunatics, and their estates, and also to stay waste, to compel the specific performance of agreements, to compel the discovery of concealed papers or evidence, or such as may be wrongfully withheld from the party claiming the benefit of the same, to prevent multiplicity of suits, to stay proceedings in a Court of Law prosecuted against equity and good conscience, to decree the issue of Letters Patent from the Crown to rightful claimants, to repeal and avoid Letters Patent issued erroneously or improvidently or through fraud ; and generally the like jurisdiction and power as the Court of Chancery in England possessed on the 10th day of June, 1857, as a Court of Equity to administer justice in all cases in which there is no adequate remedy at Law. 7 W. 4, c. 2, s. 2 ; 16 V. c. 159, 13 & 14 V. c. 50, s. 4 ; 20 V. c. 56. 15 20 25 30

Special power in cases of mortgages of long standing. 4. Whereas the law of England was at an early period introduced into Upper Canada, and continued to be the rule of decision in all matters of controversy relative to property and civil rights, while at the same time, from the want of an equitable jurisdiction, until the 4th day of March, 1837, it was not in the power of mortgagees to foreclose, and mortgagors out of possession 35

possession were unable to avail themselves of their equity of redemption, and in consequence of the want of these remedies the rights of the respective parties, or of their heirs, executors, administrators or assigns, may be attended with peculiar 5 equitable considerations, as well in regard to compensation for improvements, as in respect to the right to redeem, depending on the circumstances of each case, and a strict application of the rules established in England might be attended with injustice : the Court shall have authority in every case of 10 mortgage, where, before the said 4th day of March, 1837, the estate had become absolute in law, by failure in performing the condition, to make such decree in respect to foreclosure or redemption, and with regard to compensation for improvements, and generally with respect to the rights and claims of the 15 mortgagor and mortgagee, and their respective heirs, executors, administrators or assigns, as may appear to the Court just and reasonable under all the circumstances of the case, subject however to appeal by either party. 7 W. 4, c. 2, s. 11.

5. Whereas in regard to other claims upon, or interests 20 in real estate arising before the said date, it is just to restrict the future application of the said rules of decision to cases of fraud, and in regard to other cases, it is expedient to extend thereto in manner hereinafter provided, the authority given to the Court in case of mortgages : no title to or interest in real estate 25 which is valid at law, shall be disturbed or otherwise affected in Equity by reason of any matter or upon any ground which arose before the said date, or for the purpose of giving effect to any equitable claim, interest or estate, which arose before the said date, unless there has been actual and positive 30 fraud in the party whose title is sought to be disturbed or affected. 18 V. c. 124, s. 1.

Provisions
respecting
Equities of
long standing.

6. In regard to any other equitable claim or right which may 35 have arisen before said date, the Court shall have authority (subject to appeal) to make such Decree as may appear to the Court just and reasonable, under all the circumstances of the particular case, provided that the suit is brought within twenty years from the time when the right or claim arose ; and no further time shall be allowed for bringing any such suit, notwithstanding any disability of the claimant or of any one 40 through whom his right accrued. 18 V. c. 124, s. 2.

The same sub-
ject.

LUNATICS.

7. In the case of Lunatics, Idiots, and persons of unsound mind, and their Property and Estates, the jurisdiction of the Court shall include that which in England is conferred upon the Lord Chancellor by a Commission from the Crown, under 45 the Sign Manual. 9 V. c. 10.

Cases of
Lunatics and
their estates.

8. The word " Lunatic " is used in the subsequent sections of this Act as including an Idiot or other person of unsound mind.

The word
Lunatic ex-
tended.

Commissions
of Lunacy
may be dis-
pensd with.

9. The Court may, on sufficient evidence, declare a person a lunatic without the delay or expense of issuing a Commission to enquire into the alleged lunacy, except in cases of reasonable doubt. 20 V. c. 56, s. 5.

Traverse of
Inquisition
of Lunacy.

10. When a Commission has been issued and an inquisition thereupon returned into Court, by which a person is found Lunatic, in case any one entitled to traverse the inquisition desires to do so, he may within three calendar months from the day of the return and filing of the inquisition, present a petition for that purpose to the Court, and the Court shall hear and determine the petition subject to the following provisions : 9 V. c. 10, s. 2.

Time to be
limited.

(1). In every order giving effect to such petition, the Court shall limit a time not exceeding six calendar months from the date of the order, within which the person desiring to traverse, and all other proper parties, are to proceed to the trial of the traverse ; But the Court may under the special circumstances of any case, and upon a petition being presented for that purpose, and upon the circumstances being substantiated upon affidavit, allow the traverse to be had or tried after the time limited ; and in such special case, the Court may make such orders as seem just. 15

May be tried
in any Court
of Record.

(2). The trial may be ordered to take place in any Court of Record in Upper Canada, or before a Judge of the Court of Chancery with the aid of a Jury, according to the circumstances of the case and the situation of the parties. 25

What security
the Traverser
shall give.

(3). The Court may order that the person to traverse if he is not the party who was found Lunatic, shall, within one month after the date of the order, file with the Registrar of the Court, a bond, with one or more sureties, in favor of the Registrar for the time being, and conditioned for all proper parties proceeding to the trial of the traverse within the time limited, such bond being before the filing thereof approved of and certified to be sufficient by the Judge of the County Court of the County in which the parties reside, or by one of the Judges or Masters of the Court of Chancery. 30

When the
Traverser
barred.

(4). Every person who does not present his petition, or who neglects to give the security, or who does not proceed to the trial of the traverse, within the times respectively limited therefor, and the heirs, executors and administrators of every such person, and all others claiming through him, are hereby absolutely barred of the right of traverse. 9 V. c. 10, s. 3. 35

Proceedings
in lieu of
traverse when
no Commis-
sion has is-
sued.

11. In case the Court declares a person a lunatic without issuing a Commission, any person who might traverse an inquisition to the same effect may move against the order containing the declaration, or may appeal therefrom, as the case requires ; and the right so to move or appeal shall as to time be subject to the same rules as the right to traverse. 20 V. c. 56, s. 5.

12. In case the Court is dissatisfied with the verdict returned upon a traverse, the Court may order a new trial or more than one, as in other cases. 9 V. c. 10, s. 4. New trials may be granted.

13. In order to afford due protection to the property of Lunatics, the following provisions shall in every case be observed. 9 V. c. 10, s. 5. Property of Lunatics.

(1). The Committee of the estate shall give two or more responsible persons as sureties, in double the amount of the personal estate, and of the annual rents and profits of the real estate, for duly accounting for the same once in every year, or oftener if required by the Court; and the security shall be taken by bond or recognizance in the name of the Registrar of the Court for the time being, in such manner as the Court or a Master thereof may direct, and the same shall be filed in the office of the Registrar; Security to be given by the Committee.

(2). The Committee of the estate shall, within six months after being appointed, file in the office of the Registrar a true inventory of the whole real and personal estate of the Lunatic, stating the income and profits thereof, and setting forth the debts, credits and effects of the Lunatic, so far as the same have come to the knowledge of the Committee; The Committee to file an Inventory of present property.

(3). If any property belonging to the estate is discovered after the filing of an inventory, the Committee shall file a true account of the same from time to time, as the same is discovered; and Also, of after-discovered property.

(4). Every inventory shall be verified by the oath of the Committee. To be verified on oath.

14. Whenever the personal estate of a Lunatic is not sufficient for the discharge of his debts, the following steps may be taken. 9 V. c. 10, s. 7. When estate not sufficient to pay debts.

(1). The Committee of his estate shall petition for authority to mortgage, lease or sell so much of the real estate as may be necessary for the payment of such debts; Committee to apply for leave to mortgage or sell, &c.

(2). Such petition shall set forth the particulars and amount of the estate real and personal of the Lunatic, the application made of any personal estate, and an account of the debts and demands against the estate; What the Petition is to contain.

(3). The Court shall, by one of the Masters or otherwise, inquire into the truth of the representations made in the petition, and hear all parties interested in the real estate; The truth of to be enquired into.

(4). If it appears to the Court that the personal estate is not sufficient for the payment of debts, and that the same has been applied If personal estate insufficiently applied

cient, real estate may be disposed of.

applied to that purpose as far as the circumstances of the case render proper, the Court may order the real estate or a sufficient portion of it to be mortgaged, leased or sold either by the Committee or otherwise ;

Debts to be paid out of the proceeds.

(5). The Court shall direct the Committee to discharge such debts, out of the money so raised and the Court may order the Committee to execute conveyances of the estate, and to give security for the due application of the money and to do such other acts as may be necessary in such manner as the Court may direct ; and

Rateably and without preference.

(6). In the application of any moneys so raised, the debts shall be paid in equal proportion without giving any preference to those which are secured by sealed instruments.

If effects not sufficient to maintain the lunatic, his real estate may be applied.

15. When the personal estate, and the rents, profits and income of the real estate of the Lunatic, are insufficient for his maintenance or that of his family, or for the education of his children, an application may be made by the Committee, or by any member of the family of the lunatic, that the Committee be authorised or directed to mortgage or sell the whole or part of the real estate, as may be necessary ; upon which the reference and proceedings shall be had, and a like order made, as for the payment of debts. 9 V. c. 10, s. 8.

Surplus sums how to be applied or disposed of.

16. In case of any mortgage, lease or sale being made, the lunatic and his heirs, next of kin, devisees, legatees, executors, administrators and assigns, shall have the like interest in the surplus which remains of the money raised as he or they would have in the estate, if no mortgage, lease or sale had been made ; and such money shall be of the same nature and character as the estate mortgaged, leased or sold ; and the Court may make such orders, as are necessary for the due application of the surplus. 9 V. c. 10, s. 9.

When a Lunatic is a Trustee or Mortgagee, his Committee may act, and how far.

17. When a Lunatic is seized or possessed of real estate, by way of mortgage, or as a Trustee for others in any manner, the Committee may apply to the Court for authority to convey such real estate to the person entitled thereto, in such manner as the Court may direct ; and thereupon the like proceedings shall be had as in the case of an application to sell the real estate ; and the Court upon hearing all the parties interested may order a conveyance to be made ; and on the application, by bill or petition, of any person entitled to a conveyance, the Committee may be compelled by the Court, after hearing all parties interested, to execute the conveyance. 9 V. c. 10, s. 10.

Instruments executed by the Committee to be valid.

18. Every conveyance, mortgage, lease and assurance made by the Committee under direction of the Court, pursuant to any of the provisions of this Act, shall be as valid as if executed by the Lunatic when of sound mind. 9 V. c. 10, s. 11.

19. The Court may compel the specific performance of any contract made by a Lunatic while capable of contracting, and may direct the Committee to execute all necessary conveyances for the purpose; and the purchase money, or so much thereof as remains unpaid, shall be paid to the Committee or otherwise as the Court directs. 9 V. c. 10, s. 12.

Specific performance how compelled in such cases.

20. The Court may order any expenses and costs of and relating to the said petitions, orders, directions and conveyances to be paid and raised from the lands, rents or personal estate of the Lunatic, in respect of which the same were respectively made, in such manner as the Court thinks proper. 9 V. c. 10, s. 13.

Costs and expenses how to be defrayed.

PARTITION.

21. In regard to the partition and sale of estates of joint tenants, tenants in common and coparceners, the Court shall possess the same jurisdiction as by the laws of England on the tenth of August, eighteen hundred and fifty-one, was possessed by the Court of Chancery in England, and also as by the laws of Upper Canada is possessed by the Courts of Queen's Bench and Common Pleas or by the County Courts. 13 & 14 V. c. 50, ss. 4, 9.

Partition and sale of joint estates.

22. In such cases, any Decree, Order or Report by which a partition or sale is declared or effected, or any Deed executed by the Master of the Court, to give effect to such partition or sale shall have the same effect at law and in equity as the Record of a Return in the Court of Queen's Bench or Common Pleas or in the County Court has in matters of partition, or as Sheriff's Deeds now have in other cases. 13 & 14 V. c. 50, s. 4.

Effect of Decree for.

23. Any partition or sale made by the Court, shall be as effectual for the apportioning or conveying away of the estate or interest of any married woman, infant or lunatic, party to the proceedings by which the sale or partition is made or declared, as of any person competent to act for himself. 13 & 14 V. c. 50, ss. 6, 9.

Estates of married women, &c., to be bound.

24. An office copy of the Decree, Order or Report declaring a partition shall be sufficient evidence in all Courts of the partition declared thereby and of the several holdings by the parties of the shares thereby allotted to them. 13 & 14 V. c. 50, s. 4.

Office copy of Decree, &c., to be evidence.

INFANTS.

25. When an infant is seized or possessed of or entitled to any real estate in fee, or for a term of years, or otherwise howsoever, in Upper Canada, and the Court is of opinion that a sale, lease or other disposition of the same or of any part thereof is necessary or proper for the maintenance or education of the infant, or that, by reason of any part of the property being exposed to waste and dilapidation, or to depreciation from any other cause, his interest requires or will be substantially promoted

Estates of minors, Sale of may be authorized.

moted by such disposition, the Court may order the sale, or the letting for a term of years, or other disposition of such real estate or any part thereof, to be made under the direction of the Court or one of its officers, or by the Guardian of the infant, or by any person appointed by the Court for the purpose, in such manner and with such restrictions as to the Court may seem expedient, and may order the infant to convey the estate as the Court thinks proper. 12 V. c. 72, s. 1. 5

No sale contrary to a devise.

26. But no sale, lease or other disposition shall be made against the provisions of any will or conveyance by which the estate was devised or granted to the infant or for his use. 12 V. c. 72, s. 2. 10

The application to be by next friend or guardian.

27. The application shall be in the name of the infant by his next friend, or by his guardian; but shall not be made without the consent of the infant if he is of the age of seven years or upwards. 12 V. c. 72, s. 1. 15

When a substitute for an infant may be appointed.

28. Where the Court deems it convenient that a conveyance should be executed by some person in the place of the infant, the Court may direct some other person in the place of the infant, to convey the estate. 12 V. c. 72, ss. 2, 3. 20

Deeds executed in behalf of, to be valid.

29. Every such conveyance whether executed by the infant or some person appointed to execute the same in his place, shall be as effectual as if the infant had executed the same, and had been of the age of twenty-one years at the time. 12 V. c. 72, s. 3. 25

The Court to direct the application of the proceeds.

30. The moneys arising from any such sale, lease or other disposition, shall be laid out, applied and disposed of in such manner as the Court directs. 12 V. c. 72, s. 4. 30

The quality of surplus moneys upon sale of real estate.

31. On any sale or other disposition so made, the money raised, or the surplus thereof, shall be of the same nature and character as the estate sold or disposed of; and the heirs, next of kin, or other representatives of the infant, shall have the like interest in any surplus which may remain of the money at the decease of the infant, as they would have had in the estate sold or disposed of if no sale or other disposition had been made thereof. 12 V. c. 72, s. 5. 35

In cases of dower a composition may be made.

32. If any real estate of an infant is subject to dower, and the person entitled to dower consents in writing to accept in lieu of dower any gross sum which the Court thinks reasonable, or the permanent investment of a reasonable sum in such manner that the interest thereof be made payable to the person entitled to dower during her life, the Court may direct the payment of such sum in gross or the investment of such other sum, out of the proceeds of the sale of the Real Estate of the Infant. 12 V. c. 72, s. 6. 40

33. The Court shall also have jurisdiction respecting the custody of infants in the cases and subject to the provisions mentioned in the Statute relating to the custody of infants. 18 V. c. 126. The custody of infants.

WILLS.

34. The Court shall have jurisdiction to try the validity of Last Wills and Testaments, whether the same respect real or personal estate, and to pronounce such Wills and Testaments to be void for fraud and undue influence or otherwise, in the same manner and to the same extent as the Court has jurisdiction to try the validity of deeds and other instruments. 18 V. c. 64, s. 10. The Court may try the validity of Wills

ALIMONY.

35. The Court shall also have jurisdiction to decree alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce and to alimony as incident thereto, or to any wife whose husband lives separate from her without any sufficient cause and under circumstances which would entitle her, by the law of England, to a decree for restitution of conjugal rights; and alimony when decreed shall continue until the further order of the Court. 20 V. c. 56, s. 2. Alimony may be decreed without divorce.

36. In suits hereafter instituted for alimony the Court may, in a proper case, order a writ of *Ne Exeat Provincia* to issue at any time after the bill has been filed, and shall, in the order, fix the amount of bail to be given by the defendant in order to procure his discharge; and the amount so fixed shall be such sum as the Court thinks reasonable. 20 V. c. 56, s. 3. In suits for a *Ne Exeat* may be issued.

INJUNCTIONS.

37. The Court may grant an injunction to stay waste in a proper case, notwithstanding that the party in possession claims by an adverse legal title. 20 V. c. 56, s. 4. Injunctions to stay waste, &c.

PATENTS FOR LANDS.

38. The Court may, on Information or Bill, declare void or may rescind Crown Patents for lands in Upper Canada issued through fraud or in error or mistake or through improvidence. 20 V. c. 56, s. 21—16 V. c. 159. When Crown Patents for lands may be rescinded.

APPEALS.

39. The Court shall have jurisdiction to entertain appeals by either party against any Order or Decree made by the Judge of a County Court under the equitable jurisdiction thereof, and the Court of Chancery shall make such Order thereupon in respect to costs or otherwise, or for referring back the matter to the Judge before whom the same was first heard, as may be just and proper. 16 V. c. 119, s. 18. Appeals from Decree, &c., of County Courts.

Appeals from
decisions of
certain Com-
missioners for
protection of
Crown Lands.

40. The Court shall also have jurisdiction on any appeal from the judgment or decision of the Commissioners under the Act for the protection of the lands of the Crown in Upper Canada, except as in the said Act is otherwise provided; and the Court may alter, affirm or annul, the decision of the Commissioners, or order further inquiry to be made, or direct an issue touching the matter in dispute, to be tried at law or before the Court or a Judge thereof with the assistance of a Jury, and may make such orders and directions therein for payment of costs, and other matters respecting the same, as to the Court seems just; and the decree of the Court shall be conclusive on the party appealing, as well as on the Commissioners. 2 V. c. 15, s. 11.

VESTING ORDERS.

Vesting order,
effect of.

41. In every case in which the Court has authority to order the execution of a Deed, conveyance, transfer or assignment of any property real or personal, the Court may make an order or a decree vesting such real or personal estate in such person or persons, and in such manner, and for such estates, as would be done by any such Deed, conveyance, assignment or transfer if executed; and thereupon the order or decree shall have the same effect both at Law and in Equity as if the legal or other estate or interest in the property had been actually conveyed, by Deed or otherwise, for the same estate or interest, to the person in whom the same is so ordered to be vested, or in the case of a *chose in action*, as if such *chose in action* had been actually assigned to such last mentioned person. 20 V. c. 56, s. 6.

REGISTRATION.

A bill filed,
&c., no:
notice unless
certificate is
registered in
the County
Registrar's
Office.

42. The filing of a bill or the taking of a proceeding, in which bill or proceeding any title or interest in land is brought in question, shall not be deemed notice of the bill or proceeding to any person not being a party thereto, unless and until a certificate by the Registrar or a deputy Registrar of the Court, in the form mentioned in this section, is registered in the Registry Office of the County in which the land is situate. 18 V. c. 127, s. 3—20 V. c. 56, s. 9.

Form of Certi-
ficate of.

“ I Certify that in a suit or proceeding in Chancery between A. B. and C. D., some title or interest is called in question in the following land, (*describing it.*)”

Not necessary
in foreclosure
cases.

But no certificate is required to be registered of a suit or proceeding for the foreclosure of a registered mortgage.

Decree affect-
ing lands may
be Registered.

43. Every decree affecting land, may be registered in the Registry Office of the County where the land is situate, on a certificate by the Registrar or a Deputy Registrar of the Court, setting forth the substance and effect of the decree, and the land affected thereby. 18 V. c. 127, s. 4.

44. Every decree or order made or to be made directing any sum of money, or any costs, charges or expences, to be paid, either at one time or by several or periodical payments to any person, or into the Court, or What other Decree may be registered, and bind lands.
 5 to the credit of any cause, or otherwise, may be registered in any County Registry Office upon delivery to the County Registrar of a certificate of the Registrar or a Deputy Registrar of the Court, stating the title of the cause or matter in which the decree or order was made, and the date
 10 of the decree or order, and the amount of the money therein, or in any report made in pursuance thereof, mentioned to be payable; and the certificate shall be recorded by the County Registrar in the same books and in the same manner as certificates of judgments at Law are registered, and the registry
 15 of the certificate shall have the same effect as the registry of a judgment at Law, and may be discharged therefrom in the same manner as a judgment at Law. 20 V. c. 56, s. 10.

45. In case a person ordered or decreed to pay money satisfies the Court at the time or afterwards that some specified part of When the Court may relieve part of an estate from the lien created by registration.
 20 his real estate will be a sufficient security therefor, the Court, may direct that the charge created by the registration of the decree or order to pay be confined to such part of the real estate; and in such case the residue of the real estate of such person
 shall be unaffected by the registration; and in case the restriction
 25 is contained in the decree or order to pay, the Registrar's or Deputy Registrar's said certificate shall state the same, and if such restriction is contained in a subsequent order, the Registrar's or Deputy Registrar's certificate thereof may be registered
 by either party. 20 V. c. 56, s. 11.

30 46. In case an order or a decree for the payment of money is so registered as to become a charge on the real estate, the Court may in the same cause order the whole or any part of such estate, to be sold for the satisfaction of the money with interest and costs, without the delay or expense of a new suit.
 20 V. c. 56, s. 12. The Court may order sale of the real estate.

35 47. In any case in which the Court requires an issue to be tried by a jury, it shall not be necessary that any feigned action be commenced in a Court of Law; but the issue shall be tried at the Assizes, or at the sittings of a County Court in Upper Canada,
 40 in the same manner as issues are tried in actions brought in the Superior Courts of Law or in the County Courts, upon an office copy of the decree or order directing the trial of the issue, being entered for trial in the same manner as Nisi Prius records are entered, and the finding of the jury shall be endorsed upon such office
 45 copy and signed by the presiding Judge, and the office copy shall then be transmitted to the Registrar of the Court of Chancery; or instead of directing an issue to be tried at law, the Court may try the same by a Jury without the intervention of a Court of Common Law, and may issue a precept or order directed to
 the

the Sheriff of any County the Court sees fit, requiring him to strike and summon a Jury for that purpose; and at the trial, one Judge or more of the Court of Chancery may sit or preside. 20 V. c. 56, s. 13.

PARTIES.

Service in Proceedings for foreclosure or sale how made.

48. In any suit now depending, or instituted in the Court of Chancery after this Act takes effect by a mortgagee or judgment creditor, or by any other person having a charge on real property, for the foreclosure or sale of property, and to the which suit any judgment creditor of the mortgagor or of the judgment debtor, or of the person liable to the charge, is a defendant, personal service on such defendant shall not be necessary, and it shall be sufficient to serve the process of the Court, whether the same be an office copy of the bill or an office copy of the decree or decretal order, upon his Attorney in the action at Law in which the judgment was recovered; but the plaintiff in any such suit in Chancery may elect to serve the judgment creditor personally instead of serving the Attorney. 20 V. c. 56, s. 14.

ABSENTEES.

Service on absentees.

49. An absent defendant may be served at any place out of the jurisdiction of the Court, with a copy of any bill or proceeding, without an application being previously made to the Court for the allowance of such service, and the service shall be allowed on proof to the satisfaction of the Court that the same was duly made. 20 V. c. 56, s. 15.

THE JUDGES.

A Chancellor and Vice-Chancellor to preside over the Court.

50. The Court shall be presided over by a Chief Judge, to be called the Chancellor of Upper Canada, and two additional Judges, to be called Vice-Chancellors. 12 V. c. 64, s. 1.

Her Majesty may appoint.

51. Her Majesty may from time to time, as vacancies occur, appoint by Letters Patent under the Great Seal of this Province, one person being a barrister at Law of not less than ten years' standing at the Bar of Upper Canada to be Chancellor, and two persons being barristers of not less than ten years' standing at the said bar, to be Vice-Chancellors; and the Chancellor of Upper Canada shall have rank and precedence next after the Chief Justice of Upper Canada; and the Vice-Chancellors and the Puisne Judges of the Superior Courts of Common Law shall have rank and precedence as between themselves according to seniority of appointment to their respective Offices. 12 V. c. 64, s. 2.

To hold office during good behaviour.

52. The Judges shall hold their offices during good behaviour; but the Governor in Council may remove any of them upon the address of the two Houses of the Parliament of the Province; and in case a Judge so removed thinks himself aggrieved thereby

thereby, he may within six months appeal to Her Majesty in Her Privy Council, and in that case such motion shall not be final until the appeal is determined by Her Majesty in Her Privy Council. 12 V. c. 64, s. 3.

5 **53.** In respect to the salaries of the Judges, there shall out of the Consolidated Revenue Fund of the Province, (after paying or reserving sufficient to pay all such sums as were before the thirtieth of May, one thousand eight hundred and forty-nine, directed by any Act of the Parliament of this Province, to be
10 paid out of the same, but with preference to all other payments, thereaſter charged upon the same) be paid to the Chancellor, one thousand two hundred and fifty pounds; and to each of the other Judges, one thousand pounds; and these sums shall be paid quarterly, free from all taxes and deductions, on the
15 first day of January, the first day of April, the first day of July, and the first day of October, by equal portions; the first payment to be made on the first of those days which occurs after the appointment of the Judge entitled to receive the same; and when any of the Judges has been removed from office or died or
20 resigned his office, he or his executor or administrator shall be entitled to receive such proportionable part of the salary as accrued during the time that such Judge executed the office subsequent to the last payment; and the successor to the office vacated by such Judge shall receive such portion of the salary
25 as accrues from the day of his appointment. 12 V. c. 64, s. 4.

54. In case a Judge resigns his office after having for fifteen years held the office of Judge in the Court of Chancery, or for part of the time in that Court, and part of the time in one or more of the Superior Courts of Law in Upper Canada, or in
30 case a Judge afflicted with some permanent infirmity disabling him from the due execution of his office, resigns his office, Her Majesty may, by Letters Patent, under the Great Seal of the Province, reciting such service or disability, grant such Judge an annuity equal to two-thirds of his salary, to commence immediately after his resignation, and to continue during his life; and such annuity shall be payable out of the Consolidated Revenue Fund, after paying or reserving sufficient to pay all such sums of money as by any Acts of the Parliament of this Province in force on the thirtieth day of May, one thousand eight hundred and
40 forty-nine, were directed to be paid thereout, but with preference to all payments thereaſter charged upon the same fund; and such annuity shall be paid quarterly, free from all taxes and deductions on the four usual days of payment aforesaid, in each year; and the first quarterly payment, or a proportionate part thereof to be
45 computed from the time of his resignation, shall be made on such of the said days as next happens after the resignation; and the executors or administrators of the person to whom the annuity has been granted shall be paid such proportionate part of the same as accrued from the commencement, or
Retiring annuities provided for.

the last quarterly payment thereof, as the case may be, to the day of his death. 12 V. c. 64, s. 5.

Oath of office. 55. Every Judge shall, previous to executing the duties of his office, take the following oath, which oath shall be administered to the Chancellor before the Governor in Council, and to the Vice-Chancellors in open Court in presence of the Chancellor : 12 V. c. 64, s. 6. 5

“ I, do solemnly and sincerely promise
 “ and swear, that I will duly and faithfully, and to the best of
 “ my skill and knowledge, execute the powers and trusts re- 10
 “ posed in me, (as Chancellor or Vice-Chancellor). So help
 “ me God.”

THE CONDUCT OF BUSINESS.

The Court to sit at Toronto. 56. The Court shall be holden at the City of Toronto or in any other place from time to time appointed by Proclamation of the Governor. 12 V. c. 64, s. 1. 15

The Judges to sit together. 57. The Judges shall sit together for all business not directed by general or other orders to be transacted before a single Judge, and in such case the Chancellor or, if he be absent, the Senior Vice Chancellor shall preside. 12 V. c. 64, s. 7.

May sit separately for certain purposes. 58. The Judges may sit separately, either at the same 20 time or at different times, for the hearing and disposing of such matters and the transaction of such business as may from time to time, in that behalf be directed by general or other orders of the Court ; and the decrees and orders made by a single Judge in such cases shall have the force and effect of, and be deemed 25 for all purposes to be, decrees and orders of the Court, but shall be subject to re-hearing before the full Court or otherwise, in such cases as the Court, by general orders or otherwise, from time to time directs or appoints ; and every Judge so sitting separately, whether at Toronto or elsewhere, shall 30 have all the powers of the full Court, subject to any general orders in that behalf. 20 V. c. 56, s. 7.

The Judges to make Circuits for taking evidences, &c. 59. The Judges or one or more of them, shall also take Circuits for the transaction of such business of the Court as it may be practicable and conducive to the interests 35 of suitors and the convenient administration of justice to dispose of on such Circuits ; and for that purpose, the Court, or one or more of the Judges thereof, may hold sittings for the purposes of taking such evidence and hearing such causes and other matters, and transacting such other business, and at such periods 40 and at such County Towns, as the Court from time to time sees fit to direct and appoint. And such sittings may, at the discretion of the Court or of the Judge who is to hold the same, be held in the Court House of the County Town in which the
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the same are appointed to be held, or in such other place in the County Town as the Judge selects; and the Judge shall in all respects have the same authority as a Judge at *Nisi Prius* in regard to the use of the Court House, Gaol and other buildings or apartments set apart in the County for the administration of justice. 20 V. c. 56, s. 6.

60. All witnesses in any matter pending before the Court, or before any of the Masters thereof, shall give their testimony *vivâ voce*, and be subject to examination by Counsel, in the presence of one or more of the Judges, or of the Masters, unless it is otherwise ordered by the Court, on special grounds or with the consent of the parties in the suit or controversy to which the testimony relates. 7 W. 4, c. 2, s. 5.

Witnesses to be examined *vivâ voce*.

OFFICERS.

61. The Governor in Council may, from time to time, under the Great Seal of the Province, appoint during pleasure, one Registrar, one Master in ordinary, one Accountant, and a Sergeant-at-Arms, to the Court; and these Officers shall, in addition to the duties usually performed by the like officers in England, be liable to perform such other duties as may be assigned to them by the Court. 2 W. 4, c. 2, s. 9.

Officers, Registrar, Master, Accountant, Sergeant-at-Arms.

62. The Registrar and Master in ordinary may each appoint one Clerk, subject to the approval of the Judges, and may with the like approval remove such Clerk at pleasure. 13, 14 V. c. 50, s. 3.

Registrar and Master may appoint Clerks.

63. The Master in ordinary, Registrar or Clerk so appointed shall not take for his own benefit, directly or indirectly, any fee or emolument, save the salary to which he may be entitled by law: But the like sums and fees heretofore payable and receivable in the Court shall continue to be payable and receivable by the like persons: and all the fees received by or on account of the Master and Registrar, shall form part of the Consolidated Revenue Fund of the Province. 12 V. c. 64, s. 13.

Not to take fees.

64. The Master in ordinary and Registrar respectively shall, on the four quarterly days hereinbefore mentioned, render to the Inspector General of Public Accounts, a true Account in writing of all the fees received by or on account of his office, in such form and with such particulars as the Inspector-General from time to time requires; and shall sign the account, and declare the truth thereof before one of the Judges of the Court; and shall, within ten days after rendering the account, pay over the amount of the fees, to the Receiver-General; and if default is made in such payment, the amount shall be deemed a specialty debt to Her Majesty. 12 V. c. 64, s. 14.

To make quarterly returns of fees received.

The Court
may appoint
local Masters
and Deputy
Registrars.

65. The Judges may, from time to time, under the Seal of the Court, appoint, and at their discretion remove, local Masters and Deputy Registrars (and both offices may be held by one person,) in such places respectively out of Toronto, as the Judges may think expedient for the purpose of promoting as far as practicable the local administration of justice; and the Judges may likewise in manner aforesaid, appoint and remove Commissioners for administering oaths and taking affidavits and depositions in the said Court with the powers formerly possessed by Masters Extraordinary and examiners; And also an Usher to attend on the Court, and the respective Judges thereof, during the sittings of the Court and Judges respectively for the transaction of the business, and to execute such process of the Court as may be directed to him. 13 and 14 V. c. 50, s. 1; 20 V. c. 56, ss. 17 & 19.

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Salaries of
Officers provided
for.

66. There shall be paid out of the Consolidated Revenue Fund of the Province, (after paying or reserving sufficient to pay all such sums as were directed by any Act of the Parliament of this Province before the Thirtieth day of May, one thousand eight hundred and forty-seven, to be paid out of the same, but with preference to all payments thereafter charged upon the same) the yearly sums following as and for the salaries of the Master in ordinary, the Registrar and the Clerk of the Registrar, that is to say: to the Master, Five hundred pounds; to the Registrar, Four hundred pounds; and to the Clerk, One hundred and twenty-five pounds; which sums shall be paid quarterly, free from all taxes and deductions, on the four quarterly days hereinbefore mentioned; but the payment to be made in each case on the first of the quarterly days which happens after the right thereto accrues, shall be a rateable proportion of a Quarter's Salary, according to the time then elapsed since the accrual of the right; and in case of a vacancy in the office of such Master, Registrar or Clerk, the person making the vacancy, his executors or administrators, shall be entitled to a proportional part of his salary according to the time elapsed between the vacancy and the last quarterly payment; and there shall also be paid out of the Consolidated Revenue Fund of the Province (after paying or reserving sufficient to pay all such sums as have been directed by any Act of the parliament of this Province before the Tenth day of August one thousand eight hundred and fifty, to be paid out of the same, but with preference to all payments thereafter charged upon the same) the yearly sum of One Hundred and Twenty-five Pounds, for the salary of the Clerk in the Master's Office. 12 V. c. 61, s. 12.

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Local officers
may take fees

67. The local Masters, the Deputy Registrars and the Commissioners may receive for their own use the same fees as hitherto or as the Court from time to time directs. 13 and 14 V. c. 50, s. 3.

68. The Governor in Council may, from time to time, appoint an additional Clerk or additional Clerks in the Court, when the business of the Court requires the same and the Judges of the Court apply for such appointment, and the Clerk or 5 Clerks shall perform such duties as the Court may from time to time, by general orders or otherwise, direct. 20 V. c. 56, s. 15.

The Governor may appoint additional Clerks.

69. Every Officer of the Court before he enters upon his duties shall take and subscribe the following oath, which oath shall be administered by the Judges or one or more of them 10 in open Court :

Oath of office of Officers.

“ I, A. B. of——, do hereby solemnly swear, that I will, according to the best of my skill, learning, ability and judgment, well and faithfully execute and fulfil the duties of the office of Master, &c., (as the case may be,) without favour or 15 affection, prejudice or partiality, to any person or persons “whomsoever. So help me God.” 7 W. 4, c. 2, s. 20.

70. When it is not convenient to a person appointed to any office to attend at Toronto, to take the oath of office, the Court may direct the oath to be taken before the Judge of the 20 County Court of the County in which such Officer resides, and the oath shall be certified by such Judge and filed in the Office of the Registrar. 7 W. 4, c. 2, s. 3.

Who to administer.

71. Sheriffs, Deputy Sheriffs, Gaolers, Constables and other Peace Officers, shall aid, assist, and obey the Court and 25 the Judges thereof respectively in the exercise of the jurisdiction conferred by this Act, and otherwise, whenever or by any general or other order of the Court or of a Judge thereof, required so to do. 20 V. c. 56, s. 6—7 W. 4, c. 2, s. 14.

Sheriffs, Gaolers, &c., to be Officers of the Court.

PRISONS.

30 72. All gaols in Upper Canada shall be prisons for the Court. 7 W. 4, c. 2, s. 14—9 V. c. 10, s. 14.

Gaols to be Prisons of the Court.

MONEY IN COURT.

73. All moneys that become subject to the control and distribution of the Court, shall be paid in the name of the Accountant General of the Court into the hands of such person or body 35 corporatè, or be vested in the name of the Accountant General in the public funds of the province, or in such other securities, as the Court from time to time directs ; and all interest arising from the sums so deposited or vested, shall be added to the principal sum, and be distributed therewith to the persons 40 entitled to receive the same. 7 W. 4, c. 2, s. 7.

Money in Court how to be disposed of.

FEE

FEE FUND.

Fees to be taken to form a fee-fund.

74. A fee of six pence shall be paid to the Registrar or Deputy Registrar, on the filing of every bill and of every answer or demurrer, in addition to other fees and charges thereon; and such fee shall be paid in to an account to be called "The Suitors' Fee Fund Account," which account shall be kept and managed as may from time to time be directed by the Court, and the sums, at the credit of such account, shall be applied by the Court as may be necessary for the protection of infants and other persons not *sui juris* on whose behalf proceedings may be had in the Court, or may, by the Court, be ordered to be had in other Courts. 20 V. c. 56, s. 20. 5

GENERAL ORDERS.

The Court empowered to make orders.

75. The Court may from time to time make such General Orders as to the Court may seem expedient, for regulating the Offices of the Masters and Registrars, and for regulating and securing the due performance of the duties of all the Officers of the Court, and for regulating and adapting to the circumstances of this Province, the practice and proceedings of the Court, and more especially the nature and form of the process and pleadings, the taking, publishing, using and hearing of testimony, the examination of the parties to a suit upon their oaths, *viva voce* or otherwise, the allowance and amount of costs and every other matter which seems expedient for better attaining the ends of Justice, and advancing the remedies of Suitors; and the Court may from time to time suspend, repeal, vary or revive any such orders, but no such order shall have the effect of altering the principles or rules of decision of the Court. 12 V. c. 64, s. 11. 15 20 25

Existing orders to continue until altered, &c.

76. All general orders of the Court now standing unrepealed by the Court, are hereby confirmed and declared to be as effectual as if the same were hereby specially enacted; but the same may, from time to time, be suspended, repealed, varied and re-enacted by the Court, and shall, in all respects be subject to the control and direction of the Court and the respective Judges thereof, as in the case of any other general orders which the Court is empowered to make under the general or other jurisdiction thereof. 20 V. c. 56, s. 21. 30 35

SEAL.

The Governor to determine the Seal to be used by the Court.

77. The Governor in Council, may from time to time determine and declare the Seal to be used in the Court, and by which its judgments and proceedings shall be certified and authenticated. 7 W. 4, c. 2, s. 18. 40

C A P . X .

An Act respecting the Court of Error and Appeal in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- 5 **1.** The " Court of Error and Appeal," heretofore existing in Upper Canada, is hereby continued, and shall be called the Court of Error and Appeal for Upper Canada. 12 V. c. 63, s. 38. The Court of Appeal continued.
- 10 **2.** The Judges for the time being of the Courts of Queen's Bench, Chancery and Common Pleas in Upper Canada, shall be *ex officio* members of the Court of Appeal. 20 V. c. 5, s. 2. Who to compose the Court.
- 15 **3.** The Governor may, by Commission under the Great Seal, from time to time, appoint any retired Judges of the said three Superior Courts who ceased to hold Office as such before the date of the Commission, as additional Judges of the Court of Error and Appeal. 20 V. c. 5, s. 2. Retired Judges may be added to.
- 20 **4.** Every person so appointed shall take such rank and precedence, after the Chief Justice of Upper Canada, the Chancellor of Upper Canada, and the Chief Justice of the Court of Common Pleas, as may be designated in his Commission. 20 V. c. 5, s. 2. Rank of.
- 25 **5.** The Court of Error and Appeal shall hold its sittings at the City of Toronto, on the second Thursday next after the several Terms of Hilary, Easter and Michaelmas, and may adjourn from time to time, and meet again at the time fixed on the adjournment, for the transaction of business. 20 V. c. 5, s. 4. The Court to sit at Toronto three times a year.
- 6.** The Chief Justice of the Court of Queen's Bench for the time being, and in his absence, the Judge entitled to precedence overall the Judges present, shall preside. 20 V. c. 5, s. 4. The Chief Justice to preside.
- 30 **7.** Seven members of the Court shall be necessary to constitute a quorum. 20 V. c. 5, s. 4. Seven Members to be a quorum.
- 8.** The Court shall have an appellate Civil and Criminal Jurisdiction throughout Upper Canada, and an appeal shall lie thereto from all judgments of the Courts of Queen's Bench and Common Pleas and from all judgments, orders and decrees of the Court of Chancery. 12 V. c. 63, s. 40. Jurisdiction of the Court.
- 35 **9.** The Court shall have power to quash proceedings in cases brought before it, in which Error or Appeal does not lie, or where such proceedings are taken against good faith, or in which May quash proceedings; when.

which proceedings might heretofore have been quashed in the Court, according to the law and practice in England. 20 V. c. 5, s. 6.

May dismiss Appeals; when.

10. The Court shall have power to dismiss an Appeal, or to give the Judgment or Decree and to award the process or other proceedings which the Court whose decision is appealed against ought to have given, without regard to the party alleging Error, and may also award restitution and payment of costs. 20 V. c. 5, s. 7. 5

The Clerk to certify result of Appeals.

11. The Judgment, Decree, or Award shall be certified by the Clerk of the Court of Error and Appeal to the proper Officer of the Court below, who shall thereupon make all proper and necessary entries thereof, and all subsequent proceedings may be taken thereupon, as if the Judgment, Decree or Award had been given in the Court below. 20 V. c. 5, s. 7. 15

Appellants may discontinue.

12. An appellant may discontinue his proceedings by giving to the respondent a notice headed in the Court and cause, and signed by the appellant or his Attorney, stating that he discontinues such proceedings; and thereupon the respondent shall be at once entitled to the costs of and occasioned by the proceedings in Appeal, and may either sign judgment for such costs or obtain an Order for their payment in the Court below, and may take all further proceedings in the Court below as if no appeal had been brought. 20 V. c. 5, s. 8. 20

A Respondent may assent to a reversal of his Judgment.

13. A respondent may consent to the reversal of the Judgment, decree or proceeding appealed against, by giving to the appellant a notice headed in the Court and cause, and signed by the respondent or his Attorney, stating that he consents to the reversal of the Judgment, decree or other proceeding, and thereupon the Court shall pronounce Judgment of reversal as of course. 20 V. c. 5, s. 9. 25 30

Appellants to give security.

14. No appeal shall be allowed until the appellant gives proper security to the extent of one hundred pounds, to the satisfaction of the Court from whose order, decree or judgment he is about to appeal, that he will effectually prosecute his appeal, and pay such costs and damages as may be awarded in case the judgment or decree appealed from is affirmed. 12 V. c. 63, s. 40.—The proviso. 35

When perfected, how to be stayed.

15. Upon the perfecting of such security, execution shall be stayed in the original cause, except in the following cases: 12 40 V. c. 63, s. 40.

Subject to certain exceptions in which partial performance is

1. If the judgment or decree appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment or decree shall not be stayed until the things directed to be assigned or delivered are brought into Court 45

Court or placed in the custody of such Officer or Receiver as the Court appoints, or until security is given to the satisfaction of the Court appealed from, and in such sum as that Court directs, that the Appellant will obey the Order of the Appellate Court on appeal. 12 V. c. 63, s. 40, No. 2. required by delivery into Court.

2. If the judgment or decree appealed from directs the execution of a conveyance or any other instrument, the execution of the judgment or decree shall not be stayed until the instrument has been executed and deposited with the proper Officer of the Court appealed from, to abide the judgment of the Appellate Court. 12 V. c. 63, s. 40, No. 3. Or by deed, &c.

3. If the judgment or decree appealed from directs the sale or delivery of possession of real property or chattels real, the execution of the judgment or decree shall not be stayed until security has been entered into to the satisfaction of the Court appealed from, and in such sum as that Court directs, that during the possession of the property by the Appellant, he will not commit or suffer to be committed any waste on the property, and that if the judgment be affirmed, he will pay the value of the use and occupation of the property from the time of the appeal until the delivery of possession thereof, and also, in case the judgment or decree is for the sale of property and the payment of a deficiency arising upon the sale, that the Appellant will pay the deficiency. 12 V. c. 63, s. 40, Nos. 4 & 5. Or by the giving of special security not to commit waste.

4. If the judgment, order or decree appealed from directs the payment of money, the execution of the judgment or decree shall not be stayed until the appellant has given security, to the satisfaction of the Court appealed from, that if the judgment order or decree, or any part thereof, be affirmed, the appellant will pay the amount thereby directed, to be paid, or the part thereof as to which the judgment may be affirmed if it be affirmed only as to part, and all damages awarded against the appellant on the appeal. 12 V. c. 63, s. 40, No. 1. Or to pay debt and costs.

16. When the security has been perfected and allowed, any Judge of the Court appealed from may issue his *fiat* to the Sheriff to whom any execution on the judgment or decree has issued, to stay the execution, and the execution shall thereby be deemed to be stayed whether a levy has been made under it or not. 18 V. c. 123, s. 1. When given a fiat to stay execution to be granted.

17. If at the time of the receipt by the Sheriff of the *fiat*, or of a copy thereof, the money has been made or received by him but not paid over to the party who issued the execution, the party appealing may demand back from the Sheriff the amount made or received under the execution, or so much thereof as is in his hands not paid over, and in default of payment by the Sheriff upon such demand, may recover the same from him in an action for money had and received. 18 V. c. 123, s. 2. Execution may be superseded or payment of money levied be withheld.

- Death of Appellant not to abate the appeal.** **18.** The death of the appellant after the security required by law to be given by him has been perfected, and allowed, or stands allowed, shall not cause the appeal to abate. 20 V. c. 5, s. 10.
- Nor of the Respondent.** **19.** The death of the respondent shall not cause the appeal to abate. 20 V. c. 5, s. 11.
- Nor the marriage of a feme sole.** **20.** The marriage of a woman appellant or respondent, shall not abate the appeal, but the proceedings in error and appeal shall go on as if no such marriage had taken place, and the decision of the Court shall be certified as in other cases. 20 V. c. 5, s. 12.
- Appeals from the Superior Courts of Common Law.** **21.** As to appeals from the Court of Queen's Bench and Common Pleas. 20 V. c. 5, s. 12.
- From judgments special verdicts, special cases, &c.** 1. An appeal shall lie from a Judgment upon a special case in the same manner as from a Judgment upon a special verdict, unless the parties agree to the contrary; and the proceedings for bringing a special case before the Court of Error and Appeal shall, as nearly as possible, be the same as in the case of a special verdict, and that Court shall draw any inferences of fact from the facts stated in the special case, which the Court by which the case was originally decided ought to have drawn. 20 V. c. 5, s. 13.
- On rules to enter verdicts in non-suit in points received.** 2. An appeal shall lie from a rule to enter a verdict or non-suit upon a point reserved at the trial whether a rule to shew cause has been refused or granted, or has been discharged or made absolute. 20 V. c. 5, s. 14.
- On motions and rules for new trials** 3. In case a motion has been made for a new trial upon the ground that the Judge did not rule according to law, and in case a rule to shew cause has been refused, or if granted has been discharged or made absolute, and in case one of the Judges dissented from the rule being refused, discharged, though there was no such dissent or made absolute, or in case the Court thinks an appeal should be allowed, an appeal shall lie from such decision. 20 V. c. 5, s. 15.
- But due notice must be given.** 4. No appeal shall be allowed under the preceding three sub-sections of this clause, unless notice thereof be given in writing to the opposite party or his Attorney and to the Clerk of the Crown of the proper Court, within fourteen days after the decision complained of has taken place, or within such further time as may be allowed by that Court or a Judge. 20 V. c. 5, s. 16.
- No appeal where the matter is discretionary with the Court.** 5. Where the application for a new trial is upon matter of discretion only, as on the ground that the verdict was against the weight of evidence, or otherwise, no appeal shall be allowed. 20 V. c. 5, s. 15.

APPEALS IN CRIMINAL CASES AFFIRMED IN THE SUPERIOR COURTS.

6. A person convicted of treason, felony, or misdemeanor, whose conviction has been affirmed by either of the Superior Courts of Law, may appeal against the affirmation, and the Court of Error and Appeal shall make such rule or order therein, either
 5 in affirmance of the conviction or for granting a new trial, or otherwise, as the justice of the case requires, and shall make all other necessary rules and orders for carrying such rule or order into effect; But no such appeal shall be made
 10 unless allowed by the Superior Court appealed from, or by two of the Judges thereof, in term or vacation; nor unless such allowance has been granted and the appeal heard, within six calendar months after the conviction was affirmed, unless otherwise ordered by the Court of Error and Appeal; and any rule or order of the Court of Error and Appeal shall be final. 20 V. c. 15 61, s. 4.
7. An appeal shall lie in ejectment in the same manner and to the same extent as in any other case. 20 V. c. 5, s. 17. In ejectments.
8. An appeal shall lie in all cases in which a By-law of a Municipal Corporation has been quashed by rule of Court after
 20 argument. 20 V. c. 5, s. 18. When By-laws quashed.
9. No other appeal from a decision of the Court of Queen's Bench or Common Pleas shall be allowed, unless the judgment, decision, or other matter appealed against, appears of record. 20 V. c. 5, s. 19. No other appeals in matters not of record.

PROCEDURE.

- 25 10. In cases not otherwise provided for an appeal against any Judgment or decision shall be commenced and prosecuted with effect within four years after the judgment or decision has been entered of record, given, or completed, unless with respect to any person entitled to bring an appeal and who is at the time such
 30 title accrues, within the age of twenty one years, *feme covert non compos mentis*, or without the limits of this Province, and then such person shall have for commencing his appeal and prosecuting the same with effect six years after becoming of full age, *discoverit*, of sound memory, or returning to the Province;
 35 and if the opposite party, at the time the title to appeal accrues, is out of the province, then the party desirous of appealing shall have for commencing his appeal and prosecuting the same with effect six years after the return of such party to this province. 20 V. c. 5, s. 21. Appeals limited to 4 years, &c.
- 40 11. A Writ of Error and Appeal shall not be used in any case, and the proceeding to appeal against a Judgment shall be a step in the cause. 20 V. c. 5, s. 20. Writs of Appeal abolished.
12. Proceeding in appeals.

The notice,
&c.

12. Either party alleging error in law, may deliver to the Clerk of the Crown of the Court wherein the suit was instituted, a memorandum in writing, entitled in the Court and cause, and signed by the party or his Attorney, alleging that there is error in law in the record and proceedings. 20 V. c. 5, s. 21. 5

To be filed, &c.

13. The Clerk shall file the memorandum, and deliver to the party lodging the same a note of the receipt thereof, and the latter shall serve on the opposite party, or his Attorney, a copy of the note, together with a statement of the grounds of error intended to be argued. 10

Form of

14. The memorandum may be to the effect following :

“ In the (Q. B. or C. P.)
“ The day of , in the year of our Lord, 18 .

(The day of lodging note of Error.)

“ A. B. and C. D.
“ The plaintiff (or defendant) says that there is error in law 15
“ in the record and proceedings in this action, and the defendant
“ (or plaintiff) says that there is no error therein.

“ A. B., Plaintiff,

“ (or C. D., Defendant)

“ (or E. F., Attorney for Plaintiff or Defendant);” 20
20 V. c. 5, Sch. A 1.

Allowance of
security to be
a supersedeas
of execution.

15 . Proceedings in an appeal from a decision in a Court of Law shall be deemed a supersedeas of execution from the time of the allowance of the security ; but if the grounds of error or appeal appear to be frivolous, the Court whose judgment is 25
appealed from, or a Judge upon summons, may order execution
to issue or to be proceeded with. 20 V. c. 5, s. 22.

Assignment of
errors dispen-
sed with.

16. The assignment of and joinder in error in law shall not be used, and instead thereof a suggestion to the effect that error is alleged by the one party and denied by the other, may be 30
entered on the judgment-roll. 20 V. c. 5, s. 23.

Notice to be
given if lapse
of time or re-
lease, &c., is
relied upon.

17. In case the respondent intends to rely upon the proceeding in error being barred by lapse of time or by release of error or other matter of fact, he shall give four days' notice in writing to the appellant, to file and serve a copy of his grounds 35
of error and appeal as heretofore instead of entering the sug-
gestion, and he shall within eight days plead thereto the bar
by lapse of time, or release of error or other matter of fact, and
thereupon further proceedings may be had according to the law
and practice in England. 20 V. c. 5, s. 23. 40

18. The suggestion shall be to the effect following :

Form of Suggestion.

" The day of , in the year of our Lord, 18 .

(The day of making the entry on the Roll.)

" The plaintiff (or defendant) says that there is error in the
 " above record and proceedings, and the defendant (or plaintiff)
 5 " says there is no error therein." 20 V. c. 5, Sch. A 2.

19. The roll shall be made up, and the suggestion entered by the appellant, within ten days after the service of the note of the receipt of the memorandum alleging error, or within such other time as the Court appealed from or a Judge
 10 orders ; and in default thereof or of assignment of error in a case where an assignment is required, the respondent, his executors or administrators, may sign judgment of *non pros*. 20 V. c. 5, s. 24.

Roll and suggestion to be made up in ten days.

20. In case of an appeal on a provisional judgment against
 15 several persons, in which some only appeal, the memorandum alleging error and the note of the receipt of such memorandum shall state the names of the persons who appeal, and in case the other persons against whom judgment was given decline to join in the appeal, the same may be continued and the suggestion entered, stating the persons who appeal, without a summons and severance, or if such other parties afterwards elect to join, then the suggestion shall state them to be, and they shall be deemed, appellants although not mentioned as such in previous proceedings. 20 V. c. 5, s. 25.

Practice where some only of several parties appeal.

25 21. Upon such suggestion being entered, and after the security required to be given by the appellant has been duly allowed, the Clerk of the Court appealed from shall, on payment of his fees, prepare a full transcript of the judgment appealed against
 30 and certify the same under the seal of the Court, and shall forthwith transmit the same to the Clerk of the Court of Error and Appeal, and the cause may then be set down for argument in that Court. 20 V. c. 5, s. 26.

The Clerk to certify transcript of the judgment below.

22. In case of an appeal upon a motion or rule for a new trial, or to enter a verdict or non-suit, or upon a rule whereby a
 35 By-law has been quashed, the appeal shall be upon a case to be stated by the parties, and in case of difference to be settled by the Court or a Judge of the Court appealed from. 20 V. c. 5, s. 27.

Frame of appeal in special instances.

23. The case shall set forth so much of the pleadings,
 40 evidence, affidavits, documents, and the ruling or judgment objected to, as may be necessary to raise the question for the decision of the Court of Error and Appeal. 20 V. c. 5, s. 27.

What the case to set forth.

- To be left with Clerk of Appeal. 24. When the case has been so stated and settled, the same shall be forthwith delivered by the Appellant to the Clerk of the Court of Error and Appeal, and the cause may, after the security required to be given by the appellant has been duly allowed, be set down for argument. 20 V. c. 5, s. 27. 5
- Copies for each Judge required. 25. The appellant shall, at least four clear days before the day appointed for hearing the argument, deliver to the Clerk, a copy for each of the Judges, of the transcript of the Judgment or Case, or in default the appeal may be dismissed with costs. 20 V. c. 5, s. 28. 10
- Suggestion in case of death. 26. In case of the death of one of several appellants, a suggestion may be made of his death, and the proceedings may thereupon be continued at the suit of and against the surviving appellant, as if he were the sole appellant; and such suggestion shall not be traversable but may be set aside on 15 motion if untrue. 20 V. c. 5, s. 29.
- Executor or Administrator may continue appeals. 27. In case of the death of a sole appellant, or of all the appellants, the legal representative of the sole appellant, or of the last surviving appellant may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such 20 legal representative, and the proceedings may thereupon be continued at the suit of and against such legal representative as the appellant, and if no such suggestion is made, the respondent may proceed to an affirmance of the Judgment according to the practice of the Court, or take such other proceedings as he may be entitled to; and such suggestion, if made, shall not be 25 traversable but may be set aside on motion if untrue. 20 V. c. 5, s. 30.
- Or defend appeals. 28. In case of the death of one of several respondents, a suggestion may be made of such death, and the proceedings may be continued against the surviving respondent; and such 30 suggestion shall not be traversable but may be set aside on motion if untrue. 20 V. c. 5, s. 31.
- Notices in such cases. 29. In case of the death of a sole respondent or of all the respondents, the appellant may proceed upon giving one month's notice of the appeal, and of his intention to continue 35 the same, to the representative of the deceased, or if no such notice can be given, then upon giving the notice to the parties interested as the Court or Judge may direct. 20 V. c. 5, s. 32.
- 7 W. 4, c. 3. Interest to be allowed. Judgments affirmed. 30. When on an appeal against a Judgment the Court gives Judgment for the Defendant in error interest shall be allowed 40 by the Court of Error or Appeal, for such time as execution was delayed by the appeal. 7 W. 4, c. 3, s. 22.
- How execution to issue if a 31. If a woman being appellant or respondent marries pending the appeal, and Judgment be given for her, execution

cution may thereupon be issued in the Court below, by the *feme sole mar-*
 authority of the husband, without any suggestion or Writ of *ries*.
 Revivor, and if judgment be given against her, such judgment *Pending the*
 may be executed in the Court below against the wife alone, or *appeal.*
 5 by suggestion or Writ of Revivor pursuant to the *Common Law*
Procedure Act, judgment may be obtained against the husband
 and wife, and execution may issue thereon. 20 V. c. 5, s. 33.

22. As to appeals from the Court of Chancery ;

1. A party; desirous of appealing from any decree or order *Appeals from*
 10 in Chancery, shall file a petition of appeal with the Clerk *Chancery by*
 of the Court of Error and Appeal, and shall serve a copy thereof, *petition.*
 together with a notice of the hearing of the appeal, on the
 respondent, his Solicitor or Agent, at least two months before
 the time named in such notice for the hearing of the appeal.
 15 20 V. c. 5, s. 34.

2. Such petition shall not be answered, but proceedings *Petition not*
 shall go on as if the petition had been answered and as if the *to be answer-*
 time named in the notice had been appointed by the Court for *ed.*
 hearing the appeal ;

20 3. The petition shall be in the following form :

“ IN THE COURT OF ERROR AND APPEAL.

“ Between A. B., Appellant, and C. D., Respondent.

“ To the Honorable the Judges of the said Court.

*Form of Peti-
 tion of Ap-
 peal.*

“ The petition of the said A. B. sheweth :

“ That a Decree (*or* Order) was on pronounced by
 55 “ Her Majesty’s Court of Chancery for Upper Canada, in a
 “ certain cause depending in the said Court, wherein your
 “ petitioner was plaintiff (*or* defendant) and the above named
 “ C. D. was defendant (*or* plaintiff), which said Decree (*or*
 “ Order) has been duly entered and enrolled.

30 “ That your petitioner hereby appeals from the said Decree
 “ (*or* Order) and prays that the same may be reversed or varied,
 “ or that such other Decree (*or* Order) in the premises may be
 “ made as to your honorable Court shall seem meet.

35 “ And your petitioner will ever pray, &c.” 20 V. c. 5, Sch.
 “ A 3.

(Certificate of Counsel to be added.)

4. In case of an appeal from the Court of Chancery, *To be certified*
 the appellant shall bring the same to a hearing if the appeal *by Counsel.*
 is from a decree or decretal order, within one year from
 the pronouncing thereof; and if the appeal is from an inter-
 locutory

locutory order, not being a decretal order, within six calendar months from the pronouncing of the same, or within such further time in either case as may be allowed for the purpose by the Court of Error and Appeal, or by the Court of Chancery or a Judge thereof, upon special grounds shewn to the satisfaction of the Court or Judge granting the same. 20 V. c. 5, s. 35. 5

Term for appeal.

5. As to a decree or order which, under any general orders of the Court of Chancery, does not become absolute upon the same being pronounced, the time limited for appealing therefrom shall be computed from the time when the same does become absolute. 10

Final appeals to the Queen in Privy Council.

23. With respect to appeals to Her Majesty, in Her Privy Council; Be it enacted as follows :

1. The judgment of the Court of Error and Appeal shall be 15 final where the matter in controversy does not exceed the sum or value of one thousand pounds. 12 V. c. 63, s. 46.

Value on amount limited.

2. In a case exceeding that amount, as well as in a case where the matter in question relates to the taking of any annual or other rent, customary or other duty, or fee, or any like 20 demand of a general and public nature affecting future rights, of what value or amount soever the same may be, an Appeal shall lie to Her Majesty in Her Privy Council ;

Security to be given.

3. But no such Appeal shall be allowed until the appellant gives security to the extent of Five hundred pounds, to the 25 satisfaction of the Court appealed from, that he will effectually prosecute the appeal and pay such costs and damages as may be awarded in case the judgment or decree appealed from be affirmed ;

The execution to be stayed.

4. Upon the perfecting of such security, execution shall be 30 stayed in the original cause ;

The 15th section to apply.

5. But the provisions of the fifteenth section of this Act, shall apply to the said Appeal, and the completion of the security hereby required, shall not have the effect of staying execution in the cause, in the different cases to which the said 35 section relates, unless the provisions in the said section are complied with. 12 V. c. 63, s. 46.

The Judges may approve of the sureties.

6. Every Judge of the Court of Error and Appeal shall have authority to approve of and allow the security to be given 40 by a party who intends to appeal to Her Majesty in Her Privy Council, whether the application for such allowance be made during the sitting of the said Court, or at any other time. 20 V. c. 5, s. 36.

(7). Every appeal to Her Majesty in Her Privy Council shall be made and entered there within six months from the time of the allowance of the security, and shall be pressed to a hearing and conclusion with all reasonable speed, in default whereof the Court in which the judgment was originally pronounced may order proceedings to be had upon the Judgment of the Court of Error and Appeal as if such Judgment stood confirmed by Her Majesty in Her Privy Council at the time of the making of the rule. 20 V. c. 5, s. 36.

Appeal to Her Majesty to be within 6 months after allowance of security.

(8). Costs awarded by Her Majesty, in Her Privy Council, upon an appeal, shall be recoverable by the same process as costs awarded by the Court of Error and Appeal. 20 V. c. 5, s. 37.

Costs in final appeal.

(19). The Judges of the Court of Error and Appeal, or any five or more of them, of whom the Chief Justice of Upper Canada and the Chancellor shall be two, may from time to time make such general rules and orders for the effectual execution of this Act, and of the intention and object thereof, and for fixing the costs to be allowed in respect of proceedings in the Court, and for regulating the different proceedings in appeal, as to them may seem expedient; and may also from time to time alter and amend any of the existing rules, or any rules to be made under the authority of this Act, and make other rules instead thereof; and until such rules are made, the present rules and the existing practice and mode of proceeding in the Court, except so far as changed, modified and superseded by this Act, shall continue in force. 20 V. c. 5, s. 38.

The Judges of Court of Appeal may make rules, &c.

20. The Registrar of the Court of Chancery shall *ex officio* be Clerk of the Court of Error and Appeal, and the Clerk of the Court of Appeal shall not take for his own use or benefit, directly or indirectly, any fee or emolument whatever except the salary to which he is entitled as Registrar of the Court of Chancery, and all fees, received by or on account of the Registrar, as Clerk of the Court of Appeal, shall form part of the Consolidated Revenue Fund of the Province. 12 V. c. 63, s. 43.

The Registrar of the Court of Chancery to be Clerk in Appeal.

21. The Clerk of the Court of Error and Appeal shall on the first day of January, April, July and October in every year, render to the Inspector General, a true Account in writing, of all the fees received by or on account of the office of Clerk, in such form and with such particulars as the Inspector General from time to time requires; and such Accounts shall be signed by the Clerk, and the correctness thereof shall be declared before one of the Judges of the Court; and the Clerk shall, within ten days after the rendering of the Account, pay over the amount of the fees to the Receiver General, and if default is made in such payment, the amount due by the Clerk shall be deemed a speciality debt to Her Majesty. 12 V. c. 63, s. 44.

He is to account to Inspector General quarterly for all fees received, &c.

CAP. XI.

An Act respecting the Probate and Surrogate Courts in Upper Canada.

HER Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada enacts as follows :

- Present Courts continued.** 33 G. 3 c. 8. **1.** The Courts of Probate and Surrogate now existing in Upper Canada are hereby continued. 33 G. 3, c. 8. 5
- Name of the Court of Probate.** **2.** The Court of Probate shall be called the Court of Probate for Upper Canada, and may grant Probates of Wills, and commit Letters of Administration of the goods of persons dying intestate having personal estate in Upper Canada, and may issue process in and hold cognizance of all matters relating thereto. 10
- The Governor to preside.** **3.** The Governor shall preside in the Court of Probate, and may from time to time, call any person or persons to be Assessor or Assessors with him.
- May appoint Official Principal and Registrar, &c.** **4.** The Governor may from time to time, as vacancies occur, appoint an Official Principal of the Court of Probate, a Registrar, and such officers as are from time to time necessary for the exercise of the jurisdiction of the Court. 15
- Surrogate Courts.** **5.** There shall be a Surrogate Court in every County in Upper Canada hereafter erected into a separate Corporation. 20
- The Governor to appoint Surrogates.** **6.** The Governor shall, by Commission under the Great Seal; appoint from time to time, as vacancies occur in a Surrogate Court, a Surrogate to preside as Judge, and a Registrar, and such other officers as are from time to time necessary for the exercise of the jurisdiction of the Court. 25
- Name of Surrogate Courts.** **7.** Every Surrogate Court shall be called the Surrogate Court of the County of _____, (*naming the County in which such Court has jurisdiction,*) and may grant Probates of Wills and Letters of Administration of the goods of persons dying within the limits of the County, having personal property therein, and not having such to the value of five pounds in any County or Union of Counties other than that in which he usually resided at the time of his decease, and may issue process in and hold cognizance of all matters relating thereto. 30
- Powers of.**
- Where jurisdiction is confined to the Court of Probate.** **8.** But when a testator or an intestate dies possessed of goods to the value of five pounds in each of two or more Incorporated Counties, or in a County other than that in which he usually resided at the time of his death, the Probate of his Will, or Letters of Administration of his goods and effects, shall 35

shall be granted by the Court of Probate only, and not by a Surrogate Court.

9. Each of the said Courts shall be provided with a seal; Seal and inscription there-
on
5 And on the seal of the Court of Probate, shall be inscribed the words Upper Canada; and on the seal of every Surrogate Court, the name of the County or United Counties over which its jurisdiction extends; and a particular description of such seals shall be sent to the office of the Secretary of the Pro-
10 vince, to be kept among the records of the Province.

10. No person shall enter upon the office of Surrogate until he has taken the following oath :

“I, A. B., do solemnly promise and swear, that I will
“honestly and impartially execute the office of
15 “according to the best of my knowledge and ability. So help
“me God.” Oath of office
of Surrogate
Judge.

11. No person shall enter upon the office of a Registrar in any of the said Courts until he has taken the following oath :

“I, A. B., do promise and swear that I will diligently and Registrars'
oath.
20 “faithfully execute the office of _____, and that I will not
“knowingly permit or suffer any alteration, obliteration, or
“destruction, to be made or done by myself or others, on any
“Wills or testamentary papers committed to my charge. So
“help me God.”

25 12. Every Will or testamentary paper, duly proved and in- Probate of
Wills.
sinuated in the Court of Probate, or in a Surrogate Court, shall be kept among the records of the Court, and a transcript thereof authenticated under the seal of the Court, shall be received as the Probate of the Will or testamentary paper, in
30 all Her Majesty's Courts in Upper Canada, or wherever in Upper Canada it is necessary to produce the same.

13. No nuncupative will shall be good, where the estate Nuncupative
Wills.
bequeathed exceeds the value of thirty pounds, unless the Will is proved by the oaths of three witnesses at least, who
35 were present at the making thereof, nor unless it is proved Proof of.
that the testator at the time of pronouncing the Will bade the persons present, or some of them, to bear witness that such was his Will, or to that effect, nor unless such Will was made at the time of the last sickness of the deceased, and in the
40 house of his habitation or dwelling, or where he had been resident for the space of ten days or more next before the making of the Will, except when such person is surprised or taken sick away from his own home, and dies before returning thereto.

45 14. No testimony shall be received to prove any Will To be proved
within six
months.
of
nuncupative, after the lapse of six months after the speaking
5.

of the alleged testamentary words, unless the testimony or the substance thereof was committed to writing within six days after the making of the Will.

Citations re-
quired, &c.

15. No letters testamentary or probate of a nuncupative Will shall pass the seal of a Court till fourteen days or more after the decease of the testator have expired, nor shall any nuncupative will be at any time received to be proved unless process has issued to call in the widow or next of kindred of the deceased, to the end that they may contest the same, if they choose. 5 10

Letters of Ad-
ministration.

16. No letters of administration shall be granted of the goods, chattels, or credits, of any person represented to have died intestate, until due proof has been made that such person is dead and died intestate.

Proceedings
when applied
for by ano-
ther than the
next of kin.

17. When application is made for Letters of Administra- 15
tion of the goods, chattels and credits, of any person having
died intestate, by any person or persons not entitled to the
same as next of kin to the intestate, the proceedings shall be
the following :

(1.) The Judge to whom the application is made, shall issue, 20
a citation to the next of kin of the intestate, summoning him to
appear, and shew cause, if any he has, why the administration
should not be granted to the person so applying ;

(2.) The citation shall be served upon such of the next of kin 25
of the intestate' as reside in Upper Canada ;

(3.) In case no person of the kindred of the intestate re-
sides in Upper Canada, and the intestate resided in Upper
Canada at the time of his death, a copy of the citation may
be served personally or by being put up in some public place
in the Municipality in which the intestate resided at the time 30
of his death, at least ten weeks before the return thereof ; and

(4.) In case the intestate did not reside in Upper Canada at
the time of his death, a copy of the citation shall be pub-
lished in the Canada Gazette, once in every month for eight
months before the return thereof. 35

Temporary ad-
ministration
may be grant-
ed.

18. In case a person usually residing in Upper Canada,
and entitled to administer as next of kin, is absent from Upper
Canada, the Judge may grant a temporary administration to
any of the kindred of the intestate who are in Upper Canada
during a limited time, or to be revoked upon the return and 40
application of such nearest of kin, and for that purpose shall
take sufficient bonds from the party to whom the temporary
administration is granted, for the surrender of such Letters of
Administration, and to account for the administration in
manner hereinafter mentioned. 45

19. The Judge of each of the said Courts of Probate and Surrogate shall, upon granting Letters of Administration of the goods of persons dying intestate, take sufficient bonds of the person to whom administration is to be committed, with two or more able sureties, in a sum proportioned to the value of the estate, in the name of the Governor, and with a condition to the effect following, *mutatis mutandis* :

Security to be taken from Administrators.

“ The condition of this obligation is such, that if the within bounden A. B., administrator of all and singular the goods, chattels and credits of C. D., deceased, do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, and credits, of the said deceased, which have or shall come into the hands, possession or knowledge of him, the said A. B., or into the hands and possession of any other person or persons for him, and the same so made, do exhibit or cause to be exhibited into the registry of Court, on or before the day of next ensuing, and the same goods, chattels and credits, and all other the goods, chattels and credits of the said deceased, at the time of his or her death, which at any time after shall come into the hands or possession of the said A. B., or into the hands and possession of any other person or persons for him, do well and truly administer according to law, and further do make or cause to be made, a true and just account of his administration, at or before the day of and all the rest and residue of the said goods, chattels, and credits, which shall be found remaining upon the said administrator's account, the same being first examined and allowed by the Judge of the Court for the time being, shall deliver and pay unto such person or persons respectively, as the said Judge by his decree or sentence, conformably to the provisions in a certain Act of Parliament, entitled, *An Act for the better settling intestate estates*, and passed in the twenty-second and twenty-third year of the reign of Charles II, and also in a certain Act passed in the first year of King James II, contained, shall limit and appoint ; and if it shall hereafter appear that any last Will or Testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said Court, making request to have it allowed and approved accordingly, if the said A. B., within bounden, being thereunto required, do render and deliver the said Letters of Administration (approbation of such testament being first had and made) in the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.”

Condition of bond.

20. The Judge, may, by citation under the seal of his Court, call Administrators to account, respecting the goods of any person dying intestate within his jurisdiction, and upon hearing and due consideration thereof, may order and make distribution of what remains, after all debts, funeral and just expenses of every sort, are first allowed and deducted, according to the provisions

Administrators may be cited to account.

provisions in the statutes hereinbefore mentioned, but no such distribution shall be made until one year has fully expired after the intestate's death.

When distribution made, bonds to be taken.

21. Every one to whom a share is allotted, shall give a bond, with sufficient sureties, that if any debt truly owing by the intestate, shall be afterwards sued for and recovered, or otherwise made to appear, the person receiving such share will refund out of his share to the administrator such person's reatable part of the debt, and of the costs of suit, and of the charges of the administrator by reason of such debt, thereby to enable the administrator to pay the same. 5 10

Offenders may be punished.

22. The Judge of the Court of Probate, and every Surrogate Judge, may upon application supported by certificate from the registrar or proper officer, of any neglect or disobedience to the regular process, order or sentence of the Court, or upon any complaint verified upon oath, by any apparitor, officer or other person, of any wilful contempt or resistance to the regular process or sentence of the Courts, or to the service thereof, proceed against the offending party by attachment directed to the Sheriff of the proper County, who is hereby required to execute the same. 20

Proclamation in case of non-appearance.

23. In such case if the Sheriff returns that the party is not found in his County, the Court may issue a proclamation directed to such Sheriff which proclamation the Sheriff shall make, requiring that the party do on his allegiance personally appear in the Court, on a day named in the proclamation; and in case the Sheriff returns that the party is not found, and he does not appear at the time and place as commanded, the Court may proceed to a sequestration of the personal effects, goods and chattels of the party in contempt, to be directed to certain persons to detain and keep the same, until the contempt has been cleared, or the Court makes order to the contrary. 25 30

Security to be taken in case administration with the Will annexed.

24. When an administration is granted with a Will annexed, the letters shall contain a provision that such Will shall be observed and performed; and a bond with two or more sufficient sureties, shall be taken in the name of the Governor from the person to whom administration is committed, in such penalty as to the Judge may appear reasonable, respect being had to the value of the estate, and the condition may be as follows: 35 40

Condition of bond.

“ The condition of this obligation is such, that if the above bounden , administrator (or administratrix, as the case may be,) of all and singular the goods, chattels and credits of the said , deceased, with the will of the said , annexed, and not administered by (as the case may be) do make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of the said , deceased, 45

deceased, which shall have come to the hands, possession or knowledge of the said , or into the hands and possession of any other person for the said , and the same so made do exhibit or cause to be exhibited (where such bond shall be taken by the Judge of the Court of Probate) into the registry of the Court of Probate of this Province, or into the Office of the Surrogate of the of , at or before the expiration of six calendar months from the date of the above written obligation, and the same goods, chattels and credits, and all other goods, chattels and credits of the said deceased, at the time of his or her death, which at any time after shall come into the hands and possession of the said , or into the hands and possession of any other person or persons for the said , do well and truly administer, according to the directions and true intentions of the testator or testatrix, (as the case may be,) expressed in the will to the letters of administration granted to the said , annexed, as the law directs, and further, when thereunto lawfully required, do make or cause to be made a true and just account of administration, then this obligation to be void, or else to remain in full force."

Which bonds shall be of the same force and effect, and may be prosecuted upon the like occasions, and for the purposes and in the same manner as the bonds taken upon the granting of administrations of persons dying intestate, hereinbefore set forth.

25. In case of an administration *durante minore etate*, or *pendente lite*, or *ad litem*, or of any other temporary or limited administration, the Court shall require such proceedings to be had and such securities to be given as may suit the exigency of the case.

Administration during minority or pending litigation, &c.

26. Any person aggrieved by any order, sentence, judgment or decree of a Surrogate Court, may appeal from the same, or any part thereof, to the Judge of the Court of Probate, and such Judge shall hear and finally determine the same, and reverse, affirm or alter the order, sentence, judgment or decree, and make such other order or decree therein, as justice and equity require, and shall thereupon remit the matter, with his order, judgment or decree into the Court appealed from; but no appeal shall be made after fifteen days from the making or giving of the order, sentence, judgment or decree to be appealed from; nor unless the value of the goods, chattels, rights or credits affected by the order, judgment, sentence or decree, is more than fifty pounds.

Appeal allowed from Surrogate to Probate Judge.

27. On security being given to the satisfaction of the surrogate, for prosecuting the appeal, the order, sentence, judgment or decree, appealed from, shall be suspended.

Proceedings suspended in case of appeal and security given.

Four Terms appointed for the said Courts.

28. Four terms are hereby appointed in every year for the hearing and determining of motions, petitions, pleadings, suits and causes respecting the matters that may be brought before the said Courts respectively; the first term to be holden from the first Monday in January to the Saturday of the same week inclusive; the second from the last Monday in March to the Saturday of the same week inclusive; the third from the first Monday in June to the Saturday of the same week inclusive; and the fourth term from the last Monday in September to the Saturday of the same week; but the Court shall have jurisdiction to hear and determine any of the said particulars at other periods if the Court thinks fit.

Fees.

29. The member and officers of the Court may demand and take the following fees:

	OFFICIAL PRINCIPAL AND SURROGATE.			REGISTER.			
Tariff.	For seal to the probate of a will, to letters of administration with the will annexed, and to letters of administration where the property devolving is under £300..	£	s.	d.	£	s.	d.
	From £300 to £1000.....	0	16	0	0	6	8
	When above £2000.....	1	0	0	0	6	8
	For seal of the Court to any writing or instrument.....	2	0	0	0	6	8
	For receiving caveat.....	0	13	4	0	3	4
	For filing the same.....	0	6	8	0	0	0
	For receiving inventory.....	0	0	0	0	3	4
	For filing the same.....	0	6	8	0	0	0
	For citation.....	0	0	0	0	3	4
	For collating will.....	0	3	4	0	1	0
	For drawing bond and attesting execution	0	0	0	0	6	8
	For searching register, each year.....	0	0	0	0	6	8
	For office copy, each page eighteen lines, six words in each.....	0	0	0	0	1	0
		0	0	0	0	1	0
	APPARITOR OR MESSENGER.						
	For service of citation.....	0	2	0			
	For travelling, each mile.....	0	0	4			

CAP. XII.

Act respecting County Courts.

I. COMMON LAW JURISDICTION.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. There shall be in every County, or Union of Counties, in Existing
5 Upper Canada; a Court of Law and of Record, to be styled Courts conti-
" The County Court of the County of _____, or United nued.
" Counties of _____ " (as the case may be); and the
County Courts already established under such names respec-
tively, and all existing Commissions, Judges and Officers of
10 such County Courts, shall continue subject to the provisions
of this Act. 8 V. c. 13, s. 72.

2. The Governor shall from time to time appoint, under the The Governor
Great Seal, one person or two persons, being a Barrister or to appoint one
Barristers of at least five years' standing at the Bar in Upper or two Judges
15 Canada, to be a Judge or Judges in each of the said Courts, to each Court.
each of which Judges shall hold office during good behaviour,
but shall be subject to removal by the Governor for inability
or misbehaviour in case such inability or misbehaviour is
established to the satisfaction of the Court of Impeachment for
20 the trial of Judges of County Courts. 8 V. c. 13, s. 3.

3. In case more than one Judge of the County Court is ap- The Senior
pointed for any County, the Judge whose Commission has priority Judge to be
of date shall be styled " The Judge of the County Court of styled " The
" (as the case may be), and the other Judge of Judge, &c."
25 the same Court shall be styled the Junior Judge thereof; But
the Governor may express in the Commission to any such Judge
that he shall be the Senior Judge of the County Court to which
he is appointed. 16 V. c. 20, s. 1.

4. The Judge of the County Court, and the Junior Judge To reside
30 if there be one, shall reside within the County or Union of within the
Counties over the Court whereof he is appointed to preside, County.
and no such Judge shall, during the continuance of his appoint-
ment, directly or indirectly practise in the profession of the Law Not to prac-
as Counsel, Attorney, Solicitor or Notary Public under the penalty tise.
35 of forfeiture of office, and the further penalty of one hundred
pounds to be recovered by any person who may sue for the
same by action of debt or information in either of the Superior
Courts of Common Law—one half of such pecuniary penalty
to belong to the party suing, and the other to Her Majesty.
40 8 V. c. 13, s. 3—16 V. c. 20, ss. 1, 2.

5. In case of the appointment of a Junior Judge for any Junior Judge
County, such Junior Judge may preside over all or any of the may hold Di-
Division

Division Courts; And the County Court in the absence of the Senior Judge. Division Courts within the County, and shall, as regards any such Division Courts, have the same duties, powers and authorities as the Senior Judge; and in case of the illness or unavoidable absence of the Senior Judge, such Junior Judge shall hold the County Court, and, during such illness or absence, exercise all the powers vested in, and do all acts required or allowed to be done by the Senior Judge of such County Court. 16 V. c. 20, ss. 1, 2. 5

Senior Judge to hold Division Courts when expedient. 6. The appointment of a Junior Judge shall not prevent or excuse the Senior Judge of the County Court from presiding at 10 any of the Division Courts within his County when the public interests require it. 16 V. c. 20, 2.

A Deputy Judge may be appointed if there is no Junior Judge. 7. In case a Junior Judge is not appointed, the Governor may from time to time appoint, during pleasure, a Barrister of at least three years' standing at the Bar of Upper Canada, as 15 Deputy Judge for any County, to perform, and such Deputy Judge shall perform, all the duties of and incident to the office of Judge of the County Court and Surrogate Court, (in case the Judge of the County Court is also Judge of the Surrogate Court,) at any time during such appointment when it is necessary so to do, by 20 reason of the illness, the unavoidable absence, or absence on leave or the death of such Judge; but no such Deputy Judge shall be disabled from practising his profession of the Law while holding his appointment. 20 V. c. 58, s. 14.

Oath of office. 8. No County Court Judge, Junior or Deputy Judge, shall 25 enter upon the duties of his office until he has taken the following oath before some person appointed by the Governor to administer the same, that is to say: 8 V. c. 31—20 V. c. 58, s. 15.

Form of. "I, _____, do swear that I will truly and faithfully, 30
" according to my skill and knowledge, execute the several du-
" ties, powers and trusts of Judge of the County Court of the
" County of _____, or United Counties of
" (as the case may be), and of the several Division Courts
" within the same, without fear, favor or malice—So help me 35
" God." 8 V. c. 13, s. 4.

Salaries. 9. Every County Court Judge shall be paid by a certain yearly salary of not more than six hundred and fifty pounds nor less than two hundred and fifty pounds, and the Governor in Council shall fix the amount of such salary, having due regard 40 as well to the population of the several Counties as to the amount of fees received from the County Court and Division Court "Fee Fund" for the respective Counties. 8 V. c. 13, s. 61—19 V. c. 90, s. 22.

May be increased or diminished. 10. The Governor in Council may, within the limits afore- 45 said, increase the salary of any such Judge, and as vacancies occur may diminish such salary.

11. In case the Governor in Council is satisfied that under the provisions hereinafter contained, an allowance for travelling expenses ought to be made, then a sum not exceeding fifty pounds a year may be paid to each of the said Judges over and above his salary, as indemnity for his travelling expenses in holding Division Courts, due regard in fixing the amount being had, to the extent, population, amount of business and other circumstances of the several Counties and Divisions; and, within the limits aforesaid, the amount fixed for travelling expenses may be from time to time increased or diminished. 16 V. c. 177, s. 25.

Travelling expenses may be allowed.

TERMS.

12. The several County Courts in Upper Canada shall hold four Terms in each year, which shall respectively commence on the first Monday in January, April, July and 15 October, and end on the Saturday of the same week. 20 V. c. 58, s. 17.

Terms of the Courts.

13. The Judges of the several County Courts may, during each Term, appoint one or more days within a fortnight next ensuing the last day of such Term, on which Judgments will be given; and the said Judges respectively, on the days appointed, may sit as of Term, for the purpose only of giving Judgments and of making rules and orders in matters previously moved and argued in such Courts respectively during the term; and all Judgments, Rules and Orders pronounced and made on such days shall have the same effect as if pronounced or made in Term time. 20 V. c. 58, s. 18.

Judgments may be pronounced in vacation.

SITTINGS.

14. The Sittings of the said County Courts for the trial of issues in fact, and the assessment of damages, shall be held annually on the second Tuesday in the months of March, 30 June, September and December. 20 V. c. 58, s. 16.

The Courts to hold 4 sittings for the trial of causes.

JURISDICTION.

15. The County Courts respectively shall have jurisdiction and hold plea in all causes and suits relating to debt, covenant and contract, to one hundred pounds, where the amount is liquidated or ascertained by the act of the parties or by the signature of the Defendant and to any amount, on bail-bonds given to a Sheriff in any case in a County Court, whatever may be the penalty, and on Recognizances of Bail taken in a County Court whatever may be the amount recovered or for which the Bail therein may be liable, and in all suits and actions against Justices of the Peace for any thing done or pretended to be done by them in the execution of their office when the damages claimed do not exceed the sum of thirty pounds.

Jurisdiction.

pounds, and in all other personal actions where the debt or damages claimed do not exceed the sum of fifty pounds; but the said Courts shall not have cognizance of any action where the title to land is brought in question, or in which the validity of any devise, bequest or limitation under any will or settlement is disputed, or for any libel or slander, criminal conversation or seduction. § V. c. 13, s. 5,—19 V. c. 90, s. 20,—16 V. c. 180, s. 9,—S V. c. 13, s. 50,—12 V. c. 66, s. 7. 5

Statutes of
jeofails and of
limitations to
apply.

16. All Statutes of Jeofails and of Limitations and of Amendments shall be of the same force in the County Courts as in the Superior Courts. § V. c. 13, s. 35.

Pleas to the
jurisdiction
must be veri-
fied.

17. No plea, replication or other pleading, whereby the title to any land, or to any annual or other rent, duty or other custom or thing, relating to or issuing out of lands or tenements, is brought in question, shall be received by any County Court without an affidavit thereto annexed that the same is not pleaded vexatiously, nor for the mere purpose of excluding the Court from jurisdiction, but that the same does contain matter which the Deponent believes is necessary for the party pleading to enable him to go into the merits of his case. § V. c. 13, s. 13. 20

Writs of Exe-
cution.
Rules, orders,
&c., may be
issued and
executed in
any County.

18. The County Courts respectively may issue writs of *Fieri Facias* against goods and against lands, and writs of *Capias ad Satisfaciendum* against the person upon judgments entered in such Courts, in like cases, upon the same terms, and in the same order, as similar writs may be issued in the Superior Courts of Common Law; and writs of execution against the person's lands or goods, writs of subpoena, rules on the Sheriff and all other rules, Judges' orders and proceedings, may be issued from the County Court or by the Judge thereof, (as the case may be) in which any action is brought or judgment entered up, into any other County, and be served or executed there. § V. c. 13, s. 49. 25

CLERK.

The Governor
to appoint
Clerks.

19. The Governor in Council shall appoint a Clerk to every County Court, to hold office during pleasure. § V. c. 13, s. 2.

Where his
office is to be
held.

20. The Clerk of every County Court shall hold his office in the Court House or if there be no room therein, then in such place within the County Town as the Judge directs. 12 V. c. 66, s. 12. 35

Office hours.

21. Every such Clerk shall keep his office open for the transaction of business on every day Sunday and legal holy days excepted from the hour of ten in the forenoon to the hour of three in the afternoon, and in Term Time from nine in the forenoon to four o'clock in the afternoon. 20 V. c. 59, see 19 V. c. 90, s. 4, 12 V. c. 66, s. 12. 40

22. The Clerk of every County Court shall keep an account of all Writs, including *Subpoenas*, Rules and Orders of his Court, and of all other papers and proceedings whatsoever, mentioned and included in the Schedule hereto annexed of
 5 Fees to be collected by such Clerk and paid over to the Fee Fund through the County Attorney, and he shall receive and take all Fees payable on every such Writ or other proceeding, and shall duly and regularly enter an account of all such Fees in a Book to be kept by him, which Book shall be open to all
 10 persons desirous of searching the same on payment of one shilling and three pence for each search, and such Clerk shall, at the times, from time to time appointed by the Governor, submit his accounts to be audited by the Judge of the County Court; but no such fee shall be demanded or received for
 15 searching either the Appearance or Plea Book only. 20 V. c. 59, s. 12, 8 V. c. 13, ss. 62 & 63.

The Clerk to issue all Writs, &c.

To receive certain fees for the Fee Fund.

23. Until otherwise ordered or provided, the fees specified in the Schedule subjoined shall be the Fees which are to be received by the Clerks of the several County Courts and
 20 which are to belong to, and to be by them paid over to the Fee Fund. 8 V. c. 13, s. 75.

According to the Schedule.

24. The Clerks of the County Courts shall tax costs, subject in the event of any dispute arising at taxation, to an
 25 appeal to the Judges of the said County Courts respectively. 8 V. c. 13, s. 75.

To tax costs.

25. The Governor in Council may cause to be paid to the Clerk of the County Court for the United Counties of York and Peel, and after the dissolution of the Union of such Counties,
 30 to the Clerk of the County Court for the County of York, over and above all Fees received by him, an allowance not to exceed one hundred pounds per annum out of any Surplus that may remain of the Fee Fund of such United Counties, or
 35 County, after all other charges thereon have been first defrayed. 19 V. c. 90, s. 25.

An extra allowance may be made to the Clerk of the County of York.

SCHEDULE.

FEES TO BE RECEIVED BY THE CLERK AND TO BELONG TO AND BE PAID OVER TO THE FEE FUND. 19 V. c. 90, s. 23.

- Every Writ of Summons or *Capias ad Respondendum*, one shilling and six pence. Tariff.
- Every Verdict, six shillings and three pence.
- Executing each Writ of Trial or Enquiry and making return thereto, six shillings and three pence.
- 40 Every report made by the Judge of the proceedings on executing a Writ of Trial or Enquiry, five shillings.
- Every Certificate of Proceedings made by a Judge to be transmitted to the Court of Queen's Bench, or Common Pleas,
 45 two shillings and six pence.

Every

- Every Rule requiring a motion in open Court, one shilling and six pence.
- Every Rule or Order of Reference, one shilling and six pence.
- Every other Rule or Judge's Order, one shilling and three pence.
- Every Recognizance of Bail taken by Judge, one shilling and six pence. 5
- Every Affidavit administered by Judge, one shilling.
- Every computation of Principal and Interest on a Bill, Note, Bond or Covenant for payment of money, three shillings.
- Every Writ of Subpoena, one shilling. 10
- Every Judgment entered, six shillings and three pence.
- Every oath administered in open Court, one shilling.
- For every Special hearing before the Judge, five shillings.
- For every day's sitting in taking Examinations and Evidence, ten shillings. 15
- For every reference to the County Judge, from the Superior Courts, ten shillings per day, for every day's sitting, in taking the Examinations and Evidence. 19 V. c. 90, s. 18.
- One shilling per folio on the Evidence taken by the County Judge on every Reference to him from the Superior Courts. 20
- For every Report on the Examinations and Evidence on the Reference to the County Judge by the Superior Courts, five shillings.
- In applications and proceedings other than in suits in any Court of Civil Judicature as nearly as the nature of the case will allow as are payable under the Act for the relief of Insolvent Debtors. 25

CAP. XIII.

An Act respecting the equitable jurisdiction of the County Courts in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The County Courts in Upper Canada shall possess the like jurisdiction and authority in respect of the matters hereinafter mentioned as was possessed by the Court of Chancery of Upper Canada, on the 23rd May, 1853. 16 V. c. 119, s. 1. Jurisdiction of.
2. Any person seeking equitable relief may (personally or by Attorney) enter a claim against any person from whom such relief is sought, with the Clerk of the County Court of the County within which such last mentioned person resides, in any of the following cases, that is to say : 16 V. c. 119, s. 2. Claims may be entered with the Clerk in cases—
- (1.) A person entitled to an account of the dealings and transactions of a partnership (the joint stock or capital not having been over two hundred pounds,) dissolved or expired, seeking such account ; Of partnership :
- (2.) A creditor upon the estate of any deceased person, such creditor seeking payment of his debt (not exceeding fifty pounds) out of the deceased's assets (not exceeding two hundred pounds) ; Of estates of deceased persons
- (3.) A legatee under the will of any deceased person, such legatee seeking payment or delivery of his legacy (not exceeding fifty pounds in amount or value) out of such deceased person's personal assets (not exceeding two hundred pounds) ; Legatees.
- (4.) A residuary legatee, or one of the residuary legatees of any such deceased person seeking an account of the residue and payment or appropriation of his share therein (the estate not exceeding two hundred pounds) ; Residuary Legatees.
- (5.) An executor or administrator of any such deceased person seeking to have the personal estate (not exceeding two hundred pounds) of such deceased person, administered under the direction of the Judge of the County Court for the County within which such executor or administrator resides ; Executors and Administrators.
- (6.) A legal or equitable mortgagee whose mortgage created by some instrument in writing, or a judgment creditor having duly registered his judgment, or a person entitled to a lien or security for a debt, seeking foreclosure or sale or otherwise to enforce his security, where the sum claimed as due does not exceed fifty pounds ; Mortgagees.

Mortgagors. (7.) A person entitled to redeem any legal or equitable mortgage or any charge or lien and seeking to redeem the same, where the sum actually remaining due does not exceed fifty pounds ;

In all cases not exceeding £50. (8.) Any person seeking equitable relief for, or by reason of any matter whatsoever, where the subject matter involved does not exceed the sum of fifty pounds ; 5

Injunctions. (9.) Injunctions to restrain the committing of waste or trespass to property by unlawfully cutting, destroying or removing trees or timber, may be granted by the Judge of any County Court, which injunctions shall only remain in force for a period of one month unless sooner dissolved on an application to the Court of Chancery ; but the power to grant such injunctions shall not authorize the prosecuting of the suit in the County Court, and the injunction may be extended and the suit further presented to judgment or otherwise in the Superior Court in the like manner as if the same had originated in that Court. 10 15

Practice. 3. When not otherwise provided by Rules or Orders of the Court of Chancery, the forms and course of proceeding in the cases enumerated above may be in principle as hereinafter provided. 20

Form of claim, &c. In the County Court of the County of

A. B., of the Township of _____ in the said County, states, that from the _____ day of _____ down to the _____ day of _____ he, and C. D., of the Township of _____, in the said County, carried on the business of _____ in copartnership, under certain articles of copartnership, dated the _____ day of _____, and made between the said A. B., and the said C. D., on the _____ day of _____ (or under a verbal agreement, &c., as the case may be), that the said Copartnership was dissolved (or expired, as the case may be,) on the _____ day of _____, yet that the said C. D., refuses to account with the said A. B. concerning the dealings and transactions thereof. The said A. B. claims relief in the premises, and that an account of the partnership dealings and transactions between the said A. B. and C. D., may be taken, and the affairs and business of the said Copartnership wound up and settled under the directions of the Court, and such further relief given as may be just and proper. And the said A. B. requests that a Writ of Summons be issued from the Court, according to the Statute in that behalf, requiring the said C. D. to appear on the _____ day of _____, before the Judge of the Court, to show cause, if he can, why the relief claimed 25 30 35 40

claimed by the said A. B. should not be had, and such order in the premises made as may be just.

Dated the _____ day of _____

A. B., in person.

(Or A. B. by J. P., one, &c.)

5

16 V. c. 119, A.

To be filed by the Clerk, and proceedings thereon.

4. Upon entering the claim with the Clerk, the Clerk shall number and file the same according to the order in which it is entered, and shall thereupon issue a Summons under the seal of the Court briefly stating the nature of the claim and bearing the number of the claim on the margin thereof, requiring the person against whom the claim is made, on some day in the next term of the Court, or (by a Special Order of the Judge,) on a day out of term and therein named, to appear before the Judge to show cause, if he can, why such relief as is claimed by the Plaintiff should not be had, or why such Order as may be just with reference to the claim should not be made. 16 V. c. 119, s. 4.

5. The Writ of Summons shall be to the effect following: Victoria, &c.,

Form of Summons.

(County of _____)

To C. D. of _____

GREETING :

[L. S.] You are hereby summoned to appear either in person or by Attorney before His Honor the Judge of the County Court of the County of _____, on the _____ day of _____, at twelve o'clock noon, at the Court House in the town of _____ to answer the complaint of A. B. of the, &c., who has filed a claim against you in this Court for an account of the dealings and transactions respecting a partnership between you and the said A. B. now expired; (or as the same may be, stating briefly the nature of the claim) a certified copy of which claim is hereunto attached, and you are required in and there to show cause, if you can, why such relief as is claimed by the said A. B. should not be had, or why such Order as shall be just, with reference to the claim, shall not be made.

Witness,
Court of the County of _____
day of _____

Esquire, Judge of the County
at _____ this
16 V. c. 119, B.

6. A copy of the Writ of Summons, with a certified copy of the Plaintiff's claim so entered as aforesaid, attached thereto, shall be served on the Defendant ten days at least before the day appointed in the Writ for showing cause. 16 V. c. 119, s. 5.

Service of copy.

Alias Summons may issue.

7. When necessary, *alias* and *pluries* Writs of Summons may be issued.

Appearance.

8. At the time appointed for showing cause, the Defendant shall appear personally or by Attorney, and show cause, if he can, (and if necessary by Affidavit) why the relief claimed by the Plaintiff should not be had against him; and each party, on giving five clear days' notice in writing prior to any hearing of his intention so to do, may examine the other party upon the matters relating to such claim. 16 V. c. 119, s. 7. 5

The hearing.

9. The Judge, on hearing the claim, and what the Plaintiff alleges in support thereof, and any other evidence, whether oral or written or by affidavit, which he produces in that behalf, and what is alleged on the part of the Defendant, and the evidence whether oral or written or by affidavit which he produces in that behalf, or on production of an affidavit, that the Writ of Summons and copy of claim have been personally 10

The taking of accounts may be ordered.

served on the Defendant, may, if he, the said Judge, thinks fit, make an Order granting or refusing the relief claimed, or directing any accounts or inquiries to be taken or made, before himself, if he deems such course expedient, or before the Clerk of the Court, at days or times to be appointed by the Judge for the purpose, or the Judge may direct such other proceedings to be had for the purpose of ascertaining the plaintiff's title to the relief claimed, or may make such other Order, as according to the nature and circumstances of the case may seem to be just and proper. 16 V. c. 119, s. 7. 15 20

Parties may be added or cited.

10. The Judge may direct such persons or classes of persons, as he may think necessary or fit, to be summoned or ordered to appear as parties to the claim, or on any proceedings with reference to any account or inquiries directed to be taken or made, or otherwise. 25

Oral evidence to be on oath.

11. All oral evidence given by any person before the Judge relating to such claim, shall be upon the oath of the person giving the same, to be administered by or before said Judge. 30

Costs in default of appearance.

12. In default of the appearance of either of the parties, the Judge may make such Order as to the payment of costs by the party in default, as to him seems meet. 35

The Judge to decide both law and fact, but may direct a trial of fact by Jury.

13. The Judge of the County Court shall be the sole Judge in all actions brought in his Court under the jurisdiction given by this Act, and shall determine in a summary manner all questions of law or equity as well as of fact arising therein, unless he thinks proper to have any fact controverted in the suit tried by a jury, or unless either party applies to have such facts so tried. 16 V. c. 119, s. 8. 40

14. If an order is made allowing trial by Jury, the trial shall take place at the then next Sittings of the County Court, and shall be conducted in the same manner as other trials by Jury in the Court are conducted.

When a trial by Jury is to take place.

15. If a new trial is not moved for within ten days after the verdict is rendered, the Judge may proceed to make such Order and Decree on the verdict of the Jury as according to the nature and circumstances of the case may seem just and proper.

If a new trial not moved for, the Judge to decide the case.

16. The Rules of decision in the County Courts in respect to the matters aforesaid, shall be the same as govern the Court of Chancery, when not otherwise provided for by this Act, so far as such rules are applicable to a Court of Summary Jurisdiction. And the said County Courts shall possess authority to enforce obedience to their Orders, Judgments and Decrees, in respect to the matters in this Act contained; and all Sheriffs, Gaolers, Coroners, Constables and other Peace Officers, shall aid, assist and obey the said County Courts respectively, in the exercise of their jurisdiction, when required by any County Court so to do. 16 V. c. 119, s. 10.

The rules of the Court of Chancery to apply.

Sheriff and other officers to be aiding, &c.

17. The Judge may at any time, in furtherance of justice and on such terms as he thinks proper, amend the claim filed, and any proceeding relating thereto, by adding or striking out the name of any party, or by correcting a mistake in any other respect, or by inserting other allegations material to the case, or by conforming such claim or proceeding to the facts proved, where the amendments do not change substantially the form of the suit, and may also in any stage of the proceedings disregard any error or defect which does not affect the substantial rights of the adverse party and may make any Order for granting time to the Plaintiff or Defendant to proceed in the prosecution or defence of his suit that to such Judge may seem necessary for the ends of justice. 16 V. c. 119, s. 10.

Amendments may be made.

18. Every Order by the Judge of the County Court, made upon the hearing of any claim, or in respect to such claim and suit, or in respect to the matters herein mentioned, may be enforced in the same manner as any Judgment or Order of a County Court is or may be enforced in the Court, under the existing provisions of law in relation to the said Courts, so far as such provisions are applicable, or in such other manner as prescribed by Rules already made or to be made in the manner hereinafter mentioned. 16 V. c. 119, s. 11.

Orders, &c., how enforced.

19. The Judge before or upon any hearing or trial, or upon taking any accounts or making any inquiries, shall have the same power to order the parties to produce books, papers and writings as is possessed by the Court of Chancery, and may cause advertisements for Creditors and next of kin, or other unascertained persons, and the representatives of such

The Judge to possess the same powers as the Court of Chancery in certain instances.

as may be dead, to be published in the usual forms or otherwise, as the circumstances may require, and may in such advertisements, appoint a time within which such persons are to come in and prove their claims, and after which time, unless they so come in, they are to be excluded from the benefit of the Order. 16 V. c. 119, s. 12. 5

Proceedings
not to be
quashed for
want of form.

20. No Order, Direction, Verdict, Decree or Judgment, or other proceeding made concerning any of the matters aforesaid, shall be reversed, quashed or vacated for want of form. 16 V. c. 119, s. 13. 10

Summons to
be served.

21. Every Summons (except the Summons at the commencement of the suit,) and every Order, Notice or other proceeding requiring service, shall be served ten days at least before the day on which the same is returnable, or the action thereunder intended except where otherwise directed by the Judge. 16 V. c. 119, s. 14. 15

Costs.

22. The costs in every action or proceeding brought or had under the authority of this Act, shall be paid by or apportioned between the parties in such manner as the Judge thinks fit, and in default of any special directions the costs shall abide the event of the suit or proceeding. 16 V. c. 119, s. 15. 20

Affidavits.

23. All affidavits to be used in the said Courts may be sworn before any Judge or Clerk of the said Courts, or before any Commissioner for taking affidavits in the Superior Courts at Toronto. 16 V. c. 119, s. 16. 25

In certain
cases claims
may be re-
moved into
Chancery.

24. Any claim entered in a County Court shall be removable by either party into the Court of Chancery by Order of that Court, to be obtained on a summary application by motion or petition supported by affidavit, of which reasonable notice shall be given to the opposite party, and the said Order shall be made on such terms as to payment of costs, giving security in respect to the relief claimed and costs, or upon such other terms as to the Court of Chancery may seem just; but no claim shall be removed, unless the Court of Chancery is of opinion that the same is of such a nature as to render it proper that the same should be withdrawn from the jurisdiction of the County Court, and disposed of in the Court of Chancery. 16 c. 119. s. 17. 35

An appeal
given to Chan-
cery.

25. Either party may appeal to the Court of Chancery against any Order or Decree made by the Judge of a County Court under this Act; and the Court of Chancery shall make such Order thereupon in respect to costs or otherwise, or for referring back the matter to the Judge before whom the same was first heard, as may be just and proper. But before the County Court Judge is called on to certify the Order or other matter appealed against to the Court of Chancery, the party appealing shall enter 45

enter into a recognizance, with sufficient bail to the satisfaction of the Judge, to pay the sum decreed in case relief is not had on the appeal, or to obey the Order, (or as the case may be,) and when the party appealing appears by Attorney, an affidavit shall be made by the Attorney, that the appeal is not intended for delay as he believes, and that there is, in his opinion, probable cause for reversing the Order or Decree against which the appeal is made; and the Court of Chancery shall specially make the necessary regulations for the practice to be observed in proceedings under this, and the next preceding section. 16 V. c. 119, s. 18.

The Chancery may make regulations.

26. In order that the mode of proceeding under this Act may be fully traced out, and from time to time improved and rendered as simple, speedy and cheap, as may be, it shall be the duty of the Judges of the Court of Chancery, to frame such General Rules and Orders and all such forms as to them may seem expedient, concerning the practice and proceedings in the County Courts under this Act, and for the execution of the Orders and Process under this Act, and in relation to any of the provisions thereof to which there may arise doubts; and from time to time to alter and amend such Rules, Orders and Forms, and also the forms and mode of procedure prescribed by this Act; and such Rules, and Orders and Forms as may be made and framed by the Judges or any two of them, (of whom the Chancellor of Upper Canada shall be one,) shall from and after a day to be named therein, be in force in every County Court in Upper Canada, and shall be of the same force and effect as if the same had been embodied in an Act of Parliament. 16 V. c. 119, s. 19.

Chancery to frame general rules and orders.

May amend the same.

Their effect.

27. There shall be payable on every proceeding under this Act in a County Court, the fee hereafter set down for such proceeding, and which shall be

Fees to Fee Fund.

To be received by the Clerk and belong to and be paid over to the Fee Fund, namely: 16 V. c. 119, s. 20.

- Every claim filed, *One Shilling and Three Pence;*
- Every Writ of Summons, or other Writ under the Seal of the Court, *One Shilling and Three Pence;*
- 35 Every Order or application for Order, *One Shilling and Three Pence;*
- Every Hearing, *Five Shillings;* to be increased in the discretion of the Judge to a sum not exceeding *Ten Shillings;*
- Every Oath administered in Court, *One Shilling;*
- 40 Every Certificate under Seal of the Court, *One Shilling and Three Pence;*
- Every Sitting in taking an account, or other Sitings, *Five Shillings.* 16 V. c. 119, C.

28. The Clerk of every County Court shall keep a separate account of the said fees, and shall render an account thereof to the

How accounts to be kept, &c. the

the County Attorney, and shall pay over the amount thereof to him, under the same liabilities, securities and conditions, and to be accounted for in like manner as the present General Fee Fund of the County, and the several provisions in relation to the receiving, accounting for and paying over fees, and in relation to the responsibilities and duties of the County Attorney and Clerks, shall apply to the said fees under this Act. 16 V. c. 119, s. 20.—20 V. c. 59. 5

29. There shall be payable to the Clerk of every County Court, and to the Sheriff of every County respectively, for his own use, the fees hereafter set down, namely: 16 V. c. 119, s. 21. 10

Fees to Clerk.

Fees to the Clerk.

Receiving and filing Claim, <i>Four Pence</i> ;	
Every Writ of Summons, or other Writ, <i>One Shilling</i> ;	
Filing every separate paper <i>Three Pence</i> ;	15
Preparing Order, <i>One Shilling and Four Pence</i> , per folio for every folio over three;	
Taking any Affidavit other than an oath in open Court, <i>One Shilling</i> ;	
Every Search, <i>Six Pence</i> ;	20
Recording every final Order or Decree, <i>One Shilling</i> ;	
Other Orders, <i>Six Pence</i> ;	
Every Certificate not exceeding three folios, <i>One Shilling</i> ;	
Every Special Writ, Writ of Execution or other Special Document, <i>Eight Pence</i> , per folio;	25
Taxing costs, <i>One Shilling</i> ;	
Every attendance on reference, <i>Five Shillings</i> ; and	
Every Verdict taken, <i>Two Shillings and Six Pence</i> .	

To Sheriff.

Fees to the Sheriff.

Every Summons or Order served, including Return, <i>Two Shillings and Six Pence</i> ;	30
Every Jury sworn, <i>Two Shillings and Six Pence</i> ;	
Every Execution or Judgment Order received, <i>One Shilling and Three Pence</i> ;	
Return thereof, money made or party arrested, <i>One Shilling and Three Pence</i> ;	35
Necessary mileage actually travelled, <i>Four Pence per mile</i> ; and	
For any other service, a sum to be fixed by Order of the Judge not exceeding the present allowance by Statute for a similar service. 16 V. c. 119, D.	40

30. The costs to be paid to Attorneys and Counsel in the County Courts, as between party and party, for proceedings under this Act, shall be as follows: 16 V. c. 119, s. 21.

ATTORNEY

ATTORNEY AND SOLICITOR.

- Instructions to sue or defend, *Two Shillings and Six Pence*; Attorney and Solicitor.
 Drawing Claim, *Two Shillings and Six Pence*;
 5 Fee on every Writ or Order, *One Shilling and Three Pence*;
 Common Affidavits, *One Shilling*;
 Common Notice or Appointment, *One Shilling*;
 Every necessary Attendance, *Six Pence*;
 Special Affidavits and other Special Documents, *Eight Pence*,
 10 per folio;
 Fee on Common Motions, *One Shilling and Three Pence*;
 Copy of every paper when necessary, half the amount allowed
 for the Original;
 Bill of Costs, *One Shilling*; and
 15 Postages actually paid.

COUNSEL.

Fee on Special Applications, Arguments, Hearings, &c., Counsel.
Ten Shillings; to be increased at the discretion of the Judge to
Twenty-five Shillings. 16 V. c. 119, E.

- 31.** If any action or proceeding is commenced in the Court of Costs restrained.
 20 Chancery after this Act comes into force, for any cause or claim
 which might have been entered in a County Court under this Act,
 no costs shall be taxed against the Defendant in such action or
 proceeding, and the Defendant, if he succeeds in the action,
 shall be entitled to a Decree against the Plaintiff for his costs,
 25 as between Attorney and Client, unless the Court of Chancery
 is of opinion that it was a fit cause or claim to be withdrawn
 from a County Court and entered in the Court of Chancery.
 16 V. c. 119, s. 22.

- 32.** This Act, and the Act respecting County Courts, shall This Act and County Court Act to be construed together.
 30 be construed as one Act, and as if the several provisions therein
 contained, not inconsistent with the provisions of this Act, or
 inapplicable to an equitable jurisdiction, were repeated and
 re-enacted in this Act. 16 V. c. 119, s. 23.

- 33.** The rules and orders made by the Court of Chancery, Existing rules continued.
 35 and now in force for the regulation of the practice of the
 County Courts in suits in equity, are hereby confirmed and
 shall continue until altered under the authority of this Act.

- 34.** In construing this Act, unless there is something in the Interpretation clause.
 subject or context repugnant to such construction, the word
 40 "affidavit," includes affirmation, the word "legacy," includes
 an annuity and a specific as well as a pecuniary legacy; the
 word "legatee," include a person interested in a legacy; the
 words "residuary legatee," include a person interested in the
 residue; and the word "County," includes two or more Coun-
 45 ties united for judicial purposes. 16 V. c. 119, s. 24.

- 35.** This Act may be cited as "The County Courts Equity Short title.
 Extension Act." 16 V. c. 119, s. 25.

C A P.

CAP. XIV.

An Act respecting the Court of Impeachment for the Trial of Judges of County Courts.

20 V. c. 58,
ss. 11 to 13.
The Court
constituted.

1. There is hereby constituted and established a Court to be called the Court of Impeachment, which Court shall possess all the incidents, powers and privileges of a Superior Court of Record, and shall be composed of the Chief Justice of Upper Canada, the Chancellor of Upper Canada, and the Chief Justice of the Court of Common Pleas, and shall hold its sittings at the City of Toronto as occasion may require. 5

May make
orders.

2. Such Court may make such rules and orders as are from time to time deemed necessary.

Jurisdiction.

The Governor
to transmit
charges
against any
Judge.

3. In case any complaint for inability or misbehaviour in office is preferred against the Judge of any County Court, and if the Governor finds the same sufficiently sustained and of sufficient moment to demand judicial investigation by the Court of Impeachment, he shall direct such complaint and all papers and documents therewith connected, to be transmitted to the Chief Justice of Upper Canada as President of the Court. 15

Sittings to be
appointed as
required.

4. The said Court of Impeachment shall thereupon appoint a day for the meeting of the Court, and at such sittings or at any adjournment thereof the Judges of the said Court shall proceed to the trial of the charges laid and set forth in the said complaint, and to the hearing of the parties complainant and accused, their counsel, witnesses and proofs respectively, and shall adjudicate upon such complaint and charges. 20

Decision if in-
ability is com-
plained of.

5. If such complaint be for inability, the Court shall determine whether such inability has been proved, and if it has, shall state in the judgment of the Court the nature of the inability established, and whether the same is, in the opinion of the Court, of such a character as to render it expedient to remove such Judge. 25

If misbehav-
iour is com-
plained of.

6. If such complaint is for misbehaviour in office, the Court shall determine whether such Judge is guilty or not guilty of such misbehaviour, and if not guilty, still, whether the conduct of such Judge has been censurable or unbecoming. 30

The decision
to be certified
to the Gov-
ernor.

7. The judgment of the Court shall be certified to the Governor in Council, and shall be final and conclusive to all intents and purposes whatsoever. 35

Costs provided
for.

8. The said Court may award reasonable costs to be paid by one party to the other, according to the nature of the adjudication, 40

cation, viz : If the complaint be adjudged false or vexatious, the accused shall be entitled to his costs of defence ; if the conduct of the Judge complained against (whether he be found guilty or not guilty) be adjudged to be censurable and unbecom-
5 coming, the complainant shall be entitled to his costs of prosecution.

9. In case of the illness or unavoidable absence of any of the Judges of the said Court, the Senior Puisne Judge of the Superior Courts of Common Law at Toronto, may with like
10 powers act instead of such Judge so ill or absent.

Absence of a Judge of the Court of Impeachment provided for

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G.A.P.

CAP. XV.

An Act respecting Appeals from the County Courts.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

In what cases an Appeal lies from the County Courts to one of the Superior Courts. 1. In case any party to a cause in any of the County Courts is dissatisfied with the decision of the Judge upon any point of law arising upon the pleadings, or respecting the reception or rejection of Evidence, or with the charge to the Jury, or with the decision upon any motion for a nonsuit or for a new trial or in arrest of Judgment or for Judgment *non obstante veredicto*, the Judge at the request of such party, his Counsel or Attorney, shall stay the proceedings for a time not exceeding four days, so as to afford the party time to execute and perfect the bond required to enable him to appeal the case. 8. V. c. 13, s. 57, 12 V. c. 66, s. 11. 5 10

What securities to be given.

2. In case the party wishing to appeal gives security to the opposite party by a bond executed by himself and two sureties, in such sum as the Judge of the Court to be appealed from directs, conditioned to abide by the decision of the cause by the Court to be appealed to, and to pay all sums of money and costs as well of the suit as of the appeal awarded and taxed to the opposite party; and in case the sureties in such bond justify to the amount of the penalty of the said bond by affidavit annexed thereto in like manner as bail are required to justify, and in case such bond and affidavit of justification and also an affidavit of the due execution of the bond are produced to the Judge of the Court appealed from, to remain with the Clerk of such Court until the opinion of the Court appealed to has been given and then to be delivered to the successful party, then at the request of the party appellant the Judge of the Court appealed from shall certify under his hand to either of the Superior Courts of Common Law named by such appellant the pleadings in the cause, and all motions, rules or orders that have been made, granted or refused therein, together with his own charge, judgment or decision thereon, and when a trial has been had, the evidence, and all objections and exceptions thereto—whereupon the same matter shall be set down for argument at the next term of the Court appealed to, which Court shall give such order or direction to the Court below, touching the judgment to be given in such matter as the law requires, and shall also award costs to either party in their discretion, which costs shall be certified to and form part of the judgment of the Court below; and upon receipt of such order, direction and certificate, the Judge of the Court below shall proceed in accordance therewith. 18 V. c. 13, s. 57, 12 V. c. 63, s. 47. 15 20 25 30 35 40 45

Result to be certified to the Court below.

CAP. XVI.

An Act respecting the Division Courts in Upper Canada.

HER Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. DIVISIONS.

1. The Division Courts, and the limits and extent thereof existing at the time this Act take effect, shall continue until altered by law: all proceedings heretofore duly had shall remain valid, and all suits or proceedings heretofore commenced shall be completed under this Act; and all rules and orders made under the provisions of any former Division Court Act, and in force when this Act takes effect, shall continue in force subject to the provisions of this Act. 13 & 14 V. c. 53, ss. 1 & 2. Continuing clause.
2. There shall not be less than three, nor more than twelve Division Courts in each County or Union of Counties; and there shall be one Division Court in each City and County Town. 13 & 14 V. c. 53, s. 3. Number of Courts in Counties and Cities.
3. The said Division Courts shall not be held to constitute Courts of Record. Not to be Courts of Record.
4. A Court shall be holden in each Division once in every two months, or oftener in the discretion of the Judge thereof; and the Judge may appoint and from time to time alter the times and places within such Divisions, when and at which such Courts shall be holden. 13 & 14 V. c. 53, s. 3. Time and place of holding Courts.
5. If the Magistrates of any County in Quarter Sessions assembled, certify to the Governor in Council that in any Division of the County, from the amount of business, remoteness and inaccessibility, it is expedient that such Court should not be held so often as once in every two months, the Governor may order such Court to be held at such periods, as to him seems meet, and may revoke such order at pleasure, but such Court shall be held in the Division at least once in every six months. 13 & 14 V. c. 53, s. 109. The Governor may, in certain cases, regulate holding of Courts.
6. The Justices of the Peace in each County in General Quarter Sessions assembled, may, subject to the restrictions in this Act contained, appoint, and from time to time alter the number, limits and extent of every Division, and shall number the Divisions, beginning at number one; but a less number of Justices shall not alter or rescind any Resolution or Order made by a greater number at any previous session. 13 & 14 V. c. 53, s. 4. Quarter Sessions may alter number and limits of Division.

Designation
of Court.

7. The Court in each Division shall be called "The First (or other, as the case may be) " Division Court in the County of " 13. & 14 V. c. 53, s. 6.

On separation
of Junior from
Senior County,
Court to con-
tinue same
till altered by
Sessions.

8. When a Junior County separates from a Senior County or Union of Counties, the Division Courts of such United Counties as were before the separation wholly within the territorial limits of the Junior County, shall continue Division Courts of such Junior County until the Justices of the Peace of the Junior County in General Quarter Sessions assembled, appoint the number, limits and extent of the divisions for Division Courts within the limits of such Junior County, and all proceedings and judgments shall be had therein until the new Division comes in force and shall continue proceedings and judgments of the said Division Courts respectively, and all such Division Courts shall be known as Division Courts of such Junior County by the same numbers respectively, as they were before, until altered by the Justices of the Peace of such Junior County as herein provided. 16 V. c. 177, s. 16.

On alteration
of Divisions,
Judge to di-
rect in what
Court proceed-
ings to be con-
tinued.

9. Whenever the Justices of the Peace of any County, in General Quarter Sessions assembled, alter the number, limits and extent of the Division Courts within such County, all proceedings and judgments had in any Division Court before the day when such alteration takes effect, shall be continued in such Division Court of such County as the Judge of the County Court of the County directs; and shall be considered proceedings and judgments of such Court. 16 V. c. 177, s. 17.

Clerks and
Officers to de-
liver papers
to such per-
sons as Judge
directs.

10. Whenever a Junior County is separated from a Union of Counties, or the proceedings of any of the Division Courts of a Senior County are transferred to any other Division Court within the County upon the order of the judge thereof as herein before provided, the Clerks or other officers of such Division Courts who hold any writs or documents appertaining to any such Courts or the business thereof, shall deliver up the same to such persons as the said Judge directs, and any person refusing to deliver up the same shall be liable to be proceeded against in the same manner as persons wrongfully holding papers and documents under the provisions of the 36th section of this Act. 16 V. c. 177, s. 18.

After separa-
tion of Junior
from Senior
County, pro-
ceedings in
certain cases
to be conti-
nued in Se-
nior County.

11. If after the separation of a Junior County from a Union of Counties the territorial limits of any of the Division Courts of the former Union are partly within the Junior and partly within the Senior County, all proceedings commenced in such Division Courts of the former Union shall be continued to completion in the Court where the proceedings were originally commenced, or in such other Division Court of the Senior County as the Judge thereof directs, and the Clerks and other Officers of the said Division Courts of such Senior County in possession of any writs or documents appertaining to any such

such Court or to the business thereof, shall deliver over the same to the Clerk of such Division Court of such County as the Judge thereof directs. 16 V. c. 177, s. 19.

12. At the first Sittings of the General Quarter Sessions of the Peace for any Senior County, after the issue of any proclamation for separating a Junior from a Senior County, the Justices there present, shall appoint the number, (not less than three, nor more than twelve,) the limits, and extent of the several Divisions within such County or Counties, and the time when such change of Divisions shall take effect; but if the Justices do not make such change at such first Sittings they may do so at any other Sittings, of such Court, and a less number of Justices shall not rescind or alter any resolution or order made by a greater number under the provisions of this Section. 15 16 V. c. 177, s. 20.

Quarter Sessions of Senior County to regulate Divisions of Senior County after separation.

13. The Divisions declared and appointed, and the time and places of holding the Courts, and the alterations from time to time made therein, shall be recorded by the Clerk of the Peace in a book to be kept by him, and a copy thereof shall be by him forthwith transmitted to the Governor. 13 & 14 V. c. 53, s. 5.

Clerk of the Peace to record time and place for holding Courts.

2. THE JUDGE.

14. The County Court Judges shall preside over the Division Courts in their respective Counties.

County Court Judges to preside.

15. In case of the illness or unavoidable absence of the Judge, the Judge of the County Court of any other County may hold the Court, or the first mentioned Judge may appoint some Barrister of the Bar of Upper Canada, to act as his Deputy; and the person so appointed shall, as Judge of the Division Court, during the time of his appointment, have all the powers and privileges, and be subject to all the duties vested in or imposed by law, on the Judge by whom he has been appointed. 12 & 14 V. c. 53, s. 8.

Who to preside in case of illness or absence of Judge.

16. The Judge or the Barrister, so appointed, Deputy shall forthwith send to the Governor notice of such appointment, specifying the name, residence and profession of such Deputy Judge, and the cause of his appointment. 13 & 14 V. c. 53, s. 8.

Governor to be notified of appointment of Deputy.

17. No such appointment shall be continued for more than one Calendar Month without a renewal of the like notice, and in case the Governor disapproves of such appointment, he may annul the same. 13 & 14 V. c. 53, s. 8.

Appointment, how long to continue.

18. In case the Judge or such Deputy Judge, from illness or any casualty, does not arrive in time or is not able to open the Court on the day appointed for that purpose, the Clerk or Deputy Clerk

Clerks or Deputy Clerks may adjourn

Court if Judge does not arrive in time. Clerk of the Court, may, after eight o'clock in the afternoon, by proclamation adjourn the Court to an earlier hour on the following day, and so from day to day adjourning over any Sunday or legal holiday, until the Judge or Deputy Judge arrives to open the Court, or until he receives other direction from the Judge or Deputy Judge. 13 & 14 V. c. 53, s. 8. 5

3. THE SEAL.

Courts to have a Seal. 19. Every Court shall have a Seal (to be paid for out of the Fee Fund), with which all Processes of the Court shall be sealed or stamped. 13 & 14 V. c. 53, s. 8.

4. THE CLERKS AND BAILIFFS, &C.

Every Court to have Clerk and Bailiffs. 20. For every Division Court there shall be a Clerk and one or more Bailiffs who shall be British Subjects. 13 & 14 V. c. 53, s. 9. 10.

No practising Barrister or Attorney to be Clerk. 21. No County Court Clerk, practising Barrister or Solicitor shall be appointed Clerk. 13 & 14 V. c. 53, s. 9.

Judge to appoint and remove Clerks and Bailiffs. 22. The Judge shall from time to time appoint and may at his pleasure remove the Clerks and Bailiffs. 13 & 14 V. c. 53, s. 9.

Fees of Clerks and Bailiffs. 23. The Clerks and Bailiffs shall be paid by fees, by this Act allowed. 13 & 14 V. c. 53, s. 9.

CLERKS' DUTIES.

Clerk may appoint Deputy. 24. The Clerk may, (with the approval of the Judge) from time to time, when prevented from acting, by illness or other unavoidable accident appoint a Deputy to act for him, with all the powers and privileges and subject to like duties, and may remove such Deputy at his pleasure and the Clerk and his Sureties shall be jointly and severally responsible for all the acts and omissions of the Deputy. 13 & 14 V. c. 53, s. 10. 25

Clerk and Deputy may administer oaths. 25. The Clerk and his Deputy may administer oaths and take all affidavits required or authorized by this Act, in all suits and proceedings, commenced in his own or in any other Division Court. 13 & 14 V. c. 53, s. 11. 30

Clerks to prepare affidavits of service of Summons. 26. The Clerk shall prepare affidavits of service of all Summonses issued out of the Court, stating how the same were served, the day of service and the distance the Bailiff necessarily travelled to effect service, which affidavits shall be annexed to or endorsed on the Summonses respectively; but the Judge may require such Bailiff to be sworn in his presence and to answer such questions as may be put to him touching such service and mileage. 16 V. c. 177, s. 31. 35

27. The Clerk shall issue all Summonses filled up and without blanks, either in date or otherwise at the time of delivery for service or execution and shall furnish copies of the same with the notice thereon, in the form given in the Schedule to this Act annexed marked B, and also particulars of the plaintiffs' claim or demand and copy thereof, and of the Defendants set-off and such demand, particulars or set-off shall be furnished to the Clerk by the plaintiff or defendant respectively. 13 & 14 V. c. 53, ss. 13 & 40.

Clerk to issue Summonses and furnish particulars of claims and set off.

10 28. The Clerk shall also issue all Warrants, Precepts and Writs of Execution, tax costs subject to the revision of the Judge, register all orders and judgments of the Court, and keep an account of all Court fees and fines payable or paid into Court, and of all Sutor's money paid into and out of Court

Clerks to issue executions, tax costs and keep account of fees, &c.

15 and shall enter an account of all such fees, fines and moneys in a book to be kept by him for that purpose, which book shall be open to all persons desirous of searching the same and shall at all times be accessible to the Judge, who shall examine the same quarterly or oftener and compare the accounts hereinafter mentioned with such book, and shall certify on each such account that he has examined the same, and believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and the Clerk shall thereupon forward the account with such certificate to the County Attorney. 13 & 14 V. c. 53, s. 25 13 & 40.

29. The Clerk shall at such time as may from time to time be appointed by the Governor, submit his said accounts to be audited or settled by the County Attorney. 13 & 14 V. c. 53, s. 13.

Clerks to submit accounts to County Attorneys.

30. The Clerk shall cause a note of all summonses, orders, judgments, executions and returns thereto, to be fairly entered from time to time in a book to be kept in his Office; and shall sign his name on every page of such book; and such signed entries, or a copy thereof certified as a true copy by such Clerk, shall be admitted in all Courts and places as evidence of such entries, and of the proceedings referred to thereby, without any further proof.

Clerk to keep a record of Writs and Judgments.

31. The Clerk shall, annually in the month of January, make out a correct list of all sums of money belonging to Sutors in the Court, which have been paid into Court and which have remained unclaimed for six years before the last day of the month of December then last past, specifying the names of the parties for whom or on whose account the same were so paid. 16 V. c. 177, s. 13.

Clerk annually to make list of Sutors' money in Court.

32. A copy of such list shall be put up and remain at all times in the Clerk's office and during Court hours, in some conspicuous part of the Court House, or place where the Court is held. 16 V. c. 177, s. 13.

Copy of list to be put up in Court House and in his office.

DISPOSAL

DISPOSAL OF MONEYS PAID INTO COURT.

Unclaimed moneys to be carried to Audit of Fee Fund.

33. All sums of money which have been paid into Court to the use of any Suitor thereof, and which have remained unclaimed for the period of Six years after the same were paid into Court or to the Officers thereof, and all sums of money when this Act takes effect or afterwards in the hands of the Clerk or Bailiff, paid into Court, or to the Officers thereof, to the use of any Suitor shall, if unclaimed for the period of Six years after the same were so paid, be applicable as part of the General Fee Fund of the Division Courts, and be carried to the account of such Fund and paid over by the Clerk or Officer holding the same to the County Attorney of his County, and no person shall be entitled to claim any sum which has remained unclaimed for Six years. 16 V. c. 177, s. 15 13. 5 10 15

Claims of persons under disability not to be prejudicial.

34. No time during which the person entitled to claim such sum was an infant or *femme covert*, or of unsound mind, or out of the Province shall be taken into account in estimating the Six years. 16 V. c. 177, s. 13. 20

DISPOSAL OF BOOKS AND PAPERS WHEN CLERK CHANGED.

Upon resignation, removal or death of Clerk, County Attorney to become possessed of papers.

35. All accounts, moneys, books papers, and other matters in the possession of the Clerk by virtue of ~~an~~ appertaining to his office, shall, upon his resignation, removal or death, immediately become the property of the County Attorney of the County in which the Division is situate, and he shall hold the same for the benefit of the public until the appointment of another Clerk, to whom he shall deliver over the same, but not until such Clerk and his sureties have executed the covenant hereinafter mentioned. 13 & 14 V. c. 53, s. 13. 25 30

Penalty on person wrongfully holding moneys, books or papers.

36. Any person wrongfully holding or getting possession of such accounts, moneys, books, papers and matters aforesaid, or any of them, shall be guilty of a misdemeanor, and upon the declaration in writing of the Judge presiding over the Division Court for the time being in which such wrongful holding or getting possession took place, that any person has obtained or holds such wrongful possession thereof, and upon the order of a Judge of either of Her Majesty's Superior Courts of Law founded thereon, such person shall be arrested by the Sheriff of any County in which he is found, and be by such Sheriff committed to the Common Gaol of his County, there to remain without bail until one of such Superior Courts or a Judge thereof is satisfied that such person has not and never had nor held any such matters or moneys, or that he has fully accounted for the same or delivered up the same to such County Attorney, or until he shall be otherwise discharged by due course of Law. 13 & 14 V. c. 53, s. 13. 35 40 45

FEES OF CLERKS AND BAILIFFS.

- 37.** The Fees of the Clerks and Bailiffs of the Courts, shall be those set down in the Schedule hereto annexed marked A, or set down in any Schedule of reduced fees, under the power hereinafter given for that purpose, and a table of such fees shall be hung up in some conspicuous place in the offices of the several Clerks. 13 & 14 V. c. 53, s. 14.
- 38.** The fees upon every proceeding shall be paid in the first instance by the Plaintiff, or Defendant, on or before such proceeding. 13 & 14 V. c. 53, s. 30,—16 V. c. 177, s. 3.
- 39.** If such fees are not paid in the first instance by the Plaintiff or party on whose behalf such proceeding is to be had, the payment thereof may be enforced by order of the Judge by such ways and means as any debt or damages ordered to be paid by the Court can be recovered. 16 V. c. 177, s. 3.
- 40.** The Judge may at the trial of any cause increase the fee for hearing any defended cause to a sum not exceeding ten shillings, whether the debt, damages or subject matter of action is for ten pounds, or under or over that amount. 16 V. c. 177, s. 3.
- 41.** The Bailiff's fees upon executions shall be paid to the Clerk, at the time of the issue of the execution, and shall be paid over by such Clerk to the Bailiff, upon the return of the execution, and not before. 13 & 14 V. c. 53, s. 14.
- 42.** If the Bailiff neglects to return any process or execution within the time required by law, he shall for each such neglect forfeit his fees thereon, and all fees so forfeited shall be held to have been received by the Clerk, who shall keep a special account thereof, and account for and pay over the same to the County Attorney of the County to form part of the General Fee Fund. 13 & 14 V. c. 53, s. 14.

Fees of Clerks and Bailiffs as in Schedule.

Fees to be paid by plaintiff or defendant in first instance.

How enforced if not paid.

Judge may increase fee to 10s.

Bailiff's fees to be paid to Clerk before execution issues.

Bailiffs to forfeit fees if he neglect to return Writ.

5.—JURISDICTION.

- 43.** The Judge may hold plea of and except where a Jury is demanded and authorized as hereinafter mentioned may hear and determine in a summary way all claims and demands for or against persons, bodies corporate or otherwise of debt account or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed twenty-five pounds, and in all other personal actions (except such as hereinafter expressed), where the debt or damages claimed do not exceed ten pounds, and may make such orders, judgments or decrees thereupon as appear to him just and agreeable to equity and good conscience, and

Jurisdiction of Court.

and when not otherwise specially provided no appeal shall lie from such order, Judgment or Decree. 13 & 14 V. c. 53, ss. 2, 3, 30, 34.

Judge may order payment in money although contract not for payment in money.

44. Upon any contract for the payment of a sum certain in labour or in any kind of goods or commodities or in any other manner than in money, the Judge after the day has passed on which the goods or commodities ought to have been delivered or the labour or other things performed, may give judgment for the amount in money. 16 V. c. 177, s. 1,—13 & 14 V. c. 53, s. 10 23.

Cases in which Court have no jurisdiction.

45. No action shall be brought or tried in a Division Court for any gambling debt, nor for any spirituous or malt liquors drunk in a tavern or ale-house, or on any note of hand the consideration of which was any such debt or liquors, nor any action of ejectment or in which the right or title to any corporeal or incorporeal hereditaments, or any toll, custom or franchise comes in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, or for malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise of marriage. 13, 14 V. c. 53, s. 34,—16 V. c. 177, s. 1. 15 20

No privilege to exempt parties from jurisdiction of Court.

46. No privilege shall be allowed to any person to exempt him from suing and being sued in a Division Court, and any Executor or Administrator may sue or be sued therein, and the judgment and execution shall be such as in like cases would be given or issued in the Superior Courts. 13, 14 V. c. 53, s. 28,—13, 14 V. c. 53, s. 30. 25

Minors may prosecute for wages.

47. A minor may prosecute in a Division Court for any sum not exceeding twenty-five pounds, due to him for wages, in the same manner as if he were of full age. 13, 14 V. c. 53, s. 27. 30

Causes of action not to be divided.

48. A cause of action shall not be divided into two or more suits for the purpose of bringing the same within the jurisdiction of a Division Court, and no greater sum than twenty-five pounds shall be recovered in any action for the balance of an unsettled account, nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds fifty pounds. 13, 14 V. c. 53, s. 26. 35

Judgment to be full discharge.

49. A judgment of the Court upon a suit brought for the balance of an account shall be a full discharge of all demands in respect of the account of which such suit was for the balance and the entry of judgment shall be made accordingly. 13, 14 V. c. 53, s. 26. 40

Causes may be removed to

50. In case the debt or damages claimed in any suit brought in a Division Court amounts to ten pounds and upwards and in 45

in case it appears to any of the Judges of the Superior Courts of Common Law, that the case is a fit one to be tried in one of the said Superior Courts and in case any Judge thereof grants leave for that purpose such suit may by writ of *certiorari* be removed from the Division Court into either of the said Superior Courts upon such terms as to payment of costs or other terms as the Judge making the order thinks fit. 13, 14 V. c. 53, s. 55.

Superior Court by *certiorari* in certain cases.

6.—PROCESS AND PROCEDURE.

51. The plaintiff shall enter with the Clerk a copy and if necessary copies of his account or demand in writing in detail (and in cases of trespass or tort particulars of his demand) which shall be numbered according to the order in which the same are entered, and thereupon a Summons bearing the number of the account or demand on the margin thereof shall be issued, corresponding in substance with the form of the Schedule to this Act annexed marked B according to the nature of the demand or claim, and on the trial of the cause no evidence shall be given by the plaintiff of any cause of action or claim except such as is contained in the demand, claim or account so entered. 13, 14 V. c. 53, ss. 24, 42.

Plaintiff to enter copy of his claims with Clerk.

52. A copy of such summons with a copy of the account or of the particulars of demand attached shall be served in the defendant, his wife or servant or some grown person being an inmate of the defendant's dwelling house, or usual place of abode, trading or dealing. 13, 14 V. c. 53, ss. 24, 42.

Copy of Summons, and Account to be served.

53. Ten days at least before the return day of the Summons, personal service on the defendant shall be necessary in all cases where the amount or damages sued for exceed forty shillings. 13, 14 V. c. 53, ss. 24, 42.

Summons to be served ten days before return day.

54. Any suit may be entered and tried in the Court holden for the Division in which the cause of action arose or in which the defendant or any one of several defendants resides or carries on business at the time the action is brought, notwithstanding that the defendant or defendants may at such time reside in a County or Division or Counties or Divisions different from the one in which the cause of action arose, or by special leave and order of the Judge of any County Court having jurisdiction in the case, any such suit may be entered and tried in any Division Court in any County in which the Defendant or one of the Defendants resides or in any adjoining County, and all such proceedings shall be taken for the obtaining judgment and enforcing the same, and in the same manner as if the defendant or defendants resided, and the cause of action had arisen in such Division, except that no writ in the nature of a writ of *Fieri Facias* or attachment shall be executed out of the limits of the County over which the Judge of the Court from which such writ issues,

In what Courts suits may be entered and tried.

issues, has jurisdiction. 13, 14 V. c. 53, s. 25,—16 V. c. 177, ss. 59, 29,—18 V. c. 125.

Where no special order, Clerk to forward Summonses.

55. In cases where no such special order has been obtained, the Clerk of any Division Court shall when required forward all summonses to the Clerk of any other Division Court for service, and receive the same when returned, and he shall receive those sent to him by any other Division Court Clerk for service, and enter them in a book to be kept for that purpose, and hand the same to the Bailiff for service, and shall receive the same from the Bailiff and return them to the Clerk from whom he received them, and also shall give to any party to a suit or his agent copies of Subpœnas for his witnesses when requested to do so. 13, 14 V. c. 53, s. 25,—16 V. c. 127, s. 29,—18 V. c. 125, s. 3.

Summonses to be served 15 days before return day in certain cases, and in certain other cases 20 days before return day.

56. In case none of the defendants reside in the County, in which the action is brought, but one or more of them resides in the adjoining County, the summons shall be served fifteen days, and in case none of the defendants reside in the County where the action is brought, or in an adjoining County, the summons shall be served twenty days at least before the holding of the Court at which the cause is to be tried. 13, 14 V. c. 53, s. 26,—16 V. c. 177, s. 29.

Bailiffs to serve Writs.

57. The Bailiffs shall serve and execute all summonses, orders, warrants, precepts and writs delivered to them for service, whether Bailiffs of the Court out of which the same issued or not, and return the same to the Clerk of the Court of which they are respectively Bailiffs: But they shall not be required to travel beyond the limits of their Division, or allowed to charge mileage for any distance travelled beyond the limits of the County in which the Court of which they are respectively Bailiffs is situated. 13, 14 V. c. 53, s. 25,—18 V. c. 125, s. 2.

One of several partners may be sued in certain cases.

58. In case a plaintiff has a debt or demand against two or more persons, partners in trade or otherwise jointly answerable, but residing in different Divisions, or one or more of whom cannot be found, it shall be sufficient to serve one or more of such persons with process, and judgment may be obtained and execution issued against such person, notwithstanding others jointly liable have not been served or sued, reserving always to the person against whom execution issues his right to demand contribution from any other person jointly liable with him. 13, 14 V. c. 53, s. 29.

Bailiff may seize property of Firm on certificate of Judge.

59. Whenever judgment has been obtained against any such partner and the judge certifies that the demand proved was strictly a partnership transaction, the Bailiff, in order to satisfy the judgment and costs and charges thereon, may seize and sell the property of the Firm, as well as that of the defendants who have been served. 13, 14 V. c. 53, s. 29.

60. Any Clerk or Bailiff may sue and be sued for any debt due to or by him, separately or jointly with any other person in the Court of any next adjoining Division in the same County, in the same manner, to all intents and purposes, as if the cause of action had arisen within such next adjoining Division, or the defendant or defendants were resident therein. 13, 14 V. c. 53, s. 62.

Clerks and Bailiffs may sue and be sued in adjoining Divisions.

61. On the day named in the summons the Defendant shall in person, or by some person on his behalf, appear in the Court, and on answer being made the Judge shall, without further pleading or formal joinder of issue, proceed, in a summary way, to try the cause and give judgment; and in case satisfactory proof is not given to the Judge entitling either party to judgment, he may nonsuit the Plaintiff; and the Plaintiff may in any case insist on being nonsuited. 13, 14 V. c. 53, s. 84.

Judge may summarily dispose of cause or nonsuit plaintiff.

62. If on the day named in the summons the Defendant does not appear, or sufficiently excuse his absence, or neglects to answer, the Judge on proof of due service of the summons and copy of the Plaintiff's account or demand, may proceed to the hearing or trial of the cause on the part of the Plaintiff only, and the order, verdict or judgment thereupon, shall be final and absolute, and as valid as if both parties had attended; and, except in actions of tort or trespass, in case of the personal service of the summons and of detailed particulars of the Plaintiff's claim, the judge may, in his discretion, give judgment without further proof. 13, 14 V. c. 53, s. 45.

Proceedings in case defendant does not appear.

63. In case the Judge thinks it conducive to the ends of justice, he may adjourn the hearing of any cause in order to permit either party to summon or produce further testimony, or to serve or give any notice which may be necessary to enable such party to enter more fully into his defence or for any other cause which the Judge thinks reasonable, upon such conditions as to the payment of costs and admission of evidence or other equitable terms as to him seems meet. 16 V. c. 177, s. 26.

Judge may adjourn hearing of cause.

PAYMENT OF MONEY INTO COURT.

64. The Defendant may at any time not less than six days before the day appointed for the trial, pay into Court such sum as he thinks a full satisfaction for the Plaintiff's demand, together with the Plaintiff's costs up to the time of such payment. 13, 14 V. c. 53, s. 46,—16 V. c. 177, s. 27.

Defendant may pay money into Court.

65. The clerk having received the necessary postage, shall forthwith send notice of such payment to the Plaintiff by post or otherwise to his usual place of abode or of business, and the sum so paid shall be paid to the Plaintiff, and all proceedings in the action stayed, unless the Plaintiff, within three days after the

Clerk to give notice of payment into Court.

the receipt of the notice, signify to the Clerk his intention to proceed for the remainder of the demand claimed, in which case the action shall proceed as if brought originally for such remainder only. 13, 14 V. c. 53, s. 46,—16 V. c. 177, s. 27.

Plaintiff to pay defendant's costs if no further sums recovered.

66. If the Plaintiff recovers no further sum in the action than the sum paid into Court, the Plaintiff shall pay the Defendant all costs, charges and expenses incurred by him in the action after such payment, and such costs, charges and expenses shall be settled by the Court, and be recovered by the defendant by such means as any other sum ordered to be paid by the Court. 13, 14 V. c. 53, s. 46,—16 V. c. 177, s. 27. 5 10

SET-OFF.

Defendant to give notice of set-off or other Statutory defence.

67. In case the defendant or defendants desire to avail themselves of a set-off, the Statute of limitations or of any other relief under any law of Upper Canada, he, or one of them, shall, at least five days before the holding of such Court, give notice thereof in writing, and, in case of set-off, deliver to the Plaintiff or leave for him at his usual place of abode if within the Division, or, if living without the Division, deliver to the Clerk, a copy of the set-off. 13, 14 V. c. 53, s. 25,—16 V. c. 177, s. 29. 15

68. In case it appears to the Judge that such notice was omitted to be given; without the wilful default of the defendant or defendants, and that injustice would be done unless such defence should be allowed, he may adjourn the hearing of the cause, or such defence thereto, or any part thereof, until the next sitting of the Court, upon such terms as to payment of costs as appears to him just. 13, 14 V. c. 53, s. 25,—16 V. c. 177, s. 29. 20 25

Plaintiff may be non-suited or judgment given for defendant.

69. If the Defendant's demand, as proved, exceeds the Plaintiff's, the Court may non-suit the Plaintiff; or if the Defendant's set-off, after remitting any portion of it he pleases does not exceed twenty-five pounds, the Court may give judgment for the Defendant for the balance found in his favour. 13, 14 V. c. 53, s. 43. 30

No evidence of set-off allowed

70. No evidence of set-off shall be given by the Defendant except such as contained in the notice of set-off delivered. 35

If allowed not contained in notice.

71. And where a set-off is set up, the judgment of the Court thereon shall be a full discharge, as well of the amount allowed to be set-off as the amount by which such claim of the Defendant exceeded twenty-five pounds, and the judgment shall be entered accordingly. 13, 14 V. c. 53, s. 43. 40

SUBPŒNAS.

Parties may obtain sub-

72. Either of the parties to a suit may obtain from the Clerk (of any Division Court) a subpoena requiring the attendance 8

ance before the judge or any arbitrator appointed by him under the provision hereinafter contained, of witnesses resident within the County or served with the subpoena therein with or without a clause requiring the production of books, papers and writings in their possession or control. 13, 14 V. c. 53, s. 48,—16 V. c. 177, s. 5.

subpoenas from Clerk.

73. Any number of names may be inserted in the subpoena, and service thereof may be made by any literate person, and proof of the due service thereof, together with the tender of payment of expenses, may be received by the several Judges of the said Courts by written affidavits sworn before any Judge of a Division Court or before any person authorized by law to take affidavits in the Superior Courts in Upper Canada. 16 V. c. 177, s. 5.

Services of subpoena, by whom made.

74. Every person on whom a copy of a subpoena is served, either personally or at his usual place of abode, and to whom at the same time a tender of payment of his lawful expenses is made, who refuses or neglects without sufficient cause to obey the subpoena, and also every person in Court called upon to give evidence, who refuses to be sworn (or affirm where affirmation is by law allowed) or to give evidence, shall pay such fine not exceeding two pounds, as the Judge may impose, and shall, by verbal or written order of the Judge, be, in addition, liable to imprisonment for any time not exceeding ten days; and such fine shall be levied and collected with costs in the same manner as fines imposed on Jurymen for non-attendance, and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the General Fee Fund. 16 V. c. 177, s. 5.

Penalty for disobeying subpoena or refusing to be sworn.

75. Either party may obtain from either of the Superior Courts of Common Law a subpoena requiring the attendance at the Division Court, and at the time mentioned in such subpoena, of a witness residing or served with such subpoena in any part of Upper Canada; and the witness shall obey such subpoena, provided the allowance for his expenses was, at the time of service, tendered to him according to the scale settled in the Superior Courts. 16 V. c. 177, s. 5.

Parties may obtain subpoenas from Superior Courts.

EVIDENCE AND EXAMINATION OF PARTIES AND WITNESSES.

76. On the hearing or trial of any action or in any other proceeding, the parties thereto and all other persons may be summoned as witnesses and examined either on behalf of the plaintiff or Defendant, upon oath (or affirmation) to be administered by the proper officer of the Court: Provided always that no party to the suit shall be summoned or examined, except at the instance of the opposite party or of the Judge. 13, 14 V. c. 53, s. 8.

Parties to cause, may be subpoenaed as witnesses.

Judge may require either party to give evidence.

77. The Judge holding any Division Court may, whenever he thinks it conducive to the ends of justice, require the plaintiff or defendant in any cause or proceeding to be examined under oath or affirmation, and in any case of debt or contract brought for a demand not exceeding forty shillings in which the plaintiff gives sufficient evidence to satisfy the Judge that the defendant has become indebted to such plaintiff, but the plaintiff has not evidence to establish the particular amount, the Court may in its discretion examine the plaintiff on his oath, touching the items of such account and give judgment thereon accordingly, and such Judge may also under like circumstances examine the defendant as to the amount of any payment or set-off in any such case, and may give judgment accordingly for such defendant. 16 V. c. 177, ss. 22, 23. 5 10

Judge may receive in evidence plaintiffs' or defendants' books of account.

78. In any suit for a debt or demand, not being a Trespass or Tort, and not exceeding five pounds, the Judge may receive as testimony the plaintiffs' books, or in case of set-off or plea of payment, so far as the same extends to five pounds, the defendant's books on being satisfied of their general correctness, and may also receive as testimony the affidavit of any party or witness in the suit resident without his jurisdiction, in case such affidavit has been sworn to before a Judge of a Division Court or a Commissioner for taking affidavits in any of the Superior Courts in Upper Canada, but before pronouncing judgment, the Judge may require any such witness or any party in a cause to answer any interrogatories that may be filed in the suit and the answers may in like manner be sworn to before any such Judge or Commissioner. 13, 14 V. c. 53, ss. 31, 72,—16 V. c. 177, s. 28. 15 20 25

AFFIDAVITS.

Affidavit may be sworn before Judge, Clerk or Commissioner.

79. All affidavits to be used in the Division Courts or before the Judges thereof, may be sworn before any County Judge or any Clerk of a Division Court or Commissioner for taking affidavits in either of the Superior Courts of Common law. 13, 14 V. c. 53, s. 88,—16 V. c. 177, s. 34. 30

Wilfully giving false evidence—perjury.

80. In case any person in any examination wilfully or corruptly gives false evidence, or wilfully swears (or affirms) falsely in any matters where an oath or affirmation, or affidavit in writing is required and allowed in this Act, he shall be liable to the penalties of wilful and corrupt perjury. 13, 14 V. c. 53, s. 47. 35

JUDGES DECISION:

Judge may give judgment instanter, or postpone judgment.

81. The Judge, in any case heard before him, shall openly in Court and as soon as possible after the hearing pronounce his decision, but if he is not prepared to pronounce a decision instanter, he may postpone judgment and name a subsequent day and hour for the delivery thereof in writing at the Clerk's Office. 40

Office, and the Clerk may then read the judgment to the parties or their agents if present, and if not, then he shall enter the judgment in their absence, which shall be as effectual as if rendered in Court at the trial. 13, 14 V. c. 53, s. 39.

5 **S2.** The Judge may, order the time or times and the proportions in which any sum and costs recovered by judgment of the said Court shall be paid, reference being had to the day on which the summons was served, and at the request of the party entitled thereto may order the same to be paid into
10 Court, and the Judge may, upon the application of either party within fourteen days after the trial, and upon good grounds being shewn therefor, grant a new trial upon such terms as he thinks reasonable and in the mean time stay proceedings. 13, 14 V. c. 53, ss. 50, 72, 84.—16 V. c. 177, s. 28.

Judge may direct times and proportions in which judgment shall be paid.

15 **S3.** Except in cases where a new trial is granted, the issue of execution shall not be postponed for more than fifty days from service of the summons without the consent of the party entitled to the same. 16 V. c. 177, s. 28.

Execution not to be postponed for more than 50 days.

ARBITRATION.

20 **S4.** The Judge may, in any case, with the consent of both parties to the suit, or of their agents, order the same, with or without other matters in dispute between such parties, being within the jurisdiction of the Court, to be referred to arbitration to such person or persons, and in such manner and on such terms as he thinks reasonable and just. 16 V. c. 177, s. 4.

Judge may order cause to be referred to arbitration.

25 **S5.** Such reference shall only be revocable by either party, with the consent of the Judge. 16 V. c. 177, s. 4.

30 **S6.** The award of the Arbitrator or Arbitrators or Empire shall be entered as the judgment in the cause, and shall be as binding and effectual, as if given by the Judge. 16 V. c. 177, s. 4.

Award to be entered as judgment.

S7. The Judge on application to him within fourteen days after the entry of such award, may if he thinks fit, set aside the award, or may with the consent of both parties, revoke the reference and order another reference to be made in the manner aforesaid. 16 V. c. 177, s. 4.

Judge may set aside award.

40 **S8.** Any of such Arbitrators may administer an oath or affirmation to the parties, and to all other persons examined before such Arbitrator, and every person who in any such examination upon oath, or affirmation, wilfully and corruptly gives false evidence, shall be guilty of perjury. 16 V. c. 177, s. 5.

Arbitrators may also administer oaths.

COSTS IN UNPROVIDED CASES.

S9. In case any suit is brought in any of Her Majesty's Superior Courts of Record in respect of any grievances committed

Plaintiff not to have costs

where verdict not over £2-10s. 0d. without certificate. **5**

mitted by any Clerk, Bailiff or Officer of a Division Court, under colour or pretence of the process of the said Court, and the Jury upon the trial find no greater damages for the Plaintiff than Two Pounds Ten Shillings, the Plaintiff shall not have costs unless the Judge certifies in Court upon the back of the record, that the action was fit to be brought in such Superior Court. 13, 14 V. c. 53, s. 108.

Judge may apportion costs.

90. The costs of any action or proceeding not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge thinks fit, and in cases where the plaintiff does not appear in person or by some person on his behalf, or appearing does not make proof of his demand to the satisfaction of the Judge, he may award to the defendant such costs and such further sum of money, by way of satisfaction for his trouble and attendance, as he thinks proper, to be recovered as provided for in other cases under this Act, and in default of any special direction, the costs shall abide the event of the action, and execution may issue for the recovery thereof in like manner as for any debt adjudged in the Court. **10 15**

Costs not recoverable in Superior Court in actions upon judgments of Division Courts.

91. No costs shall be recoverable in any suit brought in any Court of Record for the recovery of any sum awarded by judgment in a Division Court, without the order of the Judge of the Superior Court, on sufficient cause being shewn. 13 & 14 V. c. 53, s. 52. **20**

CLERKS AND BAILIFFS MAY TAKE CONFESSIONS.

Clerks and Bailiffs may take confessions.

92. Any Bailiff or Clerk, before or after suit commenced, may take a confession or acknowledgment of debt from any debtor or defendant desirous of executing the same, which confession or acknowledgment shall be in writing and witnessed by the Bailiff or Clerk at the time of the taking thereof; and upon the production of such confession or acknowledgment to the Judge, and its being proved by the oath of such Bailiff or Clerk, judgment may be entered thereon; such oath or affidavit shall state that the party making it has not received and will not receive any thing from the plaintiff or defendant, or any other person, except his lawful fees, for taking such acknowledgment, and that he has no interest in the demand sought to be recovered. 13 & 14 V. c. 53, s. 54. **25 30 35**

7. JURY CASES.

When a jury may be had.

93. In actions of Trespass or Tort where the amount sought to be recovered exceeds two pounds ten shillings, and in all other cases where such amount exceeds five pounds, the Plaintiff or Defendant on payment to the Clerk of the proper fees for the expenses of the Jury at the time of leaving with him the notice that a Jury is demanded, may require a Jury to be summoned to try the said action, and thereupon a Jury shall be **40**

be summoned according to the provisions hereinafter contained.
13 & 14 V. c. 53, ss. 30, 32.

94. If the Plaintiff require a Jury, he shall give notice thereof in writing to the Clerk and pay the Jury fees as aforesaid at the time of entering his account, demand or claim, and if the Defendant require a Jury, he shall give to the said Clerk or leave at his office the like notice in writing and pay the proper Jury fees as aforesaid within five days after the day of service of the Summons on him. 13 & 14 V. c. 53, ss. 30, 32.

Parties to give notice to Clerk if they require a jury.

10 95. All male persons being subjects of Her Majesty by birth or naturalization, between the ages of twenty-one and sixty years, assessed upon the Collector's Roll and resident in the several divisions respectively, shall be jurors for the Division Courts in such Divisions. 13 & 14 V. c. 53, s. 35.

Who may be jurors.

15 96. The jurors to be summoned to serve at any Division Court shall be taken from the Collector's Rolls of the preceding year, for the Townships and places wholly or partly within the Division, and shall be summoned in rotation, beginning with the first of such persons on such Roll; and if there be more than one such Township or place within the Division, beginning with the Roll for that within which the Court is held, and then proceeding to that one of the other Rolls which contains the greatest number of such persons' names, and so on until all the Rolls have been gone through: after which, if necessary, they may be again gone through wholly or partly in the same order, and so on *toties quoties*. 13 & 14 V. c. 53, s. 35.

Jurors, how selected and summoned.

30 97. For the purposes of the last preceding section, the Collector for each place wholly or partly within any division, shall furnish the Clerk of the Division Court thereof with correct lists of the names of all persons liable to serve as jurors at such Court in the order in which they stand upon the Rolls. 13 & 14 V. c. 53, s. 35.

Collector to furnish to Clerk with list of jurors.

35 98. The Clerk of each Division Court shall cause not less than fifteen of the persons liable to serve as Jurors to be summoned to attend at each Session of the Court at the time and place to be mentioned in the summons, and such summons shall be served at least three days' before the Court, either personally, or by leaving the same with a grown-up person at the residence of the juror. 13 & 14 V. c. 53, s. 35.

Jurors to be summoned for each Court.

99. Either of the parties to a cause shall be entitled to his lawful challenge against any of the jury in like manner as in any other Court. 13 & 14 V. c. 53, s. 35.

45 100. Any juryman who, after being duly summoned for that purpose wilfully neglects or refuses to attend the Court in obedience

Penalty on jurors disobedience

obeying Summons.

obedience to such summons, shall be liable to a fine not exceeding twenty shillings, to be set on him by the Judge, which fine shall be levied and collected with costs, by the same process as any debt or judgment recovered in the said Court, and shall form part of the general fee fund. 13 & 14 V. c. 53, s. 35. 5

Service as Juror at Division Court not to exempt him from serving at Superior Courts.

101. Service as a juror at any Division Court shall not exempt such juror from serving as a juror in any of the Superior Courts of civil or Criminal Jurisdiction, or in any County Court; and no person shall be compelled to serve as a Juror in any Division Court who is by law exempted from serving as a Petty Juror in any of the Superior Courts of Record in Upper Canada. 13 & 14 V. c. 53, s. 35. 10

Penalty on Collector neglecting to furnish Clerk with list of jurors.

102. If any Collector, for six days after demand made in writing, neglects or refuses to furnish the Clerk of the Division in which the Township, Town, City or Ward for which he is a Collector is wholly or in part situate, with a correct list of the names of persons liable to serve as Jurors in the Division Court, according to the provisions of the Ninety-fifth section of this Act, the Clerk may issue a Summons to be personally served on the said Collector three days at least before the sitting of the Court, requiring him to appear at the then next sitting of the Court, to show cause why he refused or neglected to comply with the provisions of the said Section. 16 V. c. 177, s. 21. 20 25

Judge may fine Collector for breach of duty.

103. Upon proof of the service of such Summons, the Judge holding the said Court may inquire into the neglect or refusal in a summary manner, or give further time, and may impose such fine upon the Collector, not exceeding Five Pounds, as he deems just, and may also make such order for the payment of the costs of the proceedings by the Collector as to the said Judge seems meet, and all orders made by the Judge for the payment of any fine or costs, shall be enforced against the Collector by such means as are provided for enforcing Judgment in the Division Courts. 16 V. c. 177, s. 21. 30 35

Judges order for payment by Collector, how enforced

Judge's list and Jury list.

104. The causes to be heard by the Judge alone, shall be set down for hearing in a separate list from the list of causes to be tried by a jury, which two lists shall be severally called "The Judge's List" and "The Jury List," and the causes shall be set down in such lists in the order in which they were in the first instance entered with the Clerk;—"The Jury List" shall be first disposed of, and then "The Judge's List;" except when the Judge sees sufficient cause for proceeding differently. 13 & 14 V. c. 53, s. 34. 40

Five jurors to be empanelled, &c. Verdict to be unanimous.

105. Five Jurors shall be empanelled and sworn to do justice between the parties whose cause they are required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence and each cause shall be decided 45

decided by the unanimous verdict of the Jury. 13 & 14 V. c. 53, s. 37.

106. In case the Judge before whom a suit is brought thinks it proper to have any fact or facts controverted in the cause tried by a Jury, the Clerk shall instantly return a Jury of five persons present, to try such fact or facts and the Judge may give judgment on the verdict of the Jury, or grant a new trial on the application of either party in the same way and under similar circumstances as new trials are granted in other cases on verdicts of Juries. 16 V. c. 177, s. 11.

Judge may order jury to be empanelled to try any disputed fact.

107. If in any case the Judge is satisfied that the Jury, after having been out a reasonable time, cannot agree upon their verdict, he may discharge them, and adjourn the cause until the next Court, and order the Clerk to summon a new Jury for the next sitting of the Court for that Division, unless the parties consent that the Judge may render Judgment on the evidence already taken, in which case he may give Judgment accordingly. 13 & 14 V. c. 53, s. 38.

Judge may discharge jury not agreeing, &c.

8. JUDGMENTS AND EXECUTIONS.

CROSS-JUDGMENTS.

108. If there be cross-judgments between the parties, the party only who has obtained judgment for the larger sum, shall have execution and then only for the balance over the smaller Judgment and satisfaction for the remainder and also satisfaction on the judgment for the smaller sum shall be entered; and if both sums are equal, satisfaction shall be entered upon both judgments. 13 & 14 V. c. 53, s. 51.

Cross-judgments may be set off.

109. When the Judge has made an order for the payment of money, the party in whose favor such order has been made, in case of default or failure of payment thereof at the times and in the manner thereby directed, may sue out execution against the goods and chattels of the party against whom the order has been made; and thereupon the Clerk at the request of the party prosecuting the order, shall issue under the seal of the Court a *fieri facias* to one of the Bailiffs of the Court, who by virtue thereof shall levy by distress and sale of the goods and chattels of such party, being within the County within which the said Court was holden, such sum of money and costs (together with interest thereon from the date of the entry of the judgment) as shall be so ordered, and past due, and shall pay the same over to the said Clerk. 13 & 14 V. c. 53, ss. 53, 73.

Where money not paid, pursuant to order, execution to issue.

110. In case any person against whom a judgment has been entered up removes to another County without satisfying the judgment, the Judge of the Division Court of the County to which such party has removed may, upon the production of a copy

If defendant removes to another County, new judgment to be

entered in such County. copy of the judgment duly certified by the Judge of the County for which the judgment has been entered, order an execution for the debt and costs, awarded by the judgment, to issue against such party. 13, 14 V. c. 53, s. 55.

If defendant, before sale, pay to Clerk or bailiff of Court out of which execution issued, execution to be superseded. **111.** If the party against whom the execution has been awarded, before an actual sale of his goods and chattels, pays or tenders to the Clerk or Bailiff of the Division Court out of which the execution issued, such sum of money as aforesaid, or such part thereof as the Plaintiff agrees to accept in full of his debt together with the fees to be levied, the execution shall be superseded, and the goods released and restored to such party. 13, 14 V. c. 53, s. 55. 5
10

Clerk of any Court in which judgment entered to prepare transcript thereof, to transmit to any other Division Court. **112.** The Clerk of any Division Court shall, upon the application of any Plaintiff or Defendant, or his agent, having an unsatisfied judgment in his favor in such Court, prepare a transcript of the entry of such Judgment, and send the same to the Clerk of any other Division Court in any other County, with a certificate at the foot thereof signed by the Clerk who gives the same and sealed with the seal of the Court of which he is Clerk, and addressed to the Clerk of the Court to whom it is intended to be delivered and stating the amount unpaid upon such Judgment and the date at which the same was recovered; and the Clerk to whom such certificate is addressed shall, on the receipt of such transcript and certificate, enter the transcript in a Book to be kept in his office for such purpose, and the amount due on such judgment according to such certificate: and all proceedings may be taken for the enforcing and collecting such judgment in such last mentioned Division Court, by the officers thereof that could be had or taken upon judgments recovered in any Division Court for the like purpose. 18 V. c. 125, s. 3. 15
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Renewal of judgment in case of death of party to judgment. **113.** In case of the death of either or both of the parties to any judgment in any Division Court, the party in whose favor such judgment has been entered, or his personal representative in case of his death, may revive such judgment against the other party, or his personal representative in case of his death, and issue execution thereon in conformity with any rules which apply to such Division Court in that behalf. 35

Execution, when dated and returnable. **114.** Every execution shall be dated on the day of its issue, and shall be returnable within thirty days from the date thereof. 13, 14 V. 53, s. 56. 40

If execution returned *nulla bona*, parties may obtain transcript. **115.** In case an execution is returned *nulla bona*, the plaintiff or defendant may obtain a transcript of the judgment from the Clerk, under his hand and sealed with the seal of the Court, which transcript shall set forth: 45

1. The proceedings in the cause ;

2.

2. The date of issuing execution against goods and chattels ;
and

3. The Bailiff's return of *nulla bona* thereon, as to the whole
or a part. 13, 14 V. c. 53, s. 57.

5 **116.** Upon filing such transcript in the Office of the Clerk of
the County Court in the County where such judgment has been
obtained, or in the County where the Defendant's or Plaintiff's
lands are situate, the same shall become a judgment of such
County Court, and the Clerk of such County Court shall file
10 the said transcript on the day he receives the same, and enter a
memorandum thereof in a book to be by him provided for that
purpose, which memorandum shall contain : 13, 14 V. c. 53,
s. 57.

Upon filing
transcript at
office of Coun-
ty Court Clerk
judgment to
be judgment
of that Court.

1. The names of the Plaintiff and Defendant ;

2. The amount of the judgment ;

15 3. The amount remaining unsatisfied thereon ; and

4. The date of filing ;

for which services the said Clerk of the County Court shall be
entitled to demand and receive from the person filing the same
the sum of two shillings and six pence.

20 **117.** Such book shall at all reasonable hours be accessible
to any person desirous of examining the same, upon the pay-
ment to the Clerk of six pence. 13, 14 V. c. 53, s. 57.

County Court
Clerk's book
to be accessi-
ble.

118. Upon such filing and entry the Plaintiff or Defendant
may, until the judgment has been fully paid and satisfied,
25 pursue the same remedy for the recovery thereof or of the balance
due thereon, as if the judgment had been originally obtained
from the County Court.

Parties may
prosecute
judgment in
County Court.

119. No person shall be entitled to file a transcript of any
such judgment in any County Court, unless the sum remaining
30 unsatisfied on such judgment, and on the execution issued
thereon, amounts to the sum of ten pounds.

£10 0s. 0d.
must be due
on judgment
to entitle to
transcript.

120. No execution for costs only shall issue against lands
for any sum less than ten pounds.

No execution
for costs only
to issue
against lands.

121. Any party obtaining judgment in a Division Court
35 exceeding ten pounds, may at any time after fourteen days
from the day of giving judgment, obtain from the Clerk a
certificate of such judgment in the form used in the Superior
Courts in like cases, as near as circumstances will permit,
which certificate shall, on the request of the party obtaining
the

Certificate of
judgment may
be obtained for
Registry.

the same, be registered in the same manner and on payment of the same fees to the Register as are paid upon certificates of the judgments of the Superior Courts, and such registry shall bind the lands of the debtor to the same extent as they would have been bound had such judgment been rendered in any of the Superior Courts. 13, 14 V. c. 53, s. 59. 5

NEGLECT OF DUTY BY BAILIFFS IN RELATION TO EXECUTIONS, &c.

If Bailiffs neglect their duty in relation to executions.

122. In case any Bailiff employed to levy an execution against goods and chattels, by neglect, connivance or omission loses the opportunity of levying any such execution, then upon complaint of the party thereby aggrieved (and the fact alleged being proved to the satisfaction of the Court, on the oath of any credible witness) the Judge shall order such Bailiff to pay such damages as it appears the Plaintiff has sustained, not exceeding the sum for which the execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof and on his refusal to satisfy the same, the payment thereof shall be enforced by such means as are provided for enforcing judgments recovered in Court. 13, 14 V. c. 53, s. 101. 10 15

Action against Bailiff and sureties for neglect of Bailiff in returning execution.

123. If any Bailiff neglects to return any execution within three days after the return day thereof, or makes a false return thereto, the party who sued out such writ may maintain an action in any Court having competent jurisdiction against such Bailiff and his sureties on the covenant entered into by them and shall recover therein the amount for which the execution issued, with interest thereon from the date of the judgment, or such less sum as in the opinion of the Judge or Jury the Plaintiff under the circumstances is justly entitled to recover. 20 25

124. If a judgment be obtained in such suit against the Bailiff and his sureties, execution shall immediately issue thereon. 30

125. In case of the departure or removal of such Bailiff from the limits of the County, the action may be commenced and carried on against his sureties alone, or against any one or more of them.

What may be seized under execution against goods and chattels.

126. Every Bailiff or Officer having any execution against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, which shall to that extent be protected from such seizure,) and may also seize and take any money or bank notes and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, belonging to any such person. 13, 14 V. c. 53, s. 89. 35 40

127. The Bailiff shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by the execution, or so much thereof as has not been otherwise levied or raised, for the benefit of the plaintiff, and the plaintiff, when the time of payment thereof has arrived, may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby. 13, 14 V. c. 53, s. 90.

Bailiff to hold cheques, notes, &c., seized under execution for benefit of plaintiff.

128. The defendant in the original cause shall not discharge such suit in any way without the consent of the plaintiff or of the Judge. 13, 14 V. c. 53, s. 90.

Defendant in original cause not to discharge suit.

129. The party who desires to sue for any such amount, shall in the first place pay or secure all costs that may attend the proceeding, and the moneys realized, or a sufficient part thereof, shall be paid over by the officer receiving the same to apply on the plaintiff's demand, and the overplus, if any, shall be forthwith paid to the defendant in the original suit, under the direction of the Judge. 13, 14 V. c. 53, s. 90.

The party wishing to enforce costs secure costs overplus.

130. No levy or distress for any sum of money to be levied by virtue of this Act, shall be deemed unlawful, or the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage. 13, 14 V. c. 53, s. 79.

Distress not to be deemed unlawful or parties making same by reason of defect in proceedings.

131. The Bailiff after seizing goods and chattels by virtue of an execution, shall indorse thereon the date of the seizure, and shall immediately, and at least eight days before the time appointed for the sale, give public notice by advertisement (describing the goods and chattels taken), signed by himself, and put up at three of the most public places in the Division where such goods and chattels have been taken, of the time and place within such Division when and where they will be exposed to sale. 13, 14 V. c. 53, s. 60.

Bailiff after seizure of goods to indorse date of seizure and give notice of sale.

132. The goods so taken shall not be sold until the expiration of eight days at least next after the seizure thereof, unless upon the request in writing under the hand of the party whose goods have been seized. 13, 14 V. c. 53, s. 60.

Goods not to be sold till after 8 days has expired after seizure.

133. No Bailiff or other officer of any Division Court shall directly or indirectly, purchase any goods or chattels at any sale made by him under execution, and every such purchase shall be absolutely void. 13, 14 V. c. 53, s. 61.

Bailiff and other officer not to purchase goods seized.

Judge may order an execution to issue before regular day.

134. The judge at any time after recording any judgment, upon application made to him on oath by the party in whose favour such judgment has been given, or upon being satisfied by other testimony that such party will be in danger of losing the amount of the judgment, if compelled to wait till the day of payment thereof before any execution can issue, may order an execution to issue at such time as he thinks fit. 13, 14 V. c. 53, s. 63. 5

JUDGMENTS IN COURTS OF REQUESTS CONTINUED.

Judgments in the former Courts of Request provided for.

135. The orders, decisions and judgments of the Courts of Requests formerly existing in Upper Canada, which were in force on the Thirtieth day of November one thousand eight hundred and forty-one, and remain unsatisfied shall be taken to have been orders, decisions and judgments of the Several Division Courts to the Clerks of which the books, papers and documents connected with the business of such Courts of Requests, have been delivered by order of any Judge of a District or County in Upper Canada, and such orders, decisions and Judgments, shall be carried out and enforced in the same manner as similar proceedings in such Division Courts: But no proceedings shall be taken by any Judge of a County Court to carry out and enforce such orders, decisions or judgments, unless he is satisfied by the Oath of the party, and such other evidence as he may require, (all of which shall be reduced to writing), that it is just and reasonable in equity and good conscience that the same should be enforced. 16 V. c. 177, s. 24. 10 15 20 25

EXAMINATION OF JUDGMENT DEBTORS.

Judgment debtors may be examined at the instance of their creditors.

136. Any party who obtains judgment or order in any Division Court, for the payment of any debt, damages or costs, may obtain from the Court wherein the judgment was obtained or from any Division Court within the limits of which the defendant dwells or carries on his business, a summons in such form as the Judge of such Court may from time to time direct, and to be served personally upon the person to whom the same is directed, requiring him to appear at a time and place therein expressed, to answer such things as are named therein, and if the Defendant appears in pursuance thereof, he may be examined upon oath, touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which formed the subject of the action, and as to the means and expectation he then had, and as to the property and means he still has, of discharging the said debt, damages or liability, and as to the disposal he has made of any property. 13, 14 V. c. 53, s. 91. 30 35 40

And witnesses, &c.

137. The person obtaining such summons and all other witnesses whom the Judge thinks requisite, may be examined upon 45

upon oath, touching the enquiries authorized to be made as aforesaid. 16 V. c. 177, s. 30.

138. The costs of such summons and of all proceedings thereon, shall be deemed costs in the cause, unless the Judge otherwise directs. 16 V. c. 177, s. 30. The costs provided for.

139. If the party so summoned does not attend as required by the summons, nor allege a sufficient reason for not attending, or if he attends and refuses to be sworn or to declare any of the things aforesaid, or if he does not make answer touching the same to the satisfaction of the Judge, or if it appears to the Judge either by the examination of the party or by any other evidence, that the party obtained credit from the plaintiff or incurred the debt or liability which is the subject of the action in which judgment has been obtained, under false pretences or by means of fraud or breach of trust, or wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or has made or caused to be made any gift, delivery or transfer of any property, or has removed or concealed the same with intent to defraud his creditors or any of them, or if it appears to the satisfaction of the Judge that the party so summoned then, had, or since the judgment was obtained against him, has had sufficient means and ability to pay the debt or damages, or costs so recovered against him, either altogether or by any instalment or instalments which the Court in which the judgment was obtained has ordered, and if he refuses or neglects to pay the same at any time ordered, whether before or after the return of such summons, the Judge may, if he thinks fit, order such party to be committed to the Common Gaol of the County in which the party so summoned is resident, for any period not exceeding forty days. 16 V. c. 177, s. 30—13, 14 V. c. 53, s. 92.

140. The Judge, before whom such summons is heard, may, if he thinks fit, rescind or alter any order for payment previously made against any defendant so summoned before him and make any further or other order, either for the payment of the whole of the debt or damages recovered and costs forthwith, or by any instalments, or in any other manner that he thinks reasonable and just. 13, 14 V. c. 53, s. 93. Judges may make order and may alter and modify the same.

141. In case the defendant in any suit brought in any Division Court has been personally served with the summons to appear, or personally appears at the trial, and judgment is given against him, the Judge, at the hearing of the cause or at any adjournment thereof, may examine the defendant and the plaintiff and other parties, touching the several things hereinbefore mentioned, and may commit the defendant to prison, and make an order in like manner as he might have done in case the plaintiff had obtained a summons for that purpose after judgment. 13, 14 V. c. 53, s. 94. Parties may be examined, when.

Party committed not to be discharged for insolvency.

142. No protection, order or certificate granted by any Court of Bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last mentioned order.

Debt not to be extinguished.

143. No imprisonment under this Act shall extinguish the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being summoned anew and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the defendant. 13, 14 V. c. 53, s. 96. 5 10

What goods may be seized in execution in other Counties.

144. In case execution has been issued against the goods and chattels of any party, or an order for his commitment has been made under this Act, and such party or his goods and chattels are out of the County, the Bailiff of the Court may either himself execute such execution or commitment in any County, or place where such party or his goods may be, or send the same to the Clerk of any other Division Court, within the jurisdiction of which such party or his goods and chattels then are or are believed to be, with a warrant thereto annexed under the hand of such Bailiff and the seal of the Court from which the original execution issued, requiring execution of the same; and the Clerk of the Court to which the same is sent shall seal or stamp the same with the seal, and issue the same to a Bailiff of his Court. 13, 14 V. c. 53, s. 97. 15 20

Duties of Bailiffs in relation thereto.

145. Such last mentioned Bailiff shall act in all respects as if the original execution or commitment had been directed to him by the Court of which he is a Bailiff, and shall, within such time as this Act directs, return to the Bailiff of the Court from which the same originally issued, what has been done in the execution of such process, and in case a levy has been made, shall, within such time as this Act directs, pay over all moneys received in pursuance of the warrant to the Bailiff of the Court from which the same originally issued, retaining the fees for execution of the process. 13, 14 V. c. 53, s. 97. 25 30

Party to be imprisoned in the Gaol, when committed.

146. In case an order of commitment has been made and the person apprehended, he shall be forthwith conveyed in custody of the Bailiff or Officer who apprehended him, to the Gaol of the County in which he was apprehended, and be kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Act, and all Constables and other Peace Officers shall be aiding and assisting within their respective Counties in the execution of such warrant. 13, 14 V. c. 53, s. 97. 35 40

The Judge may give time for payment

147. In case it at any time appears to the satisfaction of the Judge, by affidavit or affirmation or otherwise, that any defendant is unable, from sickness or other sufficient cause, 45

cause, to pay and discharge the debt and damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, the Judge may suspend or stay any judgment, order or execution given, made or issued in such action, for such time and on such terms as he thinks fit, and so from time to time until it appears by the like proof that such temporary cause of disability has ceased. 13, 14 V. c. 53, s. 98.

148. Any person imprisoned under this Act, who has satisfied the debt or demand, or instalment thereof payable, and the costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such order, and all subsequent costs shall, upon the certificate of such satisfaction, signed by the Clerk of the Court, or be leave of the Judge of the Court in which the order of imprisonment was made, be discharged out of custody. 13, 14 V. c. 53, s. 99.

When a debtor in custody shall be discharged.

CLAIMS BY LANDLORDS OR OTHERS TO GOODS SEIZED.

149. Subject to the provisions of the "Act respecting absconding Debtors," in case any claim is made to or in respect of any goods or chattels, property or security, taken in execution or attached under the process of any Division Court, or in respect of the proceeds or value thereof by any landlord for rent, or by any person not being the party against whom such process issued, the Clerk of the Court, upon application of the officer charged with the execution of such process, or the officer himself, as well before as after any action has been brought against such officer, may issue a summons calling before the Court out of which such process issued, or before the Court holden for the Division in which the seizure under such process was made, at the next sitting thereof, as well the party who issued such process as the party making such claim, and thereupon any action which has been brought in any of Her Majesty's Superior Courts of Record at Toronto, or in a Local or Inferior Court in respect of such claim, shall be stayed, and the Court in which such action has been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels or property or security were so taken in execution or upon attachment, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the Division Court, and the Judge of such Division Court at such next sitting, or as soon after Court as convenient, shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him seems fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court, and shall be final and conclusive between the parties. 13, 14 V. c. 53, s. 107, — 16 V. c. 177, s. 7.

Claims of landlords to goods seized in execution, how to be adj. justed.

When actions in the Superior Courts respecting the subject matter may be stayed.

RIGHTS OF LANDLORDS PROTECTED.

Provisions in relation to rents due to landlords.

150. So much of the Act passed in the eighth year of the Reign of Queen Anne, intituled, *An Act for the better security of rents and to prevent frauds committed by tenants*, as relates to the liability of goods taken by virtue of any execution, shall not be deemed to apply to goods taken in execution under the process of any Division Court, but the landlord of any tenement in which any such goods are so taken, may by writing under his hand or under the hand of his agent, stating the terms of holding, and the rent payable for the same and delivered to the Bailiff making the levy, claim any rent in arrear then due to him, not exceeding the rent of four weeks when the tenement has been let by the week, and not exceeding the rent accruing due in two terms of payment where the tenement has been let for any other term less than a year, and not exceeding in any case the rent accruing due in one year. 16 V. c. 177, s. 6. 5 10 15

How the Bailiff is to proceed.

151. In case of any such claim being so made, the Bailiff making the levy shall distrain as well for the amount of the rent claimed, and the costs of such additional distress, as for the amount of money and costs for which the warrant of execution issued, and shall not sell the same, or any part thereof until after the end of eight days at least next following after such distress taken. 16 V. c. 177, s. 6. 20

Fees of Bailiff in such cases.

152. For every additional distress for rent in arrear, the Bailiff of the Court shall be entitled to have as the costs of the distress, instead of the fees allowed by this Act, the fees allowed by the Act *respecting distresses for small rents and penalties*. 16 V. c. 177, s. 6. 25

If replevin made.

153. If any replevin be made of the goods distrained, so much of the goods taken under the said warrant of execution shall be sold, as will satisfy the money and costs for which the said warrant issued, and the costs of the sale, and the surplus of such sale, and the goods so distrained, shall be returned as in other cases of distress for rent and replevin thereof. 16 V. c. 177, s. 6. 30

When landlords claim to rent is to be first paid.

154. No execution creditor under this Act, shall be satisfied his debt, out of the proceeds of such execution and distress or of execution only where the tenant replevies, until the landlord who conforms to the provisions of this Act has been paid the rent in arrear for the periods hereinbefore mentioned. 16 V. c. 177, s. 6. 35 40

PENAL CLAUSES.

Forgery of seal—process, &c.

155. Every person who forges the seal or any process of the Court, or who serves or enforces any such forged process, knowing the same to be forged, or delivers or causes to be delivered 40

delivered to any person any paper falsely purporting to be a copy of a process of the Court, knowing the same to be false, or who knowingly acts or professes to act under any false color or process of the Court, shall be guilty of felony. 13, 14 V. c. 53, s. 86.

CONTEMPT OF COURT.

156. If any person wilfully insults the Judge or any officer of any Division Court during his sitting or attendance in Court, or interrupts the proceedings of such Court, any Bailiff or officer of the Court may, by order of the Judge, take such offender into
 10 Custody, and the Judge may impose upon the offender a fine not exceeding five pounds; and in default of immediate payment thereof, the Judge may by warrant under his hand and seal commit the offender to the Common Gaol of the County for any period not exceeding one calendar month, unless such
 15 fine and costs, with the expense attending the Commitment be sooner paid. 13, 14 V. c. 53, s. 75.

Contempt of Court.

BAILIFFS TO BE CONSTABLES.

157. Every Bailiff shall exercise the authority of a Constable during the actual holding of the Court of which he is a Bailiff, with full power to prevent all breaches of the peace, riots or
 20 disturbances within the Court Room or Building in which the Court is held, or in the public streets, squares, or other places within the hearing of the Court, and may with or without warrant, arrest all parties offending against the meaning of this clause, and forthwith bring such offenders before the nearest
 25 Justice of the Peace, or any other Judicial Officer having power to investigate the matter or to adjudicate thereupon. 13, 14 V. c. 53, s. 13.

Bailiff to exercise duty of Constable during holding of Court.

158. Whenever any order of commitment has been made, the Clerk of the Court shall issue, under the seal of the Court,
 30 a warrant of commitment directed to the Bailiff of any Division Court within the County, and such Bailiff may by virtue of such warrant take the body of the person against whom the order has been made.

Commitment in case of refusal.

159. All Constables and other Peace Officers within their
 35 respective jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of the Gaol of the County in which such warrant has been issued, shall receive and keep the defendant therein until discharged under the provisions of this Act or otherwise by due course of law.

Constables, &c. to execute Warrants.

IF BAILIFF ASSAULTED.

160. If any officer or Bailiff, (or his Deputy or Assistant) is assaulted while in the execution of his duty, or if any rescue
 40 is

If Bailiff assaulted.

is made or attempted to be made of any property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the Court or before a Justice of the Peace of the County or City, and to be imprisoned for any term not exceeding three calendar months—and the Bailiff of the Court, or any peace officer may in any such case take the offender into Custody (with or without warrant) and bring him before such Court or Justice accordingly. 13, 14 V. c. 53, s. 100. 5

MISCONDUCT OF CLERKS, BAILIFFS, &c.

Misconduct of Clerks and Bailiffs. **161.** If any Bailiff or Officer, acting under colour or pre-10
tence of process of the Court, is guilty of extortion or miscon-
duct, or does not duly pay or account for any money levied or
received by him by virtue of his office, the Judge at any sitting
of the Court, if the party aggrieved thinks fit to complain to
him in writing, may inquire into such matter in a summary way, 15
and for that purpose may summon and enforce the attendance
of all necessary parties, and make such order thereupon for the
repayment of any money extorted, or for the due payment of
any money so levied or received, and for the payment of
any such damages and costs to the parties aggrieved, as 20
he thinks just; and in default of payment of any money so
ordered to be paid by such Bailiff within the time in such order,
specified for the payment thereof the Judge may by warrant
under his hand and seal, cause such sum to be levied by distress
and sale of the goods of the offender, together with the reason- 25
able charges of such distress and sale, or in default of such
payment may summarily in the first instance, commit the
offender to the Common Gaol of the County for any period not
exceeding three calendar months. 13, 14 V. c. 53, s. 76.

EXTORTION.

Extortion. **162.** If any Clerk, Bailiff or other officer exacts, or takes any 30
fee or reward other than the fees appointed and allowed by law
for or on account of any thing done, by virtue of his office, he
shall, upon proof thereof before the Court, be for ever incapable
of being employed in a Division Court in any office of profit or
emolument, and shall also be liable in damages to the party 35
aggrieved. 13, 14 V. c. 53, s. 77.

FINES HOW ENFORCED.

Fines, how enforced by Division Courts. **163.** In case a Division Court imposes any fine under autho-
rity of this Act, the same may be enforced upon the order of the
Judge, in like manner as a judgment for any sum adjudged therein,
and shall be accounted for as herein provided. 13, 14 V. c. 40
53, s. 82.

How enforced by Justices of the Peace. **164.** In all cases in which by this Act any penalty or for-
feiture is made recoverable before a Justice of the Peace, such
Justice

Justice may, with or without information in writing, summon before him the party complained against, and on such summons hear and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the 5 penalty or forfeiture incurred, and proceed to recover the same. 13, 14 V. c. 53, s. 104.

FORM OF CONVICTION.

165. In all cases where any conviction is had for any offence committed against this Act, the form of conviction may be in the words or to the effect following, that is to say: 13, 10 14 V. c. 53, s. 105.

Be it remembered, That on this . . . day of . . . in the year of our Lord . . . A. B., is convicted before one (or two as the case may be) of Her Majesty's Justices of the Peace for the County of 15 . . . or a Judge acting under the Act respecting Division Courts in Upper Canada intitled, *An Act, &c.*, (insert the title of this Act,) of having (note the offence); and I, (or we) the said . . . do adjudge the said . . . to forfeit and pay for the same the sum of 20 or to be committed to the Common Gaol of the County of . . . for the space of . . . : Given under hand and seal, the day and year aforesaid.

DISPOSAL OF FINES.

166. The moneys arising from any penalties, forfeitures, fines, how 25 and fines imposed by this Act, not directed to be otherwise disposed of, applied, shall be paid to the Clerk of the Court which imposed the same, and shall be paid by him to the County Attorney of the County to be accounted for as part of the Fee Fund. 13, 14 V. c. 53, s. 108.

30 167. No order, verdict, judgment, or other proceeding had, judgments not or made concerning any of the matters aforesaid, shall be quashed, to be reversed ed or vacated for any matter of form. 13, 14 V. c. 53, s. 106. for want of form.

LIMITATIONS AND NOTICE OF ACTIONS FOR THINGS DONE UNDER THIS ACT.

168. Any action or prosecution against any person for any thing done in pursuance of this Act, shall be commenced 35 ed within six calendar months after the fact was committed, and be laid and tried in the County where the fact was committed, and notice in writing of such action and of the cause thereof shall be given to the Defendant, one calendar month at least before the commencement of the action; and if tender 40 of sufficient amends has been made before action brought, or if the defendant after action brought, pays a sufficient sum of money into . . .

into Court with costs, the Plaintiff shall not recover, and in any such action the defendant may plead the general issue, and give any special matter in evidence under such plea. 13, 14 V. c. 53, s. 107.

PROTECTION OF BAILIFF—COPY OF WARRANT, &c.

169. No action shall be brought against a Bailiff of a Division Court or against any person acting by his order and in his aid, for anything done in obedience to any warrant under the hand of the Clerk and seal of the Court until a written demand signed by the person intending to bring such action, of the perusal, and a copy of such Warrant has by such person his attorney or agent been served upon, or left at the residence of such Bailiff, and such perusal and copy have been neglected or refused for the space of six days after such demand. 16 V. c. 111, s. 14. 5

Demand of perusal and copy of Warrant to be made before action.

170. In case after such demand and compliance there with by shewing the warrant to and permitting a copy thereof to be taken by the party demanding the same, an action is brought against such Bailiff or other person who acted in his aid for any such cause without making the Clerk of the Court who signed or sealed the warrant a Defendant, then on producing or proving such warrant at the trial, the jury shall give their verdict for the Defendant, notwithstanding any defect of jurisdiction or other irregularity in or appearing by the warrant. 16 V. c. 111, s. 14. 15

Bailiff entitled to verdict on production of warrant.

171. If an action is brought jointly against such Clerk, and Bailiff or the person who acted in his aid, then on proof of such warrant the jury shall find for such Bailiff or the person who so acted, notwithstanding such defect or irregularity; and if a verdict is given against the Clerk, the Plaintiff shall recover his costs against him, to be taxed in such manner by the proper officer as to include the costs which such Plaintiff is liable to pay to the Defendant for whom a verdict has been found. 16, V. c. 111, s. 14. 25

If Clerk and Bailiff joint defendants, Bailiff entitled to verdict on producing Warrant, and what costs plaintiffs entitled to.

172. In any such action the Defendant may plead the general issue and give the Special matter in evidence at any trial to be had thereupon. 16, V. c. 111, s. 14. 35

Defendant may plead general issue and give the Act in evidence.

11.—ABSCONDING DEBTORS.

173. In case any person, being indebted in any sum not exceeding twenty-five pounds, nor less than twenty shillings, for any debt or damages arising upon any contract, express or implied, or upon any judgment, absconds from this Province, leaving personal property liable to seizure under execution for debt in any County in Upper Canada, or attempts to remove such personal property, either out of Upper Canada or from one County to another therein, or keeps concealed in any County 40

Absconding debtors.

County

- County of Upper Canada to avoid service of process; and in case any creditor of such person, his servant or agent makes and produces an affidavit or affirmation to the purport of the form in the Schedule hereto annexed marked C, which
- 5 affidavit or affirmation, the Clerk of any Division Court of the County wherein the debtor was last domiciled, or where the debt was contracted, or the Judge of the County Court therein, or any Justice of the Peace in any County of Upper Canada may administer), and in case the said affidavit or affirmation
- 10 is then filed with such Clerk or Judge, or if taken before a Justice of the Peace, with such Justice of the Peace who shall transmit the same forthwith to the Clerk of the Division Court within whose Division the same was so made or taken, to be filed and kept among the papers in the cause, then
- 15 such Clerk, Judge or Justice of the Peace shall upon the application of such creditor, his servant or agent, issue a warrant under the hand and seal of such Clerk, Judge or Justice, in the form of that in the Schedule hereto annexed marked D, directed to the Bailiff of the Division Court within which the
- 20 same is issued, or to any Constable of the County, commanding such Bailiff or Constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person liable to seizure under execution for debt within such County, or a sufficient portion thereof, to
- 25 secure the sum mentioned in the warrant, with the costs of the action, and to return the warrant forthwith to the Court out of which the same has been issued. 13, 14 V. c. 53, s. 64.

174. Upon receipt of such warrant, the Bailiff or Constable upon being paid his lawful fees for levy, mileage and otherwise including the fees of appraisement, shall, forthwith execute the same, and make a true inventory of all the estate and effects which he seizes and takes by virtue thereof, and shall within twenty-four hours after seizure call to his aid two Freeholders, who being first sworn by him to appraise the
- 30 personal estate and effects so seized, shall then appraise the same and forthwith return the Inventory attached to such appraisement to the Clerk of the Court out of which the warrant issued. 13, 14 V. c. 53, s. 64.

Bailiff or Constable to seize and make inventory.

175. In any case commenced by attachment, in a Division Court, the proceedings may be conducted to judgment and execution of the Division within which the attachment issued. 13, 14 V. c. 53, s. 64.

Proceedings may be continued in Court out of which attachment issued.

176. When proceedings are commenced in any case before the issue of an attachment, such proceedings may be continued to judgment and execution in the Division Court within which the proceedings were commenced. 13, 14 V. c. 53, s. 64.

Proceedings commenced before attachment to continue.

177. The property seized upon any such attachment shall be liable to seizure and sale under the execution to be issued upon

Property attached may be

upon the judgment, or in case such property was perishable, and has been sold, the proceeds thereof, shall be applied in satisfaction of the judgment. 13, 14 V. c. 53, s. 64.

Plaintiff not to divide cause of action.

178. No plaintiff shall divide any cause of action into two or more suits for the purpose of bringing the same within the provision of the next preceding sections, but any plaintiff having a cause of action above the value of twenty-five pounds, and not exceeding fifty pounds, for which an attachment might be issued if the same were not above the value of twenty-five pounds, may abandon the excess, and upon proving his case, may recover to an amount not exceeding twenty-five pounds, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly. 13, 14 V. c. 53, s. 64.

If several attachments issued.

179. Subject to the provisions contained in the thirteenth section of the Act respecting absconding debtors, in case several attachments issue against any party, the proceeds of the goods and chattels attached shall not be paid over to the attaching creditor or creditors according to priority, but shall be rateably distributed among such of the creditors suing out such attachments as obtain judgment against the debtor, in proportion to the amount really due upon such judgments; and no distribution shall take place until reasonable time, in the opinion of the Judge, has been allowed to the several creditors to proceed to judgment. 13, 14 V. c. 53, s. 65.

If goods insufficient.

180. When such goods and chattels are insufficient to satisfy the claims of all the attaching creditors, no such creditor shall be allowed to share, unless he sued out his attachment, and within one month after its issue gave notice thereof to the Clerk of the Court out of which the first attachment issued, or in which it was made returnable. 13, 14 V. c. 53, s. 65.

Clerk to take charge of goods attached.

181. All property seized under the provisions of the last preceding section, shall be forthwith handed over to the custody and possession of the Clerk of the Court out of which the attachment issued, or in which it was made returnable and such Clerk shall be allowed all necessary disbursements for keeping the same. 13, 14 V. c. 53, s. 66.

On what terms goods attached may be restored.

182. In case any person against whose estate or effects any such attachment has been issued, or any person on his behalf, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out the attachment, and files in the Court to which the attachment has been returned, a bond with good and sufficient sureties, to be approved of by the Judge or Clerk, binding the obligors, jointly and severally, in double the amount claimed, with condition that the debtor (naming him,) will in the event of the claim being

being proved and judgment recovered thereon, as in other cases where proceedings have been commenced against the person, pay the same, or the value of the property so taken and seized, to the claimant or claimants, or produce such property whenever thereunto required to satisfy such judgment; such Clerk may supersede such attachment, and the property attached shall then be restored. 13, 14 V. c. 53, s. 67.

183. If within one month from the seizure aforesaid, the party against whom the attachment issued, or some one on his behalf, does not appear and give such bond as aforesaid, execution may issue as soon as judgment has been obtained upon such claim or claims, and the property seized upon such attachment or attachments, or enough thereof to satisfy the same may be sold thereon for the satisfaction thereof, according to law, or if the same has been previously sold as perishable property, under the provisions hereinafter made, enough of the proceeds thereof may be applied to satisfy the judgment and costs. 13, 14 V. c. 53, s. 68.

If the debtor does not appear.

184. When a summons has been personally served on the party whose property has been seized, and before such seizure, then the trial of the cause shall be proceeded with, as if no such attachment had been issued, and execution shall forthwith be awarded after judgment, unless otherwise ordered by the Judge. 13, 14 V. c. 53, s. 68.

If summoned personally.

185. Subject to the provisions contained in the Eleventh and Thirteenth sections of the Act respecting absconding debtors, in order to proceed in the recovery of any debt due by the person against whose property an attachment issues, where process has not been previously served, the same may be served either personally or by leaving a copy at the last place of abode, trade or dealing of the defendant, with any person there dwelling, or by leaving the same at the said dwelling if no person be there found; and in every case, all subsequent proceedings may be conducted according to the usual course of practice in the Division Court, and if it appear to the satisfaction of the Judge on the trial, upon affidavit, or other sufficient proof, that the creditor who sued out an attachment, had not reasonable or probable cause for taking such proceedings, the Judge shall order that no costs be allowed to such creditor or plaintiff, and no costs in such case shall be recovered in the cause. 13, 14 V. c. 53, s. 69.

Proceedings against debtors to the party who absconded.

186. In case any horses, cattle, sheep or other perishable goods have been taken upon an attachment, the Clerk of the Court who has the custody or keeping thereof (the same having been first appraised) may at the request of the plaintiff suing out the attachment, expose and sell the same at public auction, to the highest bidder, giving at least eight days' notice at the office

Perishable goods, how disposed of.

office of the Clerk of the said Court, and at two other public places within his Division, of the time and place of such sale; if the articles seized will admit of being so long kept, otherwise he may sell the same at his discretion. 13, 14 V. c. 53, s. 70.

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Creditor to give bond to indemnify the officer, and to be filed.

187. It shall not be compulsory upon the Bailiff or Constable to seize, or upon the Clerk to sell such perishable goods, until the party suing out the attachment has given a bond to the defendant therein, with good and sufficient sureties in double the amount of the appraised value of such goods (to be ascertained as aforesaid) conditioned that the party directing such seizure and sale will repay the value thereof, together with all costs and damages incurred in consequence of such seizure and sale, in case judgment is not obtained for the party who sued out such attachment, and the bond shall be filed with the papers in the cause. 13, 14 V. c. 53, s. 70.

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May be sued in the Division Court.

188. Any bond given in the course of any proceeding under this Act, may be sued in any Division Court of the County wherein the same was executed, and proceedings may be thereupon carried on to judgment and execution in such Court, notwithstanding the penalty contained in such bond may exceed the sum of twenty-five pounds. 13, 14 V. c. 53, s. 70.

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Judge may deliver up.

189. Every such bond shall be delivered up to the party entitled to the same, by the order and at the discretion of the Judge of such Court, to be enforced or cancelled as the case may require. 13, 14 V. c. 53, s. 70.

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Residue, how disposed.

190. The residue, after satisfying such judgments as aforesaid, with the costs thereupon, shall be delivered to the defendant, or to his agent, or to any person in whose custody the goods were found, whereupon the responsibility of the Clerk, as respects such property, shall cease. 13, 14 V. c. 53, s. 71.

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INTERPRETATION AND SAVING CLAUSES.

Interpretation of certain words.

191. In construing this Act, the word "County" shall include any two or more Counties united for judicial purposes, and in any form or proceeding, the words "United Counties" shall be introduced according to the circumstances rendering the same necessary; the word "landlord" shall include the person entitled to the immediate reversion of the lands, or, if the property be held in joint tenancy, coparcenary or tenancy in common, shall include any one of the persons entitled to such reversion; and the word "agent," shall mean any person usually employed by the landlord in the letting of lands or in the collection of the rents thereof, or specially authorized to act in any particular matter by writing under the hand of such landlord. 13, 14 V. c. 53, s. 111, & 16 V. c. 177, s. 15.

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PENDING

PENDING PROCEEDINGS CONTINUED.

192. All proceedings commenced before this Act takes effect, shall be valid to all intents and purposes, and may be continued, executed and enforced under this Act against all persons liable thereto in the same manner as if the same had been commenced under the authority of this Act. 14, 15 V. c. 53, s. 112. Pending proceedings provided for.

SHORT TITLE OF THIS ACT.

193. In citing, pleading or otherwise referring to this Act, and any other Acts hereafter passed respecting the said Division Courts, it shall be sufficient to use the expression "The Act, respecting the Division Courts in Upper Canada" or words of equivalent import, which words shall be understood to include and refer to such and so much of the said Act or Acts, as may be then in force touching or concerning, or in any wise relating to such Courts. 14, 15 V. c. 53, s. 113, & 16 V. c. 177, s. 32. Short Title of Act.

SCHEDULE A.

TABLE OF FEES.

FEE FUND.	Not exceeding £2.		Exceeding £2, and not exceeding £5.		Exceeding £5, and not exceeding £10.		Exceeding £10, and not exceeding £15.		Exceeding £15.	
	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
Entering account and issuing summons.....	0	4	0	6	1	3	2	0	3	0
Hearing an undefended cause.....	0	6	0	9	1	3	2	0	3	0
Hearing a defended cause.....	1	0	2	0	3	9	5	0	7	6
Every order or judgment, (not to be charged when the Defendant has given a confession of judgment,)	0	3	0	6	0	9	1	3	2	0
On every confession of judgment.....	0	3	0	3	0	3	0	6	0	6

TARIFF

TARIFF OF FEES AND ALLOWANCES to be received by Clerks of Division
Courts in Upper Canada.

	Not exceed- ing £5.	Exceeding £5. and not £15.	Exceeding £15.
	£ s. d.	£ s. d.	£ s. d.
Entering every Account and issuing Summons.	0 1 0	0 1 6	0 2 0
Copy of Summons, Particulars of Demand or Set-Off, each.....	0 0 6	0 0 9	0 1 0
Every Summons to Witnesses with any num- ber of names.....	0 0 6	0 0 6	0 0 6
Preparing affidavit, and administering oath to Bailliff of Service of Summons.....	0 0 9	0 0 9	0 0 9
Entering Bailiff's returns to Summons to Defen- dant.....	0 0 3	0 0 3	0 0 3
Every copy of Subpœna when made by the Clerk.....	0 0 3	0 0 3	0 0 3
Entering Set-Off or other Defence requiring no- tice to Plaintiff.....	0 0 9	0 1 0	0 1 0
Adjournment of any Cause.....	0 1 0	0 1 0	0 1 0
Entering every Judgment or order made at hearing.....	0 0 9	0 1 0	0 1 3
Taking confession of Judgment.....	0 0 9	0 0 9	0 0 9
Every Warrant, Attachment or Execution.....	0 1 3	0 1 6	0 2 0
Every copy of Judgment to another County.....	0 1 3	0 1 3	0 1 3
Transcript or Certificate of Judgment for Regis- tration in the County Registry Office.....	0 1 3	0 1 3	0 1 3
Entering and giving notice of Jury being re- quired.....	0 1 0	0 1 3	0 1 6
Making out Summons to Jury, for each Jury- man.....	0 0 6	0 0 6	0 0 6
For every Affidavit taken, and drawing the same.....	0 1 0	0 1 0	0 1 0
Returns to Treasurer, to be paid out of the Fee Fund, including attendance on the Judge to Audit the same, each, and to be retained from the Fee Fund in his hands.....	1 0 0	1 0 0	1 0 0
Every search on behalf of a person not a party to a Suit, to be paid by the Applicant.....	0 0 6	0 0 6	0 0 6
Every search for a party to a Suit when the proceedings are over a year old.....	0 0 6	0 0 6	0 0 6
Transmitting papers for service to another County or Division, in addition to the neces- sary Postage on transmission and return.....	0 1 0	0 1 0	0 1 0
Receiving papers from another County or Divi- sion for service, entering same in a book, handing the same to the Bailliff, and receiv- ing his return, to be paid when the claim is filed or defence entered.....	0 1 0	0 1 0	0 1 0
For returning Jury.....	0 1 3	0 1 3	0 1 3

TARIFF OF FEES AND ALLOWANCES, &c.—Continued.

	Not exceeding £2.	Exceeding £2, and not exceeding £5.	Exceeding £5, and not exceeding £10.	Exceeding £10, and not exceeding £15.	Exceeding £15.
	s. d.	s. d.	s. d.	s. d.	s. d.
THE BAILIFF'S FEES.					
Service of Summons, or other proceeding, except Subpœna, on each person.....	0 4	0 6	0 9	0 9	1 0
Service of Subpœna on each Witness.....	0 4	0 4	0 4	0 4	0 4
For taking Confession of judgment.....	0 4	0 6	0 6	0 9	1 0
Drawing and attending to swear to every affidavit of service of Summons, when served out of the Division.....	1 0	1 0	1 0	1 0	1 0
Enforcing every Warrant, Execution or Attachment, against the goods or body.....	1 6	1 6	2 0	3 0	3 9
For every mile necessarily travelled from the Clerk's Office, to serve Summons or Subpœna, and in going to seize on execution or Attachment, where money made or case settled after the levy, 5d.....	0 5	0 5	0 5	0 5	0 5
For every Jury trial.....	0 6	0 6	0 9	1 0	1 6
For carrying delinquent to prison, including all expenses and assistance, per mile, 1s.					
Every Schedule of property seized, return, including affidavit of appraisal.....		2 6	2 6	2 6	5 0
Every Bond, including affidavit of justification.....		2 6	2 6	2 6	
Every notice of sale not exceeding three, under execution, on attachment, 6d. each.					
That there be allowed to the Bailiff upon the sale of property under any execution, the sum of two and a half per cent upon the amount realised, and not to apply to any overplus on the said execution.					
JUROR'S FEES.					
Each Juror sworn in any cause, out of the money deposited with the Clerk for Jurors' Fees.....	0 6	0 6	0 6	0 6	0 6
FEES OF APPRAISERS OF GOODS, &c., SEIZED UNDER ABSCONDING DEBTORS' ATTACHMENT.					
To each Appraiser, 2s. 6d. per day during the time actually employed in appraising goods, to be paid in first instance by the Plaintiff and allowed in costs of the cause, 2s. 6d.					

SCHEDULE B.

FORM OF SUMMONS.

Between } A. B., Plaintiff,
and
C. D., Defendant.

To C. D., the above named Defendant.

You are hereby summoned to be and appear at the next sittings of the first (*or, as the case may be*) Division Court in and for the County of (*or United Counties of* *as* *the case may be*) to be holden at in the Township of on the day of IS , to answer the above named Plaintiff for the causes set forth in the Plaintiff's statement of claim hereunto annexed, numbered , and that in the event of your not so appearing the Plaintiff may proceed to obtain judgment against you by default.

Dated this day of IS ,

By the Court, Clerk.

NOTICE.

Take notice that if the Defendant desires to set off any demand against the Plaintiff at the trial or hearing of the cause, notice thereof containing the particulars of such demand must be left with the Plaintiff or at his usual place of abode if living within the Division, or with the Clerk of the said Court if the Plaintiff resides without the Division, at least six days before the said trial or hearing, and that if the Plaintiff or Defendant desire to take the benefit of any Statute of Limitation or other Statute, notice thereof must be left in like manner with the said Plaintiff or the Clerk at least six days before the said trial or hearing.

(*Indorsement to be made on the Summons after the service thereof.*)

This Summons was served by me, X. Y., on the day of IS .

X. Y.

SCHEDULE C.

County of }

A. B. of } in the County of (*here state the County*) the Plaintiff (*or Agent, as the case may be*) maketh oath and

and saith that C. D., (*the debtor's name*) is (*or are*) justly and truly indebted to (*the creditor's name*) in the sum of

of lawful money of Canada, for (*here state the cause of action briefly*); and this Deponent further saith, that he hath good reason to believe, and verily doth believe, that the said C. D., hath absconded from this Province, and hath left personal property liable to seizure under execution for debt within the County of _____; or that the said C. D., is (*or are*) about to abscond from this Province, or to leave the County of _____ with intent and design to defraud the said (*the creditor*) of the said debt, taking away personal estate liable to seizure under execution for debt; or that the said C. D., is concealed within the County of _____

to avoid being served with Process, with intent and design to defraud the said (*the creditor*) of his said debt; and this Deponent further saith, that this affidavit (*or affirmation, as the case may be,*) is not made, nor the Process thereon to be issued, from any vexatious or malicious motive whatever.

A. B.
Signature of Deponent.

Sworn (*or affirmed, as the case may be*) before me, the
day of _____ one thousand eight hundred
and _____

SCHEDULE D.

County of _____ }
(*here insert the County.*) }

To A. B., Bailiff of the Division Court of the said County of _____ (*or to A. B., a Constable of the County of _____ (as the case may be).*)

You are hereby commanded to attach, seize, take and safely keep all the personal estate and effects of C. D., (*naming the debtor,*) an absconding, removing or concealed debtor, of what nature or kind soever, liable to seizure under execution for debt within the County of (*here name the County*) or a sufficient portion thereof to secure A. B. (*here name the creditor*) for the sum of (*here state the amount sworn to be due*) together with the costs of his suit thereupon, and to return this warrant with what you shall have taken thereupon, to the Clerk of the (*here state the number of the Division*) Division Court of the County aforesaid forthwith: and herein fail not.

Witness my hand and seal, the
day of _____ 18 _____

E. F. (L. S.)
Judge, Clerk, or Justice of the Peace, (*as the case may be*).

CAP. XVII.

An Act respecting the duties of County Attornies in regard to the Fee Fund, of County and Division Courts, and respecting the Securities to be given by Clerks and Bailiffs of Division Courts.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

County Attornies to be Receiver of Fee Fund, and be paid 4 per ct. 20 V. c. 59- 1. The County Attorney of every County shall be the Receiver of all Fees which belong to the Fee Fund of the County Court and of the several Division Courts within his County, and shall be paid four per cent of the gross produce of the Fees thereof. (S V. c. 13, s. 60.) 5

Clerks of County and Division Courts to deliver to County Attorney a verified account of Fees. 2. The Clerk of every County Court and of each Division Court shall, from time to time, as often as required so to do by the County Attorney of his County, and at least once in every three months, deliver to him, verified by the affidavit of such Clerk sworn before the Judge or a Justice of the Peace of the County, a full account in writing of the fees received in his Court, and a like account of all fines levied by the Court, (ac- 15 counting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may have made out of any such fine, in pursuance of the power hereinafter given.)

Clerk of Division Court to furnish Judge a verified account of moneys paid in and out of Court. 3. The Clerk of each Division Court when required by the Judge shall from time to time furnish him with a like account verified by the oath of such Clerk sworn before the Judge or a Justice of the Peace, of the moneys paid into and received out of the Court, by the defendants and Plaintiffs therein, under any orders, decrees or process of the Court, and of the 25 balance in Court, belonging to the Plaintiffs or Defendants.

Division Court Clerks to furnish semi-annual accounts of fees and emoluments of Court to Judge. 4. The Clerk of every Division Court shall, half yearly at least, furnish to the Judge of his Court a detailed statement of all Fees and Emoluments of his Court; which statement shall be sworn to before such Judge, and it shall be the duty of such 30 Judge to require such statement and to file the same with the County Attorney.

Fee Fund moneys to be paid to County Attorney. 5. The fees from time to time received by such Clerks respectively, and payable to the General Fee Fund, shall be by them paid over from time to time to the County Attorney, and 35 at least once in every three months, and shall form part of a fund, to be called the General Fee Fund of the said Courts, and be applied towards the payment of the salaries of the Judges of such Courts. (8 V. c. 13, s. 64.)

6. Every County Attorney shall, half yearly, on or before the first day of July and the first day of January, render to the Inspector General a true account, in writing, of all moneys received, and of all moneys disbursed by him on account of the County and Division Courts during the period comprised in such account, in such form, and with such particulars as the Inspector General from time to time requires; and shall, within ten days after the rendering of the account, pay over the amount of any surplus of such fees to the Receiver General; and in default thereof, the amount due by any County Attorney in default shall be deemed a specialty debt to Her Majesty. 8 V. c. 13, s. 55—16, 14 V. c. 53, s. 16.

County Attorney to render semi-annual accounts to Inspector General, and pay over moneys to him.

7. In case the fees received in the said Courts respectively prove insufficient to repay the disbursements required on account of such Courts, during the period comprised in the said account, the Governor may forthwith issue his warrant on the Receiver General in favour of the County Attorney, for the amount required to make up the deficiency, and the amount thereof shall be charged upon the Consolidated Revenue Fund. 8 V. c. 13, s. 65—13, 14 V. c. 53, s. 17.

If fees do not pay disbursements of Court, Governor may issue Warrant on Receiver General for deficiency.

8. The Accounts to be kept by the several County Attorneys on account of the said Courts shall be deemed public accounts, and shall be inquired into and audited, and shall be within any provision of law for auditing public accounts. (8 V. c. 13, s. 67—13, 14 V. c. 53, s. 19.)

County Attorneys' accounts to be Public Accounts.

9. If any person having resigned or having been removed from the office of County Attorney, or of Clerk of a County or Division Court, neglects after twenty-one days' notice to such person, to account for and pay to the County Attorney for the time being, or to such person as he appoints, all such sums as remain in his hands, the County Attorney for the time being, may, in addition to any other proceeding, in his own proper name only, or by his name and description of office, sue for and recover the same from such person and his sureties with costs of suit, in any Court of Record having competent jurisdiction, by action of debt; and may declare as for money had and received to his use as such County Attorney.

Penalty on County Attorneys and Clerks for not paying over moneys after resignation, removal, &c.

10. The Court in which the action is brought may, at the instance of either of the parties, refer the account in dispute in a summary manner, to be audited by any officer of the Court or other fit person, and he may examine all parties interested in the subject matter upon oath.

Court in which action is brought may refer account to be audited.

11. The Court upon the report of the referee, (unless one party or the other shows good cause to the contrary,) may make a rule either for the payment of such sum as upon the report appears to be due, or for staying the proceedings in the action, upon such terms and conditions as to the Court appear reasonable;

Court may make a rule for payment of account on report appearing due.

able ; or the Court may order judgment to be entered up as by confession for such sum. 8 V. c. 13, s. 68—13, 14 V. 153, s. 19.

In case of death, resignation, &c., of County Attorney, a Clerk of County or Division Court, Successor may sue.

12. In case of the death, resignation or removal from office of any County Attorney or Clerk of any County or Division Court, the County Attorney for the time being may, in his own proper name, or by his name and description of office, sue and recover from the executors or administrators of the deceased, or from the person who so resigned or was removed and from his sureties, all such sums of money as remained in his hands at the time of his death, resignation or removal, and which may be recovered by an action of debt in any Court of Record having competent jurisdiction, and for which he may declare as for money had and received to his use as County Attorney ; and a like action may be brought against any executors or administrators of executors or administrators. 8 V. c. 13, s. 15 5
69—13, 14 V. c. 53, s. 20. 10

In suits against executors or administrators, defendant may plead.

13. In all such actions against executors or administrators the defendant may plead in like manner, and avail himself of the like matters of defence, as in any action founded on simple contract of the original testator or intestate. 20

Court may refer account to be audited.

14. The Court may refer the account in dispute to be audited by any officer or person, and may proceed upon the report of such referee in like manner as in the case mentioned in the eleventh section of this Act.

Proof of County Attorneys acting as such evidence of his holding office.

15. In all actions and proceedings by any County Attorney, by virtue of this Act proof of his acting in the office of County Attorney shall be sufficient evidence of his holding such office, unless the contrary is shown. 25

SECURITIES TO BE GIVEN, BY COUNTY ATTORNEYS AND COUNTY COURT CLERKS.

County Attorneys and Clerks of County Courts to give security.

16. Every County Attorney and every Clerk of a County Court shall give security for such sum, and with so many sureties, and in such manner and form as the Governor directs, for the due performance of his office, and for the due payment of all moneys received by him by virtue of his office, and the securities heretofore given shall continue in force and have the same effect as if given under this Act. 8 V. c. 13, s. 17—13, 14 V. c. 53, s. 22. 30
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BY DIVISION COURT CLERKS AND BAILIFFS.

Clerks and Bailiffs to give security by Bond to the Crown.

17. Every Division Court Clerk and Bailiff whose duty it may be to receive moneys, shall give security by entering into a Bond to Her Majesty, in such sums, with as many sureties and in such form as the Governor directs for the due accounting for and payment of all fees, fines and moneys received by them respectively, by virtue of their respective offices, and also for the due performance of their several duties. 40

SECURITIES

BY DIVISION COURT CLERKS AND BAILIFFS.

18. Every Clerk and Bailiff of a Division Court shall give security for such sum, and with so many sureties being Freeholders and residents within the County in which the Court is held as the Judge of the Division Court for which such Clerk or Bailiff acts may direct, and shall under his hand approve and declare sufficient, by entering into a covenant under their hands and seals, joint and several, according to the form given in the Schedule to this Act marked C, or in words to the same effect.

Clerks and Bailiffs of Division Courts to give security.

19. Such covenant shall be available to, and may be sued upon, by any person suffering damages by the default, breach of duty, or misconduct of any such Clerk or Bailiff, in any Court of competent jurisdiction.

Covenant of security may be sued upon by any person suffering damages by default of Clerk or Bailiff.

20. The securities given by any such Clerk or Bailiff, before the passing of this Act, shall continue in force and have the same effect as if given under this Act.

Securities heretofore given to continue in force.

21. Before any such Clerk or Bailiff enters upon the duties of his office, the covenant of himself and sureties approved as aforesaid shall be filed in the office of the Clerk of the Peace in the County in which the Division Court is situate, and for filing and granting a certificate thereof the Clerk of the Peace may demand from such Clerk or Bailiff the sum of five shillings. 13, 14 V. c. 53, s. 22.

Before Clerk or Bailiff enters on his duties, covenant to be filed with Clerk of the Peace.

22. A copy of every such covenant, certified by the Clerk of the Peace, shall be received in all Courts as sufficient evidence of the due execution and of the contents thereof without further proof.

Certified copy of covenant to be received as evidence.

23. If any surety in any such covenant dies, becomes resident out of Upper Canada, or insolvent, the Judge of the Division Court shall notify the Clerk or Bailiff for whom such person became surety of such death departure or insolvency, and such Clerk or Bailiff shall within one month after being so notified give anew the like security, and in the same manner as hereinbefore provided, or forfeit his office of Clerk or Bailiff.

If surety die, a new surety to be furnished.

24. Nothing herein before contained shall discharge or exonerate any of the parties to such former covenant from their liability on account of any matter done or omitted before the renewal of the covenant as aforesaid.

SCHEDULE C.

COVENANT BY THE CLERK OR BAILIFF.

Know all men by these presents, that we J. B., Clerk (or Bailiff, as the case may be) of the Division Court number

in

CAP. XVIII.

An Act relating to the Court of General Quarter Sessions of the Peace.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The authority under which Commissions of the Peace have been issued and the authority under which the Courts of General Quarter Sessions of the Peace have been holden and are now held in Upper Canada, and all matters and things done by, or by virtue of the same, are so far as relates to the authority under which such Commissions were issued and such Courts have been holden, good and valid to all intents and purposes whatsoever. (41 Geo. 3, c. 6.) Former Commissions and Courts confirmed.
2. The Courts of General Quarter Sessions of the Peace in and for the several Counties and Unions of Counties in Upper Canada, shall be held on the second Tuesday in the months of March, June, September and December in each year. 20 V. c. 58, s. 16. When to be held.
3. The Court of General Quarter Sessions of the Peace shall be held in the County Town of the County, but in time of war or other exigency, the Governor may, by Proclamation under the Great Seal, authorize the holding the Court of General Quarter Sessions of the Peace for any County, at some other place in such County. 20 V. c. 58, s. 39,—7 W. 4, c. 11, s. 4. Where to be held.
4. The First or Senior Judge of the County Court of every County if also a Justice of the Peace therein, and in case of his death or absence the Junior or the Deputy Judge (as the case may be) officiating in the Office of County Court Judge whether a Justice of the Peace or not, shall preside as Chairman at the General Quarter Sessions of the Peace for the County, but in case of the absence from sickness or other unavoidable cause, the First or Senior Judge of the County Court and of the Junior, and the Deputy Judge thereof if such there be, the Justices present shall elect another Chairman *pro tempore*. (8 V. c. 13, s. 3,—16 V. c. 20, s. 2,—20 V. c. 58, s. 14.) Who to be Chairman.
5. It shall not be necessary in opening any Court of Quarter Sessions in Upper Canada, to read the commission of the Peace, or any other commission issued for the County for which such Court is held ; but such Court shall have the same powers and authorities, and proceed in the same manner, as if such commission had been read. (18 V. c. 92, s. 39.) Reading the Commissions dispensed with.
6. It shall not be necessary for any Court of Quarter Sessions to deliver the Gaol of all prisoners who may be confined upon The Court not required to deliver the Gaol.

upon charges of simple larceny, but such Court may leave such cases to be tried at the next Court of Oyer and Terminer and General Gaol Delivery, if by reason of the difficulty or importance of the case, or for any other cause, it appears to them proper so to do. 7 W. 4, c. 4, s. 5.

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Court to appoint High Constable, and Constables.

7. The Court of General Quarter Sessions of the Peace, at their sittings in the month of March in each year, may nominate and appoint a High Constable for their respective Counties, and a sufficient number of Persons in each Township, Incorporated Village, Police Village and Place within their respective Counties, not being Cities or Incorporated Towns, to serve the Office of Constable therein, and each of such High Constable and Constables respectively before entering upon his office, shall take the following oath (or affirmation) which any Justice of the Peace may administer. 20 V. c. 58, s. 16,—33 Geo. 3, c. 2, s. 10.

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Oath of

“ You shall well and truly serve our Lady the Queen in the office of _____ for the _____ of _____ for the year ensuing according to the best of your skill and knowledge. So help you God.”

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Sworn (or affirmed) before me _____, at _____, in the _____ day of _____, one thousand eight hundred _____

A. B., J. P.

C A P .

CAP. XIX.

An Act respecting Writs of Error.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- 1.** When by the Law of England a Writ of Error might on the twenty-fourth day of February, one thousand eight hundred and thirty-five, have been sued out of Chancery returnable in the Court of King's Bench, for removing the Record of the Judgment of an inferior Court of Record, in order to its examination upon Errors assigned, each of the Courts of Queen's Bench and Common Pleas in Upper Canada, may in similar cases, and for the like purpose, issue a Writ of Error, which Writ shall run in the name of the Queen, and be tested and returnable like other Writs of the Court. 5, W. 4, c. 2 s. 1.
- 2.** Whenever any Writ of Error is brought upon any judgment or any indictment, information, presentment or inquisition in any criminal case, and the Court of Error reverses the judgment, such Court of Error may either pronounce the proper judgment, or remit the record to the Court below, in order that such Court may pronounce the proper judgment upon such indictment, information, presentment or inquisition. - 14, 15 V. c. 13, s. 5.
- 3.** The Judges of the Superior Courts of Common Law may, from time to time during any Term, make Rules and Orders for securing the payment of costs and of the debt or damages awarded by the Judgment of the Inferior Court appealed against, in case such Judgment is affirmed, and also for restraining frivolous Writs of Error, being brought merely for delay. 5 W. 4, c. 2. s. 2.

The Superior Courts of Common Law may issue Writs of Error.

What judgment to be given in the Court of Error.

The Judges may make rules, &c.

CAP. XX.

An Act respecting the Law Society of Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

LAW SOCIETY CONTINUED.

The Law Society continued.

1. The Law Society of Upper Canada shall continue as at present constituted, subject to the provisions of this Act, and to the By-laws, Rules and Regulations for the Government thereof in force at the time this Act takes effect, which By-laws, Rules and Regulations respectively shall also continue until modified, altered or repealed by the Corporation of "The Law Society of Upper Canada." (37 G. 3, c. 13, s. 1.)

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THE INCORPORATION OF THE TREASURER AND BENCHERS CONTINUED.

The Corporation of the Treasurer and Benchers continued.

2. The Treasurer and Benchers of the Law Society of Upper Canada, heretofore incorporated and their Successors who have been appointed according to the Rules and By-Laws of the Society, shall continue to be a body corporate and politic, by the name of "*The Law Society of Upper Canada*;" and without licence of mortmain may purchase, take, possess, and after acquiring the same, sell, lease or depart with any lands, tenements or hereditaments for the purposes of the said Society, but for no other purpose, and may execute all other matters appertaining to them to do. (2 G. 4, c. 5, s. 1.)

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THE JUDGES OF THE SUPERIOR COURTS TO BE VISITORS.

The Judges to be Visitors.

3. The Chief Justices and Puisne Judges of the Superior Courts of Common Law, and the Chancellor and Vice-Chancellors of the Court of Chancery, shall be Visitors of the Society. (37 G. 3, c. 13, s. 2; 13, 14 V. c. 51, s. 2.)

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APPOINTMENT OF BENCHERS.

Appointment of Benchers.

4. The Benchers of the Society may from time to time appoint such Members of the Bar, (including the six Senior Members and the Attorney and Solicitor General of Upper Canada,) as they think fit, to be Governors, or Benchers of the Society, and may also appoint a Librarian and Treasurer. (37 G. 3, c. 13, s. 3.)

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THE SOCIETY MAY MAKE RULES.

The Benchers, &c., may make rules.

5. The Benchers of the Society may from time to time make Rules for the Government of the Society, and other purposes connected therewith, under the inspection of the visitors. (37 G. 3, c. 13, s. 2.)

C A P .

CAP. XXII

An Act respecting Barristers at Law.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts, as follows :

1. The following persons, and no others, may be admitted to practise at the Bar in any of Her Majesty's Courts of Law or Equity in Upper Canada :

Who may be admitted to practise at the Bar

2. Any person of the age of twenty-one years, entered of and admitted into the "Law Society of Upper Canada" as a Student of the Laws, standing on the Books thereof for five years, and who has conformed himself to the Rules of the Society. (37 G. 3, c. 13, s. 5.)

Students of 5 years' standing.

3. Any person who has taken the Degree of Bachelor or Master of Arts, or Bachelor of Law, in any of the Universities of the United Kingdom of Great Britain or Ireland, or of any University or College in Upper Canada having power to grant Degrees, and has been admitted into and been standing on the Books of the Society as a Student of Laws for three years, and has conformed himself to the Rules thereof, and in the case of Degrees conferred in Upper Canada, the Student may be admitted to the Bar notwithstanding he was entered on the Books of the Society before taking his Degree. (7 W. 4, c. 15, ss. 1 to 5 ; 10, 11 V. c. 29, ss. 1, 2, 3.)

Graduates of 3 years' standing on the Books of the Society.

4. Any person who has been duly called to the Bar of any of Her Majesty's Superior Courts not having merely local jurisdiction in England, Scotland or Ireland. (2 G. 4, c. 5, s. 2.)

Barristers of England, Ireland or Scotland.

5. Any person who has been duly called to the Bar of any of Her Majesty's Superior Courts in any of Her Majesty's Provinces of North America in which the same privilege would be extended to Barristers from Upper Canada, and who produces sufficient evidence of such call and testimonials of good character and conduct to the satisfaction of the Society. (2 G. 4, c. 5, s. 2.)

Barristers of other Colonies.

CAP. XXII.

An Act respecting Attornies at Law.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Attorneys and Solicitors must be admitted and enrolled.

1. No person shall act as an Attorney or Solicitor in any Court of Civil or Criminal jurisdiction in Law or Equity, or Court of Bankruptcy or Insolvency, or before any Justice of the Peace, unless admitted and enrolled, and duly qualified to act as an Attorney or Solicitor. (20 V. c. 63, s. 2.) 5

Who may be admitted and enrolled Attorneys or Solicitors.

2. Subject to the provisions hereinafter contained the following persons, and no others, may be admitted and enrolled as an Attorney or Solicitor : (20 V. c. 63, s. 3.) 10

(1). Any person bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve as his Clerk for five years ;

(2). Any person who has taken the Degree of Bachelor or Master of Arts, Bachelor or Doctor of Laws, in any of the Universities of the United Kingdom of Great Britain and Ireland, or of this Province, and has, before or after taking his Degree, been bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve him as a Clerk for three years ; 15

(3). Any person who has been duly called to practise at the Bar of any of Her Majesty's Superior Courts, not having merely local jurisdiction, in England, Scotland or Ireland, and has been bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve him as his Clerk for one year ; 25

(4). Any person duly and lawfully sworn, admitted and enrolled an Attorney or Solicitor of Her Majesty's High Court of Chancery, or Court of Queen's Bench, Common Pleas or Exchequer in England or Ireland, or who has been Writer to the Signet or Solicitor in the Superior Courts in Scotland, and has been bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve him as his Clerk for one year ; 30

(5). Any Attorney or Solicitor of any of Her Majesty's Superior Courts of Law or Equity in any of Her Majesty's Colonies wherein the Common Law of England is the Common Law of the land, and who has been bound by contract in writing to a practising Attorney or Solicitor in Upper Canada to serve him as his Clerk for one year. 35

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3. No person above mentioned shall be admitted and enrolled as an Attorney or Solicitor, unless—(20 V. c. 63, ss. 3, 4, 5 and 11.)

Provisions to be complied with by Attorneys and Solicitors before they can be admitted.

(1). He has during the term specified in his contract of service 5 duly served thereunder, and has during the whole of such term been actually employed in the proper practice or business of an Attorney or Solicitor, by the Attorney or Solicitor to whom he has been bound (or, with his consent, by the Professional Agent of such Attorney or Solicitor at Toronto for a part of said time not 10 exceeding one year; nor unless—

(2). He has during his term of service attended the Sittings of one of the Courts of Queen's Bench or Common Pleas during at least two of the Terms of such Courts, and has complied with the regulations of the Law Society in that behalf; nor 15 unless—

(3). After the expiration of such term of service he has been examined and sworn in the manner hereinafter directed; nor unless—

(4). At least fourteen days next before the first day of the 20 Term in which he seeks admission, he has left with the Secretary of the Law Society his contract of service, and any assignment thereof, and an affidavit of execution thereof, and of due service thereunder, and a certificate of his having attended the Sittings of the Court or Courts during two Terms as hereinbefore provided; and (in the case of a person who has taken a Degree 25 hereinbefore mentioned,) a certificate of his having taken such Degree, or a duly authenticated certified copy of such certificate;

(5). Nor unless the Candidate, for admission as an Attorney 30 proves by an affidavit (in a form to be approved of by the Judges of the Court wherein he applies to be admitted) of himself, as also of the Attorney or Solicitor to whom he was bound, or his Agent as aforesaid, to be duly made and delivered to the Law Society upon his application for admission, that he hath actually served 35 and been employed by such practising Attorney or Solicitor or Agent (as to the latter for the term of one year only as hereinbefore mentioned) during the whole of his term of service and in the manner required by this Act.

4. No person who has become bound as aforesaid since 40 the tenth day of June, in the year of our Lord one thousand eight hundred and fifty-seven, shall be admitted an Attorney or Solicitor before such contract and affidavit, so marked as aforesaid respectively, have been produced to the Law Society, unless the same cannot be produced, in which case any Court 45 or Judge of the Court wherein such person seeks admission may, on his application and on being satisfied of such fact, dispense with the production thereof; (20 V. c. 63, s. 12.)

Provisions respecting persons who were entitled before 10th June, 1857.

Oath to be taken by Candidates for admission.

5. No Candidate for admission shall be admitted unless he also makes and subscribes the oath or affirmation following: (20 V. c. 63, s. 21.)

"I, A. B., do swear (or solemnly affirm, as the case may be) that I will truly and honestly demean myself in the practice of an Attorney (or Solicitor, as the case may be) according to the best of my knowledge and ability. So help me God." 5

Provisions respecting Candidates of the classes in sub-sections 3, 4 and 5 of section 2 supra.

6. No, Candidate for admission being of the class of persons respectively mentioned in sub-sections three, four and five of section two of this Act, shall be admitted unless (1) such person publishes in the *Canada Gazette* at least two months previous notice of his intention to apply for such admission to the Court of Chancery, Queen's Bench or Common Pleas, (as the case may be,) in the next ensuing Term of such Court: 10

Nor unless (2) such Candidate at least fourteen days before the first day of such Term leaves with the Secretary of the Law Society: (20 V. c. 63, s. 5.) 15

A. In the case of a Barrister,—a certificate under the seal of the Society, or Inn of Court in England, Scotland or Ireland of which he is a member, duly attested under the proper hand of the proper officer thereof, that he was duly called to the Bar, and was at the date of such certificate on the Books of such Society or Inn of Court; and also, that no complaint to such Society or Inn of Court had been made against him for misconduct; and also a certificate, under the hand of two persons at least, of the good moral character of the applicant; 20 25

B. And in the case of any Attorney or Solicitor,—a certificate under the seal of the proper Court or Courts, duly attested under the hand of the proper officer thereof, that he was duly admitted and enrolled as such Attorney or Solicitor, and was at the date of such certificate on the Roll of Attorneys or Solicitors of such Court or Courts; and also, that no application to such Court or Courts had been made against him for misconduct in his capacity of Attorney or Solicitor; and also a certificate, under the hand of two persons at least, of the good moral character of the applicant; and 30 35

C. Such certificates respectively shall bear date within three months of the first day of the Term during which the application is made.

The Law Society to make rules for the examination of Candidates.

7. The Benchers of the Law Society shall from time to time with the approbation of the Visitors, (one of the Judges of each of the Superior Courts of Law and Equity being one,) make such Rules as they consider necessary for conducting the Examination of persons applying to be admitted as Attornies or Solicitors, as well touching the Articles and Service, and the several Certificates 40

ificates required by Law to be produced by them before their admission, as to the fitness and capacity of such persons to act as Attornies or Solicitors; and the Society may from time to time nominate and appoint Examiners for conducting such
5 Examinations. (20 V. c. 63, s. 19.)

8. The Law Society, upon proof to their satisfaction of the requisites of this Act having been complied with, shall examine and enquire by such ways and means as they think proper, touching the fitness and capacity of any applicant for admission to act as an Attorney or Solicitor; and if satisfied by such examination, or by the certificate of the Examiners hereinafter mentioned, that such person is duly qualified, fit and competent to act as an Attorney or Solicitor, then any Judge, upon a certificate under the corporate seal of the said Society of the due
10 service under contract in writing, of such person, and of his fitness and capacity, and of his having duly complied with the requirements of this Act, or that he is in all respects duly qualified to be admitted as an Attorney and Solicitor, and upon production to the said Judge, annexed to such certificate of the
15 original contract of service and any assignments thereof, and the affidavits of due service thereunder, and all other certificates hereinbefore required, such Judge shall endorse his fiat of admission upon the certificate of the Law Society; whereupon any of the Superior Courts of Law or Equity during the Term
20 in which such application for admission is made, may in addition to the oath of allegiance, administer to such person in open Court the oath hereinafter directed to be taken by Attorneys and Solicitors, and after such oaths taken may cause him to be admitted and his name enrolled as an Attorney or Solicitor of
25 such Court, which admission shall be signed by the Clerk or Registrar of such Court, and thereupon the documents upon which the admission has been obtained shall be filed and retained of record in the office of the Court in which the admission takes place. (20 V. c. 63, s. 6.)
- 35 9. Whenever any person has been bound by contract in writing to serve as a Clerk to any Attorney or Solicitor, such Attorney or Solicitor shall, within three months after the date of such contract, make or procure to be made an affidavit that such Attorney or Solicitor was duly admitted, and also that such contract was
40 duly executed by the said Attorney or Solicitor, and by the person bound to serve him as such Clerk, and in every such affidavit there shall be specified the names of every such Attorney or Solicitor, and of every such person so bound, and their places of abode respectively, together with the day on which such contract was actually executed; and every such contract with such
45 affidavit annexed thereto shall be filed within three months next after the execution of the said contract with one of the Clerks of the Crown and Pleas, at Toronto, who shall endorse and sign upon such affidavit and contract a memorandum of
50 the day of the filing thereof. (20 V. c. 63, s. 7.)

The Law Society to examine into the fitness and capacity of Candidates for admission as Attorneys or Solicitors.

Articled Clerks of Attorneys and Solicitors to procure affidavits of the admission of Attorney or Solicitor—to whom articulated and of execution of articles.

Provision in case affidavit not filed in three months.

10. In case such affidavit is not filed within three months after the date of the contract, the same may nevertheless be filed by the officer before mentioned; but the service of the Clerk shall be reckoned only from the date of filing such affidavit. (20 V. c. 63, s. 8.)

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Practising Attorneys and Solicitors may have 4 articulated Clerks, and no more.

11. Every person authorized to practise as an Attorney or Solicitor may have under contract in writing four Clerks at one time, and no more; and no Attorney or Solicitor shall have any Clerk bound as aforesaid, after such Attorney or Solicitor has discontinued practising as, or carrying on the business of an Attorney or Solicitor, nor whilst such Attorney or Solicitor is employed as a Writer or Clerk by any other Attorney or Solicitor; and the service by any Clerk under Articles to an Attorney or Solicitor, for any part of the time during which such Attorney or Solicitor has been so employed, shall not be deemed good service under such Articles. (20 V. c. 63, s. 10.)

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Courts may order articles to be discharged or assigned in certain cases.

12. In case any Attorney or Solicitor, before the determination of the contract of a Clerk bound to him as aforesaid, has become bankrupt, or taken the benefit of any Act for the relief of Insolvent Debtors, or having been imprisoned for debt has remained in prison for the space of twenty-one days, any of the said Courts of Law or Equity wherein such Attorney or Solicitor had been admitted as aforesaid may, upon the application of such Clerk, order the said contract to be discharged or assigned to such person, upon such terms, and in such manner as the said Court thinks fit. (20 V. c. 63, s. 13.)

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Case of death of the Attorney or Solicitor, to whom Clerk articulated provided for.

13. If any Attorney or Solicitor, to whom any such person has been so bound, dies before the expiration of the term for which such person was bound, or discontinues practice as an Attorney or Solicitor, or if such contract is by consent of the parties cancelled, or in case such Clerk is legally discharged before the expiration of such term by any rule or order of the Court wherein such Attorney or Solicitor was admitted, such Clerk may be bound by another contract in writing, to serve as Clerk to any other practising Attorney or Solicitor during the residue of the said term; and in case an affidavit is duly made and filed of the execution of such last mentioned contract within the time and in the manner hereinbefore directed, and subject to the like regulations with respect to the original contract and the affidavit of its execution, due service under such second or subsequent contract shall be deemed sufficient. (20 V. c. 63, s. 14.)

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Attorneys and Solicitors in Prison not to practise.

14. In case an Attorney or Solicitor be a Prisoner in any Gaol or Prison, he shall not during his confinement therein, or within the limits thereof, commence, prosecute or defend as such Attorney or Solicitor any action in any Court of Law or Equity, nor act in any matter in Bankruptcy or Insolvency; and any such Attorney or Solicitor so practising, and any Attorney

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Attorney or Solicitor permitting or empowering him so to practise in his name, shall be guilty of a contempt of the Court in which any such proceedings take place, and upon the application of any person complaining thereof be punishable by such Court accordingly; and such Attorney or Solicitor shall moreover be incapable of maintaining any action at Law or in Equity for the recovery of any fee, reward or disbursement for or in respect of any matter or thing done by him whilst such Prisoner as aforesaid in his own name or in the name of any other Attorney or Solicitor. (20 V. c. 63, s. 15.)

15. In case any Attorney or Solicitor wilfully and knowingly acts as the Professional Agent of any person not duly qualified to act as an Attorney or Solicitor, or suffers his name to be used in any such agency on account or for the profit of any unqualified person; or sends any process to such person, or does any other act to enable such person to practise in any respect as an Attorney or Solicitor, knowing him not to be duly qualified, and in case complaint be made thereof in a summary way to any of the Superior Courts wherein such Attorney or Solicitor has been admitted, and proof be made thereof upon oath to the satisfaction of the Court, the Attorney or Solicitor so offending may, in the discretion of the Court, be struck off the Roll and disabled from practising as such Attorney or Solicitor; and the Court may also commit such unqualified person so having practised as aforesaid to any Common Gaol or Prison for any term not exceeding one year. (20 V. c. 63, s. 16.)

Attorneys and Solicitors not to act as Agents of unqualified persons.

Knowing the want of qualification.

16. In case any person, unless himself a Plaintiff or Defendant in the proceeding, commences, prosecutes or defends in his own name, or in that of any other person, any action or proceeding in any Court of Law or Equity; without being admitted and enrolled as aforesaid, he shall be incapable of recovering any fee, reward or disbursements on account thereof; and such offence shall be a contempt of the Court in which such proceedings were commenced, carried on or defended, and punishable accordingly. (20 V. c. 53, s. 17.)

Penalty on Attorneys practising without being admitted.

17. Except in case of fraud, no person admitted and enrolled shall be struck off the Roll on account of any defect in the Articles of Clerkship, or in the registry thereof, or in his service thereunder, or in his admission and enrolment, unless application for striking him off the Roll is made within twelve months next after his admission and enrolment. (20 V. c. 63, s. 18.)

Except in cases of fraud, Attorneys not to be struck off Roll for defect in articles, unless application made in 12 months from admission.

18. Every person duly admitted, sworn and enrolled as an Attorney or Solicitor of any one of the Courts of Queen's Bench, Common Pleas or Court of Chancery shall upon production of his Admission therein, or an Official Certificate of such admission, and that the same still continues in force, and upon signing the Roll of the other Court, be admitted an Attorney or Solicitor of either or both of the other Courts, and

Attorneys of one Court to be admitted Attorneys of other Courts. And how

any such Solicitor or Attorney may practise in the Court of Appeal. (20 V. c. 63, s. 20.)

No Attorney to practise while engaged as a Merchant.

19. No Attorney or Solicitor shall practise in any of the Courts in Upper Canada during the time he is engaged in the business of a Merchant or connected by Partnership, public or private, in purchasing and vending merchandize in the way of trade as a merchant, nor until twelve months after he has ceased to be such merchant or to be so engaged or to be connected as aforesaid. (20 V. c. 63, s. 22.)

Persons entitled to be admitted on the 1st. Dec. 1857, specially provided for.

20. Every person who on or before the 10th day of December, 1857, had completed his period of service according to the Laws in force on 9th June, 1857, but has not been admitted an Attorney or Solicitor in pursuance of such service, shall, if otherwise qualified according to the requirements of this Act, be capable of being admitted and enrolled an Attorney or Solicitor in pursuance of the provisions of this Act, in the same manner in all respects as if he had been actually bound by contract in writing, on the 11th day of June, 1857, and although such person had not attended during two of the Sittings of either of the said Courts in Term time as hereinbefore mentioned and required. (20 V. c. 63, s. 23.)

Judges of Superior Courts to make rules, &c.

21. The Judges of the Courts of Queen's Bench, Common Pleas and Chancery may from time to time, make such Rules or Regulations, other than the Rules and Regulations hereinbefore referred to, as to them may seem necessary and meet for carrying out the provisions of this Act

Fees payable under this Act.

22. The following fees shall be payable under this Act, that is to say: (20 V. c. 63, s. 24.)

1. To Clerk of the Crown and Pleas—On filing Articles and Assignments (if any) and every affidavit of execution of such Articles, and making the endorsement required by the Act—Two Shillings and Six Pence.

2. To the Law Society of Upper Canada—On leaving Articles and Assignments thereof, Affidavits of Execution and Certificates for inspection, and enquiry as to due service previous to examination for admission—Ten Shillings.

3. To the Law Society of Upper Canada—For the examination and certificate of fitness and capacity, and compliance with requisites of the Act—Ten Pounds.

4. To the Clerk of the Court whence Fiat issues—For Fiat for admission and oath, and on signing the Roll—Five Shillings.

5. To the Clerk of the Court whence Fiat issues—For Certificate—Ten Shillings.

6c. To the Clerk of the Court on admission upon Certificate of admission of any other Court.—For signing the Roll and Certificate of admission—Ten Shillings.

ATTORNEYS' COSTS.

23. No Suit at Law or Equity shall be brought for the recovery of fees, charges or disbursements, for business done by any Attorney or Solicitor as such, until one month after a Bill thereof, subscribed with the proper hand of such Attorney or Solicitor, his Executor, Administrator or Assignee, (or, in the case of a partnership, by one of the partners, either with his own name, or with the name or style of such partnership,) has been delivered to the party to be charged therewith, or sent by the Post to or left for him at his counting-house, office of business, dwelling-house, or last known place of abode, or been enclosed in or accompanied by a letter subscribed in like manner, referring to such Bill.
24. Upon the application of the party chargeable by such Bill within such month, any of the Superior Courts of Law or Equity, or any Judge thereof, or any Judge of a County Court shall refer such Bill, and the demand thereon, to be taxed by the proper officer of any of the Courts in which any of the business charged for in such Bill was done, without any money being brought into Court; and the Court or Judge making such reference shall restrain the bringing any Suit for such demand pending the reference.
25. In case no such application is made within such month, then the Court or Judge upon the application of either party may order a reference with such directions and conditions as he may deem proper; and may upon such terms as may be thought just restrain any Suit for such demand pending the reference.
26. No such reference shall be directed upon application made by the party chargeable with such Bill after a verdict has been obtained or a Writ of Inquiry executed, or after twelve months from the time such Bill was delivered, sent or left as aforesaid, except under special circumstances, to be proved to the satisfaction of the Court or Judge to whom the application for the reference is made.
27. In case either party to any such reference, having due notice, refuses or neglects to attend the taxation, the officer to whom the reference is made, may tax the Bill *ex parte*; and in case the reference is made upon the application of either party, and the party chargeable with the Bill attends the taxation, the costs of the reference shall be paid according to the event of the taxation, except as hereinafter provided, that it to say: if a sixth part be taxed off, the costs shall be paid by the party by whom or on whose behalf, such Bill was delivered; and if

Attorneys to deliver their Bill one month before bringing action for costs.

Party chargeable may have Bill taxed and what steps to be taken by him for that purpose.

Court or Judge may order Bill to be referred on application of either party.

No reference to be made on application of party chargeable after verdict or after 12 months from delivery of Bill.

If parties refuse to attend, Officer may tax Bill *ex parte*.

if less than a sixth part be taxed off, then by the party chargeable with such Bill, if he applied for or attended such taxation.

Order of reference to direct Officer to tax costs of reference and to certify what he finds due on taxation.

28. Every order for such reference shall direct the Officer to whom the reference is made, to tax the costs of the reference, and to certify what, upon the reference, he finds to be due to or from either party in respect of such Bill and of the costs of such reference, if payable. 5

Officer may make special certificate and Court or Judge may direct payment of costs of taxation.

29. Such Officer may certify specially any circumstances relating to such Bill or taxation, and the Court or Judge may thereupon make such Order as may be deemed right respecting the payment of the costs of the taxation. 10

Court or Judge may give special directions relative to costs of reference.

30. In case such reference is made when the same is not authorized, except under special circumstances, as hereinbefore provided, the Court or Judge may give any special directions relative to the costs of the reference. 15

Where no Bill delivered, or where Bill if delivered might have been referred, Court or Judge may order delivery up of papers.

31. Where no Bill has been delivered, sent or left as aforesaid, and where such Bill if delivered, sent or left, might have been referred as aforesaid, any such Court or Judge may order the delivery of a Bill, and may also order the delivery up of Deeds or papers in the possession, custody or power of the Attorney or Solicitor, his Assignee or representatives, in the same manner as has heretofore been done in cases where any such business had been transacted in the Court in which such Order was made. 20

Not necessary in first instance in action on Bill to prove contents of Bill delivered.

32. In proving a compliance with this Act, it shall not be necessary in the first instance to prove the contents of the Bill delivered, sent or left, but it shall be sufficient to prove that a Bill of fees, charges or disbursements subscribed in the manner aforesaid, or enclosed in or accompanied by such letter as aforesaid, was delivered, sent or left in manner aforesaid; but the other party may shew that the Bill so delivered, sent or left, was not such a Bill as constituted a *bonâ fide* compliance with this Act. 30

The Judges may allow actions for costs within one month if departure from U. C. is apprehended.

33. Any Judge of the Superior Courts of Law or Equity or a County Judge may authorize an Attorney or Solicitor to commence an action for the recovery of his fees, charges or disbursements (against the party chargeable therewith,) although one month shall not have expired from the delivery of a Bill as aforesaid, on proof to the satisfaction of the said Judge that there is probable cause for believing that such party is about to quit Upper Canada. 40

When a party not being the principal pays a Bill of costs, a taxation

34. When any person not being chargeable as the principal party is liable to pay or has paid any Bill either to the Attorney or Solicitor, his Assignee, or representative, or to the principal party entitled thereto, the party so paying his Assignee or representative,

representative, may make the like application for a reference thereof to taxation as the party chargeable therewith might himself have made, and the same proceedings shall be had thereupon, as if such application was made by the party so chargeable as aforesaid; in case such application is made when, under the provisions hereinbefore contained, a reference is not authorized to be made except under special circumstances, the Court or Judge to whom such application is made, may take into consideration any additional special circumstances applicable to the person making such application, although such circumstances might not be applicable to the party chargeable with the said Bill as aforesaid, if he was the party making the application. (16 V. c. 175, s. 12.)

may be allowed afterwards.

35. For the purpose of any such reference upon the application of the person not being the party chargeable, or of a party interested as aforesaid, such Court or Judge may order the Attorney or Solicitor, his Assignee or representative, to deliver to the party making the application a copy of such Bill, upon payment of the costs of such copy. (16 V. c. 175, s. 22.)

A Judge may order the delivery of a copy of the Bill.

36. No Bill previously taxed shall be again referred, unless under the special circumstances, the Court or Judge to whom the application is made thinks fit to direct a retaxation thereof.

When a Bill taxed may be referred.

37. The payment of any such Bill as aforesaid, shall in no case preclude the Court or Judge to whom application may be made from referring such Bill for taxation, if the application for such reference is made within twelve calendar months after payment and if the special circumstances of the case in the opinion of such Court or Judge appear to require the same, upon the terms and subject to the directions which to the Court or Judge seem right. (16 V. c. 175, s. 23.)

Payment not to preclude taxation if applied for within a year.

38. In all cases in which a Bill is referred to be taxed, the Officer to whom the reference is made, may request the proper Officer of any other Court, to assist him in taxing any part of such Bill, and such Officer so requested, shall thereupon tax the same, and shall have the same powers, and may receive the same fees in respect thereof, as upon a reference to him by the Court of which he is such Officer, and shall return the same, with his opinion thereon, to the Officer who so requests him to tax the same. (16 V. c. 175, s. 24.)

A Taxing Officer may require the assistance of the Officer of any other Court.

39. All applications made to refer any Bill to be taxed, or for the delivery of a Bill, or for the delivering up of Deeds, documents and papers, shall be made in the matter of such Attorney or Solicitor; and upon the taxation of any such Bill, the certificate of the Officer by whom such Bill is taxed shall (unless set aside or altered by order of a Judge, Decree or Rule of Court,) be final and conclusive as to the amount thereof, and payment of the amount certified to be due and directed

How applications against Attorneys to be intitled.

directed to be paid may be enforced according to the course of the Court in which the reference was made. (16 V. c. 175, s. 25.)

PROVISIONS FOR RAISING FUNDS FOR SALARIES OF REPORTERS.

PRACTITIONERS TO TAKE OUT CERTIFICATES.

The Law Society to provide for salaries of Reporters by fees to be paid by Attorneys.

Sum to be paid by Attorneys and Solicitors annually for certificates to practice.

40. In order to provide for the Salaries of the Reporters in the Superior Courts, the Benchers of the Law Society of Upper Canada may, by any Rule made by them with the approbation of the Visitors thereof, one of the Judges of each of the Superior Courts of Law and Equity being one, appoint a sum not exceeding one pound five shillings, in respect of each of the said Courts of Queen's Bench, Common Pleas and Chancery, to be annually paid to the Treasurer of the said Society by every practising Attorney and Solicitor of either of said Courts, and in case of persons being Solicitors of the Court of Chancery and also Attorneys of both the said Common Law Courts, the Benchers may appoint one sum to be annually paid by every such Practitioner. (8 V. c. 128, s. 8.)

CERTIFICATES HOW ISSUED.

Secretary to issue the certificates.

To be furnished to him in blank by Clerks of the Crown.

Certificates not to be issued till all past dues paid.

41. Attorneys and Solicitor's Certificates to practise shall be issued by the Secretary of the Society. (18 V. c. 128, s. 9.)

42. The Secretary of the said Law Society shall be annually furnished with such Certificates (in blank) by the respective Clerks of the Crown and Pleas, and Registrar in Chancery. (18 V. c. 128, s. 9.)

43. No such Certificate shall be issued to any Attorney or Solicitor, being at the time a Member of the Society, who at the time of payment of his Certificate fee is indebted to the Society for any Term Fee, or other fee or due payable to the Society, until all such last mentioned fees and dues have been paid to the Treasurer. (18 V. c. 128, s. 9.)

WHEN FEES TO BE PAID.

Certificate fees to be paid annually in Michaelmas Term.

44. Every practising Attorney and Solicitor shall annually in Michaelmas Term, pay to the Treasurer, the Certificate fees appointed by the Society, and thereupon the Secretary shall deliver to him one or more Certificates of his being such Attorney or Solicitor. (18 V. c. 128, s. 10.)

LISTS OF PRACTITIONERS TO BE FURNISHED, &c.

Copy to be delivered to Secretary in vacation after Trinity Term.

45. The Clerks of the Crown and Pleas respectively, and the Registrar in Chancery, shall annually, during the vacation after Trinity Term, deliver to the Secretary or at his office in Osgoode Hall, certified under their respective hands and the Seals of the said Courts respectively, a Copy of so much of the Roll of Attorney's

Attorney's and Solicitor's of their respective Courts, as contains the names of those admitted to practice therein subsequently to the last return by such Clerks or Registrar respectively made to the said Secretary. (18 V. c. 123, s. 11.)

- 5 **46.** The Secretary shall enter all such Certified Copies in a Book to be kept in his office for that purpose, affixing to each name a number following in consecutive order the numbers affixed to the names previously entered in such book. (18 V. c. 123, s. 12.)
- Secretary to enter certified copies of Roll in a Book.

WHAT TO BE DONE IF AN ATTORNEY OR SOLICITOR BE STRUCK OFF THE ROLL.

- 10 **47.** Whenever any Attorney or Solicitor is struck off the Roll of any of the said Courts, the Clerk of the Crown or Registrar of such Court shall certify the same under his hand and the seal of such Court to the Secretary of the Society, stating whether such Attorney or Solicitor was struck off at his own request or otherwise, and the Secretary shall attach such certificate to the certified copy of the Roll on which the name of such person stands, and shall in the book to be by him kept as aforesaid, make a note opposite the name of such person, of his having been struck off such Roll. (18 V. c. 123, s. 13.)
- When Attorney or Solicitor struck off Roll, Clerk to certify same to Secretary.

CLERKS TO FURNISH BLANK CERTIFICATES.

- 20 **48.** Each of the Clerks of the Crown and Pleas, and the Registrar in Chancery, shall annually, during the Vacation of Trinity Term furnish the Secretary as many blank Attorney's and Solicitor's certificates, (dated of the last day of such Vacation) as there were Attorneys or Solicitors standing on the Rolls of such Courts respectively on the last day of that Term. (18 V. c. 123, s. 14.)
- Clerks to furnish blank Attorneys' certificates to Secretary.

- 30 **49.** The Secretary shall, in the margin of every certificate issued by him, note under his hand the day of its issue, and shall at the commencement of every new year, destroy all blank certificates of the previous year then remaining unissued. (18 V. c. 123, s. 15.)
- Secretary to note date of issue on margin.

- 35 **50.** The Secretary shall, in a second book to be kept in his office for that purpose, enter all the names contained in the copies of Rolls to be so transmitted to him, alphabetically arranged, with a reference to the numbers of each name on the Roll or Rolls on which the same stands; and shall, annually on or before the first day of February, put up in his office and also in the offices of each of the Clerks of the Crown and Pleas and Registrar in Chancery, an alphabetical list certified by him, under his hand, of all Attorneys and Solicitors who have taken out their certificates for the then-current year, and shall, from time to time add to the list put up in his own office the name of each Attorney or Solicitor who takes out a certificate at a subsequent period of the year, noting thereon the
- Secretary to enter in Book alphabetical list of names on the Rolls, and annually on or before 1st February put up in his office, and in the office of Clerks of the Crown alphabetical list of certified Attorneys.

the time when such certificate was taken out. (18 V. c. 128, s. 16.)

EXTRA FEES OF CERTIFICATES NOT TAKEN OUT IN DUE TIME.

If certificates not taken out in term, sum by way of penalty to be paid.

51. If any Attorney or Solicitor omits taking out such annual certificate within the time aforesaid, he shall not be entitled thereto until he pays to the Treasurer, not only the certificate fee so appointed as aforesaid, together with any fees or dues that he, if a Member of the said Society, owes the Society, but also the additional sum by way of penalty (in respect of) each of such Courts, as follows: (18 V. c. 128, s. 17.) 5

1. If such certificate is not taken out until after the last day of Hilary Term, the further sum of ten shillings; 10

2. If not until after the last day of Easter Term, the further sum of fifteen shillings, and ;

3. If not until after the last day of Trinity Term, the further sum of twenty shillings. 15

PENALTY FOR PRACTISING WITHOUT A CERTIFICATE.

Attorneys, &c., practising without certificate to forfeit £10.

52. If any Attorney or Solicitor practises in any of the said Courts of Queen's Bench, Chancery, or Common Pleas, respectively, without such certificate, he shall forfeit the sum of ten pounds, which forfeiture shall be paid to the Treasurer of the Law Society for the uses thereof, and may be recovered in either of the said Courts of Common Law. (18 V. c. 128, s. 18.) 20

Certificate need not be taken out till Michaelmas Term next after admission.

53. No Attorney or Solicitor admitted as aforesaid, is required to take out any such certificate until the Michaelmas Term next following his admission. (18 V. c. 128, s. 19.)

Clerks of Courts and Deputies at beginning of each year to make out list of Attorneys, &c., who have practised during the previous year.

54. Each of the Clerks of the Crown and Pleas and the Registrar of the Court of Chancery, and the Deputies of each shall, at the commencement of each calendar year, make out a list of the names of every Attorney and Solicitor who by the papers or proceedings filed or had in their respective offices appears to have practised as such Attorney or Solicitor at any time during the preceding year ending with the thirty-first day of December. (18 V. c. 128, s. 20.) 25 30

And deliver the same to the Secretary.

55. Such Clerks and Registrar and their Deputies respectively shall, on or before the first day of Hilary Term in the year next to that for which they are made up, deliver or hand such lists to the Secretary at Osgoode Hall, certified under their respective hands and seals. (18 V. c. 128, s. 20.) 35

CAP. XXIII.

An Act respecting Reporters in the Superior Courts.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

HOW APPOINTED.

- 5 1. The Benchers of the Law Society in Convocation may, by Instruments under the Corporate Seal, appoint fit and proper persons (being Members of the Society of the degree of Barrister at Law,) to be Reporters, one for the Court of Queen's Bench, one for the Court of Chancery, and one for the Court of Common Pleas, who shall be amenable to the Society in Convocation for the correct and faithful discharge of their respective duties, and be subject to such rules for the discharge of their duties, including the publishing of their Reports, as the Society in Convocation with the approbation of the Visitors thereof, think fit to make.
- 15 (18 V. c. 128, s. 2.)

Reporters to be appointed by and amenable to the Society for the faithful discharge of their duties.

SALARIES.

2. The Salary of each of the Reporters shall not exceed the sum of one hundred and fifty pounds per annum, and may be fixed at, or varied within that amount, as the Society in Convocation with such approbation as aforesaid, may from time to time think just. (18 V. c. 128, ss. 7, 8.)

Salaries of Reporters not to exceed £150 per year.

APPOINTMENT AND REMOVAL OF TO BE APPROVED BY THE JUDGES.

3. No Reporter shall be appointed or removed without the assent of the Judges of the particular Court to which the Reporter is proposed to be or has been appointed, signified to the Society in writing under the hands of such judges upon report made to them by the Society in Convocation, of the proposed appointment or removal of such person. (18 V. c. 128, s. 2.)

Reporters not removable without the assent of the Judges.

WHAT JUDGMENTS ARE TO BE REPORTED.

4. The Reporters respectively shall report not only such decisions of the Court to which he is Reporter as may be delivered in writing, but also the substance of such of the oral decisions thereof as are of general importance, and shall without delay cause such reports to be fairly entered in a book, and submit the same for the inspection of the Judges of such Court; which reports after due Examination and Correction, shall be signed by such Judges respectively, or such of them as are not prevented by absence or sickness from signing the same. (18 V. c. 128, s. 3.)

Decisions whether written or oral to be reported.

5. The Benchers of the Society in Convocation may, by Rules made with such approbation as aforesaid, require the Reporters of

Law Society may require of

Reporters to report the decision in Practice Court and in Chambers.

of the Common Law Courts jointly or separately to report the decisions of the several Judges of such Courts, when sitting in the Practice Court, or at Chambers, and may thereby direct the manner in which such reports shall be made, entered, and submitted for the correction and approval of the individual Judges, who pronounce the same, and be afterwards published. (18 V. c. 128, s. 4.) 5

Society may require judgments of the Court of Appeal to be reported.

6. The Benchers may also in like manner require the three Reporters, or any two of them jointly, or any one of them separately, to report the decisions of the Court of Error and Appeal, or require each of such Reporters separately to report such of the decisions thereof as are pronounced therein on Writs or Petitions of Error or Appeal from the particular Court below, of which he is Reporter, and may also direct the manner in which the reports of such last mentioned decisions shall be made, entered, and submitted for correction and approval, and afterwards published. (18 V. c. 128, s. 5.) 10 15

WHEN THE REPORTS SHALL BE PUBLISHED.

When the reports to be published.

7. The Reporters may, and whenever thereto required by the Benchers of the Society in Convocation, shall publish such reports, or a digest thereof, in such manner as the Benchers, by any general Rules made and approved as aforesaid, direct; and the profits to arise from the publication of such reports shall belong to each of such Reporters respectively. (18 V. c. 128, s. 6.) 20

Profits to be long to the Reporter.

CAP. XXIV.

An Act to provide a Revenue for the accommodation of the Superior Courts.

WHEREAS the Law Society of Upper Canada did on the twentieth day of June, in the year of Our Lord, one thousand eight hundred and forty-six, covenant with Her Majesty, to provide at the seat of such Society suitable accommodation for the Superior Courts of Law and Equity in Upper Canada for all time to come; And whereas for the purpose of carrying out the said arrangement the sum of twenty thousand pounds was by three several statutes of this Province granted to Her Majesty to be raised by debentures as in said Acts provided; And whereas it is necessary to grant additional aid to enable the said Society to provide further accommodation for the said Courts: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: 9 V. c. 33, ss. 1-2, — 18 V. c. 122, s. 1, — 15 20 V. c. 64.

1. There is hereby granted to Her Majesty the sum of ten thousand pounds to be raised by debentures to enable Her Majesty to pay that sum to the said Society to enable the Society to provide further accommodation for the said Courts. 18 V. c. 122, s. 2.

2. The Governor may authorize the issue of Debentures for the sum of ten thousand pounds in such form and for such terms as may be found convenient at a rate of interest not exceeding six per cent per annum and to be redeemable in twenty years.

3. For the purpose of paying the principal and interest on such debentures, there shall be imposed, levied and collected on the proceedings in the Superior Courts of Law and Equity as follows: — 9. V. c. 33, s. 4.

On proceedings in the Courts of Queen's Bench and Common Pleas.

30 On every Writ of Summons or Capias, and on every other Original Writ or Process, Writ of Mandamus, or other Prerogative Writ—one shilling and six pence; 20 V. c. 64.

On entering every Record with the Clerk of Assize—five shillings.

35 On every Judgment entered—three shillings;

On proceedings in the Court of Chancery.

On filing every bill—six shillings and three pence;

On

£10,000 granted to Her Majesty to enable Law Society to provide accommodation for Courts.

Governor may authorize issue of debentures.

Fees leviable on proceedings in Court to pay principal and interest of debentures.

On proceedings in the Court of Error and Appeal.

On every Appeal entered in the Court of Error and Appeal from a judgment, decree or other proceeding had in either of the Courts of Queen's Bench, Common Pleas or Chancery—seven shillings and six pence.

Clerks of Crown and Pleas and Deputies, Clerks of Assize and of Appeals to render half-yearly accounts to Inspector General.

4. The Clerks of the Crown and Pleas and their several 5
deputies, and the Clerks of Assize and the Registrar of the Court
of Chancery, and the Clerk of the Court of Appeals, shall severally collect the sums by this Act imposed on the Writs, Process and proceedings herein mentioned, and render half yearly 10
accounts of the same to the Inspector General duly verified on oath to be taken before any Judge or Justice of the Peace, and shall pay the same to the account of or to the Receiver General, at such time as the Governor in Council may direct; and the officer rendering such account and making such payment shall be entitled to charge and receive four per centum on the sums 15
paid over by him. 9 V. c. 33, s. 4.

Governor may direct sale of 2 acres of land in Toronto to raise funds to meet debentures.

5. The Governor may authorize and direct a portion, not exceeding two acres, of the lot of land in the City of Toronto formerly known and designated as Simcoe Place, and bounded by Front Street, John Street, Wellington Street and Simcoe 20
Street, according to the plan in the Office, to be sold at public auction, for the best price that can be obtained for the same, payable in money at a credit of not more than five years; and the proceeds of such sale, as well interest as principal, shall be applied to the satisfaction of the debentures issued and to 25
be issued for the purposes aforesaid. 9 V. c. 33, s. 6.

Governor may call in debentures.

6. The Governor may by Proclamation call in for payment any of the said debentures, although not then payable; and at the expiration of six months from the date of such Proclamation, all interest on the debentures so called in shall cease. 30
9 V. c. 33, s. 7.

Accounts to be laid before Legislature.

7. Accounts in detail of all moneys received and paid, and of the debentures issued and the interest thereon, and of the redemption of the whole or any portion of such debentures, and of all expenses attending the collection and payment of the sums of money collected and received by authority of this 5
Act, shall be laid before the Legislature of this Province at each Session thereof. 9 V. c. 33, s. 8.

CAP. XXV.

An Act respecting the appointment of Commissioners to take Affidavits and Bail.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The Chief Justice and Justices of the Court of Queen's Bench, 5 or any two of them, of which the Chief Justice shall be one, and the Chief Justice and Justices of the Court of Common Pleas, or any two of them, of whom the Chief Justice thereof, shall be one, or in the event of the death or absence from the Province of the Chief Justice of either of said Courts respectively, then 10 the remaining Justices of the Court of which the Chief Justice shall be dead or absent, may by one or more commission or commissions under the seal of said Courts respectively, from time to time empower such and so many persons as they think fit and necessary in the several Counties within Upper 15 Canada, or within Lower Canada, to take and receive all and every such affidavits and affirmations (in cases where by law an affirmation is allowed) as any person or persons desire to make in or concerning any cause, matter or thing depending, or in any wise concerning any of the proceedings in the said 20 respective Courts. 2 Geo. 4, c. 1. s. 39. 12 V. c 77, s. 13.

The Judges of the Superior Courts may appoint Commissioners for taking affidavits.

2. The affidavits and affirmations aforesaid shall be of the same force as if taken in open Court, and shall be filed in the office of the Court in which the same are taken and may be read and made use of in the said Court as other affidavits 25 or affirmations taken in such Court, and any person forswearing himself in any affidavit before any of the said Commissioners shall be liable to the same pains and penalties as if such affidavits had been made in open Court.

To be of the same force as if taken in open Court.

3. The said Chief Justices and Justices of the said Superior 30 Courts respectively, from time to time in manner aforesaid may appoint the same or other persons to be Commissioners in the several Counties in Upper Canada, to take and receive all and every recognizance or recognizances of Bail as any person or persons may desire to acknowledge or make in any action or suit 35 depending in either of the said Courts, in such manner and form and by such recognizance of Bail as the Justices of the said Courts may take, which recognizance or recognizances of Bail or Bail piece so taken as aforesaid shall be filed in the Office of the Clerk or Deputy Clerk of the Crown in the County 40 in which the same has been taken, together with an affidavit of the due taking of the recognizance by some credible person present at the taking thereof. 2 Geo. 4, c. 1, s. 40.

The Judges may also appoint Commissioners for taking bail.

- Bail so taken may be excepted to.** **4.** The recognizance so taken and filed shall be of the like effect and subject to exception as to the Bail in like manner and within the same time as if the same were taken in open Court, and the said Commissioners for taking affidavits or Bail in Upper Canada may take any affidavits or recognizances of Bail required to be taken in any County Court in Upper Canada. 2 Geo. 4, c. 1, s. 40. 5
- Any of the Judges may take bail.** **5.** Any Judge of either of said Courts may take the acknowledgment of Bail in any civil suit, which recognizance shall be filed as aforesaid without oath, and shall be of the like effect as if taken in open Court. 2 Geo. 4, c. 1, s. 42,—4 W. 4, c. 5, s. 2. 10
- The Commissioners of one Court may take affidavits in all other Courts.** **6.** Each Commissioner appointed for taking affidavits and affirmations in Upper Canada as aforesaid, may take affidavits and affirmations in either of the said Superior Courts, whether the Court for which he was appointed, or not, and in the 15 Court of Chancery and in all the County and Division Courts. 16 V. c. 119, s. 16,—16 V. c. 177, s. 33,—20 V. c. 56, s. 19.
- Including Commissioners of Court of Chancery.** **7.** The Commissioners for taking Affidavits in the Court of Chancery, may administer oaths and take Affidavits in the Courts of Queen's Bench, and Common Pleas, and County 20 Courts. 20 V. c. 56, s. 19,—*See ante Chap. 9, s. 65.*
- Each Commissioner to be an Officer of all the Courts.** **8.** Every Commissioner for taking Affidavits heretofore or hereafter appointed by either of the said Superior Courts of Common Law or of the Court of Chancery, shall be deemed to be an Officer of all the said Courts. 20 V. c. 56, s. 19. 25
- Any other Courts may revoke the Commission of any Commissioner.** **9.** Any of the last mentioned Courts, may revoke the Commission of any such Commissioner, whether the Commission was issued by such Court, or by one of the other Courts, and such revocation shall be notified to the other Courts, and shall operate as a revocation in regard to all the Courts and for all 30 purposes. 20 V. c. 56, s. 19.
- Commissioners may take bail in all the Courts.** **10.** Each Commissioner appointed for taking Recognizance of Bail as aforesaid, may in like manner take the same in either of the said Superior Courts and in the County Courts.
- The Judges and Clerks of County Courts may take affidavits: and bail.** **11.** The Judges and Clerks of the several County Courts 35 respectively may take all affidavits and all Recognizances of Bail required to be taken in their respective Courts. 8 V. c. 13, s. 20.

CAP. XXVI.

An Act to regulate the procedure of the Superior Courts of Common Law and of the County Courts.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. In the Superior Courts of Common Law and in the County Courts in Upper Canada respectively the process and proceeding shall be as follows: Process and proceeding in the Courts.

ORIGINAL PROCESS NON BAILABLE.

2. Except in cases where it is intended to hold the Defendant to special bail, all personal actions brought in the said Courts when the Defendant is residing or supposed to reside within the jurisdiction thereof, shall be commenced by Writ of Summons according to the form contained in the Schedule (A) to this Act annexed, marked No. 1, and in every such Writ and copy thereof, the place and county of the residence or abode or supposed residence or abode of the party Defendant, shall be mentioned. (19 V. c. 43, s. 16.) All actions not bailable to be commenced by Summons.

BAILABLE.

3. In case it is intended to arrest and hold any person to special bail, the process shall be by a Writ of Capias according to the form contained in Schedule (A) to this Act annexed, and marked No. 2, which Writ shall bear date, be tested and (in addition to other indorsements) be endorsed in the same manner as Writs of Summons, and may be directed to the Sheriff of any County in Upper Canada. (19 V. c. 43, s. 22.) Commencement of actions where it is intended to hold defendant to special bail.

WHO TO ISSUE.

4. (1.) In the Superior Courts, the Clerk of the Process shall issue to the parties or their Attorneys all original, alias, pluries and concurrent Writs of Summons and of capias and all Writs of Replevin issued respectively from the principal office at Toronto and shall renew such Writs as hereinafter authorized. (19 V. c. 43, s. 4.) Process Clerk to issue Writs, &c., to parties and their Attorneys in Toronto.

(2.) And the Clerk of the Process and each Deputy Clerk of the Crown shall issue Writs for the commencement of actions, and the Clerks of the County Courts shall issue all similar writs in such Courts respectively. (19 V. c. 43, s. 4.) Deputy Clerk and County Court Clerk in the outer Counties.

(3.) In the Superior Courts such writs shall be issued alternately one at a time from each of such Courts, and not otherwise, but this shall not affect the issue of concurrent Writs. (19 V. c. 43, s. 4.) Writs to issue alternately from each Court.

All Writs to be under the seal of the Courts, and tested, &c.

5. All Writs issued by any of the said Courts shall be under the seal thereof, and in the Superior Courts be tested in the name of the Chief Justice and in the County Courts in the name of the Senior Judge thereof, or in case of the death of the Chief Justice or Senior Judge then in the name of the Senior Judge for the time being. (19 V. c. 43, s. 4.) 5

Office from which issued to be noted in the margin.

6. The Process Clerk and each Deputy Clerk of the Crown and the Clerk of each County Court shall note in the margin of every Writ issued by him, from what office and in what County the Writ issued, and shall subscribe his name thereto. 10

Proper office for taking out Writs in transitory actions.

7. In cases in the Superior Courts in which the cause of action is transitory, the Plaintiff may sue out the Writ for the commencement of the action from the office of the Clerk of either of the said Superior Courts, or from the office of any of the Deputy Clerks of the Crown, and in like cases in a County Court the Writ may be sued out from any County Court having jurisdiction over the cause of action. (19 V. c. 43, s. 6, and c. 90, s. 5.) 15

When venue local.

8. When the cause of action is local, the Writ for the commencement of the action must be sued out from the office within the proper County, and all proceedings to final judgment shall be carried on in the office from which the first process issues. (19 V. c. 43, s. 7, and c. 90, s. 5.) 20

WRIT OF SUMMONS.

Form of action need not be stated in.

9. It shall not be necessary to mention any form or cause of action in any Writ of Summons or in any notice thereof. (19 V. c. 43, s. 17.) 25

To contain the names of all the parties.

10. Every such Writ shall contain the names of all the Defendants in the action, and of no other Defendant. (19 V. c. 43, s. 18.) 30

To be dated the day of issue.

11. Every such Writ shall bear date on the day on which the same issues. (19 V. c. 43, s. 19.)

And endorsed with the name and abode of of the plaintiffs, Attorney and Agent.

12. Every such Writ shall be indorsed with the name and place of abode of the Attorney actually suing out the same, and when he sues out the same as agent for another Attorney, the name and place of abode of such other Attorney shall also be indorsed thereon. (19 V. c. 43, s. 21.) 35

When sued out in person to be so noted, &c.

13. When the Writ is sued out by the Plaintiff in person, he shall indorse thereon a memorandum expressing that the same has been sued out by him in person, and mentioning the City, Town, incorporated or other Village or Township within which such Plaintiff resides. (19 V. c. 43, s. 21.) 40

14. The Plaintiff's Attorney, or the Plaintiff if he sues in person, shall endorse on every such Writ issued for the payment of a debt, and upon every copy thereof, the amount of the Plaintiff's claim for debt, and if there be an Attorney, the Attorney's claim for the costs of Writ, copy and service, and attendance to receive debt and costs; and that upon payment thereof within eight days, to the Plaintiff or his Attorney, as the case may be, further proceedings will be stayed, which indorsement shall be written or printed in the following form or to the like effect: (19. V. c. 43, s. 26.)

The amount of plaintiff's claim to be endorsed on Writ—if paid within 8 days proceedings to stop.

"The Plaintiff claims £ for debt and £ for costs; Form-
"and if the amount thereof be paid to the Plaintiff or his Attorney
"within eight days from the service hereof, further proceedings
"will be stayed;"

15 But the Defendant may, notwithstanding such payment, have the costs taxed; and if more than one sixth be disallowed, the Plaintiff's Attorney shall pay the costs of taxation.

15. In all cases where the Defendant resides within the Jurisdiction of the Court, and the claim is for a debt or liqui-
20 dated demand in money, with or without interest, arising upon a contract express or implied, as for instance, on a Bill of Exchange, Promissory Note or Cheque, or other simple contract debt, or on a bond or contract under seal for payment of a liquidated amount of money, or on a statute where the sum
25 sought to be recovered is a fixed sum of money or in the nature of a debt, or on a guarantee whether under seal or not, where the claim against the principal is in respect of such debt or liquidated demand, bill, note or cheque;—The Plaintiff
30 may make upon the Writ and copy thereof, a special indorsement of the particulars of his claim, in the form contained in Schedule (A) to this Act annexed, marked No. 5, or to the like effect; and when the Writ has been so indorsed, the indorsement shall be considered as particulars of demand, and no further or other particulars need be delivered unless ordered by the Court
35 or a Judge. (19. V. c. 43, s. 41.)

In demands for liquidated sums, certain particulars may be endorsed on the Writ.

No further particulars need be given unless ordered.

16. The Writ whether issued by one of the Superior Courts or by any County Court, may be served in any County in Upper
Canada, and the service thereof, whenever practicable, shall
40 be personal; but the Plaintiff may on affidavit from time to time apply to the Court out of which the Writ issued or to a Judge having jurisdiction over the case, and if it appears to such Court or Judge that reasonable efforts have been made to effect personal service, and either that the Writ has come to the knowledge of the Defendant, or that he wilfully evades ser-
45 vice of the same, and has not appeared thereto, such Court or Judge may by order grant leave to the Plaintiff to proceed as if personal service had been effected, subject to such conditions as to the Court or Judge seem fit. (19. V. c. 43, s. 31 and 34.)

Writs issued from any of the Courts may be served in any County.

If service evaded, how plaintiff to proceed.

Service on
Corporations,
how effected.

17. Every such Writ issued against a Corporation aggregate, and in the absence of its appearance by Attorney, all papers and proceedings in the action before final judgment, may be served on the Mayor, Warden, Reeve, President, or other head Officer, or on the Township, Town, City or County Clerk, or on the Cashier, 5
Manager, Treasurer or Secretary, or Agent of such Corporation, or of any branch or agency thereof in Upper Canada, or on such other person or in such manner as the Court in which the action is brought may direct; and every person who, within Upper Canada, transacts or carries on any of the business of, or any business for any Corporation whose chief place of business is 10
without the limits of Upper Canada, shall, for the purpose of being served with a Writ of Summons issued against such Corporation, be deemed the agent thereof. (19 V. c. 43, s. 33.)

Time of deli-
very of Writ
at Sheriff's
office to be en-
dorsed.

18. Upon the delivery of the Writ at the office of any Sheriff to be served by him, he, his Deputy or Clerk, shall 15
endorse thereon the time it was so delivered, and in case the Writ is not fully and completely served within ten days after such delivery, the Plaintiff, his Attorney or Agent shall be entitled to receive back the same, and such Sheriff, Deputy Sheriff or Clerk, shall endorse thereupon the time of such re- 20
delivery, and in the taxation of costs, the costs of the mileage and service of such Writ by any literate person afterwards, shall be allowed as if the same had been served by the Sheriff or his officer; and if such Sheriff neglects or refuses 25
to return any such Writ after the expiration of the said ten days, the Plaintiff may issue a Duplicate, or concurrent Writ on the *Præcipe* already filed, and the costs of the first or other Writ not returned may be charged against and recovered from the said Sheriff by the Plaintiff or his Attorney. (16 V. c. 175, 30
s. 13 & 14.)

If not served
within ten
days may be
withdrawn
and served by
any literate
person.

Time of ser-
vice of Writs
to be endorsed
three days
after service.

19. The person serving the Writ shall, within three days next after such service, indorse thereon the day of the month and week of the service thereof, otherwise the Plaintiff shall not be at liberty in case of non-appearance to proceed under this Act; and every affidavit of service of such Writ shall 35
mention the day on which such indorsement was made, and in the taxation of costs no fees shall be allowed for the mileage or service of the Writs unless served and sworn in the affidavit of service to have been served by the Sheriff, his Deputy or Bailiff being a literate person, (or by a Coroner when the 40
Sheriff is a party to the suit,) except as provided in the last preceding section of this Act. (19 V. c. 43, s. 32.)

Concurrent
Writs may be
sued out.

20. The Plaintiff in any action may, at any time during six months from the issuing of the original Writ, sue out from the office whence the same issued, one or more concurrent 45
Writ or Writs of the same kind to be tested of the same day as the original Writ, and to be marked by the Clerk or Deputy Clerk issuing the same with the word *concurrent* in the margin, with

with the memorandum required by the fifth section of this Act; but such concurrent Writ or Writs shall only be in force for the period during which the original Writ is in force. (19 V. c. 43, s. 27.)

- 5 **21.** No original Writ shall be in force for more than six months from the day of the date thereof inclusive; but if any Defendant therein named has not been served therewith, the original or any concurrent Writ may at any time before its expiration be renewed for six months from the date of such renewal, and so from time to time, during the currency of the renewed Writ, by being marked in the margin, with a memorandum to the effect following: "Renewed for six months from the day of _____," signed by the Clerk or Deputy Clerk who issued the Writ, or his successor in office, upon 10 delivery to him by the Plaintiff or his Attorney, of a *Præcipe*, in the form heretofore required to be delivered upon the obtaining of an *alias* Writ; and a Writ so renewed, shall remain in force and be available to prevent the operation of any Statute whereby the time for the commencement of the action may be 20 limited, and for all other purposes from the date of the issuing the original Writ. (19 V. c. 43, s. 28.)
- within what time Writs must be served, &c.
Renewing Writs.
Effect of renewal as to Statute of Limitations.

- 22.** The production of the Writ with the memorandum signed shewing such Writ to have been renewed, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed Writ. (19 V. c. 43, s. 30.)
- Memorandum of renewal to be sufficient evidence thereof.

ARREST.

- 23.** No Writ of Capias to arrest and hold to bail shall be issued for a cause of action less than ten pounds, but such Writ may be issued when the cause of action exceeds that 30 sum. (19 V. c. 43, s. 23.)
- No bailable Writ to issue for less than £10.

- 24.** No person shall be subject to arrest under any such Writ who, by reason of any privilege, usage or otherwise, is by law exempt therefrom. (19 V. c. 43, s. 23.)
- Person privileged not to be arrested.

- 25.** In the case of a debt certain, no such Writ shall be issued unless an affidavit of the cause of action has been first made and filed by the Plaintiff, his servant or agent, stating the nature and amount thereof, and that the same is justly and truly due to the Plaintiff, and also that the Deponent hath good reason to believe and verily doth believe that the Defendant is immediately 40 about to leave Upper Canada with intent and design to defraud the Plaintiff of the said debt: and such affidavit at the time of the making thereof need not be entitled of or in any Court, but the style and title of the Court may be added at the time of filing the same and suing out the process thereon, and shall be that 45 of the Court out of which the process issues, and such style and
- Affidavit of debt to be made.
How to be entitled.

and title when so added, shall be for all purposes and in all proceedings, whether civil or criminal, taken and adjudged to have been part of the affidavit *ab initio*. (19 V. c. 43, s. 23.)

Where the cause of action is other than a debt certain.

26. In case the cause of action is other than a debt certain, no such Writ shall be issued unless a Judge's Order has been first obtained for that purpose in such cases and in like manner as has heretofore been the practice. (19 V. c. 43, s. 23.)

WRITS OF CAPIAS.

Writs of Capias' copies, notice, &c., to be delivered to the Sheriff.

27. Every Writ of Capias, and so many copies thereof as there are persons intended to be arrested thereon or served therewith, together with every memorandum or notice subscribed thereto and all indorsements thereon, shall be delivered with the original Writ, to the Sheriff or other officer who may have the execution or return thereof, and service thereof shall be of the same force and effect as the service of the Writ of 15 Summons hereinbefore mentioned. (19 V. c. 43, s. 22.)

Some Defendants may be arrested and others not.

Effect of service as to—

28. The Plaintiff or his Attorney may order the Sheriff, or other officer to whom such Writ is directed, to arrest one or more of the Defendants therein named, and to serve a copy thereof on one or more of the others, which order shall be duly 20 obeyed by such Sheriff or other officer. (19 V. c. 43, s. 22.)

Execution of process.

Indorsement thereon on Writ.

29. Such Sheriff or officer shall, upon or immediately after the execution of such process, cause one such copy to be delivered to every person upon whom he executes the same, whether by service or arrest, and shall within three days after 25 such service or arrest indorse thereon the true day of the execution thereof, and whether by service or arrest. (19 V. c. 43, s. 22.)

Declaration when to be made, when defendant is imprisoned for want of bail.

30. If any Defendant has been taken or charged in custody upon any such process, and imprisoned for want of sureties for 30 his appearance thereto, the Plaintiff may, before the end of the next term after the arrest of the Defendant, declare against him and proceed thereon, in the manner and according to the directions contained in the one hundredth and one hundred and thirty-second rules of the Superior Courts of Common Law, 35 made in Trinity Term, in the twentieth year of Her Majesty's Reign. (19 V. c. 43, s. 22.)

Concurrent Writs of Capias may be issued and all Writs of Capias may from time to time be renewed.

31. Concurrent Writs of Capias may be issued and Writs of Capias may be renewed from time to time, and shall be in force for the same period of time and in like manner as 40 hereinbefore provided for Writs of Summons. (19 V. c. 43, s. 27.)

BAIL.

32. The Sheriff to whom a Capias issued out of a County Court is directed, shall take bail from any Defendant arrested thereon, and if required shall assign the bail bond, which assignment shall have the same effect as if the Writ had issued from one of the Superior Courts. (8 V. c. 13, s. 21.)

On Writs from County Courts the Sheriff to take bail from persons arrested—sign bail bond, &c.

33. Special bail may be put in and perfected according to the established practice; and after special bail has been so put in, the plaintiff may by filing a declaration or otherwise proceed to judgment, in like manner as if the action had been commenced by Writ of Summons and the Defendant had appeared thereto. (19 V. c. 43, s. 24.)

Special bail may be entered according to the form in practice after which plaintiff may proceed as upon a Writ of Summons.

34. The condition of the recognizance of special bail shall be that if the Defendant shall be condemned in the action at the suit of the Plaintiff, he will satisfy the costs and condemnation money, or render himself to the custody of the Sheriff of the County in which the action against such Defendant has been brought or that the cognizers shall do so for him. (8 V. c. 13, s. 26;—2 Geo. 4, c. 1, s. 11.)

Condition of recognizance of bail.

35. Upon due notice given to the Attorney of the Plaintiff, and upon production of the bail piece, and whether the Defendant is detained in custody or not, bail may justify (either in term time or in vacation) before any Judge of the Court in which the action is pending, and such justification and the opposing thereof may be by affidavit or affirmation without the attendance of the bail in open Court or before such Judge, unless specially required by such Court or Judge, and such Court or Judge may thereupon order a rule to issue for the allowance of such bail and for the discharge of the Defendant (if in custody) by a Writ of supersedeas. (2 Geo. 4, c. 1, s. 13—4 W. 4, c. 5, s. 2.)

How bail may justify.

And order for allowance to issue.

36. Special bail may surrender their principal to the Sheriff of the County in which such principal is resident or found, on production of a copy of the bail piece certified by the Clerk of the Court having the custody thereof, and such Sheriff shall receive such principal into his custody and give such bail a certificate under his hand and seal of office of such surrender, for which certificate the Sheriff shall be entitled to the sum of five shillings, and any Judge of the Court in which the action is pending, upon proof of due notice to the Plaintiff or his Attorney of such surrender, and upon production of the Sheriff's certificate thereof, shall order an exoneretur to be entered on the bail piece, and thereupon the bail shall be discharged. (8 V. c. 13, s. 27—4 W. 4, c. 5, s. 1.)

Bail may surrender their principal to the Sheriff of any County, &c.

37. In cases where such surrender is made to any other Sheriff than the Sheriff of the County specified in the recognizance

Such surrender not to

take

affect the
venue.

ance of bail, the Plaintiff shall not be compelled to change the venue or to conduct his suit in any manner different from that in which he would have been compelled to do, had the render been made to such last mentioned Sheriff. (8 V. c. 13, s. 27—4 W. 4, c. 5, s. 1.)

5

In cases in a
County Court
How plaintiff
to proceed
when defend-
ant surrend-
ered in a County
different from
that in which
the action was
brought.

38. In case (in any action in a County Court) the Defendant has been surrendered by his bail into the custody of the Sheriff of a County other than that in which the action was instituted, the Plaintiff therein, after entering up judgment, may procure a transcript of the judgment roll and proceedings, 10 certified under the hand of the Judge of the Court wherein the same was obtained, and upon filing the certified transcript in the office of the Clerk of the Court of the County wherein the Defendant has been surrendered, may charge the Defendant in execution and take all other necessary proceedings in like 15 manner as if the suit had been originally instituted in such Court. (4 Wm. 4, c. 5, s. 3.)

Recognizance
of bail in
County Courts
may be record-
ed and pro-
ceeded upon
in like manner
as in the Su-
perior Courts.

39. A recognizance of bail taken in a County Court may be entered of Record in such Court, and an action of debt or *scire facias* shall lie thereupon in such Court as in similar 20 cases in the Superior Courts, and in cases in the County Courts the Judges thereof may grant the same remedies to the Plaintiff against the Sheriff or Sheriff's Bail or the Bail to the action and afford relief to the Defendant, Sheriff or Bail in like 25 manner and form as might be done by either of the Superior Courts had the action been instituted in such Court. (8 V. c. 13, s. 50—12 V. c. 66, s. 7.)

Plaintiff may
obtain *Capias*
in certain
cases after
commencing
the suit by
Writ of Sum-
mons, affida-
vit required.

Writ to issue
from the same
Court as the
Original Writ.

Form of Writ.

To whom di-
rected.

Copies.

One copy to be
delivered to
each person on
whom the
Writ is exe-
cuted.

40. The Plaintiff, after the commencement of any action by Writ of Summons but before Judgment in such action, upon making and filing an affidavit conformably to the provisions 30 of the twenty-fifth section of this Act, or on obtaining a Judge's order for that purpose, may sue out of the office whence such Summons was issued a Writ of *Capias*, and one or more concurrent Writs, and renew such Writs in manner directed by 35 this Act; and such Writ of *Capias* shall in every such case be issued by the Court out of which the original Writ in the cause was issued, and shall be in the form contained in Schedule (A) to this Act annexed, and marked No. 6, and may be directed to the Sheriff of any County in Upper Canada, and so many copies of 40 such Writ, with every memorandum or notice subscribed thereto, and all endorsements thereon as there may be persons intended to be arrested thereon, shall be delivered with such writ to the Sheriff or other officer who may have the execution or return thereof; and such Sheriff or Officer shall immediately upon, or 45 after the execution thereof, cause one such copy to be delivered to every person upon whom such process is executed by him, and shall, within three days at farthest after such execution, indorse upon such Writ the true day of the execution thereof; and the proceedings in any such action may be carried on to Judgment without

without regard to the issuing of such *Capias* or to any proceedings in any way arising from or dependent thereon; and on entering Judgment the Plaintiff shall be entitled to tax the costs of such Writ or Writs of *Capias* and the proceedings thereon in like manner as if the suit had been originally commenced by *Capias*, together with the other costs incurred and taxable in the cause. (8 V. c. 13, s. 27—19 V. c. 43, s. 42.)

ABSENTEES.

41. In case any Defendant being a British subject, is residing out of the Jurisdiction of the said Courts, the Plaintiff may issue a Writ of Summons in the form contained in the Schedule (A) to this Act annexed, marked No. 3, which Writ shall bear the indorsement contained in the said form, purporting that such Writ is for service out of the Jurisdiction of the said Courts, and the time for appearance by the Defendant shall be regulated by the distance from Upper Canada of the place where the defendant is residing, having due regard to the means of, and necessary time for postal or other communication. (19 V. c. 43, s. 35.)

Summons to party being a British subject residing out of the jurisdiction of the said Courts.

Service thereof, &c.

42. The Court or Judge, upon being satisfied that there is a cause of action which arose within the Jurisdiction, or in respect of the breach of a contract made within the Jurisdiction, and that the Writ was personally served upon the Defendant, or that reasonable efforts were made to effect personal service thereof upon the Defendant, and that it came to his knowledge, and either that the Defendant wilfully neglects to appear to such Writ, or that he is living out of the Jurisdiction of the said Courts in order to defeat or delay his creditors, may from time to time, direct that the Plaintiff shall be at liberty to proceed in the action in such manner and subject to such conditions as to such Court or Judge may seem fit, having regard to the time allowed to the Defendant to appear being reasonable, and to the other circumstances of the case; but the Plaintiff shall before obtaining Judgment prove the amount of the debt or damages claimed by him in such action, either before a Jury on an assessment in the usual mode, or by reference to compute in the manner hereinafter provided, according to the nature of the case, as such Court or Judge may direct. (19 V. c. 43, s. 35.)

If service cannot be made.

Order in such case by the Court or a Judge on affidavit.

Plaintiff must prove his case.

43. In any action against a person residing out of the Jurisdiction of the said Courts and not being a British subject, the like proceedings may be taken as against a British subject resident out of the Jurisdiction, except that the Plaintiff shall instead of the Summons mentioned in the next preceding Section, issue a Writ of Summons according to the form contained in the said Schedule (A) marked No. 4, and shall in manner aforesaid serve a notice of such last mentioned Writ upon the Defendant, which notice shall be in the form contained

If the defendant be not a British subject.

tained in the said Schedule also marked No. 4; and such service or reasonable efforts to effect the same, shall be of the same force and effect as the service or reasonable efforts to effect the service of a Writ of Summons in any action against a British subject resident abroad, and by leave of the Court or a Judge, upon their or his being satisfied by affidavit as aforesaid, the like proceedings may be had and taken thereupon. (19 V. c. 43, s. 36.) 5

Certain Writs may be made concurrent.

44. A Writ for service within the Jurisdiction may be issued and marked as a concurrent Writ with one for service out of the Jurisdiction, and a Writ for service out of the Jurisdiction may be issued and marked as a concurrent Writ with one for service within the Jurisdiction. (19 V. c. 43, s. 39.) 10

Affidavits for enabling proceedings to be taken against a party out of the jurisdiction before whom to be made.

45. Any affidavit for the purpose of enabling the Court or a Judge to direct proceedings to be taken against a Defendant residing out of the Jurisdiction of the said Courts, may be sworn before the Chief Justice or Judge of any Court of Superior Jurisdiction in the Country wherein such Defendant may reside or be served, or before the Mayor or Chief Magistrate of any City, Town or place wherein the Defendant may reside or be served, or before any Consul General, Consul, Vice-Consul or Consular Agent for the time being, appointed by Her Majesty at any foreign port or place at or near which the Defendant may reside or be served; and saving all just exceptions, every affidavit so sworn may be used and shall be admitted in evidence provided it purport to have been sworn before such Chief Justice, Judge, Mayor or Chief Magistrate, Consul General, Consul, Vice-Consul or Consular Agent. (19 V. c. 43, s. 40.) 15 20 25

MISCELLANEOUS PROVISIONS RESPECTING WRITS, &c.

Amendment if the plaintiff omits any thing in the indorsement on or in the Writ.

46. If the Plaintiff or his Attorney omits to insert in or to indorse on any Writ or copy, any of the matters required by this Act to be inserted therein or indorsed thereon, such Writ or copy thereof shall not on that account be held void, but it may be set aside as irregular, or amended upon application to be made to the Court out of which the same issued or to a Judge, and such amendment may be made upon any application to set aside the Writ upon such terms as to the Court or Judge seems fit. (19 V. c. 43, s. 37.) 30 35

Amendment if one form of Writ be substituted by error for another.

47. If any one of the forms of Writs of Summons contained in the Schedule (A) to this Act annexed, and marked respectively Nos. 1, 3 and 4, has been by mistake or inadvertence substituted for either of the others, such mistake or inadvertence shall not be an objection to the Writ or any other proceeding in such action, but the Writ may, upon an *ex parte* application to a Judge, whether before or after an application to set aside the Writ or any proceeding thereon, and whether the same or notice thereof has been served or not, be amended by such Judge without costs. (19 V. c. 43, s. 38.) 40 45

48. Every Attorney whose name is endorsed on any Writ issued for the commencement of any action shall, on demand in writing made by or on behalf of any Defendant, declare forthwith whether such Writ was issued by him or with his authority or privity; and if he answers in the affirmative, then he shall also, in case the Court or a Judge so directs, declare in writing within a time to be limited by such Court or Judge, the profession or occupation and place of abode of the Plaintiff, on pain of being guilty of a contempt of the Court from which such Writ appears to have issued; and if such Attorney declares that such Writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereon without leave of the Court or a Judge. 19 V. c. 43, s. 15. 25.

Attorney whose name is endorsed on the Writ to declare whether he sued it out, and if so, plaintiff's name, &c., if so ordered.

Proceedings stayed if he declares he did not sue it out.

APPEARANCE.

49. The Defendant may appear at any time before Judgment, and if he appear after the time specified either in the Writ of Summons or in the warning indorsed on any Writ of Capias served on him, or in any rule or order to proceed as if personal service had been effected, he shall, after notice of such appearance to the Plaintiff or his Attorney, *as the case may be*, be in the same position as to pleadings or other proceedings in the action as if he had appeared in time; but a Defendant appearing after the time appointed by the Writ, shall not be entitled to any further time for pleading or any other proceeding than if he had appeared within such appointed time; and if the Defendant appears after the time appointed by the Writ, and omits to give such notice of his appearance, the Plaintiff may proceed as in case of non-appearance. 19 V. c. 43, s. 62.

Defendant may appear at any time before judgment.

His position.

50. Every appearance by the Defendant in person shall give an address at which all pleadings and other proceedings not requiring personal service may be left for him; and if such address is not given, the appearance shall not be received, and if an illusory or fictitious address is given, the appearance shall be irregular and may be set aside by the Court or a Judge, and the plaintiff may, by the Court or Judge, be permitted to proceed by sticking up the proceedings in the office from whence the Writ was sued out. 19 V. c. 43, s. 63.

Defendant appearing in person to give an address.

Where pleadings, &c., may be served.

51. The mode of appearance to every such Writ of Summons or under the authority of this Act, shall be by filing with the proper officer in that behalf, a memorandum in writing according to the following form, or to the like effect: 19 V. c. 43, s. 64.

Mode and form of appearance.

A. B., Plaintiff, against C. D., Defendant, } The Defendant, C.
 or } D. appears in person
 against C. D., and another } or
 or } E. F. Attorney for C.
 against C. D., and others. } D. appears for him.

(If the Defendant appears in person, here give his address.)

Entered the day of A. D., 18

Plaintiff need not enter appearance for defendant.

52. In no case shall it be necessary for the Plaintiff to enter an appearance for the Defendant. 19 V. c. 43, s. 59.

Proceedings in non-appearance of defendant on Writ specially endorsed.

53. In case of non-appearance by the Defendant where the Writ of Summons is indorsed in the special form hereinbefore provided, and in case the Plaintiff files the Writ of Summons, and an affidavit of personal service thereof, or in case of service on a corporation, files an affidavit of service in the manner of Court, or a Judge's order for leave to proceed under the provisions of this Act, such Plaintiff may at once sign final judgment in the form contained in Schedule (A) to this Act annexed, marked No. 7, *bis*, (on which judgment no proceeding in error or appeal shall lie) for any sum not exceeding the sum indorsed on the Writ, together with interest to the date of the judgment and costs to be taxed in the ordinary way: and the Plaintiff may, at the expiration of eight days from the last day for appearance and not before, issue execution upon such judgment; but the Court or a Judge, may after final judgment, let in the Defendant to defend, upon an application supported by satisfactory affidavits accounting for the non-appearance and disclosing a defence upon the merits. 19 V. c. 43, s. 60.

Signing judgment.

Execution.

Defendant may be let in to defend.

And if the Writ be not specially endorsed.

54. In case of such non-appearance where the Writ of Summons is not indorsed in the special form hereinbefore provided, and in case the Plaintiff files the Writ of Summons, and an affidavit of personal service thereof, or in case of service on a corporation, files an affidavit of service in the manner in this Act authorized for service on corporations, or files the writ of Summons and a Judge's Order for leave to proceed under the provisions of this Act, such Plaintiff may file a declaration indorsed with a notice to plead in eight days, and in default of a Plea may sign judgment by default at the expiration of the time to plead so indorsed. 19 V. c. 43, s. 61.

Declaration.

Signing judgment.

Execution.

55. In the event of no plea being filed and served where the cause of action mentioned in the declaration is for any of the claims which might have been inserted in the special indorsement on the Writ of Summons, the Judgment shall be final, and execution may issue for an amount not exceeding the amount indorsed on the Writ of Summons with interest and costs; but in such case the plaintiff shall not be entitled to more costs.

Costs.

costs than if he had made such special indorsement and signed judgment upon non-appearance. 19 V. c. 43, s. 61.

56. All such proceedings as are mentioned in any Writ of Summons or Capias, or notice or warning thereto or thereon, issued, made or given by authority of this Act, may be had and taken (in default of a Defendant's appearance or putting in special bail) at the expiration of ten days from the service or execution thereof, whatever day the last of such ten days may be and whether in term or vacation; but if the last of the ten days be Sunday, Christmas Day or Good Friday, then the following day, or the following Monday when Christmas Day falls on a Saturday, shall be considered as the last of such ten days. 19 V. c. 43, s. 65.

At what time certain proceedings may be taken if defendant do not appear.

Holy-days.

57. If such Writ is served or executed on any day between the first day of July and the twenty-first day of August, special bail may be put in by the Defendant on bailable process, or appearance entered by the Defendant on process not bailable, at the expiration of such ten days. 19 V. c. 43, s. 65.

Long vacation.

58. In any action brought against two or more Defendants when the Writ of Summons is indorsed in the special form herein before provided, if one or more of such Defendants only appear and another or others of them do not appear, the Plaintiff may sign Judgment against such Defendant or Defendants only as have not appeared, and before declaration against the other Defendant or Defendants, may issue execution upon such Judgment, in which case he shall be taken to have abandoned his action against the Defendant or Defendants who have appeared; or the Plaintiff may, before such execution, declare against such Defendant or Defendants as have appeared, stating by way of suggestion the Judgment obtained against the other Defendant or Defendants who have not appeared, in which case the Judgment so obtained against the Defendant or Defendants who have not appeared, shall operate and take effect in like manner as a Judgment by default obtained before the commencement of this Act against one or more of several Defendants in an action of debt. 19 V. c. 43, s. 66.

Proceedings if some of the defendants appear and others do not, the Writ being specially endorsed.

59. The service of all papers and proceedings subsequent to the service of the Writ, shall be made upon the Defendant or his Attorney, according to the established practice, unless special provision is otherwise made in this Act, and if the Attorney of either party do not reside or have not a duly authorized agent residing in the County wherein the action has been commenced, then service may be made upon the Attorney wherever he resides, or upon his duly authorized agent in Toronto, or if such Attorney have no duly authorized agent there, then service may be made by leaving a copy of the papers for him in the office where the action was commenced, marked on the outside as copies left for such Attorney. 19 V. c. 43, s. 9.

Proceedings to be carried on in office whence Writ issues, &c.

Service of papers, &c.

MISNOMER AND JOINDER OF PARTIES TO ACTIONS.

60. No plea in abatement for misnomer shall be allowed in any personal action, but in cases of misnomer the Defendant may upon a Judge's summons founded on an affidavit of the right name cause the declaration to be amended at the costs of the Plaintiff, by inserting the right name; and in case such summons be discharged, the Judge may order the party applying therefor, to pay the costs of the application. (7 W 4. c. 3, s. 8.)

Court may, in certain cases, order any party not joined as plaintiffs to be so joined to be struck out before trial.

61. The Court or a judge may at any time before the trial of any cause, order that any person or persons not joined as Plaintiff or Plaintiffs in such cause, shall be so joined, or that any person or persons originally joined as Plaintiff or Plaintiffs shall be struck out from such cause, if it appears to such Court or Judge that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid, consent either in person or by writing under his, or their hands to be so joined, or that the person or persons to be struck out as aforesaid, were originally introduced without his, or their consent, or that such person or persons consent in manner aforesaid to be struck out; and such amendment shall be made upon such terms as to the amendment of the pleadings if any, postponement of the trial, and otherwise as the Court or Judge making such amendment thinks proper; (19 V. c. 43. s. 67)

Plaintiffs added subject to the same liability as original plaintiffs.

62. When any such amendment is made, the liability of any person or persons who have been added as co-Plaintiff or co-Plaintiffs shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such cause. (19 V. c. 43, s. 67.)

Proceedings for amendment if the mis-joinder of Plaintiffs; or an omission to join those who ought to be joined appear at the trial the defendant not having given notice of objection.

63. In case it appears in any action at the trial or assessment of damages therein that there has been a mis-joinder of Plaintiffs, or that some person or persons not joined as Plaintiff or Plaintiffs ought to have been so joined, and the Defendant has not at or before the time of pleading, given notice in writing that he objects to such non-joinder, specifying therein the name or names of such person or persons, and if it appears to the Court or Judge or other officer presiding at the trial, that such mis-joinder or non-joinder was not for the purpose of obtaining an undue advantage, and that injustice will not be done by such amendment, and that the person or persons to be added as aforesaid, consent either in person or by writing under his, or their hands to be so joined, or that the person or persons to be struck out as aforesaid were originally introduced without his, or their consent, or that such person or persons consent in manner aforesaid to be so struck out, such mis-joinder or non-joinder may be amended as a variance at the trial or assessment by such Court or Judge or other officer presiding at the trial or assessment in like manner as to the mode of amendment and proceedings consequent thereon, or

as near thereto as the circumstances of the case will admit, as in the case of the amendment of variances in the sections of this Act, numbered 207 to 213. (19 V. c. 43, s. 68.)

64. Every such amendment shall be made upon such terms as the Court or Judge or other presiding officer by whom such amendment is made, thinks proper; and when any such amendment has been made, the liability of any person or persons, who have been added as co-Plaintiff or co-Plaintiffs shall, subject to any terms imposed as aforesaid, be the same as if such person or persons had been originally joined in such action. (19 V. c. 43, s. 68.)

Liability of persons ordered to be joined as plaintiffs.

65. In case such notice has been given, or where a plea in abatement may be pleaded, in case any plea in abatement of non-joinder of a person or persons as co-Plaintiff or co-Plaintiffs has been pleaded by the Defendant, the Plaintiff before plea or replication upon payment of the costs only of and occasioned by amending may without any order, amend the writ and other proceedings by adding the name or names of the person or persons named in such notice or plea in abatement, and proceed in the action without any further appearance and in case of such amendment after plea the Defendant may plead *de novo*. (19 V. c. 43, s. 69.)

If such notice has been given by the defendant or non-joinder be pleaded in abatement.

66. In the case of the joinder of too many Defendants in any action or contract, the Court or a Judge, if it appears that injustice will not be done thereby, may at any time before trial or assessment of damages order the name or names of one or more of such Defendants to be struck out, and the amendment shall be made upon such terms as the Court or Judge thinks proper; and in case it appears at the trial of any action on contract, that there has been a mis-joinder of Defendants, such mis-joinder may be amended as a variance at the trial in like manner as the mis-joinder of Plaintiffs has been hereinbefore directed to be amended, and upon such terms as the Court or Judge or other presiding officer by whom such amendment is made thinks proper. (19 V. c. 43, s. 70.)

Mis-joinder of defendants discovered before trial in action on contract.
And at trial.

67. In any action on contract where the non-joinder of any person as co-Defendant has been pleaded in abatement, the Plaintiff may without any order, amend the Writ of Summons and the declaration by adding the name of the person mentioned in such plea in abatement as a joint contractor, and serve the amended Writ upon the person or persons so named in such plea in abatement, and proceed against the original Defendant or Defendants and the person so named in such plea in abatement; but the date of such amendment shall, as between the person so named in such plea of abatement and the Plaintiff, be considered for all purposes as the commencement of the action. (19 V. c. 43, s. 71.)

If the non-joinder of defendants be pleaded in abatement in such action.

Non-joinder of obligors no ground to abate suit.

68. In any action brought against any joint obligor or contractor, the action shall not abate nor the Plaintiff be required to amend on account of any other joint obligor or contractor not having been made a Defendant, unless the party pleading such non-joinder avers in his plea that such joint obligor or contractor is living within the limits of Upper Canada, and states, the place of his residence, nor unless an affidavit of the truth of such plea is filed therewith. (19 V. c. 43, s. 73.)

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Costs of such plea in abatement.

69. In all cases after a plea in abatement and amendment, as aforesaid if it appears upon the trial of the action that the person or persons so named in such plea in abatement was or were jointly liable with the original Defendant or Defendants, the original Defendant or Defendants shall be entitled as against the Plaintiff to the costs of such plea in abatement and amendment; but if at such trial it appears that the original Defendant or any of the original Defendants is or are liable, but that one or more of the persons named in such plea in abatement is or are not liable as a contracting party or parties, the Plaintiff shall nevertheless be entitled to Judgment against the Defendant or Defendants who appear to be liable, and every Defendant who is not so liable shall have Judgment and shall be entitled to his costs as against the Plaintiff, but the Plaintiff shall be allowed such costs together with the other costs on the plea in abatement and amendment as costs in the cause against the original Defendant or Defendants who has so pleaded in abatement the non-joinder of such person; but any such Defendant who has so pleaded in abatement, may on the trial adduce evidence of the liability of the Defendants named by him in such plea. (19 V. c. 43, s. 72.)

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Judgment as regards defendant's liable or not liable respectively.

Joint contract, &c., may be given in evidence against any one contractor.

70. The joint obligation, contract or promise may be given in evidence against any one or more of the joint obligors or contractors, and shall have the same force and effect for the recovery of Judgment thereon as if it were only the obligation, contract or promise of the Defendant or Defendants actually sued. (19 V. c. 43, s. 74.)

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Several causes of action may be joined subject to certain conditions.

71. Causes of action of whatever kind, provided they be by and against the same parties and in the same rights, may be joined in the same suit, but this shall not extend to replevin or ejectment, or in the County Courts to causes of action which are local and arise in different Counties; and where two or more of the causes of action so joined in cases in the Superior Courts are local and arise in different Counties, the venue may be laid in either of such Counties. (19 V. c. 43, s. 75.)

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Court may order separate trial.

72. Either of the Superior Courts or a Judge thereof or the Judge of a County Court may prevent the trial of different causes of action together, if such trial would be inexpedient, and in such case any such Court or Judge may order separate records to be made up and separate trials to be had; but nothing

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nothing

nothing herein contained shall restrict or diminish the obligation or right of a Plaintiff to include in one action all or any of the drawers, makers, endorsers, and acceptors of any Bill of Exchange or Promissory Note. (19 V. c. 90, s. 9, and 19 V. c. 43, s. 75.)

As to promissory notes, bills, &c.

73. In any action brought by a man and his wife on any cause of action accruing personally to the wife, in respect of which they are necessarily co-Plaintiffs, the husband may add thereto claims in his own right, and separate actions brought in respect of such claims may be consolidated, if the Court or a Judge thinks fit; but in case of the death of either Plaintiff, such suit, so far only as relates to the causes of action if any, which do not survive, shall abate. (19 V. c. 43, s. 76.)

Cases where a husband and wife are co-plaintiffs.

LANGUAGE AND FORM OF PLEADINGS IN GENERAL, AND OTHER PROVISIONS IN RESPECT THEREOF.

74. All statements which need not be proved, such as the statement of time, quantity, quality and value where these are immaterial, the statement of losing and finding, and bailment in actions for goods or their value—the statements of acts of trespass having been committed with force and arms and against the peace of our Lady the Queen—the statement of promises which need not be proved, as promises in *indebitatus* counts and mutual promises to perform agreements, and all statements of a like kind, shall be omitted. (19 V. c. 43, s. 98.)

Statements which need not be proved need not be made.

75. Every declaration or other pleading shall be entitled of the proper Court, and of the day of the month and year when the same is filed, and shall also be entered on the record made up for trial, and on the Judgment Roll, under the date of the day of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a Judge. (19 V. c. 43, s. 103.)

Entering, dating and recording pleadings.

76. It shall not be necessary to make profert of any deed or other document mentioned or relied on in any pleading; and, if profert be made, it shall not entitle the opposite party to crave oyer of or to set out upon oyer, such deed or other document. (19 V. c. 43, s. 104.)

Profert, oyer &c., unnecessary.

77. A party pleading in answer to any pleading in which any document is mentioned or referred to, may set out the whole or any part thereof which is material, and the matter so set out shall be taken to be part of the pleading in which it is set out. (19 V. c. 43, s. 105.)

But may be set out in plea.

78. The Plaintiff or Defendant in any action may aver performance of conditions precedent generally, but the opposite party shall not deny such performance generally, and shall specify

As to averment of performance or non-performance.

ance of a condition precedent. specify in his pleading the condition or conditions precedent the performance of which he intends to contest. (19 V. c. 43, s. 106.)

THE TIME AND MANNER OF DECLARING.

Plaintiff must declare within a year. **79.** A Plaintiff shall be deemed out of Court unless he declares within one year after the Writ of Summons or Capias is returnable. (19 V. c. 43, s. 107.) 5

Notice instead of rule to declare, &c. **80.** A notice requiring the opposite party to declare, or to declares peremptorily within eight days, shall be sufficient without any rule or other demand. (19 V. c. 43, s. 102.)

Declaration or pleading not to be filed or served in the long vacation. **81.** No declaration, or pleading after declaration, shall be filed or served between the first day of July and the twenty-first day of August in any year, and the parties respectively in any case shall be entitled to the same number of days after the twenty-first day of August to plead to or answer any pleading filed or delivered before the first day of July, to which they would have been entitled had this provision not been made. 12 V. c. 66, s. 8—12 V. c. 63, s. 26. 10 15

Declarations and other pleadings may be served in any County. **82.** Unless otherwise provided by Statute or rule of Court; declarations and other pleadings and notices required to be served in any action whether in the Superior or County Courts, may be served in any County. 13, 14 V. c. 52, s. 2. 20

Commencement of declaration. **83.** Every declaration shall commence as follows, or to the like effect:

Form. (*Venue.*) A. B. by E. F. his Attorney (*or in person, as the case may be*) sues C. D., who has been summoned (*or arrested*) by virtue of a Writ issued on the day of A. D., 18 , for (*here state cause of action*): And shall conclude as follows, or to the like effect:

Conclusion of declaration. And the Plaintiff claims £ , (*or if the action is brought to recover specific goods,*) the Plaintiff claims a return of the said goods or their value, and £ for their detention. (19 V. c. 43, s. 108.) 25

Commencement after abatement for non joinder. **84.** If after a plea in abatement of the non-joinder of another person as Defendant, the Plaintiff, without having proceeded to trial on an issue thereon, amends by adding the omitted Defendant or Defendants, or commences another action against the Defendant or Defendants, and the person or persons named in such plea as joint contractors, the commencement of the declaration shall be in the following form, or to the like effect: (19 V. c. 43, s. 109.) 35

(*Venue.*)

(*Venue.*) A. B. by E. F., his Attorney, (or in his own proper Form person, sues C. D. (the Defendant originally named in the *Summons*) who has been summoned (or arrested) by virtue of a Writ issued on the day of A. D. 18 , and G. H., the non-joinder of which G. H. the said C. D. has heretofore pleaded in abatement, for, &c. (19 V. c. 43, s. 109.)

85. The forms contained in the Schedule (B) to this Act annexed shall be sufficient, and those and the like forms may be used with such modifications as may be necessary to meet the facts of the case, but a departure from such forms shall not render the pleading erroneous or irregular so long as the substance is expressed without prolixity. (19 V. c. 43, s. 140.)

Forms of pleading in Schedule B, if observed in substance to be sufficient.

86. In case the damages laid at the conclusion of any declaration in a County Court do not exceed the jurisdiction of such Court, but the sums mentioned or claimed in the different counts of such declaration do in the aggregate exceed the jurisdiction of such Court, the declaration or any subsequent pleading shall not on that ground, be subject to any objection either by demurrer or otherwise, if the sum laid in each count respectively is within the jurisdiction. (12 V. c. 66, s. 8.)

Declaration in County Courts not invalid because of the Courts exceeding the jurisdiction.

CHANGE OF VENUE.

87. The venue in any action in the Superior Courts may be changed according to the practice now in force, but notwithstanding a change of the venue, the proceedings shall continue to be carried on in the office from which the first process in the action was sued out: But the Court or any Judge may on application of either party order the issue to be tried or damages to be assessed in any other County than that in which the venue has been laid, and for that purpose may order suggestion to be entered on the Record, that the trial may be more conveniently had or damages assessed in the County where the same is ordered to take place. (19 V. c. 43, s. 8.)

Provision if the venue changed.

PLEAS AND SUBSEQUENT PLEADINGS.

88. The signature of Counsel shall not be required to any pleading, nor shall any wager of law be allowed. (19 V. c. 43, s. 134.)

Signature of Counsel not required.

89. In cases where the Defendant is within the jurisdiction, the time for pleading in bar, unless extended by the Court or a Judge, shall be eight days, and a notice requiring the Defendant to plead thereto in eight days, otherwise judgment, may be indorsed on the copy of the declaration served or be delivered separately, and in cases in the County Courts the declaration, and all pleadings and notices requiring to be served, may be served in any County. (19 V. c. 43, s. 112.)

Time for pleading in bar when defendant is within the jurisdiction.

Notice to plead sufficient.

90. A notice requiring the opposite party to plead, reply, rejoin, or otherwise, as the case may be, within eight days otherwise Judgment, shall be sufficient without any other demand; and such notice may be delivered separately or be indorsed on any pleading which the other party is required to answer. (19 V. c. 43, s. 111.) 5

Express color unnecessary.

91. Express colour shall not be necessary in any pleading. (19 V. c. 43, s. 113.)

And special traverses.

92. Special traverses shall not be necessary in any pleading. (19 V. c. 43, s. 114.) 10

Certain allegations and prayers not required.

93. In a plea or subsequent pleading it shall not be necessary to use any allegation of *actionem non* or *actionem ulterius non*, or to the like effect, or any prayer of judgment; nor shall it be necessary in any replication or subsequent pleading to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment. (19 V. c. 43, s. 115.) 15

Commencement of Plea.

94. No formal defence shall be required in a plea or avowry or cognizance, and it shall commence as follows, or to the like effect:

The Defendant, by E. F., his Attorney, (or in person, as the case may be) says that (*here state first defence*); 20

And it shall not be necessary to state in a second or other plea or avowry or cognizance, that it is pleaded by leave of the Court or a Judge or according to the form of the statute, or to that effect, but every such plea, avowry or cognizance, shall be written in a separate paragraph and numbered, and shall commence as follows, or to the like effect: 25

Second Plea.

And for a second (&c.,) plea to (*stating to what it is pleaded*) the Defendant says that &c.,

Formal conclusions unnecessary.

And no formal conclusion shall be necessary to any plea, avowry, cognizance, or subsequent pleading. (19 V. c. 43, s. 116.) 30

Defence arising after action how pleaded.

95. Any defence arising after the commencement of any action shall be pleaded according to the fact without any formal commencement or conclusion, and any plea which does not state whether the defence therein set up arose before or after action, shall be deemed to be a plea of matter arising before action. (19 V. c. 43, s. 117.) 35

Or after the last pleading.

96. In cases in which a plea *plis darrein continuance* was formerly pleadable in Banc or at *Nisi Prius*, the same defence may be pleaded with an allegation that the matter arose after the last pleading; but unless the Court or a Judge otherwise orders, such plea shall not be allowed unless accompanied 40

accompanied by an affidavit that the matter thereof arose within eight days next before the pleading of the plea. (19 V. c. 43, s. 118.) Affidavit required.

97. In any action except in actions for assault and battery, 5 false imprisonment, libel, slander when not within the third Section of the Act to amend the law relating to libel and slander, malicious arrest or prosecution, criminal conversation or debauching of the Plaintiff's daughter or servant, a sole Defendant without rule or Judges order, or one or more of several 10 Defendants (by leave of the Court or a Judge upon such terms as the Court or Judge thinks fit,) may pay into Court a sum of money by way of compensation or amends. (8 V. c. 13, s. 36—19 V. c. 43, s. 119—13, 14 V. c. 60.) Defendant may pay money into Court except in certain cases.

98. The money shall be paid to the proper officer of the 15 Court who for receiving the same, may exact a sum not exceeding one per cent on the sum so paid in, and who shall sign a receipt for the amount in the margin of the plea, for signing which receipt he shall be entitled to one shilling, and the sum so paid in shall on demand be paid out to the Plaintiff, or to 20 his Attorney upon a written authority from the Plaintiff. (2 G. 4, c. 1, s. 26.) Officer to receive one per cent. on monies paid into Court.

99. Payment of money into Court shall be pleaded in all cases as near as may be in the following form, *mutatis mutandis* : (19 V. c. 43, s. 120.) Such payment how pleaded.

25 The Defendant, by E. F., his Attorney (or in person, &c.,) (if pleaded to part, say, as to £ , parcel of the money claimed,) brings into Court the sum of £ , and says the said sum is enough to satisfy the claim of the Plaintiff in respect of the matter herein pleaded to. Form.

30 100. The Plaintiff, may reply to a plea of payment of money into Court, by accepting the sum so paid in, in full satisfaction and discharge of the cause of action in respect of which it has been paid in, and may in that case tax his costs of suit, and in case of 35 non-payment thereof within forty-eight hours, sign judgment for his costs so taxed ; or the Plaintiff may reply that the sum paid in is not enough to satisfy his claim in respect of the matter to which the plea has been pleaded, and in the event of an issue thereon being found for the Defendant, the Defendant shall be entitled to judgment and his costs of suit. (19 V. c. 40 43, s. 122.) Reply of Plaintiff in such case. Plaintiff satisfied. Plaintiff not satisfied.

101. No plea good in substance shall be objectionable on the ground of its treating the declaration either as framed for a breach of contract or for a wrong. (19 V. c. 43, s. 123.) Plea good tho' it treat an alleged breach of contract as a wrong, and vice versa.

102. Pleas of payment and set off, and all other pleadings capable of being construed distributively, shall be taken distributively, Distributive plea to be construed distributively.

butively, and if issue is taken thereon and so much thereof as is a sufficient answer to part of the causes of action is proved, and found true by the Jury, a verdict shall pass for the Defendant in respect of so much of the causes of action as are answered, and for the Plaintiff in respect of so much of the causes of action as are not answered; and if upon a plea of set off the Jury find a larger sum proved to be due from the Plaintiff to the Defendant than is proved to be due from the Defendant to the Plaintiff, a verdict shall pass for the Defendant for the balance remaining due to him, and he shall have Judgment to recover such balance and his costs of suit. (19 V. c. 43, s. 124.)

If on set off, Defendant proves more due from Plaintiff than to him.

Traversing facts alleged in declaration.

103. A Defendant may either traverse generally such of the facts contained in the declaration as might have been denied by one plea, or may select and traverse separately any material allegation in the declaration although it might have been included in a general traverse. (19 V. c. 43, s. 125.)

Traversing pleas.

104. A Plaintiff may traverse the whole of any plea or subsequent pleading of the Defendant by a general denial, or admitting some part or parts thereof may deny all the rest or deny any one or more allegations. (19 V. c. 43, s. 126.)

And Replications, &c.

105. A Defendant may in the like manner deny the whole or part of a replication or subsequent pleading of the Plaintiff. (19 V. c. 43, s. 127.)

Joining issue.

106. Either party may plead in answer to the plea or subsequent pleading of his adversary, that he joins issue thereon, which joinder of issue may be as follows, or to the like effect:

The Plaintiff joins issue on the Defendant's, first, (*&c. specifying which or what part*) plea.

The Defendant joins issue upon the Plaintiff's replication to the first (*&c. specifying which*) plea.

Joinder how construed.

And such form of joinder of issue shall be deemed to be a denial of the substance of the plea or other subsequent pleading, and an issue thereon; and in all cases where the Plaintiff's pleading is in denial of the pleading of the Defendant, or some part of it, the Plaintiff may add a joinder of issue for the Defendant. (19 V. c. 43, s. 128.)

Pleading and demurring at the same time.

Affidavit may be required.

107. Either party may, by leave of the Court or a Judge, plead and demur to the same pleading at the same time, upon an affidavit by such party or his Attorney, if required by the Court or Judge, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be traversed by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance are respectively true in substance and in fact, and that he is further advised

advised and believes that the objections raised by such demurrer are good and valid objections in law, and the Court or a Judge may direct which issue shall be first disposed of. (19 V. c. 43, s. 129.)

5 **108.** The Plaintiff may, by leave of the Court or a Judge, plead in answer to the plea or subsequent pleading of the Defendant as many several matters as he thinks necessary to sustain his action, and the Defendant may by leave of the Court or a Judge plead in answer to the declaration or other subsequent pleading of the Plaintiff, as many several matters as he thinks necessary for his defence, but if required by the Court or a Judge, then only upon an affidavit of the party making such application or his Attorney, to the effect that he is advised and believes that he has just ground to traverse the several matters proposed to be pleaded by him, and that the several matters sought to be pleaded as aforesaid by way of confession and avoidance, are respectively true in substance and in fact; and the costs of any issue either of fact or of law, shall follow the finding or Judgment on such issue, and be adjudged to the successful party, whatever may be the result of the other issue or issues. (19 V. c. 43, s. 130.)

Several matters may be pleaded by leave of the Court or of a Judge.
(An affidavit if required.)
Costs.

109. No rule of Court for leave to pay money into Court or to plead several matters shall be necessary where a Judge's Order has been made for the same purpose. (19 V. c. 43, s. 131.)

Rule not required.

25 **110.** The following pleas, or any two or more of them, may be pleaded together as of course, without leave of the Court or a Judge, that is to say: a plea denying any contract or debt alleged on the declaration, a plea of tender as to part, a plea of the statute of limitations, set off, discharge of the Defendant under any Bankrupt or Insolvent law, *plene administravit*, *plene administravit præter*, infancy, coverture, payment, accord and satisfaction, release, not guilty, a denial that the property an injury to which is complained of is the Plaintiff's, leave and license *son assault demesne*, and any other pleas which the Judges of the said Superior Courts, or any four of them of whom the Chief Justices of the said Courts shall be two, by any rule or order to be from time to time by them made in Term or in vacation, order and direct. (19 V. c. 43, s. 133.)

Certain pleas may be pleaded together without leave.

40 **111.** Except in the cases herein specially provided for, if either party plead several pleas, replications, avowries, cognizances or other pleadings without leave of the Court or a Judge, the opposite party may sign Judgment, but such Judgment may be set aside by the Court or a Judge upon an affidavit of merits, and on such terms as to costs and otherwise as they or he may think fit. (19 V. c. 43, s. 135.)

In other cases several pleas, &c., shall not be filed without leave.

112. All objections to the pleading of several pleas, replications or subsequent pleadings, or several avowries or cognizances,

Objections when to be heard.

ances, on the ground that they are founded on the same ground of answer or defence, shall be heard upon the summons to plead several matters. (19 V. c. 43, s. 132.)

One new assignment only to several pleas to the same cause of action.

113. One new assignment only shall be pleaded to any number of pleas to the same cause of action, and such new assignment shall be consistent with and confined by the particulars delivered in the action, if any, and shall state that the Plaintiff proceeds for causes of action different from all those which the plea professes to justify, or for an excess over and above what all the defences set up in such pleas justify, or both. (19 V. c. 43, s. 136.)

Pleas for new assignment.

114. No plea which has already been pleaded to the declaration shall be pleaded to such new assignment, except a plea in denial, unless by leave of a Court or Judge, and such leave shall only be granted upon satisfactory proof that the repetition of such plea is essential to a trial of the merits. (19 V. c. 43, s. 137.)

Time for pleading to an amended pleading, &c.

115. Where an amendment of any pleading is allowed no new notice to plead thereto shall be necessary, but the opposite party shall be bound to plead to the amended pleading within the time specified in the original notice to plead, or within two days after amendment, whichever may last expire, unless otherwise ordered by the Court or a Judge; and in case the pleading amended had been pleaded to before such amendment, and is not pleaded to *de novo* within two days after amendment, or within such other time as the Court or a Judge allows, the pleading originally pleaded thereto shall stand and be considered as pleaded in answer to the amended pleading. (19 V. c. 43, s. 139.)

DILATORY PLEAS.

Dilatory pleas may be argued before a Judge in vacation.

116. If a Defendant pleads any dilatory plea, being matter in law and not of fact, the Plaintiff may set down such plea for argument on the first paper day thereafter on which the Court meets, or on any other day in Term, giving two days, notice thereof to the Defendant or his Attorney; and if the Plaintiff fails so to set down the same for argument, he may apply to any Judge of the Court to hear and determine the issue joined thereon, in like manner as the same may now be done in open Court; and in case the Judge gives judgment for the Plaintiff, he shall direct the plea to be taken off the file, with costs, to be taxed by the proper officer; and the Defendant shall, within four days from the date of the order, plead an issuable plea, and rejoin gratis, and 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. (19 V. c. 43, s. 31,—2 Geo. 4, c. 1, s. 37.)

- 117.** The Court or a Judge, may order any pleading so framed as to prejudice, embarrass, or delay the fair trial of the action, to be struck out, or may make such other order respecting the same, and also respecting the costs of the application, as such Court or Judge sees fit. (19. V. c. 43, s. 101.)
- Unfair pleadings may be struck out or amended.

DEMURRERS.

- 118.** Either party may object by demurrer to the pleading of the opposite party on the ground that such pleading does not set forth sufficient ground of action, defence or reply, as the case may be. (19 V. c. 43, s. 99.)
- Either party may demur to the pleading of the opposite party.
- 10 119.** The form of a demurrer shall be as follows, or to the like effect :
- The Defendant, by his Attorney, (or Plaintiff, as the case may be,) (or in person, &c.,) says that the declaration (or plea, &c.) is bad in substance..
- 15** And on the margin thereof some substantial matter of law intended to be argued shall be stated ; and the Court or a Judge may set aside any demurrer delivered without such statement, or with a frivolous statement, and may give leave to sign Judgment as for want of a plea ;
- A substantial ground of demurrer to be stated in the margin.
- 20** And the form of a joinder in demurrer shall be as follows, or to the like effect :
- The Plaintiff (or Defendant) says that the declaration (or plea, &c.) is good in substance. (19 V. c. 43, s. 138.)
- Form of joinder in demurrer.
- 25 120.** Where issue is joined on demurrer, the Court shall give Judgment according as the very right of the cause and matter in law appears unto them, without regarding any imperfection, omission, defect in or lack of form, and no Judgment shall be arrested, stayed or reversed for any such imperfection, omission, defect in or lack of form. (19. V. c. 43, s. 99.)
- Judgment to be given according to the very right.
- 30 121.** No pleading or amended pleading shall be deemed insufficient for any defect which formerly could only have been objected to by special demurrer. (19 V. c. 43. s. 100.)
- Special Demurrers superseded.

EQUITABLE DEFENCES.

- 122.** Any Defendant or the Plaintiff in Replevin, in any cause in which, if Judgment were obtained, he would be entitled to relief against such Judgment on equitable grounds, may plead the facts which entitle him to such relief by way of defence, and the said Courts are hereby empowered to receive such defence by way of plea ; but such plea must begin with the words "for defence on equitable grounds," or words to the like effect. (19 V. c. 43. s. 287.)
- Replevin.
Equitable defence may be pleaded.
Commencement of words.

123. Any such matter which if it arose before or during the time for pleading would be an answer to the action by way of plea, may, if it arise after the lapse of the period during which it could be pleaded, be set up by way of *audita querela*. 19 V. c. 43, s. 288.

124. The Plaintiff may reply, in answer to any plea of the Defendant, facts which avoid such plea upon equitable grounds, but such replication must begin with the words "for replication on equitable grounds," or words to the like effect. (19 V. c. 43, s. 289.)

125. In case it appears to the Court or any Judge thereof, that any such equitable plea or equitable replication cannot be dealt with by a Court of Law so as to do justice between the parties, such Court or Judge may order the same to be struck out, on such terms, as to costs and otherwise, as to such Court or Judge seems reasonable. (19. V. c. 43, s. 290.)

INTERLOCUTORY MATTERS AND PROCEEDINGS.

126. Whenever the plaintiff or defendant in any suit instituted in either of the said Superior Courts, wishes to produce to either of such Courts or to any Judge thereof, the writ, declaration, plea or any other proceedings filed in such cause in the office of any Deputy Clerk of the Crown, the said plaintiff or defendant may demand and receive from such Deputy Clerk a copy of the same certified by the said Deputy to be a true copy of the original, which copy shall be received by such Court or Judge, in all cases in lieu of the original, and as a proof thereof. (12 V. c. 63, s. 35.)

TIME TO PLEAD REPLY, &c.

127. In suits in either of the Superior Courts, the Judge of the County Court for the County in which the suit has been brought or the venue laid, may upon the application of the Plaintiff or defendant in such suit, grant summonses and orders for time to declare, plead, reply, or rejoin and for particulars of demand, or of set off, and for summonses and orders to compute whether the defendants reside within the County or not and for summonses or orders for payment of money into Court for the allowance of Bail, or for security for costs; and the Judge of such County Court may hear and determine such applications and grant such summonses, impose such terms, and make such orders as might be granted, imposed and made in the like cases by a Judge of one of the Superior Courts sitting in Chambers. 16 V. c. 175, s. 17, 13 & 14 V. c. 52, s. 5.

128. The provisions of the last section shall not apply to any suit wherein the venue is laid in the County of York, or in any suit wherein the Attorney for the defendant, or in case of two or more defendants where the Attorney for any one or more of them,

them, resides in a County different from that in which the Attorney for the plaintiff, or if he prosecutes in person in such the Plaintiff, resides: and either party interested may appeal from any such decision or order to the Court in which the action is pending, or to a Judge of one of the Superior Courts at Chambers, and such Court or Judge may affirm, reverse or modify such decision or order, or make such other order upon the subject matter of appeal, and the proceedings had thereon, and with or without costs, as to such Court or Judge seems meet. (19 V. c. 91, s. 1.)

With right to appeal to Superior Court or a Judge thereof.

EFFECT OF DEATH OR MARRIAGE UPON THE PROCEEDINGS IN AN ACTION.

129. The death of a Plaintiff or Defendant shall not cause the action to abate, but it may be continued as hereinafter mentioned. (19 V. c. 43, s. 208.)

Death of plaintiff or defendant.

130. If there be two or more plaintiffs or Defendants and 15 one or more of them dies, if the cause of such action survives to the surviving Plaintiff or Plaintiffs, or against the surviving Defendant or Defendants, the action shall not be thereby abated, but such death being suggested on the record, the action shall proceed at the suit of the surviving Plaintiff or 20 Plaintiffs against the surviving Defendant or Defendants. (19 V. c. 43, s. 209.)

If there be more than one plaintiff or defendant, and the cause of action survive to the others.

131. In case of the death of a sole Plaintiff or sole surviving Plaintiff, the legal representative of such Plaintiff may, by leave of the Court or a Judge, enter a suggestion of the death, and 25 that he is such legal representative, and the action shall thereupon proceed; and if such suggestion be made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased Plaintiff, and such Judgment shall follow upon the verdict, in favor of or against the person 30 making such suggestion, as if such person were originally the Plaintiff. (19 V. c. 43, s. 210.)

Death of a sole plaintiff.

132. In case of the death of a sole Defendant or sole surviving Defendant where the action survives, the Plaintiff may make a suggestion either in any of the pleadings, if the cause 35 has not arrived at issue, or by filing a suggestion with the other pleadings, if it has so arrived, of the death, and that a person named in such suggestion is the executor or administrator of the deceased, and may thereupon serve such executor or administrator with a copy of the writ and suggestion, and of 40 the said other pleadings, and with a notice signed by the Plaintiff or his Attorney, requiring such executor or administrator to appear within ten days after service of the notice, inclusive of the day of such service, and that in default of his so doing the Plaintiff may sign Judgment against him as such executor or administrator. (19 V. c. 43, s. 211.)

Death of a sole or of a sole surviving defendant may be suggested.

Copy and notice to be served on the opposite party.

- 133.** The same proceedings may be had and taken in case of non-appearance after such notice as upon a writ against such executor or administrator in respect of the cause for which such action was brought. (19 V. c. 43, s. 211.)
- 134.** In case no pleadings have taken place before the death, the suggestion shall form part of the declaration, and the declaration, with a notice to plead, and the suggestion, may be served together, and the new Defendant shall plead thereto at the same time, and within eight days after the service. (19 V. c. 43, s. 211.)
- 135.** In case the Plaintiff had declared, but the Defendant had not pleaded before the death, the new Defendant shall plead at the same time to the declaration and suggestion within eight days after service of the suggestion; and in case the Defendant did plead before the death, the new Defendant shall be at liberty to plead to the suggestion only, and within eight days after the service thereof, by way of denial, or such plea as may be appropriate to and rendered necessary by his character of executor or administrator, unless by leave of the Court or a Judge he is permitted to plead fresh matter in answer to the declaration. (19 V. c. 43, s. 211.)
- 136.** In case the Defendant has pleaded before the death, but the pleadings have not arrived at issue, the new Defendant, besides pleading to the suggestion within eight days after the service thereof, shall continue the pleadings to issue in the same manner as the deceased might have done, and the pleadings upon the declaration and the pleadings upon the suggestion shall be tried together; and in case the Plaintiff recovers, he shall be entitled to the like Judgment in respect of the debt or sum sought to be recovered, and in respect of the costs prior to the suggestion, and in respect of the costs of the suggestion and subsequent thereto, as in an action originally commenced against the executor or administrator. (19 V. c. 43, s. 211.)
- 137.** The death of either party between the verdict and Judgment shall not hereafter be alleged for error, so as such Judgment be entered within two terms after such verdict. (19 V. c. 43, s. 212.)
- 138.** If the Plaintiff in any action dies after an interlocutory Judgment and before a final Judgment obtained therein, the action shall not abate by reason thereof, if such action might have been originally prosecuted or maintained by the executor or administrator of such Plaintiff; if the Defendant dies after such interlocutory Judgment and before final Judgment, the action shall not abate if such action might have been originally prosecuted or maintained against the executor or administrator of such Defendant. (19 V. c. 43, s. 213.)

139. The Plaintiff, or, if he dies after such interlocutory Judgment, his executor or administrator, shall have a writ of revivor in the form contained in the Schedule (A) to this Act annexed marked No. 11, or to the like effect, against the Defendant, if living after such interlocutory judgment, or if he has died, then against his executors or administrators, to show cause why damages in such action should not be assessed and recovered by the Plaintiff, or by his executor or administrator. (19 V. c. 43, s. 213.)

A writ of Revivor may issue in case of plaintiff's death.

140. If such Defendant, his executor or administrator, appears at the return of such writ, and does not show or allege any matter sufficient to arrest the final judgment, or makes default, the damages shall be assessed, or the amount for which final judgment is to be signed shall be referred to the proper officer as in this Act provided; and after the assessment had, or the delivery of the order with the amount endorsed thereon to the Plaintiff, his executor or administrator, final judgment shall be given for the Plaintiff, his executor or administrator, prosecuting such writ of revivor against such Defendant, his executor or administrator respectively. (19 V. c. 43, s. 213.)

Proceedings thereupon.

141. The marriage of a woman Plaintiff or Defendant shall not cause the action to abate, but the action may notwithstanding be proceeded with to judgment, and such judgment may be executed against the wife alone, or by suggestion or writ of revivor pursuant to this Act, judgment may be obtained against the husband and wife and execution issue thereon; in case of a judgment for the wife, execution may be issued thereupon by the authority of the husband without any writ of revivor or suggestion; and if in any such action the wife has sued or defended by Attorney appointed by her when sole, such Attorney may continue the action or defence, unless his authority is countermanded by the husband, and the Attorney changed according to the practice of the Court. (19 V. c. 43, s. 214.)

Marriage of a woman plaintiff or defendant.

142. Where an action would but for this Act have abated by reason of the death of either party and in which the proceedings may be revived and continued under this Act, the defendant or person against whom the action may be so continued, may apply by summons to compel the plaintiff or person entitled to proceed with the action to proceed according to the provisions of this Act within such time as the Judge may order. (19 V. c. 43, s. 215.)

Right of defendant in action which would have abated but for this Act.

143. In default of such proceeding the defendant or other person against whom the action might be so continued may enter a suggestion of such default and of the representative character of the person by or against whom the action might be proceeded with *as the case may be*, and shall have judgment for the costs of the action against the plaintiff, or

When a suggestion of default may be made.

or

or against the person entitled to proceed in his room as the case may be, and in the latter case, to be levied of the goods of the testator or intestate. (19 V. c. 43, s. 215.)

JUDGMENTS BY DEFAULT, AND THE MODE OF ASCERTAINING
THE AMOUNT TO BE RECOVERED THEREON.

No rule or order to compute necessary. **144.** No rule or order to compute shall be used. (19 V. c. 43, s. 141.) 5

Judgment by default final in certain cases. **145.** In actions where the Plaintiff seeks to recover a debt or liquidated demand in money, the true cause and amount of which has been stated in the special indorsement on the Writ of Summons or in the declaration, judgment by default shall be final. (19 V. c. 43, s. 142.) 10

Provisions of a certain British Act of s. 9 W. 3, c. 11, to remain in force. **146.** Notwithstanding any thing in this Act contained, the provisions of the Act of the Parliament of Great Britain, passed in the Session held in the eighth and ninth years of the Reign of King William the Third, intituled, *An Act for the better preventing frivolous and vexatious suits*, as to the assignment or suggestion of breaches, or as to judgment, shall continue in force in Upper Canada. (19 V. c. 43, s. 145.) 15

Writs of Inquiry not to issue to Sheriffs. **147.** No writ of inquiry shall issue to a Sheriff in cases of judgment by default, but except in cases where the judgment is final as aforesaid, the damages when to be assessed by a Jury, shall be ascertained at the same time and in like manner as if the parties had pleaded to issue, and the entries shall be made on the Roll accordingly. (2 Geo. 4, c. 1, s. 29.) 20

When to be assessed by a Jury.

PROVISIONS FOR THE DETERMINATION OF QUESTIONS RAISED BY
THE CONSENT OF THE PARTIES WITH OR WITHOUT PLEADING.

Parties may agree upon an issue of fact and try it. **148.** Where the parties to an action are agreed as to the question or questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of a Judge, (which order any Judge may make upon being satisfied that the parties have a *bonâ fide* interest in the decision of such question or questions, and that the same is or are fit to be tried,) proceed to the trial of any question or questions of fact without formal pleadings, and such question or questions may be stated for trial in an issue in the form contained in the Schedule (A) to this Act annexed, marked No. 8, and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action, and the proceedings in such action and issue shall be under and subject to the ordinary control and jurisdiction of the Court, as in other actions. (19 V. c. 43, s. 77.) 25 30 35

Form of stating questions and trial of issue thereon.

And may enter into agreement to pay **149.** The parties may, if they think fit, enter into an agreement in writing, which shall be embodied in the said or any 35

any subsequent order, that upon the finding of the Jury in the affirmative or negative of such issue or issues, a sum of money to be fixed by the parties, or to be ascertained by the Jury upon the issue or issues and evidence submitted to them, shall be paid by one of such parties to the other of them, either with or without the costs of the action. (19 V. c. 43, s. 78.)

money or not according to the result.

150. Upon the finding of the Jury upon any such issue, judgment may be entered for the sum agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge otherwise orders for the purpose of giving either party an opportunity for moving to set aside the verdict or for a new trial. (19 V. c. 43, s. 79.)

Judgment may be entered and execution issued, &c., upon the finding.

151. The proceedings upon any such issue may be recorded at the instance of either party; and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action. (19 V. c. 43, s. 80.)

Proceedings may be recorded, &c.

Effect of judgment.

152. The parties may, after writ issued and before judgment, by consent and by order of a Judge, without any pleadings, state any question or questions of law in a special case for the opinion of the Court. (19 V. c. 43, s. 81.)

Parties may agree upon a special case without pleadings.

153. The parties may, if they think fit, enter into an agreement in writing, which shall be embodied in the aforesaid or any subsequent order, that upon the judgment of the Court being given in the affirmative or negative of the question or questions of law raised by such special case, a sum of money fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of such parties to the other of them, either with or without costs of the action, and the judgment of the Court may be entered for any sum so fixed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed or unless stayed by proceedings in error or appeal. (19 V. c. 43, s. 82.)

And may agree to pay or not to pay money according to the decision upon such case, &c.

154. The parties in any action or information after issue joined, may by consent and by order of a Judge of the Court in which the action is depending, state the facts of the case, in the form of a special case, for the opinion of the Court, and agree that a judgment shall be entered for the plaintiff or defendant by confession, or of *Nolle Prosequi*, immediately after the decision of the case, or otherwise, as the Court may think fit, and judgment shall be entered accordingly. (7 W. 4, c. 3, s. 17.)

After issue joined, the parties may agree upon a special case for the opinion of the Court.

155. In case no agreement is entered into as to the costs of such action, the costs shall follow the event, and be recovered by the successful party. (19, V. c. 43, s. 83.)

Costs when there is no agreement about them

**PROVISIONS FOR THE MORE EXPEDITIOUS DETERMINATION OF
MERE MATTERS OF ACCOUNT.**

The Court or Judge on the application of either party may refer the whole or any part to an Arbitrator, Officer or County Judge.

156. If at any time after the issuing of the writ, it be made to appear, to the satisfaction of the Court or a Judge, upon the application of either party, that the matters in dispute consist wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, the Court or Judge may, upon such application, if they or he think fit, decide such matter in a summary manner, or order such matter, either wholly or in part, to be referred to an arbitrator appointed by the parties, or, in cases in the Superior Courts, to an officer of the Court, or in country causes in the Superior Courts, to the Judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge thinks reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee, shall be enforceable by the same process as the finding of a Jury upon the matter referred. (19 V. c. 43, s. 84, —19 V. c. 90, s. 10.)

Enforcing such order or decision under it.

Any incidental question of law may be decided by the Court or one of fact by a jury upon a special case or issue.

157. If it appear to the Court or Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a Jury, such Court or Judge may direct a case to be stated or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the Jury upon such issue or issues, shall be taken and acted upon by the arbitrator as conclusive. (19 V. c. 43, s. 85,—19 V. c. 90, s. 11.)

In actions involving long accounts, Judge may direct a reference as to part and a verdict as to other parts, &c., or leave the whole to the jury.

158. In all actions involving the investigation of long accounts on either side, the Judge may at and during the trial direct a reference of all issues of fact in the cause, or of such of the said issues and of the accounts and matters involved in all or any such issues as he thinks fit, taking the verdict of the Jury upon any issue or issues not so referred, and directing a verdict to be entered generally, on all or any of the issues, for either party, subject to such reference, or he may leave all or any issues of fact to be found by the Jury, referring only the amount of damages to be ascertained; and if the parties agree upon the arbitrators (not more than three), the names of those agreed on shall be inserted in the order of reference, but if the parties cannot agree, the Judge shall name the arbitrator or arbitrators, and appoint all other terms and conditions of the reference to be inserted in such order, and the award may be moved against, as in ordinary cases, within the first four days of the Term next after the making thereof. (19 V. c. 43, s. 156,—20 V. c. 58, s. 3.)

Appointment of arbitrators in referred cases

As to motion to set aside award.

How the amount of damages shall be ascertained when the Court shall be

159. In actions in which it appears to the Court or a Judge that the amount of damages which ought to be recovered by the Plaintiff is substantially a matter of calculation, it shall not be necessary to assess the damages by a Jury, but the Court or a Judge may direct that the amount for which final judgment is

is

is to be signed, shall be ascertained—if the proceedings be carried on in the principal Office at Toronto, by the Clerk of the Crown and Pleas of the proper Court—or, if the proceedings be carried on in the Deputy Clerk's Office in any County, then by the Judge of the County Court of such County—or, if the proceedings be carried on in any County Court, then by the Clerk thereof; and the attendance of witnesses and the production of documents before such Clerk of the Crown, or Judge or Clerk of the County Court, may be compelled by subpoena, in the same manner as before a Jury upon a writ of inquiry; and such Clerk of the Crown or Judge or Clerk of the County Court, respectively, may appoint the day for hearing the case, and adjourn the inquiry from time to time, as occasion requires; and such Clerk of the Crown, or Judge or Clerk of the County Court, as the case may be, shall indorse upon the rule or order for referring the amount of damages to him, the amount found by him, and shall deliver the rule or order with such indorsement to the Plaintiff, and such and the like proceedings may thereupon be had, as to taxation of costs, signing judgment, and otherwise, as upon the finding of a Jury upon an assessment of damages. (19 V. c. 43, s. 143,—19 V. c. 90, s. 14.)

of opinion that it is substantially a matter of calculation.

160. The arbitrator, upon any compulsory reference; or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the Superior Courts of Law or Equity, or of any County Court, may, if he thinks fit, and if it is not provided to the contrary, state his award as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court. (19, V. c. 43, s. 86.)

Arbitrator may make award in the form of a special case.

Effect thereof.

161. The proceedings upon any such arbitration as aforesaid shall, except otherwise directed by this Act or by the submission or document authorizing the reference, be conducted in like manner and subject to the same rules and enactments as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, or otherwise, as upon a reference made by consent under a rule of Court or Judge's order. (19 V. c. 43, s. 87,—19 V. c. 90, s. 13.)

Proceedings before arbitrator and his power to be as upon reference by consent.

162. In every case of reference to arbitration, whether under this Act or otherwise, where the submission is made a rule of any Court of Upper Canada, such Court or a Judge thereof may at any time and from time to time remit the matters referred, or any or either of them, to the reconsideration and re-determination of the arbitrator or arbitrators or umpire, as the case may require, upon such terms as to costs and otherwise as to the said Court or Judge may seem proper. (19, V. c. 43, s. 88.)

Case may be remitted to the arbitrators for re-consideration, &c. whenever the reference is made a rule of Court.

Period within which application to set aside award must be made.

163. All applications to set aside any award made on a compulsory reference, shall be made within the first six days of the term next following the publication of the award to the parties, whether the award be made in Vacation or Term; and if no such application be made, or if no rule be granted thereon, or if any rule granted thereon be afterwards discharged, such award shall be final between the parties. (19 V. c. 43, s. 89.) 5

Award may by order of a Judge be enforced tho' the said period has not elapsed.

164. Any award made on a compulsory reference may, by authority of a Judge, on such terms as to him seems reasonable, be enforced at any time after six days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed. (19 V. c. 43, s. 90.) 10

When parties to any instrument hereafter made have agreed that any difference between them shall be referred to arbitration, the Court or a Judge may stay proceedings in any action or suit respecting such difference on application of defendant and proof of certain matters.

165. Whenever the parties to any deed or instrument in writing made or executed, after this Act takes effect or any of them, agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing or any person or persons claiming through or under him or them, nevertheless commences an action at Law or a suit in Equity against the other party or parties or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred to any of them, then upon the application of the Defendant or Defendants, or any of them, after appearance and before plea or answer, and upon being satisfied that no sufficient reason exists why such matters ought not to be referred to arbitration according to such agreement as aforesaid, and that the Defendant was at the time of the bringing of such action or suit and still is ready and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, the Court in which such action or suit has been brought or a Judge thereof may make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise, as to such Court or Judge may seem fit; but such rule or order may, at any time afterwards, be discharged or varied as justice requires. (19 V. c. 43, s. 91.) 15 20 25 30 35

Provision for supplying the place of a single arbitrator or umpire dying, refusing to act, &c., when the reference does not show an intention that his place should not be supplied.

166. If in any case of arbitration, the document authorizing the reference provides that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator, or if any appointed arbitrator refuses to act, or becomes incapable of acting, or dies, and the terms of the document do not shew the intention that such vacancy should not be supplied, and the parties do not concur in appointing a new arbitrator, or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator, or if any appointed umpire or third arbitrator refuses to act, or becomes incapable of acting, or dies, and the terms of the document authorizing the reference do not shew 40 45

shew the intention that such vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one, then and in every such instance, any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire or third arbitrator; and if within seven clear days after such notice has been served, no arbitrator, umpire or third arbitrator has been appointed, any Judge of either of the Superior Courts of Law, or of the Court of Chancery, or of any County Court, if the case be in such County Court, may, upon summons to be taken out by the party having served such notice, appoint an arbitrator, umpire or third arbitrator, *as the case may be*, and such arbitrator, umpire or third arbitrator shall have the like power to act in the reference and make an award as if he had been appointed 15 by consent of all parties. (19 V. c. 43, s. 92.)

A Judge to appoint another in default of the proper party.

167. When the reference is or is intended to be to two arbitrators, one appointed by each party, either party in case of the death, refusal to act or incapacity of any arbitrator appointed by them, may substitute a new arbitrator, unless the document authorizing the reference shews the intention that the vacancy should not be supplied, and if on such a reference one party fails to appoint an arbitrator either originally or by way of substitution as aforesaid, for seven clear days after the other party has appointed an arbitrator, and has served the party so failing with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole referee in the reference, and an award made by him shall be as binding on both parties as if the appointment had been by consent; but the Court or a Judge may revoke such appointment on such terms as seem just. (19 V. c. 43, s. 93.)

When the reference is to two arbitrators and one party neglects to appoint, the other may after certain notice, &c., appoint his arbitrator to act alone, unless the reference provides that the vacancy should not be supplied.

168. When the reference is to two arbitrators and the terms of the document authorizing it do not shew the intention that there should not be an umpire, or do not provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they are called upon by notice as aforesaid to make the appointment sooner. (19 V. c. 43, s. 94.)

Two arbitrators may always appoint an umpire unless the reference forbid it.

169. The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or order respectively contains a different limit of time) within three months after he has been appointed, and has entered on the reference or has been called upon to act by a notice in writing from any party, the parties may by consent in writing enlarge the time for making the award. (19 V. c. 43, s. 95.)

Award to be made within a certain period.

Period may be enlarged.

170. The Court of which such submission, document or order has been or may be made a rule or order, or any judge thereof, may, for good cause to be stated in the rule or order for enlargement, from time to time, enlarge the term for making the award, and if no other period of enlargement is stated in the consent or order for enlargement, it shall be deemed an enlargement for one month. (19 V. c. 43, s. 95.) 5

When the umpire shall act.

171. In any case where an umpire has been appointed, he may enter on the reference in lieu of the arbitrators if the latter have allowed their time to expire without making an award, or have delivered to any party or to the umpire a notice in writing stating that they cannot agree. (19 V. c. 43, s. 95.) 10

When the award directs possession of real property to be delivered, the Court may order such delivery and enforce it as a judgment in ejectment.

172. When any award made on any such submission, document or order of reference as aforesaid, directs that possession of any lands or tenements capable of being the subject of an action of ejectment shall be delivered to any party either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, the Court of which the document authorizing the reference has been or may be made a rule or order, may order any party to the reference who is in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the lands to the party entitled thereto pursuant to the award, and such rule or order to deliver possession shall have the effect of a Judgment in ejectment against every such party or person named in it, and execution may issue and possession shall be delivered by the Sheriff as on a Judgment in ejectment. (19 V. c. 43, s. 96.) 15 20 25

Court may order reference to arbitration as in Queen's Bench.

173. In cases in a County Court, the Judge thereof may, either at the sittings or in term, by consent of the parties, order any cause to be referred to arbitration, in the same manner, with the same effect and with the same powers and in like manner set aside any award thereon, as may be exercised by the Superior Courts in any cause therein. (19 V. c. 90, s. 13.) 30 35

Every submission to arbitration may be made a rule of Court unless the Instrument forbid it.

174. Every agreement or submission to arbitration by consent, whether by deed, or in writing not under seal, may, on the application of any party thereto, be made a rule of either of the Superior Courts of law, or of the Court of Chancery, or of a County Court in actions pending in such County Court, unless such agreement or submission contains words purporting that the parties intended that it should not be made a rule of Court. (19 V. c. 43, s. 97.) 40

Of what Court it may be made a rule, and if a case be stated in

175. If in any such agreement or submission it is provided that the same may be made a rule of one in particular of the Superior Courts aforesaid, it shall be made a rule of that Court only; and if when there is no such provision, a case has been stated for the 45 the

the opinion of one of the Superior Courts and such Court is specified in the award, and the document authorizing the reference has not before the publication of the award to the parties been made a rule of Court, such document shall be made a rule only of the Court specified in the award. (19 V. c. 43, s. 97.)

the award for the opinion of a Court.

176. When in any case the document authorizing the reference is or has been made a rule or order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award. (19 V. c. 43, s. 97.)

Other Courts not to interfere.

177. The power and authority of any arbitrator or umpire appointed by, or in pursuance of any rule of Court, or Judge's order or order of Nisi Prius, in any action, or by or in pursuance of any submission to reference, containing an agreement that such submission may be made a rule of either of the Superior Courts of Common Law or of the Court of Chancery, or of any County Court, shall not be revocable by any party to such reference, without the leave of the Court by which such rule or order was made, or which is mentioned in such submission, or by leave of a Judge; and the arbitrator and umpire shall proceed with the reference notwithstanding any such revocation, and make an award, although the person making such revocation do not afterwards attend the reference; and the Court, or any Judge thereof may, from time to time, enlarge the term for any such arbitrators making their award. (7 W. 4, c. 3, s. 29.)

Submission to arbitration if agreed to be made a rule of Court, not revocable without leave of Court.

Arbitrator to proceed with reference.

Court may enlarge time for making an award.

178. In case of a reference by any such rule or order, or by any submission containing such agreement as aforesaid, and in case of an application to the Court by which such rule or order was made or to the Court mentioned in such agreement, or to any Judge thereof, setting forth the place of residence of any witness whose presence is desired, such Court or Judge may by a rule or order for that purpose command the attendance and examination of any such witness named in such rule or order and also the production of any documents mentioned therein. (7 W. 4, c. 3, s. 30.)

Witnesses may, by order of the Court, be compelled to attend arbitrators.

179. If, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience thereto, signed by one at least of the arbitrators, or by the umpire, before whom the attendance is required, has been served, either together with or after the service of such rule or order: the disobedience of any such rule or order shall be deemed a contempt of Court, but the person whose attendance is required shall be entitled to the like conduct money and payment of expenses, and for loss of time, as for and upon attendance at any trial: and no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compelled to produce at a trial, or to attend

Neglect so to do, a contempt of Court.

attend for more than two consecutive days, to be named in such order. (7 W. 4, c. 3, s. 30.)

When witnesses may be sworn by arbitrators.

180. In case in any rule or order of reference, or in any submission to arbitration containing an agreement that the submission may be made a rule of Court, it is ordered or agreed that the witnesses upon such reference shall be examined upon oath, the arbitrator or umpire, or any one arbitrator, shall administer an oath to such witnesses, or take affirmations in cases where an affirmation is allowed by law instead of an oath. (7 W. 4, c. 3, s. 31.)

SUMMARY APPLICATIONS AND PROCEEDINGS.

Affidavits on new matter in answer to affidavits.

181. Upon motions founded upon affidavits, either party with leave of the Court or a Judge, may make affidavits in answer to the affidavits of the opposite party, upon any new matter arising out of such affidavits, subject to all such rules as have been or may be made respecting such affidavits. (19 V. c. 43, s. 169.)

Court or Judge may, on hearing any motion or summons, order the production of documents or oral evidence.

182. Upon the hearing of any motion or Summons, before either of the Superior Courts or any Judge thereof, having jurisdiction in the case, such Court or Judge at their or his discretion, and upon such terms as they or he think reasonable, from time to time order may be produced, such documents as they or he think fit, and may order such witnesses, as they or he may think necessary, to appear and be examined *viva voce* before such Court or Judge, before a Judge of any County Court, or before any Clerk or Deputy Clerk of the Crown, and upon reading the report of the Judge of the County Court, or Clerk or Deputy Clerk of the Crown, (*as the case may be*) or if no such reference has been made, then upon examining such documents or hearing such witnesses by the Court or Judge in which, or before whom such motion or Summons may be pending, such Court or Judge may make such rule or order as may be just, and in cases within the jurisdiction of a County Court the Court or a Judge therein having jurisdiction in the case may order the production of documents or the attendance of witnesses before such Court or Judge and may proceed thereon in like manner as if such documents had been produced or such witness had attended and been examined before one of the Superior Courts or a Judge thereof. (19 V. c. 90, s. 16—19 V. c. 43, s. 170.)

Power to compel attendance of witnesses or production of documents in such cases.

183. Any such Court or Judge may by such rule or order, by any subsequent rule or order, command the attendance of the witnesses named therein for the purpose of being examined, or command the production of any writings or other documents to be mentioned in such rule or order, and in the case of a Judge, he may if necessary or convenient so to do direct the attendance of any such witness to be at his own place of abode or elsewhere.

If

If in addition to the service of the rule or order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, has been also served together with or after the service of such rule or order, and the wilful disobedience of any such rule or order shall be a contempt of Court, and the order in the case of a Judge's order having made a rule of Court, proceedings may be forthwith had by attachment. But—1. Every person whose attendance is so required, shall be entitled to the like payment for attendance and expences as if he had been subpoenaed to attend upon a trial; 2. And no person shall be compelled to produce under any such rule or order any writing or other document that he would not be compellable to produce at a trial of the cause; 3. And the Court or Judge, or person appointed to take the examination, may adjourn the same from time to time as occasion may require. (19 V. c. 43, s. 171.)

184. The Sheriff, Gaoler or other Officer having the custody of any prisoner, may take such prisoner for examination under the authority of this Act by virtue of a Writ of *habeas corpus* to be issued for that purpose, which Writ may be issued by the Court or Judge, under such circumstances and in such manner as such Court or Judge may now by law issue a Writ of *habeas corpus ad testificandum*. (19 V. c. 43, s. 173.)

How prisoners may be brought up to give evidence.

185. Any party to any civil action or other civil proceeding requiring the affidavit of a person who refuses to make it may apply by Summons for an order to such person to appear and be examined upon oath before a Judge, or any other person to be named in such order to whom it may be most convenient to refer such examination, as to the matters concerning which he has refused to make an affidavit, and a Judge may, if he think fit, make such order for the attendance of such person before the person therein appointed to take such examination for the purpose of being examined as aforesaid, and for the production of any writings or documents to be mentioned in such order, and may therein impose such terms as to such examination and the costs of the application and proceedings thereon as he thinks just, and such order shall be proceeded upon in like manner as the order mentioned in the 182nd & 183rd sections of this Act. (19 V. c. 43, s. 174.)

Persons refusing to make affidavit may be compelled to appear and be examined or to produce papers.

186. Upon the application of any party to a cause or civil proceeding stating his belief upon affidavit that any document to the production of which he is entitled for the purpose of discovery or otherwise, is in the possession or power of the opposite party, the Court or Judge may order that the party against whom such application is made, or if such party is a body corporate, that some Officer to be named of such body corporate, shall answer on affidavit, stating what documents he or they has or have in his or their possession

Provision for the discovery of documents in the possession of the adverse party.

possession or power relating to the matters in dispute, or what he knows as to the custody they or any of them are in, and whether he or they objects or object (and if so, on what grounds) to the production of such as are in his or their possession or power, and upon such affidavit being made, the Court or Judge may make such further order thereon as is just. (19 V. c. 43, s. 175.) 5

Interrogatories may be served on the opposite party who shall be required to answer them.

187. In all cases the plaintiff with the declaration, and the Defendant with the plea, may deliver, or either of them, by leave of the Court or a Judge at any other time may deliver to the opposite party or his attorney (provided such party if not a body corporate would be liable to be called and examined as a witness upon such matter,) interrogatories in writing upon any matter upon which discovery may be sought, and require such party, or in the case of a body corporate, any of the Officers of such body corporate, within ten days to answer the questions in writing by affidavit to be sworn and filed in the ordinary way; and any party or Officer omitting without just cause, sufficiently to answer all questions as to which discovery may be sought, within the above time, or such extended time as the Court or Judge may allow, shall be deemed guilty of a contempt, and may be proceeded against accordingly. (19 V. c. 43, s. 176.) 10 15 20

Affidavit upon which the application for leave to serve such interrogatories must be founded.

188. The application for such order shall be made upon an affidavit of the party proposing to interrogate, and of his Attorney or agent, or in the case of a body corporate, of their Attorney or agent, stating that the deponents or deponent believe or believes that the party proposing to interrogate, whether Plaintiff or Defendant, will derive material benefit in the cause from the discovery which he seeks, that there is a good cause of action or of defence upon the merits, and if the application be made on the part of the Defendant, that the discovery is not sought for the purpose of delay; but where it happens from unavoidable circumstances, that the Plaintiff or Defendant cannot join in such affidavit, the Court or a Judge may, upon affidavit of the circumstances by which the party is prevented from so joining therein, allow and order that the interrogatories may be delivered without such affidavit. (19 V. c. 43, s. 177.) 30 35 40

Where the party is prevented from joining in such affidavit.

In case of omission to answer, the party may be examined orally or commanded to produce the documents, and before whom.

189. In case of omission, without just cause, to answer sufficiently such written interrogatories, the Court or a Judge may direct an oral examination of the interrogated party as to such points as they or he may direct, before a Judge or any other person to be specially named; and the Court or a Judge, may, by such rule or order, or by any subsequent rule or order, command the attendance of such party or parties before the person appointed to take such examination for the purpose of being orally examined as aforesaid, or command the production of any writings or other documents to be 45 50

be mentioned in such rule or order, and may impose therein such terms as to such examination and the costs of the application and of the proceedings thereon, and otherwise, as to such Court or Judge seems just, and such rule or order shall have the same force and effect and may be proceeded upon in like manner as an order made under the 182nd & 183rd sections of this Act. (19 V. c. 43, s. 178.)

190. Whenever by virtue of this Act, an examination of any party or parties, witness or witnesses, has been taken before a Judge of either of the Superior Courts, of Common Law or of any County Court, or before any Officer or other person appointed to take the same, the depositions taken down by such examiner shall be returned to and kept in the office of the Court (Principal or Deputy Clerk's office, as the case may be,) in which the proceedings are carried on, and office copies of such depositions may be given out, and the examinations and depositions certified under the hand of the Judge or other officer or person taking the same, shall, and may without proof of the signature, be received and read in evidence, saving all just exceptions. (19 V. c. 43, s. 179.)

Examination to be filed in the office of the Court.

May be used in evidence.

191. Every Judge, Officer or other person named in any such rule or order as aforesaid, for taking examinations under this Act, may, and if need be, shall make a special report to the Court in which such proceedings are pending, touching such examination and the conduct or absence of any witness or other person thereon or relating thereto ; and the Court shall be required to institute such proceedings and make such order or orders upon such report as Justice may require, and as may be instituted and made in any case of contempt of the Court. (19 V. c. 43, s. 180.)

Examiners may make a special report to the Court.

Orders there upon.

192. The costs of every application for any rule or order to be made for the examination of parties or witnesses by virtue of this Act, and of the rule or order and proceedings thereon, shall be in the discretion of the Court or Judge by whom such rule or order is made. (19 V. c. 43, s. 181.)

As to costs of Rule and examination.

193. Either party may apply to the Court or a Judge for a rule or order for the inspection by the Jury or by himself or by his witnesses, of any real or personal property, the inspection of which may be material to the proper determination of the question in dispute, and the Court or a Judge may make such rule or order upon such terms as to costs and otherwise, as such Court or Judge may direct ; but nothing herein contained shall affect the provisions of any Act as to obtaining a view by a Jury. (19 V. c. 43, s. 172.)

Inspection of real or personal property by jury, parties, or witnesses.

INSPECTION OF DOCUMENTS.

194. The Court in which any action or legal proceeding is pending, or any Judge thereof in vacation, may, on application (and

When the Court or a

Judge may allow inspection of documents.

(and in any such action or proceeding in either of the Superior Courts when the Attornies for both parties reside in the same County, the Judge of the County Court of such County may on application), compel the opposite party to allow the party making the application, to inspect all documents in the custody or under the control of such opposite party relating to such action or other legal proceeding, and if necessary, to take examined copies of the same, in all cases in which previous to the passing of this Act a discovery might have been obtained by Bill, or other proceeding in Equity, at the instance of the party so making application as aforesaid. (16 V. c. 19, s. 8.)

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ADMISSION OF DOCUMENTS.

Calling on parties to admit documents.

195. Either party may call upon the other party, by notice, to admit any Document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the Documents shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the Judge certifies that the refusal to admit was reasonable; and no costs of proving any Document shall be allowed unless such notice has been given, except in cases where the omission to give the notice is, in the opinion of the Taxing Officer, a saving of expense. (19 V. c. 43, s. 165.)

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Costs.

Evidence of admissions.

196. An affidavit of the Attorney in the cause, or his Clerk, of the due signature of any admissions made in pursuance of such notice, and annexed to such affidavit, shall be in all cases sufficient evidence of such admissions. (19 V. c. 43, s. 166.)

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Evidence of service of notice to produce.

197. An affidavit of the Attorney in the cause, or his Clerk, of the service of any notice to produce in respect to which notice to admit has been given, and of the time when it was served, with a copy of such notice to produce, annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served. (19 V. c. 43, s. 167.)

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NOTICE OF TRIAL OR OF ASSESSMENT OF DAMAGES, AND COUNTERMAND THEREOF.

Eight days' trial to be given.

198. Eight days' notice of trial or of assessment shall be given, and shall be sufficient in all cases, whether at Bar or at *Nisi Prius*, or at the County Courts. (19 V. c. 43, s. 146—3 V. c. 13, s. 29.)

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Four days' notice of countermand.

199. A countermand of notice of trial or assessment shall be given four days before the time mentioned in the notice of trial or assessment, unless short notice has been given, and then two days before the time mentioned in the notice, unless otherwise ordered by the Court or a Judge, or by consent. (19 V. c. 43, s. 147.)

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NISI PRIUS RECORDS.

200. The record of *Nisi Prius* need not be sealed but shall be passed and signed by the Clerk or Deputy Clerk of the Crown in whose office the same may be passed and in Country Causes shall be entered for trial with the Deputy Clerk of the Crown of the proper County, before noon of the Commission or opening day of the Assizes for such County; but the Judge may permit a record in any suit to be entered after the time above limited, if upon facts disclosed on affidavit, or on the consent of both parties, he sees fit to do so. (19 V. c. 43, s. 154.)

Nisi Prius records need not be sealed.

How to be passed.

201. The party entering any record shall indorse thereon whether it be an assessment, an undefended issue or a defended issue; and the Deputy Clerk of the Crown shall make three lists and enter each Record in one of the said lists, in the order in which the Records are received by him, and on the first list he shall enter all the assessments and undefended issues, and in the second list all defended issues not marked "Inferior Jurisdiction," and on the third list all defended issues marked "Inferior Jurisdiction," and the Judge at *Nisi Prius* may postpone the trial of causes in the third list until all the others are disposed of, and call on the causes in the first list at such time and times as he finds most convenient for disposing of the business. (19 V. c. 43, s. 154.)

How to be indorsed.

202. The judge presiding at the Assizes or County Court sittings, may, in his discretion, peremptorily order the business of the Court to be proceeded with, on the first day of the sitting of the Court. (14 & 15 V. c. 14, s. 14.)

The Judge may order proceedings peremptorily on the first day.

203. In Town Causes the Records shall be entered with the Clerk of Assize, who shall attend at the Court House on the Commission or opening day for the purpose of receiving and entering the same, from nine in the morning until noon, after which he shall not receive any without the order of the presiding Judge, who shall have the same power in this respect as set forth in the 200th section, and the Clerk of Assize shall make three lists as aforesaid, which shall be regulated and the business disposed of as in Country Causes. (19 V. c. 43, s. 155.)

How records to be entered in Town causes.

204. In cases in the County Courts the plaintiffs shall enter with the Clerk of such Courts, a record in the form of a *Nisi Prius* record, on or before the first day of the sitting of such Courts respectively, and in those Courts no other *venire* than the following need be entered in the record: (8 V. c. 13, s. 30.)

How entered in County Courts.

Therefore, the Sheriff, (or Coroner, as the case may be) is (or are) commanded that he (or they) cause to come before _____, Esquire, Judge of our said Court, at the next sitting thereof, for trials and assessments, at the Court House, in _____, in the said County, on _____ the day _____ *Venire*.

day of _____, in the year of Our Lord,
 one thousand eight hundred and _____, a Jury to try the
 said issue, (or assess the damages, as the case may be).

When there are issues in law and also in fact, or upon any as-
 sessment of damages, the above venire may be altered and 5
 adapted to the particular case.

ADDRESSES OF COUNSEL, &C.

How addresses of Council to jury regulated. 205. Upon the trial of any cause the addresses to the Jury shall be regulated as follows: the party who begins, or his Counsel, in the event of his opponent not announcing at the close of the case of the party who begins, his intention to adduce evidence, shall be allowed to address the Jury a second time at the close of such case, for the purpose of summing up the evidence; and the party on the other side, or his Counsel, shall then be allowed to open his case and also to sum up the evidence (if any), and the right to reply shall be the same as at present. (19 V. c. 43, s. 157.) 10 15

TRIALS MAY BE ADJOURNED, &C.

When the Court may adjourn a trial. 206. The Court or Judge at the trial of any cause may, when deemed right for the purposes of justice, order an adjournment for such time and subject to such terms and conditions, as to costs and otherwise, as they or he may think fit. (19 V. c. 43, s. 158.) 20

AND WITH RESPECT TO AMENDMENTS AT THE TRIAL.

Variations may be amended in civil cases and in prosecutions for misdemeanors at the discretion of the Court or Judge holding plea thereof. 207. When upon the trial in any Civil Action, Indictment or Information for any Misdemeanor, before any Court of Record holding Plea in Civil Actions, or any Judge sitting at *Nisi Prius* any, variance appears between any matter in writing or in print produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending such Court or Judge may, cause the Record on which such trial is pending to be forthwith amended in such particular by some officer of the Court, on payment of such costs (if any) to the other party as such Court or Judge may think reasonable, and thereupon the trial shall proceed as if no such variance had appeared; and in case such trial is had at *Nisi Prius*, the order for the amendment shall be endorsed on the postea and returned together with the record, and thereupon the papers, rolls, and other records of the Court, from which such record issued, shall be amended accordingly. (1 W. 4, c. 2, s. 1.) 25 30 35

Upon such terms respecting costs as may seem reasonable. 208. When upon the trial in any civil action, or in any information in the nature of a quo warranto or proceedings on a mandamus, before any Court of Record holding Plea in civil actions, or any Judge sitting at *Nisi Prius*, any variance appears between the proof and the recital or setting forth on the record, writ or document, in which the trial is proceeding, of any contract, name or other matter, in any particular or particulars, in the judgment of such Court or Judge not material to the merits of 40 45 of

of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution or defence, such Court or Judge may cause such record, writ or document, to be forthwith amended by some officer of the Court, or otherwise, both in the part of the pleadings where such variance occurs, and in every other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party, or postponing the trial to be had before the same or another Jury, or both of payment of costs and postponement, as such Court or Judge thinks reasonable; and in case such variance exists in some particular in the judgment of such Court or Judge not material to the merits of the case, but such as that the opposite party may have been prejudiced thereby in the conduct of his action, prosecution or defence, such Court or Judge may cause the same to be amended, upon payment of costs to the other party, and the withdrawal of the record or postponement of the trial, as aforesaid, as such Court or Judge may think reasonable. (1 W. 4, c. 3, s. 15.)

Or allow the record to be withdrawn.

209. In case after such amendment the trial is proceeded with, the same shall proceed in the same manner in all respects, both with regard to the liability of witnesses to be indicted for perjury, and otherwise, as if no such variance had appeared.

After amendment, the trial to proceed though no such variance had appeared.

210. In case such trial is had at *Nisi Prius*, the order for the amendment shall be endorsed on the postea, and returned together with the record; and thereupon such papers, rolls and other records of the Court from which such record issued, as it may be necessary to amend, shall be amended accordingly, and the order for amendment shall be entered on the roll or other document upon which the trial is had. (7 W. 4, c. 3, s. 15.)

On trial at *Nisi Prius*, order for amendment to be endorsed on the postea rolls, and records to be amended accordingly.

211. Any party dissatisfied with the decision of the Judge at *Nisi Prius*, respecting his allowance of any such amendment, may apply to the Court from which the record issued for a new trial upon that ground; and in case any such Court think such amendment improper, a new trial shall be granted accordingly, on such terms as the Court may think fit, or the Court shall make such other order as to them may seem meet. (7 W. 4, c. 3, s. 15.)

Party dissatisfied with the amendment may apply for new trial.

212. The said Court or Judge may, in any such case of variance, instead of causing the record to be amended, as aforesaid, direct the jury to find the fact or facts according to the evidence, and thereupon such finding shall be stated on such record; and notwithstanding the finding on the issue joined, if the Court from which the record issued think the variance immaterial to the merits of the case, and the misstatement such as not have prejudiced the opposite party in the conduct of the action or defence, such Court shall give judgment according to the very right and justice of the case. (7 W. 4, c. 3, s. 16.)

Instead of amendment the Judge may direct the jury to find facts according to the evidence, and if variance be immaterial, Court may give judgment according to the merits.

The Courts may and must make all such amendments in any civil proceedings as may be necessary to do full justice.

213. The Courts and every Judge thereof, and any Judge sitting at *Nisi Prius*, or for the trial of causes, may, at all times amend all defects and errors in any proceeding in civil causes, whether there is any thing in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not, and all such amendments may be made with or without costs, and upon such terms as to the Court or Judge seems fit, and all such amendments as may be necessary for the purpose of determining in the existing suit the real question in controversy between the parties, shall be so made. (19 V. c. 43, s. 291.)

COSTS OF THE DAY.

Costs of the day provided for.

214. In case a notice of trial or assessment is given and not duly countermanded, the party giving the notice of trial or assessment shall, if he do not bring the issue to trial or assess the damages, pay to the party to whom such notice was given the like costs and charges as if such trial or assessment had not been countermanded. (2 G. 4, c. 1, s. 36—19 V. c. 43, s. 148—8 V. c. 13, s. 29.)

Rule for costs of the day on affidavit.

215. The rule for costs of the day for not proceeding to trial or assessment pursuant to notice, or not countermanding in sufficient time, may be drawn up on affidavit without motion made in Court. (19 V. c. 43, s. 148.)

JUDGMENTS BY DEFAULT FOR NOT PROCEEDING TO TRIAL.

A certain British Act of 14 Geo. 2, c. 17, not to be in force, U. C.

216. The Act of the Parliament of Great Britain, passed in the fourteenth year of the Reign of King George the Second, intituled, *An Act to prevent inconveniences from delays of causes after issue joined*, so far as the same relates to judgment as in case of a nonsuit, shall not be in force in Upper Canada. (19 V. c. 43, s. 149.)

Town causes and County causes distinguished.

217. Causes in which the venue is laid in the United Counties of York and Peel, or in the County of York alone, when no longer united with the said County of Peel, shall be called Town causes, and all other causes shall be called Country causes. (19 V. c. 43, s. 150.)

If plaintiff neglects to go to trial within a certain time after issue joined, Defendant may give notice to plaintiff to bring issue to trial, &c.

218. Where issue is joined in any cause, and the Plaintiff neglects to bring such issue on to be tried, in cases in the Superior Courts at the times following, that is to say, in Town causes where issue is joined in, or in the vacation before Hilary, Trinity or Michaelmas Term, and the Plaintiff neglects to bring the issue on to be tried at or before the second Assizes following such term, or if issue is joined in or in the vacation before Easter Term, then if the Plaintiff neglects to bring the issue on to be tried at or before the first Assizes after Easter Term,—and in Country causes where

issue is joined in, or in the vacation before Hilary or Trinity Term, and the Plaintiff neglects to bring the issue on to be tried at or before the second Assizes following such Term, or if issue is joined in or in the vacation before Easter or Michaelmas Term,—and the Plaintiff neglects to bring the issue on to be tried at or before the first Assizes after such Term, or in cases in the County Court if the Plaintiff neglects to bring the issue on to be tried at the first sittings of the Court after issue joined whether in any such cases the Plaintiff has in the mean-
 10 time given notice of trial or not, the Defendant may give twenty days' notice to the Plaintiff, to bring the issue on to be tried at the Assizes or sittings of the Court next after the expiration of the notice; and if the Plaintiff afterwards neglects to give notice of trial for such Assizes or Sittings, or to proceed to trial as re-
 15 quired by the notice given by the Defendant, the Defendant may suggest on the record that the Plaintiff has failed to proceed to trial, although duly required so to do, (which suggestion shall not be traversable, but only be subject to be set aside if untrue,) and may sign Judgement for his costs; but
 20 the Court or a Judge may extend the time for proceeding to trial with or without terms; and no rule for trial by proviso shall hereafter be necessary. (19 V. c. 43, s. 151.)

TRANSMISSION AND DELIVERY OF NISI PRIUS RECORDS, &c.

219. Every Deputy Clerk of the Crown shall, within twenty-
 25 four hours after notice in writing delivered to him in his office, for that purpose, and payment of the necessary postage enclose, seal up and transmit by post to the proper principal office at Toronto, addressed to the Clerk thereof, any record of *Nisi Prius* in his custody mentioned in such notice, together
 30 may be adjudged guilty of a contempt of Court, and be dealt with in the discretion of the Court accordingly; and if, after such notice, the *Nisi Prius* record is not in Court at the time of moving any rule requiring a reference thereto, the party moving may, on filing an affidavit of the service of notice, and
 35 that the record, on search, has not been found in the said principal office, be allowed by the Court to move any such rule without the production of the Record of *Nisi Prius*. (14 & 15 V. c. 118, s. 6—20 V. c. 57, s. 3.)

Deputy Clerks of the Crown to transmit any *Nisi Prius* record to Toronto or deliver the same sealed up on proper notice, &c.

Failure to be a contempt.

After such notice a party may move although the record be not in Court; first filing affidavit of notice.

220. The said Deputy Clerks of the Crown shall, after the
 40 time for the moving for new trials has expired, deliver to the Attorney of the party entitled to the *Postea*, any record in their custody upon getting a receipt for the same, but they shall not deliver to any party any Exhibit filed, without a Judge's order to that effect. (14 & 15 V. c. 118, s. 2.)

When and how Deputy Clerks shall deliver record or exhibits to Attorney or parties.

221. After verdict or non-suit, the Attorney of the party
 45 entitled to the *Postea* in the cause shall prepare the same. (14 & 15 V. c. 118, s. 4.)

Attorney entitled to *Postea* to prepare the same.

RULES FOR NEW TRIALS OR TO ENTER A VERDICT OR NON SUIT.

Grounds to be stated in Rule Nisi for new trial.

222. In every rule nisi for a new trial or to enter a verdict or non-suit, the grounds upon which such rule has been granted shall be shortly stated therein; but in case of any omission, the Court may permit the rule to be amended and served again on such terms as are deemed reasonable. (19 V. c. 43, s. 168.)

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Court may allow amendments.

223. When a new trial is granted on the ground that the verdict is against evidence, the costs of the first trial shall abide the event, unless the Court otherwise order.

County Courts may set aside non-suits or grant new trials.

221. In cases in the County Courts verdicts or non-suits may be set aside and new trials granted. Judgments be arrested upon the like grounds and principles as in the Superior Courts, but no motion for any such purpose shall be entertained after the rising of the Court on the second day of the term ensuing the rendering of the verdict or the non-suit. (8 V. c. 13, s. 43.)

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ARREST OF JUDGMENT AND JUDGMENT non obstante veredicto.

Proceedings on motions in arrest of judgment or for judgment non obstante.

225. Upon any motion made in arrest of Judgment or for Judgment non obstante veredicto by reason of the non averment of some material fact or facts, or some material allegation or other cause, the party whose pleading is alleged or adjudged to be therein defective, may by leave of the Court, suggest the existence of the omitted fact or facts or other matter which if true would remedy the alleged defect: and such suggestion may be pleaded to by the opposite party within eight days after notice thereof, or such further time as the Court or a Judge may allow, and the proceedings for trial of any issues joined upon such pleadings shall be the same as in an ordinary action. (19 V. c. 43, s. 217.)

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Suggestion of facts by party whose pleading is objected to.

If suggestion be found true.

226. If the fact or facts suggested be admitted or be found to be true, the party who suggested them shall be entitled to such Judgment as he would have been entitled to if such fact or facts or allegations had been originally stated in the pleading and proved or admitted on the trial, together with the costs of and occasioned by the suggestion and proceeding thereon; but if such fact or facts be found untrue, the opposite party shall be entitled to his costs of and occasioned by the suggestion and proceedings thereon, in addition to any other costs to which he may be entitled. (19 V. c. 43, s. 218.)

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If untrue.

CONFESSIONS, FILING THE SAME AND JUDGMENTS THEREON.

As to judgment on cognovits.

227. Final judgment upon a cognovit actionem or Warrant of Attorney to confess judgment given or executed before the suing out of any process, may, at the option of the Plaintiff, be entered in any office of either of the said Superior Courts, and in like manner and like circumstances final judgment may be entered on a cognovit actionem or Warrant of Attorney to confess judgment for an amount not exceeding one hundred pounds, in any County Court, unless some particular office that

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that purpose is expressly stated in the *cognovit* or warrant. 19 V. c. 90, s. 6.—19 V. c. 43, s. 10.

228. No confession of judgment or *cognovit actionem* shall be valid or effectual to support any judgment or writ of execution, unless the same or a sworn copy thereof, is filed of record in the proper office of the Court in the County in which the person giving such confession of judgment or *cognovit actionem* resides, within one month after the same has been given; and a book shall be kept in every such office to be called the Cognovit Book, in which shall be entered the names of the Plaintiff and Defendant in every such confession or cognovit, the amount of the true debt or arrangement secured thereby, the time when judgment may be entered and execution issued thereon, and the day when such confession or cognovit, or copy thereof, is filed in the said office; and such book shall be open to inspection by any person during office hours, on the payment of a fee of one shilling. 20 V. c. 57, s. 17.

Confessions and cognovits given after this Act to be registered.

JUDGMENT AND WRITS OF EXECUTION.

229. The party in whose favour a verdict has been rendered or when the Plaintiff has been non-suited at the trial the Defendant may enter final judgment on the fifth day of term next following such verdict or non-suit and thereupon sue out execution. 19 V. c. 43, s. 182—8 V. c. 13, s. 42.

When final judgment may be entered.

230. The Judge before whom any issue joined in any action is tried, or damages assessed, in case the Plaintiff or Demandant therein becomes non-suit, or a verdict is given for the Plaintiff or Demandant, Defendant or Tenant, may certify under his hand on the back of the Record, at any time before the end of the Sittings or Assizes, that in his opinion, execution ought to issue in such action forthwith, or at some day to be named in such certificate, and subject or not to any condition or qualification, and in case of a verdict for the Plaintiff, then either for the whole or any part of the sum found by such verdict, in all which cases costs may be taxed in the usual manner and judgment entered forthwith, and execution may be issued forthwith or afterwards on any day in vacation or term, according to the terms of such certificate, and the *postea* with such certificate as a part thereof, shall and may be entered of record as of the day on which the judgment is signed; but the party entitled to such judgment may postpone the signing thereof. 19 V. c. 43, s. 182—8 V. c. 13, s. 42.

After verdict or non-suit, Judge may certify that execution ought to issue forthwith.

Taxing costs. Execution. Entering *postea*.

231. In all actions where the Plaintiff recovers a sum of money, the amount to which he is entitled may be awarded to him by the judgment generally, without any distinction being therein made as to whether such sum is recovered by way of a debt or damages. 19 V. c. 43, s. 144.

Sum of money recovered to be awarded generally.

Entry and record of judgment. **232.** Every judgment signed by virtue of the 230th Section may be entered and recorded as the judgment of the Court wherein the action is pending, though the Court may not be sitting on the day of the signing thereof, and shall be as effectual as if the same had been signed and recorded according to the course of the common law. 19 V. c. 43, s. 183. 5

Judgment may be set aside, &c. **233.** Notwithstanding any Judgment signed or recorded or execution issued by virtue of the 230th and 232nd Sections, the Court in which the action is brought may order such Judgment to be vacated and execution to be stayed or set aside, and may enter an arrest of Judgment or grant a new trial or a new assessment of damages, as justice may appear to require, and thereupon the party affected by such Writ of Execution shall be restored to all that he may have lost thereby, in like manner as upon the reversal of a Judgment by Writ of Error, or otherwise as the Court may think fit to direct; but any application to vacate such Judgment must be made within the first four days of the Term next after the rendering of the verdict. 19 V. c. 43, s. 184. 10
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Deputy Clerk to keep books for minuting all judgments, &c. **234.** Every Deputy Clerk of the Crown and Pleas and every County Court Clerk shall keep a regular book, in which shall be minuted and docketed all Judgments entered by such Deputy Clerk or County Court Clerk; and such minute shall contain: 25

1. The name of every Plaintiff and Defendant;
 2. The date of the issue of the first process;
 3. The date of the entry of Judgment;
 4. The form of action, and the amount of debt or damages recovered; 30
 5. The amount of costs taxed;
- And 6. Whether such Judgment has been entered on verdict, default, confession, *non pros*, non suit, discontinuance, or how otherwise. 19 V. c. 43, s. 15—19 V. c. 90, s. 7.

Judgments to be also docketed at Toronto. **235.** Within three months after the entry of each Judgment by a Deputy Clerk of the Crown he shall transmit to the principal Clerk of the proper Court in Toronto, every such Judgment-roll and all papers of or belonging thereto, and such Judgment shall be also docketed in the principal office, and in case the original Judgment-roll happens to be lost or destroyed, so that no exemplification or examined copy thereof can be procured, a copy of the entry in either of such docket books, certified by the Clerk or Deputy Clerk of the Crown having such 35
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If the original roll be lost, copies may be used.

such book in his custody, shall be evidence of all matters therein set forth and expressed. 19 V. c. 43, s. 15—19 V. c. 90, s. 7.

236. When any such Deputy or any County Court Clerk enters up Judgment in any of the said Courts, he may give to the party on whose behalf it is entered, or to his legal representative, a certificate signed by him, of such Judgment, containing the like particulars as are required in certificates of Judgments given by the Clerks of the Crown and Pleas, and such certificate may be registered in the Registry Office of any County in Upper Canada, and the same certificate and the registration thereof shall have like force and effect in binding or operating as a charge upon lands, tenements and hereditaments situated within such County, as if the certificate had been granted by either of the Clerks of the Crown and Pleas at Toronto. 19 V. c. 43, s. 15—19 V. c. 90, s. 7.

Deputy Clerks may give certificates of judgments entered by them, which certificates may be registered in the proper County and bind lands.

237. All Writs of execution may issue from the offices where-in the Judgment has been entered, and in the Superior Courts, after the transmission of the roll to the principal office, such Writs may, at the option of the party entitled thereto, be issued out of such principal office. 13, 14 V. c. 52, s. 3—19 V. c. 43, s. 11.

Writs of Execution.

238. It shall not be necessary to issue any Writ directed to the Sheriff of the County in which the venue is laid, but Writs of execution may issue at once into any County and be directed to and executed by the Sheriff of any County without reference to the County in which the venue is laid, and without any suggestion of the issuing of a prior Writ into such County. 19 V. c. 43, s. 186.

Writ to Sheriff of the County where the venue is laid may be dispensed with.

239. Where it is now necessary to sue out process of execution against the person into any particular County in order to charge bail, the same shall continue to be necessary, notwithstanding any thing contained in this Act. 7 W. 4, c. 3, s. 33.

It shall still be necessary to sue out execution in the proper County to charge bail.

240. Every Writ of execution shall bear date and be tested on the day on which it is issued, and shall remain in force for one year from the teste, and no longer if unexecuted, unless renewed, but such Writ may, at any time before its expiration, be renewed by the party issuing it, for one year from the date of such renewal, by being marked in the margin, with a memorandum to the effect following: "Renewed for one year from the day of _____," signed by the Clerk or Deputy Clerk of the Crown who issued such Writ or by his successor in office; and a Writ of execution so renewed shall have the effect and be entitled to priority according to the time of the original delivery thereof to the Sheriff. 19 V. c. 43, s. 189.

Duration of Writs of Execution.

Renewal.

Effect of renewal.

- Evidence of renewal.** **241.** The production of a Writ of execution marked as renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed. 19 V. c. 43, s. 190.
- If the Sheriff go out of office during currency of a Writ against land.** **242.** If the Sheriff goes out of office during the currency of any Writ of execution against lands, and before the sale, such writ shall be executed and the sale and conveyance of the lands be made by his successor in office, and not by the old Sheriff; but any Sheriff may, after he has gone out of office, execute any Deed or conveyance necessary to effectuate and complete a sale of lands made by him while in office. 19 V. c. 43, s. 187.
- Advertisement during currency of writ sufficient commencement of execution, &c.** **243.** The advertisement in the *Official Gazette*, of any lands (giving some reasonably definite description of them,) for sale under a Writ of Execution, during the currency of the Writ, shall be deemed to be a sufficient commencement of such execution to enable the same to be completed by a sale and conveyance of the lands after the Writ has become returnable. (19 V. c. 43, s. 188).
- On what affidavits writ of Ca. Sa. may issue.** **244.** In cases in which the Defendant has been held to special bail, it shall not be necessary before suing out a *Capias ad Satisfaciendum*, to make or file any further or other affidavit than that upon which the Writ of *Capias* issued in the first instance, but where the Defendant has not been held to special bail, a Writ of *Capias ad Satisfaciendum* may issue after judgment upon an affidavit in the same form (*mutatis mutandis*) as is hereinbefore required to be made for the purpose of suing out a Writ of *Capias* as aforesaid, or upon an 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. (19 V. c. 43, s. 185).
- Precipe and affidavits filed in principal offices.** **245.** In cases where a Writ of *Capias ad Satisfaciendum* is issued by a Deputy Clerk of the Crown, he shall transmit the precipe and (where one is required) the affidavit to the principal office within one month after the same have been filed. 2 Geo. 4, c. 1, s. 33.
- Tests of writs to fix bail.** **246.** Writs of execution to fix bail may be tested and returnable in vacation. (19 V. c. 43, s. 192).
- As to order by the plaintiff or his attorney for discharge of defendant.** **247.** A written order under the hand of the Attorney in the cause by whom any writ of *Capias ad Satisfaciendum* has been issued, shall justify the Sheriff, Gaoler or person in whose custody the party may be under such writ, in discharging such party, unless the party for whom such Attorney professes to act has given written notice to the contrary to such Sheriff, Gaoler or person in whose custody the opposite party may be, but such discharge shall not be a satisfaction of the debt

debt unless made by the authority of the creditor, and nothing herein contained shall justify any Attorney in giving such order for discharge without the consent of his client. (19 V. c. 43, s. 191.)

5 **248.** Every Deputy Clerk of the Crown and Pleas and Sheriff or Coroner to return writs and process issued out of the office of such Deputy or County Court Clerk and directed to such Sheriff or Coroner; and each Sheriff or Coroner shall, in case of his being served with any such rule, return such writs to the office of the Court from which the writ issued. (19 V. c. 43, s. 14).

Rules to return, process may be issued by Deputy Clerks.

PROCEEDINGS AGAINST GARNISHEES.

15 **249.** Any creditor who has obtained a judgment in either of the Superior Courts may apply to the Court or a Judge there of for a rule or order that the judgment debtor shall be orally examined before any County Court or before any Clerk or Deputy Clerk of the Crown, or before any other person to be specially named, as to any and what debts are owing to him, and the Court or Judge may make such rule or order for the examination of such Judgment debtor, and for the production of any books or documents, and the examination shall be conducted in the same manner, as in case of an oral examination of an opposite party under this Act, and in the case of a judgment in any County Court such County Court may exercise similar jurisdiction in relation to such judgment and in like manner as might be exercised by one of the Superior Courts sitting in Banc. (19 V. c. 90, s. 17.)

Examination of a judgment debtor as to what debts are due to him.

30 **250.** A Judge of any of the said Courts (as the case may be) upon the *ex parte* application of such Judgment creditor, either before or after such oral examination, and upon his affidavit or that of his Attorney, stating that Judgment has been recovered and that it is still unsatisfied and to what amount, and that any other person is indebted to the Judgment debtor and is within the jurisdiction, may order that all debts owing by or accruing from such third person (hereinafter called the garnishee) to the Judgment debtor shall be attached to answer the Judgment; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Judge or some officer of the Court to be specially named by such Judge, to show cause why he should not pay the Judgment creditor the debt due from him to the Judgment debtor, or so much thereof as may be sufficient to satisfy the Judgment debt; but this section shall not apply in actions commenced or carried on against a Defendant as an absconding debtor. (19 V. c. 90, s. 17.)

Judge may on application and affidavit, order attachment of such debts.

And may order the garnishee to appear, &c.

251. When the amount claimed as due from any garnishee, is within the Jurisdiction of a County or Division, What order shall be made

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when the amount is within the jurisdiction of a County or Division Court. Notice to garnishee. sion Court, the order to be made under the 249th section of this Act, shall be for the garnishee to appear before the Judge of the County Court of the County within which the garnishee resides—at some day and place within his County to be appointed in writing by such Judge—and written notice thereof shall be given to the garnishee at the time of the service of the order. (20 V. c. 57, s. 16.) 5

Execution from County or Division Court, if the garnishee does not dispute the debt. 252. If the garnishee does not forthwith pay the amount due by him, or an amount equal to the Judgment debt, and does not dispute the debt due or claimed to be due from him to the Judgment debtor, or if he does not appear before the Judge named in the order at the day and place appointed by such Judge, then such Judge on proof of service of the order and appointment having been made four days previous, may make an order directing execution to issue out of the County Court or out of a division Court according to the amount due, and such order shall be sufficient authority for the clerk of either of such Courts to issue execution without any previous writ or process, to levy the amount due from such garnishee. (20 V. c. 57, s. 16.) 10 15 20

The Sheriff or Bailiff to levy the amount with costs and fees. 253. The Sheriff or Bailiff to whom such writ of execution is directed, shall levy the amount mentioned in the said execution, towards satisfaction of the Judgment debt, together with the costs of the proceeding, to be taxed, and his own lawful fees, according to the practice of the Court from which such execution issued. (20 V. c. 57, s. 16.) 25

Proceedings if he disputes the debt. 254. If the garnishee disputes his liability, the Judge may order that the judgment creditor shall be at liberty to proceed against the garnishee according to the usual practice of the County or Division Court, as the case may require, for the alleged debt or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit. (20 V. c. 57, s. 16.) 30

Payment by garnishee to be a valid discharge. 255. Payment by or execution levied upon the garnishee, in any such case shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although the proceeding should be set aside or the Judgment be reversed. (20 V. c. 57, s. 4.) 35

Order or notice thereof to bind the garnishees. 256. Service of an order that debts due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee in such manner as the Judge directs, shall bind such debts in his hands. (19 V. c. 43, s. 195.) 40

Amount due by garnishee may be levied by execution if not disputed. 257. If the garnishee does not forthwith pay into Court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, and does not dispute the debt due or claimed to be due from him to the judgment debtor, or if he does not appear upon summons, then the Judge may order execution 45

execution to issue, and it may be sued forth accordingly, without any previous writ or process, to levy the amount due from such garnishee towards satisfaction of the judgment debt. (19 V. c. 43, s. 196.)

5 **258.** If the garnishee disputes his liability, the Judge, instead of making an order that execution shall issue, may order that the judgment creditor shall be at liberty to proceed against the garnishee, by writ calling upon him to shew cause why there should not be execution against him for the alleged 10 debt, or for the amount due to the judgment debtor if less than the judgment debt, and for costs of suit, and the proceedings upon such suit shall be the same, or as nearly as may be, as upon a writ of revivor issued under this Act. (19 V. c. 43, s. 197.)

Proceedings if the garnishee disputes the debt.

15 **259.** Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although such proceeding should be afterwards set aside or the judgment be reversed. (19 V. c. 20 43, s. 198.)

Payment by the garnishee to be a valid discharge to him.

260. There shall be kept at the several offices of the Clerk of the Crown and his deputies, and at the several County Court offices, a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with 25 names, dates and statements of the amount recovered and otherwise; and the mode of keeping such books shall be the same in all the offices, and copies of any entries made therein may be taken by any person upon application to the proper officer. (19 V. c. 43, s. 199.)

Attachment book to be kept in the office of the Clerk of the Crown and his Deputies.

30 **261.** The costs of any application for an attachment of debt under this Act, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or Judge. (19 V. c. 43, s. 200.)

Costs of such application.

262. The Court or a Judge upon the application of the 35 Plaintiff in any action for the detention of any chattel, may if he or they see fit, order that execution shall issue for the return of the chattel detained, without giving the Defendant the option of retaining such chattel upon paying the value assessed, and order that unless the Court or a Judge should otherwise direct, the Sheriff shall distrain the Defendant by all his lands and 40 chattels in the said Sheriff's County, till the Defendant renders such chattel, or at the option of the Plaintiff, may order the Sheriff to make of the Defendant's goods the value of such chattel; but the Plaintiff shall, either by the same or by a separate writ or writs of execution to be issued in the ordinary manner, be entitled to have made of the Defendant's goods or lands, the dam- 45 ages, costs and interest in such action. (19 V. c. 43, s. 201.)

Specific delivery of a chattel may be compelled, and how.

Option to the Plaintiff. Damages, Costs, &c.

263.

PROCEEDINGS FOR THE REVIVAL OF JUDGMENTS AND OTHER
 PROCEEDINGS BY AND AGAINST PERSONS NOT PARTIES
 TO THE RECORD.

- Execution without *scire facias* or revival.** **263.** During the lives of the parties to a judgment, or those of them during whose lives execution may at present issue within a year and a day without a *scire facias*, execution may issue without a revival thereof at any time within six years from the recovery of the judgment. (19 V. c. 43, s. 202.) 5
- Application for revival of judgment and execution thereupon.** **264.** In case it becomes necessary to revive a judgment, either by reason of lapse of time or of a change by death or otherwise of the parties entitled, or liable to execution, the party alleging himself to be entitled to execution may either sue out a writ of revivor in the form hereinafter mentioned, or 10 apply to the Court or a Judge for leave to enter a suggestion upon the roll, to the effect that it manifestly appears to the Court that such party is entitled to have execution of the judgment, and to issue execution thereupon.
- Such application to be by summons or rule to shew cause.** **265.** Such leave shall be granted by the Court upon a rule 15 to shew cause, or by a Judge upon a summons to be served according to the present practice, or in such other manner as the Court or Judge directs, and which rule or summons may be in the form contained in the Schedule (A) to this Act annexed marked No. 9, or to the like effect. (19 V. c. 43, s. 203.) 20
- If the Court be satisfied.** **266.** Upon such application, in case it manifestly appears that the party making the same is entitled to execution, the Court or Judge shall allow such suggestions as aforesaid to be entered in the form contained in the Schedule (A) to this Act annexed marked No. 10, or to the like effect and execution 25 to issue thereupon, and shall order whether or not the costs of such application shall be paid to the party making the same; and in case it does not manifestly so appear, the Court or Judge shall discharge the rule or dismiss the Summons with or without costs: but in such last mentioned case, the party making 30 the application shall be at liberty to proceed by writ of revivor or action upon the judgment. (19 V. c. 43, s. 204.)
- Writ of Revivor, and proceedings thereon.** **267.** The writ of revivor shall be directed to the party called upon to shew cause why execution should not be awarded, and shall bear teste on the day it is issued, and after reciting 35 the reason why such writ has become necessary, it shall call upon the party to whom it is directed to appear within ten days after service thereof in the Court out of which it issues, to shew cause why the party at whose instance such writ has been issued should not have execution against the party to whom 40 such writ is directed, and it shall give notice that in default of appearance, the party who issued such writ may proceed to execution. (19 V. c. 43, s. 205.)

268. Such writ may be in the form contained in the Schedule (A) to this Act annexed marked No. 11, or to the like effect, and may be sued out and served in any County, and otherwise proceeded upon whether in Term or Vacation in the same manner as a writ of Summons. (19 V. c. 43, s. 205.)

Form of Writ.

269. The venue in a declaration upon such writ may be laid in the County in which the writ has been sued out; and the pleadings and proceedings thereupon, and the rights of the parties respectively to costs, shall be the same as in an ordinary action. (19 V. c. 43, s. 205.)

Venue in such cases.

270. Notice in writing to the Plaintiff, his Attorney or agent, shall be sufficient appearance to a writ of revivor. (19 V. c. 43, s. 205.)

Notice to be a sufficient appearance.

271. All writs of *scire facias* against bail on a recognition, or against members of a Joint Stock Company or other body or upon a Judgment recorded against a public officer or other person sued as representing such Company or body, or against such Company or body itself, or by or against a husband to have execution of a Judgment for or against a wife, or for restitution after a reversal on Error or Appeal, or upon a suggestion of further breaches after Judgment, or for any penal sum pursuant to the Statute passed in the Session holden in the eighth and ninth years of the reign of King William the Third, intituled, *An Act for the better preventing frivolous and vexatious suits*,—shall be tested, directed and proceeded upon in like manner as writs of revivor. (19 V. c. 43, s. 206.)

Certain Writs of *scire facias* to be proceeded upon in like manner as Writs of revivor.

272. A writ of revivor to revive a Judgment less than ten years old, shall be allowed without any rule or order; but if more than ten years old, not without a rule of Court or Judge's Order; nor if more than fifteen years old, without a rule to shew cause. (19 V. c. 43, s. 207.)

Age of judgment as respects Writs of revivor.

273. In case of the death of any one or more of the Defendants in any action, against whom a joint Judgment has been entered, the Plaintiff or Plaintiffs, or the survivor or survivors of them, or the executor or administrator of a sole Plaintiff or of the survivor, may proceed by writ of *scire facias* against the representatives of such Defendant or Defendants, notwithstanding there may be another Defendant still living, and against whom the said Judgment may be in force: but the property and effects of stock holders in Chartered Banks, or the members of other Incorporated Companies, shall not be rendered liable to a greater extent than they would have been if this Act had not been passed. (1 V. c. 7, s. 2.)

Proceedings by writ of *Scire Facias* against the Representatives of deceased joint contractors authorized.

Limitation of liability of Stockholders in chartered Banks or Incorporated Companies.

274. Proceedings against Executors upon a Judgment of assets in *futuro* may be had and taken in the manner herein provided as to Writs of revivor. (19 V. c. 43, s. 216.)

Against Executors as to assets in *futuro*

PROVISIONS

PROVISIONS WITH RESPECT TO COSTS.

- 275.** In cases not otherwise provided for by Statute or Rule of Court, the allowance of costs to either party in civil suits and penal actions, shall be regulated by the Laws of England. (2 Geo. 4, c. 1, s. 38—19 V. c. 43, s. 311.)
- Costs in civil suits to be regulated by the Law of England.
- 276.** Until otherwise ordered by Rule of Court, the costs of Writs issued under the authority of this Act and of all other proceedings under the same, shall be and remain as nearly as the nature thereof will allow, the same as heretofore, but in no case greater than those already established; but after this Act takes effect, no mileage shall be taxed or allowed for the service of any Writ, paper or proceeding, without an affidavit being made and produced to the proper taxing officer, stating the sum actually disbursed and paid for such mileage, and the name of the party to whom such payment was made. (19 V. c. 90, s. 18.)
- Costs on Writs under this Act to be as heretofore until otherwise ordered.
- Mileage.
- 277.** And where judgment is given either for or against a plaintiff or demandant, or for or against a defendant or tenant, upon any demurrer joined in any action whatever, the party in whose favour such judgment is given shall also have judgment to recover his costs in that behalf. (7 W. 4, c. 3, s. 26.)
- Plaintiff allowed costs after judgment in default, &c.
- 278.** In case several persons are made defendants in any personal action, and a *nolle prosequi* is entered as to any one or more of them, or in case upon the trial of such action, a verdict passes for him or them, every such person shall have judgment for and recover his reasonable costs, unless, in the case of a trial, the Judge before whom the trial is had certifies upon the record, under his hand, that there was a reasonable cause for making such person a defendant in such action. (7 W. 4, c. 3, s. 24.)
- Defendants entitled to costs after a *nolle prosequi* unless the Judge shall certify.
- 279.** Where a *nolle prosequi* is entered upon any count, or as to part of any declaration, the defendant shall have judgment for his reasonable costs in that behalf. (7 W. 4, c. 3, s. 25.)
- Costs where *nolle prosequi* entered as to part of declaration.
- 280.** Upon an arrest of judgment or judgment *non obstante veredicto*, the Court shall adjudge to the party against whom such judgment is given, the costs occasioned by the trial of any issues in fact arising out of the pleading for defect of which such judgment is given, and upon which such party has succeeded, and such costs shall be set off against any money or costs adjudged to the opposite party, and execution may issue for the balance, if any. (19 V. c. 43, s. 219.)
- Costs on arrest of judgment or judgment *non obstante*.
- 281.** In all Writs of scire facias, the plaintiff obtaining judgment on an award of execution, shall recover his costs of suit
- Plaintiff allowed costs on

suit upon a judgment by default, as well as upon a judgment after plea pleaded, or demurer joined. (7 W. 4, c. 3, s. 26.)

scire facias after judgment by default, &c.

Payment of costs by executors and administrators.

282. In every action brought by any executor or administrator in right of the testator or intestate, such executor or administrator shall, unless the Court in which such action is brought, or a Judge thereof otherwise orders, be liable to pay costs to the defendant in case of being non-suited, or a verdict passing against the plaintiff, and in all other cases in which he would be liable if the plaintiff were suing in his own right upon a cause of action accruing to himself, and the defendant shall have judgment for such costs, and they shall be recovered in like manner. (7 W. 4, c. 3, s. 23.)

283. In case the Plaintiff in any action does not obtain a verdict for the amount for which the defendant was arrested and held to special bail, and in case it is made appear, to the satisfaction of the Court in which the action has been brought, upon motion to be made in Court for that purpose, and upon hearing the parties by affidavit, that the plaintiff had not any reasonable or probable cause for causing the defendant to be arrested and held to special bail, in such amount as aforesaid, such Court may by rule or order, direct that the costs of suit shall be allowed to the defendant, and the defendant shall thereupon, be entitled to such costs of suit, and the Plaintiff, upon such rule or order being made, shall be disabled from taking out any execution for the sum recovered in any such action, unless the same exceeds, and then in such sum only as the same exceeds the amount of the taxed costs of the defendant, and in case the sum recovered in any such action is less than the amount of the taxed costs of the defendant, then the defendant, after deducting the sum of money recovered by the plaintiff from the amount of his costs to be taxed as aforesaid, may take out execution for the balance of such costs in like manner as a defendant may now by law have execution for costs in other cases. (49 Geo. 3, c. 4, s. 1.)

Circumstances under which defendant when held to special bail shall be entitled to costs of suit.

284. In case an action is brought upon any judgment recovered in any Court of Record of Upper Canada, or in any Division Court, the plaintiff in such action, shall not be entitled to any costs of suit, unless the Court in which such action is brought, or some Judge of the same Court, otherwise orders. (49 Geo. 3, c. 4, s. 2.)

In actions on judgments, plaintiff not entitled to costs unless by rule of Court.

285. If the Plaintiff in any action of trespass or trespass on the case, recovers by the verdict of a Jury less damages than forty shillings, such Plaintiff shall not be entitled to recover in respect of such verdict any costs whatever, whether the verdict be given on an issue tried or Judgment has passed by default, unless the Judge or presiding Officer before whom such verdict is obtained immediately afterwards, certifies on the back of the record or of the writ of trial or inquiry that the action was really brought

Plaintiff in trespass or trespass on the case, to recover no costs if the verdict be for less than forty shillings unless the Judge

certify certain facts. brought to try a right besides the right to recover damages for the trespass or grievance in respect of which the action has been brought, or that the trespass or grievance in respect of which the action has been brought was wilful and malicious. (19 V. c. 43, s. 312.)

5

This shall not extend to certain trespasses.

Provision as to actions which might have been brought in an Inferior Court.

286. Nothing in the last section contained shall deprive the Plaintiff of costs in any action brought for a trespass or trespasses over any lands, wastes, closes, woods, plantations or inclosures, or for entering into any dwelling, out building or premises in respect to which notice not to trespass had been 10
been previously served by or on behalf of the owner or occupier of the land trespassed over, upon or left at the last reputed or known place of abode of the Defendant in such action; but nothing in this or in the last preceding section shall entitle any Plaintiff to recover costs as of an action brought in a Superior 15
Court in any case where by law his action might properly have been brought in an inferior Court. (19 V. c. 43, s. 312.)

Suits within the jurisdiction of County Courts may be brought in the Superior Courts subject to County Court costs only.

How papers to be endorsed.

287. Any Plaintiff having a cause of action within the jurisdiction of the County Courts, may institute and carry on such action in either of the Superior Courts, and proceed to judgment and execution therein, but such Plaintiff or Defendant and all persons and officers entitled to costs and fees therein, shall only be allowed the usual costs and disbursements which would be allowable in case the said action had been instituted and carried on in a County Court; and in order to designate 25
the proceedings in such action, as being one also cognizable by the County Courts, and in order to regulate the costs, fees and disbursements therein, all the papers and proceedings filed, issued or used in the Superior Court, shall be endorsed with the words "Inferior Jurisdiction." (13, 14 V. c. 52, s. 1.) 30

But in the County of York not without a Judge's fiat or leave.

288. No Plaintiff having a cause of action within the jurisdiction of the County Court, in the County of York, shall institute or carry on such action in either of the Superior Courts, unless the Plaintiff before issuing the first Process in such action, obtains the fiat of one of the Judges of one of such 35
Superior Courts, allowing the Plaintiff to bring such action in one of such Superior Courts, on proof by affidavit to the satisfaction of such Judge that some important question at Law or in Equity is likely to arise in such action rendering it advisable to have such action tried in such Superior Court. 40

Costs in suits brought in Queen's Bench which might be brought in a District Court.

289. In case a suit of the proper competence of a County Court, is brought in a Superior Court, or in case a suit of the proper competence of a Division Court is brought in a Superior Court or in a County Court, the Defendant shall be liable to County Court costs or to Division Court costs only (as the case 45
may be) unless the Judge who tried the cause certifies in open Court immediately after the verdict has been recorded, that it was a fit cause to be withdrawn from the County Court or Division
Division

Division Court, (as the case may be) and brought in a Superior Court, and if the Judge does not so certify so much of the Defendant's costs taxed as between Client and Attorney as exceed the taxable costs of defence which would have been incurred in the County Court or Division Court, shall in entering Judgment be set off and allowed by the Master against the Plaintiffs County Court or Division Court costs to be taxed, and if the amount of costs so set off exceeds the amount of the Plaintiff's verdict and taxable costs the Defendant shall be entitled to execution for the excess. (8 V. c. 13, s. 59.)

Extra costs paid by the defendant may be allowed him and set off against costs of plaintiff.

290. When several suits are brought on one bond, recognizance, promissory note, bill of exchange, or other instrument, or when several suits are brought against the maker and endorser of a note, or against the drawer, acceptor or endorsers of a bill of exchange, there shall be collected or recovered from the Defendant the costs taxed in one suit only at the election of the Plaintiff, and in the other suits the actual disbursements only shall be collected or received from the Defendant; but this provision shall not extend to any interlocutory costs in the progress of a cause. (5 W. 4, c. 1, s. 1.)

Costs recoverable in one suit only.

And disbursement in others.

Not to extend to interlocutory costs.

291. Either party may as of right, upon giving two days' notice to the opposite party, have the taxation of costs by any Deputy Clerk of the Crown and Pleas revised by the principal Clerk of the Court wherein the proceedings were had; and the Court or a Judge may by rule or summons, call upon the Deputy Clerk who taxed any Bill, to shew cause why he should not pay the costs of revising his taxation and of the application, if in the opinion of the Court or Judge, on the affidavits and hearing the parties, such Deputy Clerk was guilty of gross negligence, or of wilfully taxing fees or charges for services or disbursements larger or other than those sanctioned by the Rules and Practice of the Court. (19 V. c. 43, s. 12.)

Revision of taxation of costs.

Costs of revision may be charged to Deputy in certain cases.

THE JUDGES MAY FRAME A TABLE OF COSTS FOR COUNTY COURTS.

292. The Judges of the said Superior Courts, or any three of them (of whom one of the Chief Justices shall be one,) may from time to time frame a table of costs for the several County Courts, and ascertain, determine, declare and adjudge all and singular the fees allowed to be taken by Counsel, Attornies, Sheriffs, Coroners and Officers of the said Courts respectively, in respect of any business done or transacted in the said County Courts, in all matters, causes and proceeding depending in the said Courts, or before the Judges thereof, in all actions and proceedings within the jurisdiction of such County Courts or of the Judges thereof; and the costs and fees authorized by such table or by any amended table from time to time made, and no other or greater, shall be taken or received by any Counsel or Attorney, Sheriff, Coronor or Officer of any of the said Courts, for any business by them respectively done in the

Judges of the Superior Courts may frame table of costs for County Courts.

the said County Courts or before the Judges thereof; and the said Judges so framing or altering such table of costs may, if they think fit, associate with them in framing or altering such table any one of the County Court Judges. 20 V. c. 58, s. 8.

THE JUDGES MAY MAKE RULES.

Power to make rules for giving effect to this Act.

293. The Judges of the Superior Courts or any four or more of them of whom the Chief Justices shall be two, may from time to time make— 5

1. Such orders and rules as they deem fit respecting the manner of justifying and perfecting bail when taken by Commissioners of either of the said Courts, and respecting the notices to be given previous to justification, the attendance of bail before a Commissioner or a Judge, and the affidavits or examinations to be required, and any other matter or thing which to them seems expedient, and also 10

2. All such general rules and orders for the Government and conduct of the officers of their respective Courts in and relating to the distribution and performance of the duties and business to be done and performed by them, and also 15

3. All such general rules and orders for the effectual execution of this Act, so far as respects such Courts, and of the intention and object thereof, and 20

4. For fixing the fees and costs to be allowed for and in respect of the matters herein contained and the performance thereof, and

5. For apportioning the costs of issues, and

6. For the purpose of enforcing uniformity of practice in the allowance of costs in the said Courts, as in their judgment may be necessary or proper, and for that purpose may meet from time to time as occasion may require. (19 V. c. 43, s. 313.) 25

To make further alterations in mode of pleading, &c.

294. And the said Judges, or any four or more of, them of whom the Chief Justices shall be two, may, also by any rule or order to be from time to time by them made in Term or Vacation, at any time within three years after this Act comes into force, make such further alterations in the time and mode of pleading in the said Courts and in the mode of entering and transcribing pleadings, judgments and other proceedings in actions at law, and in the time and manner of objecting to errors in pleadings and other proceedings, and in the mode of verifying pleas and obtaining final judgment without trial in certain cases, as to them may seem expedient. (19 V. c. 43, s. 313.) 30 35

295. All such Rules, Orders or Regulations shall be laid before both Houses of the Parliament of this Province, if Parliament be then sitting, immediately upon making the same, or if Parliament be not sitting, then within twenty days after the next meeting thereof; and no such Rule, Order or Regulation, shall have effect until three months after the same has been so laid before both Houses of Parliament. (19 V. c. 43, s. 313.)

Such rules &c. to be laid before both Houses of Parliament

296. Every Rule, Order and Regulation so made shall, from and after such time as aforesaid, be binding and obligatory on the said Courts and on all Courts of Error and Appeal in this Province, into which the judgments of the said Courts or either of them may be removed, and be of like force and effect as if the provisions contained therein had been expressly enacted by the Parliament of this Province. (19 V. c. 43, s. 313.)

And then to be binding on all the Courts, &c.

297. The Governor may, by proclamation, or either of the Houses of Parliament, may by resolution, at any time within three months next after such Rules, Orders and Regulations have been laid before Parliament, suspend the whole or any part of such Rules, Orders or Regulations, and in such case the whole or such part thereof so suspended, shall not be binding or obligatory on the said Courts or on any Court of Error and Appeal; and nothing herein contained shall restrain the authority or limit the jurisdiction of the said Courts or the Judges thereof, to make rules or orders, or otherwise to regulate and dispose of the business therein. (19 V. c. 43, s. 313.)

The Governor or either house of Parliament, may within three months suspend all or any such rules.

Power of the Courts to make occasional rules not restrained.

298. Such new or altered Writs and forms of proceedings shall be issued, entered and taken, as by the Judges of the said Courts, or any four or more of them, of whom the Chief Justices shall be two, may be deemed necessary or expedient for giving effect to the provisions hereinbefore contained, and in such forms as the Judges as aforesaid from time to time think fit to order; and such Writs and proceedings shall be acted upon and enforced in such and the same manner as Writs and proceedings of the said Courts are now acted upon and enforced, or as near thereto as the circumstances of the case will admit; and any existing Writ or proceeding, the form of which is in any manner altered in pursuance of this Act, shall, nevertheless, be of the same force and virtue as if no alteration had been made therein, except so far as the effect thereof may be varied by this Act. (19 V. c. 43, s. 314.)

As to issue &c. of new or altered writs.

As to existing writs of which the form is altered by this Act.

299. The Judges of the said Superior Courts, or any three of them (of whom one of the Chief Justices shall be one,) shall have power to extend and apply to the several County Courts all or any of the rules and orders made or to be made under this Act with and under any modifications they may deem necessary, and shall also have power to make such rules and orders for and specially applicable to, the said County Courts

Judges may extend Superior Court rules to County Courts with modification.

as

as may appear to them expedient for carrying into beneficial effect the laws applicable to the said County Courts. (19 V. c. 43, s. 9.)

Superior Court rules hereafter.

300. All rules and orders of the said Superior Courts after this Act takes effect shall (unless the contrary be expressed therein) extend to the several County Courts. (19 V. c. 43, s. 9.) 5

The words "a Judge" to include Judges of both of the Superior Courts.

301. Whenever any power is given by this Act to the Court or a Judge, the words "a Judge" shall be held to authorize any Judge of either of the said Superior Courts, to exercise such power, altho' the particular proceedings may not be in a cause pending in the Court whereof he is a Judge. (19 V. c. 43, s. 315.) 10

First and last days of all periods of time limited by this Act or any rules or orders to be inclusive.

302. Unless otherwise expressed, the first and last days of all periods of time limited by this Act or by any rules or orders of Court for the regulation of practice, shall be inclusive. (2 Geo. 4, c. 1, s. 22.) 15

All rules in the County Court to be two day rules.

303. All Rules in the County Courts in Term time shall be two day Rules, (where the same Rules in the Superior Courts would be four day Rules,) and be answerable or returnable on the third day inclusive, after service, and may be made absolute at the rising of the Court on that day, and in all cases not otherwise provided for herein, one half of the period allowed in the Superior Courts shall be allowed in the County Courts. (9 V. c. 7, s. 3.) 20

County Courts may set aside proceedings, grant security for costs, &c.

304. The several County Courts in cases therein may, in term time, by rule or order, set aside proceedings for irregularity make orders for judgment non *obstante veredicto*, or stay proceedings until security is given for costs, and the Judges of the County Courts in their respective Courts may exercise the like powers in vacation, and may issue Summons and make orders in all matters of practice in like manner as the Judges of the Superior Courts in their Courts, and may cause rules on a Sheriff, or any other rules, orders or proceedings thereupon to be served in any County. (8 V. c. 13, s. 37.—9 V. c. 7, s. 2.) 25

County Courts to have same power to enforce their rules as the Superior Courts.

305. The several County Courts shall have the same power to enforce their rules as the Superior Courts possess, and may punish by fine or imprisonment, or both for any wilful contempt or resistance to their regular process, rules or orders, but such fine shall in no case exceed twenty-five pounds currency, nor such imprisonment six calendar months. (8 V. c. 13, s. 45.) 30

INTERPRETATION CLAUSE.

Meaning of words "Clerk"

306. The term "Clerk" in this Act shall mean the Clerk of the Crown of each of the Superior Courts and the Clerk of 40

of the County Court (as the case may be,) or according as the proceeding with reference to which the term "Clerk" is used, it applies or may apply to the Superior Courts or County Courts, (reddendo singula singulis) and the term "Deputy Clerk" shall mean Deputy Clerk of the Crown.

307. This Act shall be called and known as and in all proceedings may be cited as "The Common Law Procedure Act." (19 V. c. 43, s. 317.)

SCHEDULE A.

No. 1.—(Vide Section 2.)

WRIT OF SUMMONS WHEN THE DEFENDANT RESIDES WITHIN THE JURISDICTION.

Upper Canada, } VICTORIA, by the Grace of God, &c.
County of } To C. D. of in the County of

(SEAL.)

We command you that within ten days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of , in an action at the suit of A. B. ; and take notice that in default of your so doing the said A. B. may proceed therein to judgment and Execution.

Witness, &c.

In the margin.

Issued from the Office of the Clerk (or Deputy Clerk) of the Crown and Pleas, in the County of

(Signed,) J. H., Clerk (or Deputy Clerk.)

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within six calendar months from the date thereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsements to be made on the Writ before the service thereof.

This Writ was issued by E. F., of , Attorney for the said Plaintiff, or this Writ was issued in person by A. B., who resides at (mention the City, Town, incorporated or other Village, or Township within which such Plaintiff resides).

Also the endorsement required by the twenty-sixth Section of this Act.

Indorsement to be made on the Writ after service thereof.

This Writ was served by X. Y. on C. D., (the Defendant or
 one of the Defendants) on the day of
 one thousand eight hundred and

WRIT OF CAPIAS.

No. 2.—(*Vide* Section 3.)

Upper Canada, } VICTORIA, &c.,
 County of } To the Sheriff of, &c.

(SEAL.)

We command you that you take C. D., if he shall be found in your (County *or* United Counties,) and him safely keep until he shall have given you bail in an action (on promise *or* of debt, &c.) at the suit of A. B., or until the said C. D. shall by other lawful means be discharged from your custody: And we do further command you, that on execution hereof you do deliver a copy hereof to the said C. D.; and We hereby require the said C. D. to take notice that within ten days after execution hereof on him, inclusive of the day of such execution, he cause special bail to be put in for him in our Court of according to the warning hereunder written (*or* endorsed hereon,) and that in default of his so doing, such proceedings may be had and taken as are mentioned in the said warning: And We do further command you the said Sheriff, that immediately after the execution hereof, you do return this Writ to the said Court, together with the manner in which you shall have executed the same, and the day of the Execution thereof, or if the same shall remain unexecuted and shall not be renewed according to law, then that you do return the same at the expiration of six calendar months from the date hereof, or of the last renewal hereof, or sooner if you shall be required there- to by order of the Court or of a Judge.

Witness, &c.

In the margin.

Issued from the Office of the Clerk (*or* Deputy Clerk) of the
 Crown and Pleas, in the County of

(Signed,) J. H. Clerk (*or* Deputy Clerk.)*Memorandum to be subscribed on the Writ.*

N. B.—This Writ is to be executed within six calendar
 months

months from the date hereof, or if renewed, then from the date of such renewal, including the day of such date, and not afterwards.

Warning to the Defendant.

1. If a Defendant being in custody shall be detained on this Writ, or if a Defendant being arrested thereon shall go to prison for want of bail, the Plaintiff may declare against any such Defendant before the end of the Term next after such arrest, and proceed thereon Judgment and execution.

2. If a Defendant having given bail to the Sheriff on the arrest, shall omit to put in special bail conditioned for his surrender to the Sheriff of the County from which the Writ of Capias issued, and file the bail piece in the Office of the Clerk or Deputy Clerk of the Crown and Pleas for the same County, the Plaintiff may proceed against the Sheriff or on the bail bond.

3. If a Defendant having been served with this Writ and not arrested thereon, shall not enter an appearance withing ten days after such service, in the Office of the Clerk or Deputy Clerk of the Crown from which the Writ issued, the Plaintiff may proceed to judgment and execution.

Indorsement to be made on the Writ before the Service thereof.

This Writ was issued by E. F. of Attorney,
&c., as in form No. 1.

Bail for £ by affidavit, or by Judge's order, as the case may be.

Also the Indorsement required by the Twenty-sixth Section of the Act.

Indorsement to be made on the Writ after execution thereof.

This Writ was executed by X. Y., by arresting C. D., or as the case may be, as to service on any Defendant, on the day of one thousand eight hundred and

No. 1.

Schedule referred to in the foregoing Act.

VICTORIA, by the Grace of God, &c.

To C. D. of , in the County of

(PROCESS SEAL.)

We warn you that unless within sixteen days after the service of this Writ on you, inclusive of the day of such service,
15° you

you obtain leave from one of the Judges of our Court of Queen's Bench, or of Common Pleas (*or as the case may be*), at _____ to appear, and do within that time appear in our Court of _____ in an action at the suit of A. B., the said A. B. may proceed to judgment and execution.

Witness, &c.

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within six calendar months from the date hereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the Writ before service thereof.

This Writ was issued by E. F., of _____, Attorney for the Plaintiff, *or* this Writ was issued in person by A B., who resides at (*mention the City, Town incorporated, or other Village or Township within which such Plaintiff resides*).

Indorsement.

The Plaintiff claims £ _____, principal and interest, (*or* £ _____ balance of principal and interest) due to him as the payee (*or* "endorse," &c.) of a Bill of Exchange, (*or* "Promissory Note,") of which the following is a copy (*here copy Bill of Exchange or Promissory Note, and all endorsements upon it*), and also _____ shillings for noting (*or protesting,* " *as the case may be,*) and £ _____ for damages (*if damages be recoverable on the Bill under 12 Vict. chap. 76.*) and £ _____ for costs, and if the amount thereof be paid to the Plaintiff, or his Attorney, within eight days from the service hereof, further proceedings will be stayed.

Notice.

Take notice, that if the Defendant do not obtain leave from one of the Judges of the Queen's Bench or Common Pleas, within sixteen days after having been served with this writ, inclusive of the day of such service, to appear thereto, and do within such time, cause an appearance to be entered for him in the Court out of which this Writ issues, the Plaintiff will be at liberty at any time after the expiration of such sixteen days to sign final judgment, for any sum not exceeding the sums above claimed, and the sum of £ _____ for costs, and issue execution for the same.

Leave to appear may be obtained, on an application at the Judge's Chambers, Osgoode Hall, Toronto, supported by affidavit, shewing that there is a defence to the action on the merits, or that it is reasonable that the Defendant should be allowed to appear in the action.

Indorsement

Indorsement to be made on the Writ after service thereof.

This Writ was served by X. Y. on C. D., (the Defendant or one of the Defendants,) on day, the day of ,
18 .

(Signed,) X. Y.

No. 3.—(*Vide* Section 41.)

WRIT WHERE THE DEFENDANT, BEING A BRITISH SUBJECT,
RESIDES OUT OF UPPER CANADA.

Upper Canada, } VICTORIA, &c.
County of } To C. D., of

(SEAL.)

W command you that within (*here insert a sufficient number of days according to the directions in the Act,*) days after the service of this Writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of , in an action at the suit of A. B. ; and take notice that in default of your so doing, the said A. B. may, by leave of the Court or a Judge, proceed therein to Judgment and execution.

Witness, &c.

In the margin.

Issued from the office of, &c. (*as in foregoing cases.*)

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within six calendar months from the date thereof, or if renewed, then from the date of such renewal, including day of such date, and not afterwards.

Indorsements to be made on the Writ before the Service thereof.

This Writ is for service out of Upper Canada, and was issued by E. F. of , Attorney for the Plaintiff, or this Writ was issued in person by A. B. who resides at (*mentioning Plaintiff's residence, as directed in form No. 1.*)

(*Also the indorsement required by the twenty-sixth Section of the Act, allowing the Defendant two days less than the time limited for appearance; to pay the debt and costs.*)

No. 4.

No. 5—(Vide Section 15.)

SPECIAL INDORSEMENT.

(After the Indorsement required by the twenty-sixth Section of the Act, this special Indorsement may be inserted.)

The following are the particulars of the Plaintiff's claim :

1851.

January 10.—Five barrels of Flour, at 20s.....	£ 5 0
July 2.—Money lent to the Defendant.....	30 0
October 1.—A Horse sold to Defendant.....	25 0
	<hr/>
	£60 0
Paid.....	7 10
	<hr/>
Balance due.....	£52 10

Or,

To Bread, (or Butcher's Meat,) supplied between the 1st January, 1851, and the 1st January, 1852....	£40 0
Paid.....	12 10
	<hr/>
Balance due.....	£27 10

(If any account has been delivered, it may be referred to with its date, or the Plaintiff may give such a description of his claim as on a particular of demand, so as to prevent the necessity of an application for further particulars.)

Or,

£100, principal and interest, due on a bond, dated the day of , conditioned for the payment of £200 and interest.

Or,

£100, principal and interest, due on a covenant contained in a deed dated the day of , to pay £500 and interest.

Or,

£100, on a Bill of Exchange for that amount, dated the 2nd February, 1851, accepted (or drawn or indorsed) by the Defendant, with interest and Notarial charges.

Or,

£100, on a Promissory Note for that amount, dated the 2nd February, 1851, made (or indorsed) by the Defendant, with interest and Notarial charges.

Or,

£100, on a Guarantee, dated the 2nd February, 1851, whereby the defendant guaranteed the due payment by E. F., of goods supplied (or to be supplied) to him.

(In

(In all cases where interest is lawfully recoverable, and is not above expressed, add "the Plaintiff claims interest on £ from the day of until Judgment.")

N. B.—Take notice, that if a Defendant served with this Writ within Upper Canada, do not appear according to the exigency thereof, the Plaintiff will be at liberty to sign final judgment for any sum not exceeding the sum above claimed (with interest) and the sum of for costs, and issue execution at the expiration of eight days from the last day for appearance.

No. 6.—(Vide Section 40.)

WRIT OF CAPIAS IN AN ACTION ALREADY COMMENCED.

Upper Canada, } VICTORIA, &c.
County of } To the Sheriff of &c.

(SEAL.)

We command you, that you take C. D., if he shall be found in your (County or United Counties), and him safely keep, until he shall have given you bail in the action (on promises or of debt &c.), which A. B. has commenced against him, and which action is now pending, or until the said C. D. shall, by other lawful means, be discharged from your custody. And we do further command you, that on execution hereof, you do deliver a copy to the said C. D., and that immediately after execution hereof, you do return this writ to our Court of together with the manner in which you shall have executed the same and the day of the execution hereof; and if the same shall remain unexecuted and shall not be renewed according to law, then that you do so return the same at the expiration of six calendar months from the date hereof, or of the last renewal hereof, or sooner if you shall be required thereto by order of the said Court or a Judge. And We do hereby require the said C. D., that within ten days after execution hereof on him, inclusive of the day of such execution, he cause special bail to be put in for him in our said Court, according to the warning hereunder written or indorsed hereon, and that in default of his so doing, proceedings may be had and taken as are mentioned in the warning in that behalf.

Witness, &c.

In the margin.

Issued from the office of the (Clerk or Deputy Clerk), of the Crown and Pleas, in the County of

(Signed,) J. H., Clerk (or Deputy Clerk.)
Memorandum

Memorandum to be subscribed on the Writ.

N. B.—This writ is to be executed within six calendar months from the date hereof, or if renewed, then from the date of such renewal, including the day of such date, and not afterwards.

Warning to the Defendant.

1. This suit, which was commenced by the service of a Writ of Summons, will be continued and carried on in like manner as if the Defendant had not been arrested on this Writ of Capias.

2. If the Defendant, having given bail to the Sheriff on the arrest on this writ, shall omit to put in special bail for his surrender to the Sheriff of the County from which the Writ of Capias issued, and to file the bail piece in the office of the Clerk or Deputy Clerk of the Crown and Pleas for the County of _____, the Plaintiff may proceed against the Sheriff or on the Bail Bond.

Indorsements to be made on the Writ before the execution thereof.

1. This writ was issued by E. F. of, &c., (as in form No. 1).

2. Bail for £_____ by affidavit or by Judge's order, (as the case may be).

Also the indorsement required by the twenty-sixth section of the Act.

Indorsement to be made on the Writ after the execution thereof.

This Writ was executed by arresting C. D., (according to the facts,) on the _____ day of _____ 18 _____.

No. 7.—(Vide Section 53.)

In the (Q. B. or C. P.)

On the _____ day of _____, A. D. 18 _____.

(Day of signing Judgment.)

Upper Canada, } A. B., in his own person (or by _____ his
to wit: } Attorney) sued out a Writ of Summons against
C. D., indorsed according to The Common Law Procedure
Act, 1856, as follows:

(Here copy special Indorsement.)

And

And the said C. D. has not appeared; therefore it is considered that the said A. B. recover against the said C. D., £ together with £ for costs of suit.

No. 8.—(Vide Section 146.)

In the (Q. B. or C. P.)

The day of , in the year of our Lord, 18 .

County of) Whereas A. B. has sued C. D. and
to wit :) affirms and denies,

(Here state the question or questions of fact to be tried.)

And it has been ordered by the Honorable Mr. Justice according to The Common Law Procedure Act, 1856, that the said question shall be tried by a Jury, therefore let the same be tried accordingly.

No. 9.—(Vide Section 265.)

FORM OF A RULE OR SUMMONS WHERE A JUDGMENT CREDITOR APPLIES FOR EXECUTION AGAINST A JUDGMENT DEBTOR.

(Formal parts as at present.)

C. D., to show cause why A. B., (or as the case may be,) should not be at liberty to enter a suggestion on the roll in an action wherein the said A. B. was Plaintiff, and the said C. D., Defendant, and wherein the said A. B. obtained judgment for £ , against the said C. D., on the day of , that it manifestly appears to the Court that the said A. B. is entitled to have execution of the said judgment, and to issue execution thereupon, and why the said C. D. should not pay to the said A. B. the costs of this application to be taxed.

NOTE.—The above may be modified so as to meet the case of an application by or against the representative of a party to the Judgment.

No. 10.—(*Vide* Section 266.)

FORM OF SUGGESTION THAT THE JUDGMENT CREDITOR IS ENTITLED TO EXECUTION AGAINST THE JUDGMENT DEBTOR.

And now, on the _____ day of _____ it is suggested and manifestly appears to the Court, that the said A. B. (or E. F., as executor of the last Will and Testament of the said A. B., deceased, or as the case may be,) is entitled to have execution of the judgment aforesaid, against the said C. D., (or against G. H., as executor of the last Will and Testament of the said C. D., or as the case may be,) therefore it is considered by the Court, that the said A. B., or E. F., as such executor as aforesaid, or as the case may be, ought to have execution of the said judgment against the said C. D., (or against G. H., as such executor as aforesaid, or as the case may be.)

No. 11.—(*Vide* Section 268.)

FORM OF WRIT OF REVIVOR.

VICTORIA, &c.,

To C. D., of

GREETING :

We command you, that within ten days after the service of this Writ upon you, inclusive of the day of such service, you appear in our Court of _____, to shew cause why A. B., (or E. F., as executor of the last Will and Testament of the said A. B., deceased, or as the case may be,) should not have execution against you, (if against a representative, here insert, as executor of the last Will and Testament of _____, deceased, or as the case may be,) of a judgment whereby the said A. B., or as the case may be, recovered against you, (or as the case may be,) £ _____, and take notice that in default of your doing so, the said A. B., (or as the case may be,) may proceed to execution.

Witness, &c.,

SCHEDULE B.

FORMS OF PLEADINGS.—*Vide* Section 85.)

ON CONTRACTS.

1. Money payable by the Defendant to the Plaintiff for these words "money payable," &c., should precede money counts like

1 to 11, *but need only be inserted in the first*) goods bargained and sold by the Plaintiff to the Defendant.

2. Work done and materials provided by the Plaintiff for the Defendant at his request.

3. Money lent by the Plaintiff to the Defendant.

4. Money paid by the Plaintiff for the Defendant at his request.

5. Money received by the Defendant for the use of the Plaintiff.

6. Money found to be due from the Defendant to the Plaintiff on accounts stated between them.

7. A messuage and lands sold and conveyed by the Plaintiff to the Defendant.

8. The Defendant's use by the Plaintiff's permission of messuage and lands of the Plaintiff.

9. The hire of (*as the case may be*) by the Plaintiff let or hire to the Defendant.

10. Freight for the conveyance of the Plaintiff for the Defendant at his request of goods in (ships, &c.)

11. The demurrage of a (ship) of the Plaintiff kept on demurrage by the Defendant.

12. That the Defendant on the _____ day of _____ A. D. by his Promissory Note now overdue, promised to pay to the Plaintiff £ _____ (*two*) months after date, but did not pay the same.

13. That one A, on, &c., (*date*) by his Promissory Note now overdue, promised to pay the Defendant or order £ _____ (*two*) months after date, and the Defendant indorsed the same to the Plaintiff, and the said Note was duly presented for payment and was dishonored, whereof the Defendant had due notice, but did not pay the same.

14. That the Plaintiff on, &c. (*date*) by his Bill of Exchange now overdue, directed to the Defendant, required the Defendant to pay to the Plaintiff £ _____ (*two*) months after date, and the Defendant accepted the said Bill, but did not pay the same.

15. That the Defendant on, &c., (*date*), by his Bill of Exchange to A, required A to pay the Plaintiff £ _____ (*two*) months after date, and the said Bill was duly presented for acceptance and

and was dishonored, of which the Defendant had due notice, but did not pay the same.

16. That the Plaintiff and Defendant agreed to marry one another, and a reasonable time for such marriage has elapsed, and the Plaintiff has always been ready and willing to marry the Defendant, yet the Defendant has neglected and refused to marry the Plaintiff.

17. That the Defendant by warranting a horse to be then sound and quiet to ride, sold the said horse to the Plaintiff, yet the said horse was not then sound and quiet to ride.

18. That the Plaintiff and Defendant agreed by charter party, that the Plaintiff's schooner called the *Toronto*, should with all convenient speed sail to *Hamilton*, and that the Defendant should there load her with a full cargo of flour and other lawful merchandize, which she should carry to *Kingston* and there deliver, on payment of freight per barrel, and that the Defendant should be allowed four days for loading and four days for discharging, and four days for demurrage, if required, at £ per day; and that the Plaintiff did all things necessary on his part to entitle him to have the agreed cargo loaded on board the said schooner at *Hamilton*, and that the time for so loading has elapsed, yet the Defendant made default in loading the agreed cargo.

19. That the Plaintiff let the Defendant a house, being (*designate it*) for years to hold from the day of A. D. at £ a year, payable quarterly, of which rent quarters are due and unpaid.

20. The Plaintiff by deed let to the Defendant a house, (*designate it*) to hold for seven years from the day of A. D. and the Defendant by the said deed covenanted with the Plaintiff, well and substantially to repair the said house during the said term (*according to the covenant*), yet the said house was during the said term out of good and substantial repair.

FOR WRONGS INDEPENDENT OF CONTRACT.

21. That the Defendant broke and entered certain land of the Plaintiff called lot No. &c., and depastured the same with cattle.

22. That the Defendant assaulted and beat the Plaintiff, gave him into custody to a Constable, and caused him to be imprisoned in the Common Gaol.

23. That the Defendant debauched and carnally know the Plaintiff's wife.

24. That the Defendant converted to his own use (or wrongly deprived the Plaintiff of the use and possession of) the Plaintiff's goods, that is to say—(mentioning what articles, as for instance, household furniture.)

25. That the Defendant detained from the plaintiff his title deeds of land called lot No. &c. in &c. that is to say, (describe the deeds.)

26. That the Plaintiff was possessed of a mill, and by reason thereof was entitled to the flow of a stream for working the same, and the Defendant, by cutting the bank of the said stream, diverted the water thereof away from the said mill.

27. That the Defendant, having no reasonable or probable cause for believing that the Plaintiff was immediately about to leave Upper Canada with intent and design to defraud the Defendant, maliciously caused the Plaintiff to be arrested and held to bail for £

28. That the Defendant falsely and maliciously spoke and published of the Plaintiff the words following, that is to say, "He is a thief" (if there be any special damage, here state it, with such reasonable particularity as to give notice to the Defendant of the peculiar injury complained of, as for instance, whereby the Plaintiff lost his situation as shopman in the employ of N.)

29. That the defendant falsely and maliciously published of the Plaintiff in a newspaper called the words following, that is to say: "He is a regular prover under bankruptcies," the Defendant meaning thereby that the Plaintiff had proved; and was in the habit of proving, fictitious debts against the estates of bankrupts, with the knowledge that such debts were fictitious.

COMMENCEMENT OF PLEA.

30. The Defendant by his Attorney (or in person) says (here state the substance of the Plea.)

31. And for a second Plea, the Defendant says (here state the second Plea.)

Plea in actions on Contracts.

32. That he never was indebted as alleged. (N. B.—This plea is applicable to other declarations like those numbered 1 to 11.)

33. That he did not promise as alleged. (*This plea is applicable to other declarations on simple contracts not on bills or notes, such as those numbered 16 to 19. It would be objectionable to use "did not warrant," "did not agree," or any other appropriate denial.*)

34. That the alleged deed is not his deed.

35. That the alleged cause of action did not accrue within years (*state the period of limitation applicable to the case*) before the suit.

36. That before action he satisfied and discharged the Plaintiff's claim by payment.

37. That the Plaintiff, at the commencement of this suit, was, and still is, indebted to the Defendant in an amount equal to (or greater than) the Plaintiff's claim for (*state the cause of set off as in a declaration, see form ante,*) which amount the Defendant is willing to set off against the Plaintiff's claim, (or, and the Defendant claims to recover a balance from the Plaintiff.)

38. That after the claim accrued, and before this suit, the Plaintiff, by deed, released the Defendant therefrom.

PLEAS IN ACTIONS FOR WRONGS INDEPENDENT OF CONTRACT.

39. That he is not guilty.

40. That he did what is complained of by the Plaintiff's leave.

41. That the Plaintiff first assaulted the Defendant, who thereupon necessarily committed the alleged assault in his own defence.

42. That the Defendant, at the time of the alleged trespass, was possessed of land, the occupiers whereof, for twenty years before this suit, enjoyed, as of right and without interruption, a way on foot and with cattle from a public highway over the said land of the Plaintiff to the said land of the Defendant, and from the said land of the Defendant over the said land of the Plaintiff, to the said public highway, at all times of the year, for the more convenient occupation of the said land of the Defendant, and that the alleged trespass was the use by the Defendant of the said way.

REPLICATIONS.

43. The Plaintiff takes issue upon the Defendant's first, second, &c., pleas.

44.

44. The Plaintiff as to the second Plea, says: (*here state the answer to the plea, or in the following forms.*)

45. That the alleged release is not the Plaintiff's deed.

46. That the alleged release was procured by the fraud of the Defendant.

47. That the alleged set off did not accrue within six years before this suit.

48. That the Plaintiff was possessed of land whereon the Defendant was trespassing and doing damage, whereupon the Plaintiff requested the Defendant to leave the said land, which the Defendant refused to do, and thereupon the Plaintiff gently laid his hands upon the Defendant in order to secure him, doing no more than was necessary for that purpose, which is the alleged first assault by the Plaintiff.

49. That the occupiers of the said land did not for twenty years before this suit, enjoy, as of right and without interruption, the alleged way.

NEW ASSIGNMENT.

50. The Plaintiff as to the and pleas, says, that he sues not for the trespasses therein admitted, but for trespasses committed by the Defendant in excess of the alleged rights, and also in other parts of the said land, and on other occasions and for other purposes than those referred to in the said pleas.

If the Plaintiff replies and new assigns, the new assignment may be as follows:

51. And the Plaintiff as to the and pleas, further says that he sues, not only for the trespasses in those pleas admitted, but also for, &c.

If the Plaintiff replies and new assigns to some of the pleas, and new assigns only to the other, the form may be as follows:

52. And the Plaintiff as to the and pleas, further says that he sues, not for the trespasses in the pleas (*the pleas not replied to*) admitted, but for the trespasses in the pleas, (*the pleas replied to*) admitted, and also for, &c.

C A P .

CAP. XXVII.

An Act respecting Writs of *Mandamus* and Injunction.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

MANDAMUS.

1. The Plaintiff, in any action except replevin or ejectment
5 in either of the Superior Courts, may indorse upon the Writ and copy to be served, a notice that the Plaintiff intends to claim a Writ of *Mandamus*, and the Plaintiff may thereupon claim in the declaration, either together with any other demand which may now be enforced in such action, or separately, a Writ of
10 *Mandamus* commanding the Defendant to fulfil any duty in the fulfilment of which the Plaintiff is personally interested. (19 V. c. 43, s. 275.)
2. The declaration in such action shall set forth sufficient
15 ground upon which the claim is founded, and shall set forth that the Plaintiff is personally interested therein, and that he has sustained or may sustain damage by the non-performance of such duty, and that performance thereof has been demanded by him and refused or neglected. (19 V. c. 43, s. 276)
3. The pleadings and other proceedings in any action in
20 which a Writ of *Mandamus* is claimed, shall be the same in all respects as nearly as may be, and costs shall be recoverable by either party, as in an ordinary action for the recovery of damages; and in case Judgment is given for the plaintiff that a
25 *Mandamus* do issue, the Court in which such Judgment is given, besides issuing execution in the ordinary way for the costs and damages, may also issue a peremptory Writ of *Mandamus* to the Defendant, commanding him forthwith to perform the duty to be enforced. (19 V. c. 43, s. 277.)
4. Such Writ need not recite the declaration or other pro-
30 ceedings or the matter therein stated, but shall simply command the performance of the duty, and in other respects shall be in the form of an ordinary Writ of Execution, except that it shall be directed to the party and not to the Sheriff, and may be issued in term or vacation and be made returnable forthwith,
35 and no return thereto, except that of compliance, shall be allowed, but time to return it may upon sufficient ground be allowed by the Court or a Judge, either with or without terms. (19 V. c. 43, s. 278.)
5. The Writ of *Mandamus* so issued as aforesaid, shall have
40 the same force and effect as a Peremptory Writ of *Mandamus*, and in case of disobedience, may be enforced by attachment. (19 V. c. 43, s. 279.)

When a *Mandamus* may be obtained on equitable grounds.

Form of Declaration.

The pleadings to be as in ordinary actions as near as may be.

What the Writ shall require.

Force and effect of the Writ.

When the Court may direct a substituted performance.

6. The Court may upon application by the Plaintiff, besides or instead of proceeding against the disobedient party by attachment, direct that the act required to be done may be done by the Plaintiff or some other person appointed by the Court, at the expense of the Defendant, and upon the act being done, the amount of such expense may be ascertained by the Court either by Writ of enquiry or reference to the proper officer, as the Court or a Judge may order, and the Court may order payment of the amount of such expenses and costs, and enforce payment thereof by execution. (19 V. c. 43, s. 280.) 5 10

But the provisions of this Act shall apply to prerogative Writs.

7. Upon application by motion for a Writ of *Mandamus*, the rule may in all cases be absolute in the first instance, if the Court thinks fit, and the Writ may bear test on the day of its issuing, and may be made returnable forthwith whether in term or in vacation, but time may be allowed to return it by the Court or a Judge either with or without terms. (19 V. c. 43, s. 282.) 15

Jurisdiction as to Writs of *Mandamus* not to be affected.

8. Nothing herein contained shall take away the Jurisdiction of either of the Superior Courts to grant Writs of *Mandamus*; nor shall any Writ of *Mandamus* issued out of such Courts be invalid by reason of the right of the prosecutor to proceed by action for *Mandamus* under this Act, but the provisions of this Act, so far as they are applicable, shall apply to the pleadings and proceedings upon a prerogative Writ of *Mandamus* issued by either of the Superior Courts. (19 V. c. 43, s. 281.) 20 25

INJUNCTION.

When a Writ of Injunction may issue by Courts of Law.

9. In all cases of breach of contract or other injury, where the party injured is entitled to maintain and has brought an action, he may in like case and manner as hereinbefore provided, with respect to *Mandamus*, claim a Writ of injunction against the repetition or continuance of such breach of contract or other injury, or the committal of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right, and he may also in the same action include a claim for damages or other redress. (19 V. c. 43, s. 283.) 30

The summons and indorsement thereon.

10. The Writ of Summons in such action shall be in the same form as the Writ of Summons in any personal action, but on every such Writ and copy thereof, there shall be indorsed a notice, that in default of appearance the Plaintiff may, besides proceeding to Judgment and execution for damages and costs, apply for and obtain a Writ of injunction. (19 V. c. 43, s. 284.) 35 40

The proceedings to be similar to those in cases of *Mandamus*.

11. The proceedings in such action shall be the same as nearly as may be, and subject to the like control as the proceedings in an action to obtain a *Mandamus* under the provisions hereinbefore contained, and in such action Judgment may be given that the Writ of injunction do or do not issue as justice may 45

may require ; and in case of disobedience, such Writ of injunction may be enforced by attachment by the Court, or when such Court is not sitting, by a Judge. (19 V. c. 43. s. 285.)

12. The Plaintiff may at any time after the commencement of the action, and whether before or after Judgment, apply *ex parte* to the Court or a Judge for a Writ of injunction to restrain the Defendant in such action from the repetition or continuance of the wrongful act or breach of contract complained of or the committal of any breach of contract or injury of a like kind, arising out of the same contract or relating to the same property or right ; and such Writ may be granted or denied by the Court or Judge upon such terms as to the duration of the Writ—keeping an account—giving security—or otherwise, as to such Court or Judge seems reasonable and just ; and in case of disobedience, such Writ may be enforced by attachment by the Court, or when such Court is not sitting, by a Judge.

When Injunction may be had after action brought.

13. Any order for a Writ of injunction made by a Judge, or any Writ issued by virtue thereof, may be discharged, or varied or set aside by the Court on application made thereto by any party dissatisfied with such order. (19 V. c. 43, s. 286.)

Writs and orders for Writs to be under the control of the Court.

CAP. XXVIII.

An Act respecting the Practice and Procedure in Suits instituted on behalf of the Crown, in matters relating to the Revenue.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

- Commissions, extents, &c. may be issued and be returnable in vacation. **1.** Any Commissions, Extents, Writs, or other Process issued from either of the Superior Courts of Common Law for Upper Canada by or on behalf of the Crown, may be tested, made returnable and returned on any day certain in Term or Vacation to be named in such Commission, Extent, Writ or other Process. (20 V. c. 2, s. 1.) 5
- Rules may be issued and proceedings had in vacation. **2.** At the return of any such Commission, Extent, Writ or other Process, the like rules may be given, and such other proceedings had, and any such subsequent Writs and Process issued, at any time in Vacation, as may be given, had or issued in Term-time. (20 V. c. 2, s. 1.) 10
- Writs issued in Vacation as valid as if in Term time. **3.** All Commissions, Extents, Writs or other Process, rules and proceedings, issued or had in Vacation, shall be as valid and effectual as if the same had been issued or had in Term. (20 V. c. 2, s. 1.) 15
- Time for filing, pleading, not altered. **4.** Nothing herein contained shall extend to alter the time for filing any pleadings. 20 V. c. 2, s. 1. 20
- After claims to goods seized exceed the exchequer, practice in England to govern. **5.** In case any person enters a claim to any goods seized under any Extent, or returned as forfeited (which he may do in Vacation), the further proceedings shall be according to the ordinary practice of the Court of Exchequer in England. (20 V. c. 2, s. 1.) 25
- Attorney General may recover costs in Revenue cases. **6.** In all informations, actions, suits and other legal proceedings before any Court or Tribunal whatever in Upper Canada, by or on behalf of the Crown, against any Corporation or person, in respect of any lands, tenements or hereditaments, or of any goods or chattels belonging to or accruing to the Crown, or standing or being in the name of Her Majesty, or in respect of any sum of money due and owing to Her Majesty, by virtue of any vote of Parliament for the service of the Crown, or of any Act of Parliament relating to the public Revenue, or in any manner whatsoever, in which judgment is given for the Crown, Her Majesty's Attorney General for Upper Canada may recover costs, in the same manner and under the same rules, regulations and provisions in force touching the payment or receipt of costs in proceedings between Subject and Subject. (20 V. c. 2, s. 2.) 30 35

7. If in any such information, action, suit or other proceeding, judgment is given against the Crown, the defendant may recover costs, in like manner and subject to the same rules and provisions as though such proceeding had been had between Subject and Subject; And the Receiver General shall pay such costs out of any moneys which may be hereafter voted by Parliament for that purpose. (20 V. c. 2, s. 2.)

Defendant
may recover
costs in rev-
enue cases.

8. The Judges of the Superior Courts of Common Law in Upper Canada, or any four of them, of whom the Chief Justices shall be two, may make such general rules and orders for the regulation of the pleading and practice on informations, suits and other proceedings instituted by or on behalf of the Crown, in Her Majesty's Courts of Common Law in Upper Canada, and frame such writs and forms of proceedings, as to them seem expedient. (20 V. c. 2, s. 3.)

Superior
Courts of
Common Law
to make rules,
&c.

9. All such rules, orders or regulations shall be laid before both Houses of Parliament, immediately upon the making of the same, if Parliament be then sitting, or, if Parliament be not then sitting, within five days after the next meeting thereof. (20 V. c. 2, s. 3.)

Rules to be
laid before
Parliament.

10. No such rule, order or regulation shall have effect until three months after the same has been so laid before both Houses of Parliament. (20 V. c. 2, s. 3.)

Not to have
effect for 3
months after
laid before
Parliament.

11. Any rule, order or regulation so made, shall, from and after such time, be binding and obligatory on all Courts of Common Law and on all Courts of Error or Appeal into which any Judgment of the said Courts may be carried. (20 V. c. 2, s. 3.)

Rules to be
binding, &c.

12. The Governor in Council, may, by Proclamation inserted in the *Canada Gazette*, or either of the Houses of Parliament, may by Resolution passed at any time within three months next after such rules, orders and regulations have been laid before Parliament, suspend the whole or any part of such rules, orders or regulations; in which case the whole, or the part thereof so suspended, shall not be binding on the Superior Courts, or on any other Court of Common Law, or Court of Error or Appeal. (20 V. c. 2, s. 3.)

The Governor
or houses of
Parliament
may suspend
Rules.

C A P . X X I X .

An Act respecting Ejectment.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- How action to be commenced.** 1. Actions of ejectment shall be commenced by Writ, directed to the persons in possession by name, and to all persons entitled to defend the possession of the property claimed, which property shall be described in the Writ with reasonable certainty. (19 V. c. 43, s. 220.) 5
- Contents of Writ.** 2. The Writ shall state the names of all the persons in whom the title is alleged to be, and command the persons to whom it is directed to appear in the Court from which it is issued, within sixteen days after service thereof, to defend the possession of the property sued for, or such part thereof as they may think fit, and it shall contain a notice that in default of appearance they will be turned out of possession. 10 15
- Teste and out of what office to issue.** 3. The Writ shall bear teste of the day on which it issues, and shall be issued out of the office in the County wherein the lands lie, and shall be in force for three months, and shall be in the form contained in the Schedule (A) to this Act annexed, marked No. 1, or to the like effect, and the name and abode of the Attorney issuing the same (or if no Attorney, the name and residence of the party) shall be endorsed thereon, in like manner as the endorsements on Writs of Summons in a personal action, and the same proceedings may be had to ascertain whether the Writ was issued by the authority of the Attorney whose name appears indorsed thereon, and who and what the Claimants are, and their abode, and as to staying the proceedings upon Writs issued without authority, as in the case of Writs in personal actions. (19 V. c. 43, s. 221.) 20 25
- Duration and contents of.**
- Notice of plaintiffs, title to be attached to the Writ.** 4. To the Writ and to every copy thereof served on any party, shall be attached a notice of the nature of the title intended to be set up by the Claimant, as for example by grant from the Crown, or by deed, lease or other conveyance derived from or under the grantee of the Crown, or by marriage, descent or devise, stating to or from whom, or by length of possession, or otherwise, with reasonable certainty according to the nature of the Claimant's title. 19 V. c. 43, s. 222. 30 35
- Such notice limited to one claim of title.** 5. Such notice shall not contain more than one mode in which title is set up, without leave of the Court or a Judge, and at the trial the Claimant shall be confined to proof of the title set up in the notice ; But the Claimant shall not be required to set out in such notice the dates or particular contents of any Letters Patent, Deeds, Wills or other instruments or writings, which shew or 40

or support his title, or the date of any marriage or death, unless it be specially directed by order of the Court or a Judge. (19 V. c. 43, s. 222.)

6. The Writ shall be served in the same manner as a Service of
5 declaration in ejectment was formerly served, or in such man- Writ.
ner as the Court or a Judge may order.

7. In case of a vacant possession, service may be by posting Possessors
a copy thereof upon the door of the dwelling house or other vacant.
conspicuous part of the property. (19 V. c. 43, s. 222.)

10 8. The persons named as Defendants in such Writ, or any When tenant
of them, may appear within the time appointed; and with the to appear and
appearance shall file a notice addressed to the Claimant, stating notice to be
that besides denying the title of the Claimant, the party asserts thereupon
15 title in himself, or in some other person, (stating who) under given.
whom he claims, and setting forth the mode in which such title
is claimed, in like manner, to the same extent, and subject to
the same conditions, rules and restrictions as are hereinbefore
set forth in respect to the notice of a Claimant's title, and the
giving proof thereof at the trial. (19 V. c. 43, s. 224.)

20 9. Any other person not named in such Writ, may, by leave Landlords
of the Court or a Judge, appear and defend, on filing an affi- may appear.
davit shewing that he is in possession of the land either by
himself or his tenant. (19 V. c. 43, s. 225.)

10. All appearances shall be entered and all subsequent In what office
25 proceedings conducted in the Office from which the Writ appear, and
issued. (19 V. c. 43, s. 226.) proceedings to
be entered.

11. Any person appearing, in person or by his tenant, to What land-
defend as landlord in respect of property whereof he is in pos- lords to do if
session, shall state in his appearance that he appears as landlord, they appear.
30 and he may set up any defence which a landlord appearing in
an ejectment has heretofore been allowed to set up, and no
other (19 V. c. 43, s. 227.)

12. Any person appearing to such Writ may limit his de- The defence
fence to a part only of the property mentioned therein may be limit-
35 describing that part with reasonable certainty in a notice entit- ed if notice
led in the Court and cause, and signed by him or his Attorney, given.
which notice must be served within four days after appearance,
upon the Attorney whose name is endorsed on the Writ if any,
and if none, then filed in the proper Office; and an ap-
40 pearance without such notice confining the defence to a part,
shall be deemed an appearance to defend for the whole. (19
V. c. 43, s. 228.)

13. Want of "reasonable certainty" in the description of the If notice too
property or part of it, in the Writ, or in the notice of defence, or in vague, a letter
the

may be ordered. the notice of the title given by either party, shall not nullify them, but shall only be ground for an application to a Judge for better particulars of the land claimed or defended, or of the title thereto, which a Judge may order in all cases. (19 V. c. 43, s. 229.)

5

Defence of persons out of possession may be restrained. **14.** The Court or a Judge may strike out or confine appearances and defences set up by persons not in possession by themselves or their tenants. (19 V. c. 43, s. 230.)

Judgment in case of non-appearance or defence for part only. **15.** In case no appearance has been entered within the time appointed, or if an appearance has been entered, but the defence has been limited to part only, the Plaintiff may sign a Judgment that the person whose title is asserted in the Writ shall recover possession of the land, or of the part thereof to which the defence does not apply, which Judgment if for all may be in the form contained in the Schedule (A) to this Act annexed, marked No. 2, or to the like effect, and if for part may be in the form contained in the Schedule (A) to this Act annexed, marked No. 3, or to the like effect. (19 V. c. 43, s. 231.)

Form of.

20

If appearance is entered and plaintiff may make up issue. **16.** In case an appearance is entered, an issue may be made up without any pleadings, by the Claimants or their Attorney, setting forth the Writ and stating the fact of the appearance with its date, and the notice limiting the defence, if any, of each of the persons defending, so that it may appear for what defence is made, and directing the Sheriff to summon a Jury; and such issue, in case defence is made for the whole, may be in the form contained in the Schedule (A) to this Act annexed, marked No. 4, or to the like effect, and in case defence is made for part, may be in the form contained in the Schedule (A) to this Act annexed, marked No. 5, or to the like effect. (19 V. c. 43, s. 232.)

Form of.

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Vexatious defences without merits provided for. **17.** It being desirable not to prevent Claimants in actions of Ejectment brought against persons who are merely intruders from recovering land to which they have just Claim on account of some want of technical form in their title, or some imperfection not affecting the merits of their case and of which mere Strangers to the title having no Claim or colour of legal Claim to the possession should not be permitted to take advantage; the Claimant or his attorney, in any action of ejectment, may serve a notice upon the defendant in words or to the effect following: (4 W. 4, c. 1, s. 52.)

35

40

Form of notice.

“Take notice that I claim the premises for which this action is brought as the bonâ fide purchaser thereof, from A. B.—, or as heir-at-law of A. B., of—, (or otherwise, as the case may be,) and that you will be required to show upon the trial of this cause what legal right you have to the possession of the premises;”

. If

18. If upon the trial of such ejectment, the evidence of title given by the Claimant satisfies the Court and Jury that he is entitled in justice to be regarded as the proprietor of the land, or is entitled to the immediate possession thereof for any term of years, but that he cannot shew a perfect legal title by reason of some want of legal form in some instrument produced, or by reason of the defective registration of some will or instrument produced, or from any cause not within the power of the Claimant to remedy by using due diligence, the Jury, under the direction of the Court may find a verdict for the plaintiff, unless the defendant, or his counsel, upon being required by the other party so to do, gives such evidence of title as shews that he is the person legally entitled, or does bonâ fide claim to be the person legally entitled to the land, by reason of the defect in the title of the Claimant, or that he holds, or does bonâ fide claim to hold, under the person so entitled.

Formal defects in plaintiff's title aided, when and how.

19. When a verdict is rendered under the authority of the foregoing provision, it shall be endorsed as given under this Act and it shall be stated in the postea and entry of the judgment Act, to have been so given; and in any action thereafter brought for the mesne profits, such judgment in ejectment shall not be evidence to entitle the Claimant to recover. (4 W. 4, c. 1, s. 52.)

The verdict to be endorsed as rendered under this Act.

20. By consent of the parties and by leave of a Judge, a special case may be stated as in other actions. (19 V. c. 43, s. 233.)

A special case may be stated.

21. If no special case is agreed to, the Claimants may proceed to trial in the same manner as in other actions, and the particulars of the claim and defence and of the notices of Claimant and Defendant of their respective titles, if any, or copies thereof, shall be annexed to the record by the Claimants; and except in the cases hereinafter mentioned, the question at the trial shall be whether the statement in the Writ of the title of the Claimants is true or false, and if true, then which of the Claimants is entitled, and whether to the whole or part, and if to part, then to which part of the property in question; and the entry of the verdict may be made in the form contained in the Schedule (A) to this Act annexed, marked No. 5, or to the like effect, with such modifications as may be necessary to meet the facts. (19 V. c. 43, s. 234.)

Questions to be tried if in special case agreed upon.

Form of entry of verdict.

22. In case the title of the Claimant as alleged in the Writ existed at the time of service thereof, but had expired before the trial, the Claimant shall, notwithstanding, be entitled to a verdict, that he was entitled at the time of serving the Writ, and to judgment for his costs of suit. (19 V. c. 43, s. 235.)

If claimant was entitled at service of Writ, but not afterwards.

- 23.** The Court or a Judge may, on the application of either party, on grounds shewn by affidavit, order that the trial shall take place in any County other than that in which the venue is laid, and such order being suggested on the record, the trial may be had accordingly. (19 V. c. 43, s. 236.) 5
- 24.** If the Defendant appears, and the Claimant does not appear at the trial, the Claimant shall be non-suited, and if the Claimant appear and the Defendant does not appear, the Claimant shall be entitled to recover without any proof of his title. (19 V. c. 43, s. 237.) 10
- 25.** The Jury may find a special verdict, or either party may tender a bill of exceptions. (19 V. c. 43, s. 238.)
- 26.** Upon a finding for the Claimant, Judgment may be signed and execution issued for the recovery of possession of the property or of such part thereof as the Jury have found the Claimant entitled to, and for costs, within the time not exceeding the fifth day in Term next after the verdict ordered by the Court or Judge who tried the cause, and if no such order has been made, then on the fifth day in Term next after the verdict. (19 V. c. 43, s. 239.) 15 20
- 27.** Upon a finding for the Defendants, or any of them, Judgment may be signed and execution for costs issued against the Claimants named in the Writ, within the same time, and in like manner as upon a finding for the Claimant. (19 V. c. 43, s. 240.) 25
- 28.** Upon Judgment for recovery of possession and costs, there may be either one Writ or separate Writs of Execution for the recovery of possession, and for the costs, at the election of the Claimant. (19 V. c. 43, s. 241.) 30
- 29.** In case the action has been brought by some or one of several persons entitled as joint tenants, tenants in common or coparcenary, any joint tenant, tenant in common or coparcener in possession, may, at the time of appearance or within four days after, give notice in the same form as the notice of a limited defence, that he defends as such and admits the right of the Claimant to an undivided share of the property (stating what share), but denies any actual ouster of him, from the property, and may within the same time file an affidavit, stating with reasonable certainty, that he is joint tenant, tenant in common or coparcener, and the share of such property to which he is entitled, and that he has not ousted the Claimant, and such notice shall be entered in the issue in the same manner as the notice limiting the defence, and upon the trial of such an issue, the additional question of whether an actual ouster had taken place shall be determined. (19 V. c. 43, s. 242.) 35 40 45

30. If upon the trial of such issue as last aforesaid, it is found that the Defendant is joint tenant, tenant in common, or coparcener with the Claimant, then the question whether an actual ouster had taken place shall be tried, and unless such actual ouster is proved the Defendant shall be entitled to Judgment and costs; but if it is found either that the Defendant is not such joint tenant, tenant in common, or coparcener, or that an actual ouster had taken place, *etc.* the Claimant shall be entitled to Judgment for the recovery of possession and costs. (19 V. c. 43, s. 243.)

Question to be tried if such joint tenancy &c., with claimant be found, &c., and the contrary.

31. The death of a Claimant or Defendant shall not cause the action to abate, but it may be continued as hereinafter provided. (19 V. c. 43, s. 244.)

Death of either party not to abate action, &c.

32. In case of the death of Claimant if the right of the deceased Claimant survives to another Claimant, a suggestion may be made of the death, which suggestion shall not be traversable, but shall only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving Claimant; and if such a suggestion has been made before the trial, then the surviving Claimant shall have a verdict, and recover such Judgment as aforesaid, upon proof that he was entitled to bring the action either separately or jointly with the deceased Claimant. 19, V. c. 43, s. 245.

Right of one claimant surviving to another.

33. In case of the death before trial of one of several Claimants, whose right does not survive to another or others of the surviving Claimants, and the legal representative of the deceased Claimant does not become a party to the suit in the manner hereinafter mentioned, a suggestion may be made of the death, which suggestion shall not be traversable, but may only be subject to be set aside if untrue, and the action may proceed at the suit of the surviving Claimant for such share of the property as he is entitled to and costs. 19 V. c. 43, s. 246.

If the right of the deceased claimant does not survive to another, &c.

34. In the case of a verdict for two or more Claimants, if one of such Claimants dies before execution executed, the other Claimant may, whether the legal right to the property survives or not, suggest the death in manner aforesaid, and proceed to Judgment and execution for the recovery of possession of the entirety of the property and the costs; but this shall not affect the right of the legal representative of the deceased Claimant, or the liability of the surviving Claimant to such legal representative, and the entry and possession of such surviving Claimant under such execution shall be considered an entry and possession on behalf of such legal representative in respect of the share of the property to which he is entitled as such representative, and the Court may direct possession to be delivered accordingly. (19 V. c. 43, s. 247.)

One or more of several claimants dying after verdict for them but before execution.

35. In case of the death of a sole Claimant, or before trial of one of several Claimants whose right does not survive to another or others of the Claimants, the legal representative of such Claimant may, by leave of the Court or a Judge, enter a suggestion of the death, and that he is such legal representative, and the action shall thereupon proceed, and if such suggestion has been made before the trial, the truth of the suggestion shall be tried thereat, together with the title of the deceased Claimant, and such Judgment shall follow upon the verdict in favor of or against the person making such suggestion, as hereinbefore provided with reference to a Judgment for or against such Claimant; and if in case of a sole Claimant such suggestion is made after trial and before execution executed by delivery of possession thereunder, and such suggestion be denied by the Defendant within eight days after notice thereof, or such further time as the Court or a Judge may allow, then such suggestion shall be tried, and if upon the trial thereof, a verdict passes for the person making such suggestion, he shall be entitled to such Judgment as aforesaid, for the recovery of possession and for the costs of and occasioned by such suggestion, and in case of a verdict for the Defendant, such Defendant shall be entitled to such Judgment as aforesaid for costs. (19 V. c. 43, s. 248.)

36. In case of the death before or after Judgment of one of several Defendants who defend jointly, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the action may proceed against the surviving Defendant to Judgment and execution. (19 V. c. 43, s. 249.)

37. In case of the death of a sole Defendant, or of all the Defendants before trial, a suggestion may be made of the death, which suggestion shall not be traversable, but only be subject to be set aside if untrue, and the Claimants shall be entitled to Judgment for recovery of possession of the property, unless some other person appears and defends within a time appointed for that purpose, by the order of the Court or a Judge, made upon the application of the Claimants.

38. The Court or a Judge upon such suggestion being made, and upon such application as aforesaid, may order that the Claimants shall be at liberty to sign Judgment at such time as the Court or a Judge thinks fit, unless the person then in possession by himself or his tenant or the legal representative of the deceased Defendant, appears within such time and defends the action; and such order may be served in the same manner as the Writ, and in case such person appears and defends, the same proceedings may be taken against such new Defendant as if he had originally appeared and defended the action, and if no appearance be entered and defence made, then the Claimant may sign Judgment pursuant to the order. (19 V. c. 43, s. 250.)

39. In case of the death of a sole defendant or of all the Defendants, after verdict, the Claimants shall nevertheless be entitled to Judgment as if no such death had taken place, and may proceed by execution for recovery of possession with-
5 out suggestion or revivor, and may proceed for the recovery of the costs in like manner as upon any other Judgment for money, against the legal representatives of the deceased Defendant. (19 V. c. 43, s. 251.)

Death of sole defendant or of all the defendants after verdict.

40. In case of the death, before trial, of one of several
10 Defendants who defends separately for a portion of the property for which the other Defendant or Defendants do not defend, the same proceedings may be taken as to such portion as in the case of a sole Defendant, or the Claimant may proceed against the surviving Defendants in respect of the portion of the pro-
15 perty for which they defend. (19 V. c. 43, s. 252.)

Death before a trial of a defendant defending separately for part.

41. In case of the death, before trial, of one of several Defendants, who defends separately in respect to property for which the surviving Defendants also defend, the Court or a Judge may at any time before trial allow the person in posses-
20 sion of the property at the time of the death, or the legal representative of the deceased Defendant, to appear and defend on such terms as may appear reasonable and just, upon the application of such person or representative, and if no such application be made or leave granted, the Claimant suggesting the death in
25 manner aforesaid, may proceed against the surviving Defendants to Judgment and execution. (19 V. c. 43, s. 253.)

Death before a trial of the defendant who defends separately but for property for which others also defend.

42. The Claimant may at any time discontinue the action as to one or more of the Defendants, by giving to the Defendant or his Attorney a notice, headed in the Court and cause,
30 and signed by the Claimant or his Attorney, stating that he discontinues such action, and thereupon the Defendant, on receiving such notice, may forthwith sign Judgment for costs in the form contained in the Schedule (A) to this Act annexed, marked No. 6, or to the like effect. (19 V. c. 43, s. 254.)

Claimant may discontinue as to one or more defendants.

43. In case one of several Claimants desires to discon-
35 tinue, he may apply to the Court or a Judge to have his name struck out of the proceedings, and an order may be made thereupon upon such terms as to the Court or Judge seems fit, and the action shall thereupon proceed at the suit of
40 the other Claimants. (19 V. c. 43, s. 255.)

One of several claimants may discontinue.

44. If after appearance entered, the Claimant without going to trial, allows to elapse the time fixed by the practice of the Court for going to trial in ordinary cases after issue joined, the Defendant may give twenty days' notice to the Claimant
45 to proceed to trial at the Assizes next after the expiration of the notice, and if the Claimant afterwards neglects to give notice of trial for such Assizes, or to proceed to trial in pursuance of the

Claimants not proceeding to trial in due time after notice.

- Right of defendant in such case. the said notice given by the Defendant, and the time for going to trial has not been extended by the Court or a Judge, the Defendant may sign Judgment in the form contained in the Schedule (A) to this Act annexed, marked No. 7, and recover the costs of the defence. (19 V. c. 43, s. 256.) 5
- Sole defendant or all the defendants may confess the action as to the whole or part of the property 45. A sole Defendant or all the Defendants may confess the action as to the whole or a part of the property, by giving to the Claimant a notice headed in the Court and cause, and signed by the Defendant or Defendants, such signature to be attested by his or their Attorney, and thereupon the Claimant may forthwith sign Judgment and issue execution for the recovery of possession and costs, in the form contained in the Schedule (A) to this Act annexed, marked No. 8, or to the like effect. (19 V. c. 43, s. 257.) 10
- And so may one of several defendants defending for a part for which others do not defend. 46. In case one of several Defendants who defends separately for a portion of the property for which the other Defendant or Defendants do not defend, desires to confess the Claimant's title to such portion, he may give a like notice to the Claimant, and thereupon the Claimant may forthwith sign Judgment and issue execution for the recovery of possession of such portion of the property, and for the costs occasioned by the defence relating to the same, and the action may proceed as to the residue. (19 V. c. 43, s. 258.) 15 20
- And if others defend as to the same part. 47. In case one of several Defendants who defends separately in respect of property for which other Defendants also defend, desires to confess the Claimant's title, he may give a like notice thereof, and thereupon the Claimant may sign Judgment against such Defendant for the costs occasioned by his defence, and may proceed in the action against the other Defendants to Judgment and execution. (19 V. c. 43, s. 259.) 25 30
- Proceedings need not be enrolled before execution. 48. It shall not be necessary before issuing execution on any Judgment in ejectment to enter the proceedings upon any roll, but an *incipitur* thereof may be made upon paper, shortly describing the nature of the Judgment, and the Judgment may thereupon be signed, and costs taxed and execution issued; but the proceedings shall be entered on the roll whenever the same becomes necessary for the purpose of evidence or of bringing error, or appealing, or the like. (19 V. c. 43, s. 260.) 35
- Effect of judgment. 49. The effect of a Judgment in ejectment shall be the same as that of a Judgment in ejectment obtained before the tenth day of August, one thousand eight hundred and fifty-six. (19 V. c. 43, s. 261.) 40
- Penalty on tenant receiving writ of ejectment and 50. If any tenant to whom a Writ in ejectment has been delivered, or to whose knowledge it comes, omits forthwith to give notice thereof to his landlord, or to his bailiff or receiver, he shall forfeit to the person of whom he holds, the value of three 45

three years improved or rack rent of the premises demised or holden in the possession of such tenant, to be recovered by action in any Court of Common Law having jurisdiction for the amount. (19 V. c. 43, s. 262.) not notifying his landlord.

5 **51.** In all cases between landlord and tenant, as often as it happens that one half year's rent is in arrear, and the landlord or lessor to whom the same is due, hath right by law to re-enter for the non-payment thereof, such landlord or lessor may, without any formal demand or re-entry, serve a Writ in
10 ejection for the recovery of the demised premises, or in case the same cannot legally be served or no tenant is in actual possession of the premises, then such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in
15 case such action in ejection is not for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments comprised in such Writ, and such affixing shall be deemed legal service thereof, which service or affixing of such Writ shall stand instead and place of a demand and re-entry. Landlord having power to re-enter for non-payment of rent may recover possession by ejection.

20 **52.** In case of Judgment against the Defendant for non-appearance, if it is shown, by affidavit, to the Court wherein the action is depending, or proved upon the trial in case the Defendant appears, that half a year's rent was due before the said Writ was served, and that no sufficient distress was to be found
25 on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, the lessor shall recover Judgment and have execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made. And how such right shall be exercised.

53. In case the lessee or his assignee, or other person claiming
30 or deriving title under the said lease, permits and suffers Judgment to be had on such trial and execution to be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for relief in equity within
35 six months after execution executed, then and in every such case the said lessee and his assignee and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by bringing a Writ of appeal for reversal of such Judgment, and the said landlord or lessor shall from thence-
40 forth hold the demised premises discharged from such lease. Consequences of the exercise of such right.

54. Nothing hereinbefore contained shall bar the right of any mortgagee of such lease or any part thereof, who is not in
possession, so as such mortgagee do within six months after such Judgment obtained and execution executed, pay all rent
45 in arrear and all costs and damages sustained by such lessor or person entitled to the remainder or reversion, and perform all covenants and agreements which on the part and behalf of the first lessee are to be or ought to have been performed. (19 V. c. 43, s. 263.) As to mortgages of lease.

Proceedings if the tenant ejected seek relief in Equity.

55. In case the said lessee, his assignee or other person claiming any right, title or interest in law or equity of, in or to the said lease, proceeds for relief in any Court of Equity within the time aforesaid, such person shall not have or continue any injunction against the proceedings at law on such ejection, unless, within forty days next after a full and perfect answer has been made by the Claimant in such ejection, he brings into Court and lodges with the proper officer such sum of money as the lessor or landlord in his answer swears to be due and in arrear over and above all just allowances, and also the costs taxed in the said suit, there to remain until the hearing of the cause, or to be paid out to the lessor or landlord on good security, subject to the decree of the Court; and in case such proceedings for relief in equity are taken within the time aforesaid and after execution has been executed, the lessor or landlord shall be accountable only for so much as he really and *bona fide* without fraud, deceit, or wilful neglect, has made of the demised premises from the time of his entering into the actual possession thereof, and if what he has so made is less than the rent reserved on the said lease, then the said lessee or his assignee, before being restored to his possession, shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands. (19 V. c. 43, s. 264.)

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If such proceedings be after execution executed.

Discontinuance if tenant pay arrears of rent and costs before trial, &c.

56. If the tenant or his assignee at any time before the trial in the ejection, pays or tenders to the lessor or landlord, or to his Attorney in the cause, or pays into the Court wherein the cause is depending, all the rent and arrears together with the costs, all further proceedings on the said ejection shall cease; and if such lessee or his assigns, has, upon such proceeding as aforesaid, been relieved in equity, he and they shall have, hold and enjoy the demised lands according to the lease thereof made, without any new lease. (19 V. c. 43, s. 265.)

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If he be relieved in Equity.

Proceedings when the time for which any tenants holds the lands leased shall have expired and the tenant shall refuse to deliver possession after notice.

57. Where the term or interest of any tenant of any lands, tenements or hereditaments, holding the same under a lease or agreement in writing for any term or number of years certain, or from year to year expires or is determined either by the landlord or tenant by regular notice to quit, and such tenant or any one holding or claiming refuses to deliver up possession accordingly, after lawful demand of possession in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling house or usual place of abode of such tenant or person by or under him, and the landlord thereupon proceeds by action of ejection for recovery of possession, he may at the foot of the Writ in ejection, address a notice to such tenant or person, requiring him to find such bail, if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified.

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58. Upon the appearance of the party, or in case of non-appearance, then on making and filing an affidavit of service of the Writ and notice, and on the landlords producing the lease or agreement, or some counterpart or duplicate thereof and 5 proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired, or been determined by regular notice to quit, (as the case may be,) and that possession has been lawfully 10 demanded in manner aforesaid, the landlord may move the Court or apply to a Judge at Chambers for a rule or summons for such tenant or person, to shew cause, within a time to be fixed by the Court or Judge on a consideration of the situation of the premises, why such tenant or person should not enter 15 into a recognizance by himself and two sufficient securities, in a reasonable sum, conditioned to pay the costs and damages which may be recovered by the Claimant in the action, and the Court or Judge, upon cause shewn or upon affidavit of the service of the rule or summons, in case no cause is shewn, may 20 make the same absolute in whole or in part, and order such tenant or person within a time to be fixed upon a consideration of all the circumstances, to find such bail with such conditions and in such manner as shall be specified in the said rule or summons, or such part of the same so made absolute.

Notice to tenant to find security.

25 59. In case the party neglects or refuses to comply with such rule or order, and gives no ground to induce the Court or Judge to enlarge the time for obeying the same, then the lessor or landlord, upon filing an affidavit that such rule or order has been made and served and not complied with, may sign Judgment for 30 the recovery of possession and costs of suit, in the form contained in Schedule (A) to this Act annexed, marked No. 9, or to the like effect. (19 V. c. 43, s. 266.)

60. Whenever it appears on the trial of any ejectment at the suit of a landlord against a tenant, that such tenant or his 35 Attorney has been served with due notice of trial, the Judge before whom the cause comes on to be tried, shall, (whether the Defendant appears upon such trial or not,) permit the claimant, after proof of his right to recover possession of the whole or any part of the premises mentioned in the Writ, to go into 40 evidence of the mesne profits thereof which have or might have accrued from the day of the expiration or determination of the tenant's interest in the same, down to the time of the verdict given in the cause, or to some preceding day to be specially mentioned therein, and the Jury on the trial finding for the 45 Claimant shall in such case give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits, and in such case the landlord shall have Judgment within the time hereinbefore provided, not only for 50 the recovery of possession and costs, but also for the mesne profits

Court may allow proof of mesne profits at trial as soon as the landlord shall have established his right to recover possession, &c.

As to mesne profits after verdict, &c.

profits found by the Jury: and the landlord may after the verdict bring an action for the mesne profits which accrue from the time of the verdict, or from the day so specified therein, down to the day of the delivery of possession of the premises recovered in the ejectment. (19 V. c. 43, s. 267.)

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Court may order execution within six days in cases where security is given unless, &c.

61. If upon the trial of any case in which such security has been given as aforesaid, a verdict passes for the Claimant, the Judge before whom the trial is had may (unless it appears to him, that the finding of the Jury is contrary to the evidence or that the damages given are excessive,) order that Judgment may be entered and execution issued in favour of the Claimant at the expiration of six days next after the giving of such verdict. (19 V. c. 43, s. 268.)

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All recognizances, &c., to be taken in like manner as Bail in the Superior Courts, with like fees, &c.

Limitation of actions upon such Recognizance, &c.

62. All recognizances and securities entered into in pursuance of this Act shall be taken respectively in such manner and by and before such persons as are provided and authorized in respect of recognizances of bail upon actions and suits depending in the Superior Courts, and subject to the like fees and charges; but no action or other proceeding shall be commenced upon any such recognizance or security after six months from the time when the possession of the premises or any part thereof have actually been delivered to the landlord. (19 V. c. 43, s. 269.)

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More easy remedy against tenants who wrongfully hold over

Application to the Court Q. B., or a Judge in vacation.
Writ to issue.

63. Any landlord, or the agent of any landlord, whose tenant after the expiration of his term, (whether the same was created by writing, or parol,) wrongfully refuses, upon demand made in writing to go out of possession of the land demised to him, may apply to either of the Superior Courts of Common Law in Term, or to a Judge thereof in vacation, setting forth, on affidavit, the terms of the demise, if by parol, and annexing a copy of the instrument containing such demise, if the same were in writing, and also a copy of the demand made for the delivering up possession, and stating also the refusal of the tenant to go out of possession, and the reason given for such refusal, (if any were given,) adding such explanation in regard to the ground of refusal as the truth of the case may require; and if upon such affidavit it appears to the Court or Judge that such tenant wrongfully holds over, without colour of right, such Court or Judge may order a writ to issue in the name of the Queen, and tested in the name of the Chief Justice or Senior Puisne Judge of such Court on the day that the same actually issues, directed to such person as the Court or Judge appoints, and commanding him to issue his precept to the Sheriff of the County in which the land is situated, for the summoning of a Jury of twelve men, to come before the Commissioner at a day and place by such Commissioner to be named, to inquire and say upon their oaths whether the person complained of was tenant to the complainant for a term which has expired, and whether he does wrongfully refuse to go out of possession,

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sion, having no right, or colour of right, to continue in possession, or how otherwise, which writ shall be made returnable whenever the same has been duly executed, before any one of the Judges of the said Court.

5 **64.** Notice in writing of the time and place of holding such inquisition shall be served upon the tenant, or left at his place of abode, at least three days before the day appointed, to which notice shall be annexed a copy of the affidavit on which the writ was obtained, and of the papers attached thereto. Notice of holding inquisition.

10 **65.** The Commissioner may administer an oath to the persons summoned on such Jury, well and truly to try, and a true verdict to give, upon the matters and things in the said writ contained, according to the evidence; and may also administer an oath to the witnesses produced by either party. Jury to be sworn. Witnesses.

15 **66.** The Jurors shall, under their hands, either with or without their seals, endorse their finding upon the back of the writ, or return the same upon a paper attached thereto by such Commissioner. Verdict.

20 **67.** If it appears to the Court, or to any Judge thereof, upon the return of the said writ, and upon a consideration of all the evidence, which shall also be certified and returned by such Commissioner, to be filed with such commission and the proceedings thereupon in the office of one of the Clerks of the Crown and Pleas, at Toronto, that the case is clearly one coming within Evidence to be returned with Commission.

25 the true intent and meaning of this Act, such Court or Judge may issue a precept to the Sheriff, in the Queen's name, commanding him forthwith to place the landlord in possession of the premises in question. (4 W. 4, c. 1, s. 53.) Landlord to be placed in possession.

30 **68.** When such precept has been made by a Judge, the Court may on motion before the end of the second term after such precept has been issued, examine into the proceedings, and, if they find cause, set aside the same, and issue their precept to the Sheriff, if it be necessary, commanding him to restore the tenant to his possession, in order that the question of right, if any appear, may be tried as in other cases of ejectment. (4 W. 4, c. 1, s. 54.) Court of Q. B. may revise the proceeding. And if proper order tenant to be restored to possession.

40 **69.** The Judges of the Superior Courts of Common Law, in term time or in vacation, may make and from time to time alter and amend the form of the writ, inquisition and return, and of the precepts to be issued under the two next preceding sections of this Act, and may make such order respecting costs as to them seems just, and may issue a writ to the Sheriff, commanding him to levy such costs of the goods and chattels, or issue an attachment for the non-payment thereof, against the landlord or tenant, or person described as landlord or tenant, as to them The Judges of the Q. B. may devise forms of proceedings; and make orders respecting costs and enforce their payment

45 seems just. (4 W. 4, c. 1, s. 55.)

Commissioners to be sworn.

70. Before any Commissioner holds an inquisition under this Act, he shall take the following oath, before some one of the Justices of the Peace in and for the County in which the inquisition is holden, which oath shall be indorsed on the said writ, that is to say :

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“ I, A. B., do solemnly swear, that I will impartially, and to the best of my judgment, discharge my duty as Commissioner under this writ. So help me God.” (4 W. 4, c. 1, s. 56.)

All other remedies of landlords saved.

71. Nothing herein contained shall prejudice or affect any other right of action or remedy which landlords may possess in any case hereinbefore provided for.

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Action of ejectment brought by mortgagee.

72. Where an action of ejectment is brought by any mortgagee or his assignees for the recovery of the possession of any mortgaged lands, tenements or hereditaments, and no suit is then depending in the Court of Chancery for or touching the foreclosing or redeeming the same, if the person having right to redeem, appears and becomes Defendant in such action, at any time pending the action, and pays unto such mortgagee, or in case of his refusal brings into the Court where the action is depending, all the principal moneys, and interest due on such mortgage, and also all such costs as have been expended in any suit at law or in equity thereupon, (such money for principal, interest and costs, to be ascertained and computed by the Court where such action is pending, or by the proper officer by such Court to be appointed for that purpose), the moneys so paid or brought into such Court shall be deemed and taken to be in full satisfaction and discharge of such mortgage, and the Court shall discharge every such mortgagor or Defendant of and from the same accordingly, and shall by rule of the same Court compel such mortgagee to assign, surrender or reconvey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee has therein, and to deliver up all deeds, evidences and writings in his custody relating to the title of such mortgaged lands, tenements and hereditaments unto the mortgagor who has paid or brought such moneys into the Court, or to such other persons as he, for that purpose, nominates and appoints. 19 V. c. 43, s. 271.

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Discharge of mortgage.

To extend to cases where the right to redeem or the sum due is contested.

73. Nothing herein contained shall extend to any case when the person against whom the redemption is prayed, insists (by writing under his hand or the hand of his Attorney, Agent or Solicitor to be delivered before the money has been brought into such Court of law to the Attorney or Solicitor for the other side), either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums than what appear on the face of the mortgage, or are admitted on the other side, or to any case where the right of redemption to the mortgaged lands

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lands and premises in question in any cause or suit is contravened or questioned by or between different Defendants in the same cause or suit, or shall be of any prejudice to any subsequent mortgage or subsequent encumbrance. (19 V. c. 43, s. 272.)

- 5 74. If any person brings an action of ejectment after a prior action of ejectment has been unsuccessfully brought by him or by any person through or under whom he claims, against the same Defendant or against any person through or under whom he defends the Court or a Judge may, on the application of the Defendant, at any time after his appearance entered, order that the Plaintiff shall give to the Defendant security for the payment of costs, and that all further proceedings in the cause be stayed until such security has been given, whether the prior action was disposed of by discontinuance or by non-suit, or by
10 Judgment for the Defendant. (19 V. c. 43, s. 273.)

The same claimant in subsequent action for the same property may be ordered to give security for costs.

75. The several Courts and the Judges thereof respectively, may and shall exercise over the proceedings in ejectment under this Act, the like jurisdiction as formerly exercised in the old action of ejectment, so as to ensure a trial of the title and of
20 actual ouster when necessary, and for all other purposes for which such jurisdiction might have been exercised. (19 V. c. 43, s. 274.)

Courts may exercise the same jurisdiction as formerly over proceedings in ejectment.

SCHEDULE A.

No. 1.—(Vide Section 2.)

EJECTMENT.

VICTORIA &c.,

To X., Y. and Z., and all persons entitled to defend the possession of (*describe the property with reasonable certainty*), in the Township of _____, in the County of _____, to the possession whereof A. B., and C., some or one of them claim to be (*or to have been on and since the _____ day of _____, A. D., _____*) entitled, and to eject all other persons therefrom. These are to will and command you or such of you as deny the alleged title, within sixteen days of the service hereof, to appear in our Court of _____, to defend the said property or such part thereof as you may be advised, in default whereof Judgment may be signed, and you turned out of possession.

Witness, &c.,

No. 2.

No. 2.—(Vide Section 15.)

JUDGMENT IN EJECTMENT IN CASE OF NON-APPEARANCE.

In the Q. B., (or C. P.)

The day of , 18 (*date of the Writ.*)

County of } On the day and year above written, a Writ of
to wit : } our Lady the Queen issued out of this Court in
these words, that is to say :

VICTORIA, &c., (*copy the Writ,*) and as no appearance has been entered or defence made to the said Writ, therefore it is considered that the said (*insert the names of the persons in whom title is alleged in the Writ,*) do recover possession of the land in the said Writ mentioned, with the appurtenances.

No. 3.—(Vide Section 15 and 16.)

In the Q. B., (or C. P.)

On the day of , 18 , (*date of the Writ.*)

County of } On the day and year above written, a Writ of
to wit : } our Lady the Queen issued out of this Court, in
these words, that is to say :

VICTORIA, &c., (*copy the Writ,*) and C. D. has on the day of , appeared by , his Attorney (*or in person,*) to the said Writ, and has defended for a part of the land in the Writ mentioned, that is to say, (*state the part,*) and no appearance has been entered or defence made to the said Writ, except as to the said part; therefore, it is considered that the said A. B., (*the Claimant,*) do recover possession of the land in the said Writ mentioned, except the said part, with the appurtenances, and that he have execution thereof forthwith; and as to the rest, let a Jury come, &c.

No. 4.—(Vide Section 16.)

In the Q. B., (or C. P.)

On the day of , 18 (*date of the Writ.*)

County of } On the day and year above written, a Writ of
to wit : } our Lady the Queen issued out of this Court, in
these words, that is to say :

VICTORIA,

VICTORIA, &c., (*Copy the Writ,*) and C. D. has on the day of _____, appeared by _____, his Attorney, (*or in person,*) to the said Writ, and defended for the whole of the land therein mentioned; therefore, let a Jury come, &c.

No. 5.—(*Vide Section 21.*)

Afterwards on the _____ day of _____, A. D., before _____ Justice of our Lady the Queen, assigned to take the assizes in and for the within County, come the parties within mentioned, and a Jury of the said County being sworn to try the matters in question between the said parties, upon their oath, say: that A. B. (*the Claimant,*) within mentioned, on the _____ day of _____, A. D., was and still is entitled to the possession of the land within mentioned, as in the Writ alleged; therefore, &c.

No. 6.—(*Vide Section 42.*)

In the Q. B., (*or C. P.*)

On the _____ day of _____, 18____, (*date of the Writ.*)

County of _____ } On the day and year above written, a Writ of
to wit: } our Lady the Queen issued out of this Court in
these words, that is to say:

VICTORIA, &c., (*Copy the Writ,*) and C. D. has on the day of _____, appeared by _____, his Attorney, (*or in person,*) to the said Writ, and A. B. has discontinued the action; therefore, it is considered that the said C. D. be acquitted, and that he recover against the said A. B., £ _____ for his costs of defence.

No. 7.—(*Vide Section 44.*)

In the Q. B., (*or C. P.*)

On the _____ day of _____, 18____, (*date of Writ.*)

County of _____ } On the day and year above written, a Writ of
to wit: } our Lady the Queen issued out of this Court, in
these words, that is to say:

VICTORIA, &c., (*copy of the Writ,*) and C. D. has on the day of _____, appeared by _____, his Attorney, (*or in person,*)

person,) to the said Writ, and A. B., has failed to proceed to trial, although duly required so to do; therefore it is considered that the said C. D. be acquitted, and that he do recover against the said A. B. £ for his costs of defence.

No. 8.—(*Vide* Section 45.)

In the Q. B., (*or* C. P.)

The day of , 18 , (*date of the Writ.*)

County of } On the day and year above written, a Writ of
to wit : } our Lady the Queen issued out of this Court in
these words, that is to say :

VICTORIA, &c., (*copy the Writ,*) and C. D., has on the day of , appeared by , his Attorney, (*or in person,*) to the said Writ, and the said C. D. has confessed the said action (*or has confessed the said action as to part of the said land, that is to say : (state the part) ;* therefore, it is considered that the said A. B., do recover possession of the land in the said Writ mentioned, (*or of the said part of the said land,*) with the appurtenances, and £ , for costs.

No. 9.—(*Vide* Section 59.)

In the Q. B., (*or* C. P.)

The day of , 18 , (*date of Writ.*)

County of } On the day and year above written, a Writ
to wit : } of our Lady the Queen issued out of this Court,
with a notice thereunder written, the tenor of which Writ and
notice follows in these words, that is to say :

(*Copy the Writ and notice, which latter may be as follows :*

“ Take notice that you will be required, if ordered by the Court or a Judge, to give bail by yourself and two sufficient sureties, conditioned to pay the costs and damages which shall be recovered in the action.”

And C. D. has appeared by , his Attorney, (*or in person,*) to the said Writ, and has been ordered to give bail pursuant to the Statute, and has failed so to do; therefore, it is considered that the said (*landlord's name,*) do recover possession of the land in the said Writ mentioned, with the appurtenances, together with £ , for costs of suit.

C A P .

CAP. XXX.

An Act respecting the Procedure in Actions of Dower.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The action of dower at law shall be commenced by Action of dower commenced by declaration.
 5 filing a declaration or plaint in the form heretofore used in the office of one of the Clerks of the Crown and Pleas, or of the Deputy Clerk of the Crown and Pleas, in the County where the action is brought. (13, 14 V. c. 58.)

2. An action of dower shall be brought in the County or Venue.
 10 United Counties wherein the lands or tenements of which dower is sought to be recovered are situate, and the declaration may be served on the tenant of the freehold in any part of Upper Canada.

3. A copy of such declaration and of the notice herein-
 15 after prescribed may be served by any literate person personally, within one year from the filing thereof on the tenant of the freehold, if within the jurisdiction of the Court, and if not, then upon the tenant of the land of which dower is demanded, and if such tenant do not plead agreeably to the notice, the de-
 20 mandant therein, upon affidavit of the due service of such declaration and notice being filed, may proceed thereon as in personal actions. Time and manner of serving declaration and notice.

The notice referred to in the last section may be in the following form.

In the Queen's Bench, (or Common Pleas, &c.,)

A. B., who was (or is, as the case may be) the widow of Form of notice.
 C. D., deceased, demandant, and E. F., tenant.

Take notice that a declaration, of which the annexed is a true copy, was this day filed in the Office of the Clerk of the Crown and Pleas (or Deputy, as the case may be) at _____, in the County of _____, (or United Counties of _____, as the case may be) and unless you plead thereto within twenty days from the service hereof, judgment will be signed against you by default, and subsequent proceedings and execution thereof follow thereon, according to law.

Dated the _____ day of _____, 18____
 J. K., Attorney, &c., residing at _____,
 in the County of _____, (or United
 Counties of _____, as the case may be.

To E. F., of the Town of _____,
 (as the case may be) the above tenant.

Proceeding if
possession
vacant.

4. If the land of which dower is demanded is vacant, and the tenant of the freehold cannot be personally served with a declaration as hereinbefore provided, then service may be made as in actions of ejectment; but such service when not personal upon such tenant, must be allowed by the Court or a Judge thereof, and after filing the declaration and the affidavit of such service, and the order or rule of allowance thereof, the demandant may, after the time for pleading has expired, proceed thereon as if personal service had been effected. 5

What to be
proved if de-
fendant does
not appear.

5. When the tenant of the land has not been personally served with the declaration, and the demandant, proceeds to the trial of the right of dower in the land, the demandant, before the entry of any verdict in favor of such right, shall prove the marriage, *seisin*, and death of the husband, in the same manner as if the tenant had pleaded, traversing such marriage, *seisin*, and death. 10 15

When costs
shall be al-
lowed.

6. In case it appears on the trial that a demand in writing had been made of the dower claimed from the tenant one month before action brought, and in case the action has been brought within a year from such demand, costs shall be allowed to the demandant in all such cases, whether damages be recoverable or not, in the same manner as costs are now allowed to a plaintiff or defendant in personal actions. But if it appears on the trial, that the tenant offered to assign the dower demanded before action brought, the demandant shall not recover costs. 20 25

Tenant in
possession to
give notice to
landlord.

7. In case a declaration or plaint in dower is delivered to any tenant not being the tenant of the freehold, such tenant shall forthwith give notice thereof to his landlord, or to the servant, attorney, agent, bailiff or receiver of his landlord, under the penalty of forfeiting to the person of whom he holds three years improved or rack-rent of the premises demised, so holden, or in the possession of such tenant, to be recovered by action of debt in any Court of Record in Upper Canada. 30

Effect of a re-
covery against
a mere occu-
pant not being
terre tenant.

8. A recovery had against a mere occupier of the land, and without notice to the *terre tenant*, shall have no greater effect than a recovery in ejectment for the quantity of land assigned as dower in such recovery would have had. 35

C A P. XXXI.

An Act relating to Replevin.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Canada, enacts as follows :

1. Whenever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities or other personal property have been wrongfully distrained under circumstances in which by the Law of England Replevin might be made, or have been otherwise wrongfully taken or detained, the owner or other person, or Corporation at present capable of maintaining an action of trespass or trover for personal property, may bring an action of Replevin for the recovery of such goods, chattels or other property aforesaid, and for the recovery of the damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are now brought and maintained by persons complaining of an unlawful distress. 4 W. 4, c. 7, s. 1,—14 & 15 V. c. 64, s. 1.

When goods may be replevied.

2. The provisions herein contained shall not authorize the replevying of or taking out of the custody of any Sheriff or other officer, any personal property seized by him under any process issued out of any Court of Record for Upper Canada. 18 V. c. 118.

Goods seized in execution not to be replevied.

3. In case the value of the goods or other property distrained, taken or detained, does not exceed the sum of fifty pounds, and in case the title to land is not brought in question, the Writ may issue from the County Court of any County wherein such goods or other property have been distrained, taken or detained. 14 & 15, V. c. 64, s. 5,—19 V. c. 90, s. 20.

County Courts may grant replevin where value does not exceed £50.

4. Before any Writ of Replevin issues, the person claiming the property, his servant or agent shall make an affidavit, entitled and filed in the Court out of which the Writ issues, and sworn before any person entitled to administer an affidavit, therein stating : 4 W. 4, c. 7, s. 2,—14 & 15 V. c. 64, s. 2.

Proceedings necessary to entitle a party to replevy.

(1st). That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof, describing the property in the affidavit ;

Affidavit to be made.

(2nd). Stating the value thereof to the best of his belief, and such description of the property and the value shall be stated in the Writ.

To state value, &c.

5. The Writ shall be tested in the same manner as a Writ of Summons, and be returnable on the eighth day after the service of

How Writs to be tested.

of

of a copy thereof, and may be in the form of Schedule A to this Act, or otherwise adapted to the circumstances of the case. 14 & 15 V. c. 64, s. 1.

6. A copy of such Writ shall be served on the defendant personally, or if he cannot be found, by leaving such copy at his usual or last place of abode, with his wife or some other grown person, being a member of his household, or an inmate of the house wherein he resided as aforesaid. 14 & 15, V. c. 64, s. 1. 5

7. The Sheriff shall not serve a copy of the Writ until he has replevied the property, or some part of the property therein mentioned if he cannot replevy the whole in consequence of the defendant having eloiigned the same out of his County, or because the same is not in the possession of the defendant, or of any person for him. 14 & 15 V. c. 64, s. 1. 10 15

8. Before the Sheriff replevies he shall take a bond in treble the value of the property to be replevied as stated in the Writ, which bond shall be assignable to the Defendant, and the bond and assignment thereof may be in the form in the Schedule to this Act marked B, the condition being varied to correspond with the Writ. 14 W. 4, c. 7, s. 2. 20

9. In case the property to be replevied or any part thereof, has been secured or concealed in any dwelling house or other building or enclosure of the defendant, or of any other person holding the same for him, and in case the Sheriff has publicly demanded from the owner and occupant of the premises, deliverance of the property to be replevied, and in case the same is not delivered to him within twenty-four hours after such demand, he may, and if necessary shall, break open such house, building or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the Writ aforesaid. 14 & 15 V. c. 64, s. 10. 25 30

10. If the property to be replevied, or any part thereof, has been concealed either about the person or the premises of the defendant, or any other person holding the same for him, and in case the Sheriff has demanded from the defendant or such other person aforesaid deliverance thereof, and deliverance has been neglected or refused, he may, and if necessary shall search and examine the person and premises of the defendant or of such other person aforesaid, for the purpose of replevying such property or any part thereof, and shall make replevin according to the Writ. 14 & 15 V. c. 64, s. 10. 35 40

11. The Sheriff shall return the Writ at or before the return day thereof, and shall transmit annexed thereto. 14 & 15 V. c. 64, s. 6. 45

1st. The names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto ; With Schedule annexed.

2nd. The place of residence and additions of the sureties ; What Schedule to contain.

3rd. The number, quantity and quality of the articles of property replevied ; and in case he has replevied only a portion of the property mentioned in the Writ and cannot replevy the residue by reason of the same having been eloiigned out of his County by the defendant, or not being in the possession of the defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy and the reason why not.

12. In case the defendant has been duly served with a copy of the Writ, and does not enter his appearance in the suit at the return thereof, the plaintiff may, on filing the Writ and affidavit of its due service, enter a common appearance for the Defendant and proceed thereon as if he had appeared. 14 & 15 V. c. 64, s. 3. If defendant having been served does not appear.

13. When the Replevin is brought for property distrained for any cause, the venue shall be laid in the County in which the distress has been made, but in other cases it may be laid in any County. 14 & 15 V. c. 64, s. 5. When venue to be laid.

14. Upon the appearance being duly entered by or for the defendant in the proper office, the plaintiff and defendant respectively shall, (in the absence of any provision herein and of any rules of the Superior Courts of Common Law to the contrary,) declare, avow, reply, rejoin and otherwise plead to issue and take all subsequent proceedings to trial and judgment according to the practice in Replevin in England, so far as applicable to the Court having cognizance of the case, but as to all such proceedings within the same time as in other personal actions in the same Court, and in case of default so to do, he shall be liable to the like judgment and proceedings as in such personal actions under the "Common Law Procedure Act." 14 & 15 V. c. 64, s. 7,—4 W. 4, c. 7, s. 5. If defendant appear. Plaintiff to declare, &c.

15. The defendant shall be entitled to the same pleas in abatement or bar as heretofore, and may plead as many pleas in defence as he thinks necessary, each of which, if the action was trespass and the taking complained of, or detinue, and the detention only complained of, would constitute a legal defence. 14 & 15 V. c. 64, s. 9. What pleas defendant may plead.

16. When the action is founded on a wrongful detention and not on the original taking of the property, the declaration shall conform to the Writ, and may be the same as in an action of detinue. 14 & 15 V. c. 64, s. 8. Form of declaration for wrongful detention, &c.

Form of declaration for wrongful taking, &c.

17. When the action is founded on a wrongful taking and detention of the property, it shall not be necessary for the plaintiff to state in his declaration a place certain within the City, Town, Township or Village, as the place at which the property was taken. 14 & 15 V. c. 64, s. 3.

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When defendant to state a place certain in his avowry.

18. If the defendant justifies or avows the right to take or distrain any such property, in or upon any place in respect of which the same might be liable to forfeiture, or to distress for rent, or for damage feasant, or for any custom, rate or duty, by reason of any law, usage or custom at the time when, existing and in force, he shall state in his plea of justification or avowry a place certain within the City, Town, Township or Village within the County, as the place at which such property was so distrained or taken. 14 & 15 V. c. 64, s. 8.

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If Sheriff's returns the property eloigned, a Writ in Withernam may issue.

19. If the Sheriff makes such a return of the property distrained, taken or detained, having been eloigned, as would warrant the issuing of a Capias in Withernam by the Law of England, then upon the filing of such return, such a Writ shall be issued by the officer who issued the Writ of Replevin, in the form given in the Schedule to this Act marked C, and before executing such Writ the Sheriff shall take pledges according to the Law of England in that behalf in cases of distress. 4 W. 4, c. 7, s. 3.

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The Superior Courts may make rules.

20. The Courts of Queen's Bench and Common Pleas may, from time to time, make such rules for advancing and rendering easy and effectual the remedy by replevin, as well by regulating the practice to be observed in such actions, as by prescribing or changing the forms of Writs and proceedings to be used therein, as such Courts deem conducive to the ends of justice. 4 W. 4, c. 7, s. 8.

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SCHEDULE A.

County or United Counties of } Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.
(As the case may be.)

To the Sheriff of (*here insert name of County or United Counties*)—Greeting :

We command you that, without delay, you cause to be replevied to (A. B.) his goods, chattels and personal property following, that is to say : (*here set out the description of property as in the affidavit filed,*) which the said (A. B.) alleges to be of the value of _____, and which (C. D.) hath taken and unjustly detains, (*or unjustly detains, as the case*

case may be,) as it is said, in order that the said (A. B.) may have his just remedy in that behalf : And that you summon the said (C. D.) to appear before us in our Court of Queen's Bench, (*or Court of Common Pleas,*) at Toronto, (*or our County Court,* at _____ in and for the County, *or United Counties, as the case may be,*) within eight days after service of a copy of this Writ upon the said (C. D.) to answer to the said (A. B.) in a Plea of taking and unjustly detaining (*or unjustly detaining, as the case may be,*) his goods, chattels and personal property aforesaid. And what you shall do in the premises, make appear to us in our said Court (*or County Court, as the case may be,*) on the day and at the place aforesaid ; And have there and then this Writ.

Witness _____ of our said Court, at _____ this
day of _____ A. D. 18 _____

(*Signature of Clerk.*)

This Writ is to continue in force for three months from the *teste* hereof, and no longer.

SCHEDULE B.

Know all men by these presents, that we, A. B., of _____, W. G., of _____, and J. S., of _____, are jointly and severally held and firmly bound to W. P., Esquire, Sheriff of the County of _____, in the sum of _____, of lawful money of Upper Canada, to be paid to the said Sheriff, or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each and every of us in the whole, our and each and every of our heirs, executors and administrators, firmly by these presents, sealed with our seals.

Dated this _____ day of _____, one thousand eight hundred and _____

The condition of this obligation is such, that if the above bounden A. B. do prosecute his suit with effect and without delay against C. D. for the taking and unjustly detaining (*or unjustly detaining*) of his cattle, goods and chattels, to wit : (*here set forth the property distrained,*) and do make a return of the said property, if a return thereof shall be adjudged, then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

Sealed and delivered }
in the presence of }

Know all men by these presents, that I, W. P., Esquire, Sheriff of the County of _____, have at the request of the within named _____ C.

C. D., the avowant (*or person making cognizance*) in this cause assigned over this Replevin Bond unto the said C. D., pursuant to the Statute in such case made and provided.

In witness whereof I have hereunto set my hand and seal of office, this day of , one thousand eight hundred and

Sealed and delivered }
in the presence of }

SCHEDULE C.

County or }
United Counties of } Victoria, by the Grace of God, &c.
to wit : }

To the Sheriff of , Greeting:

Whereas we lately commanded you, that without delay you should cause to be replevied to A. B. his cattle, goods and chattels, to wit, &c., (*selling out the cattle and goods,*) which C. D. had taken and unjustly detained, as it was said, according to our writ to you afore directed, and that you should make appear to us in our Court of , at Toronto, (*or County Court, as the case may be,*) on the day of , what you had done in the premises; and you at that day returned to us that the cattle, goods and chattels aforesaid, were eligned by the said C. D. out of your County to places to you unknown, so that you could in no wise replevy the same to the said A. B.

Therefore, we command you, that you take in Withernam the cattle, goods and chattels, of the said C. D. in your County, to the value of the cattle, goods and chattels, by him the said C. D. before taken, and deliver them to the said A. B., to be kept by him until the said C. D. delivered cattle, goods and chattels, last aforesaid to the said A. B.; and in what manner you shall have executed this our writ make appear to us, on the day of term, in our Court of , (*or County Court, as the case may be,*) that we may cause to be further done thereupon what of right and according to the laws of Upper Canada we shall see meet to be done. We also command you, that if the said A. B. shall make you secure of prosecuting his claims, and of returning the cattle, goods and chattels to be by you taken in *Withernam* as aforesaid, if a return thereof shall be adjudged, then that you put by gages and safe pledges the said C. D. that he be before us, at the time last aforesaid, to answer to the said A. B. of the taking and unjustly detaining of his cattle, goods and chattels aforesaid, and have then there this writ.

Witness ,

C A P .

CAP. XXXII.

An Act respecting Executions and Poundage.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Goods and chattels, lands and tenements shall not be included in the same writ of execution, nor shall any execution issue against lands and tenements until the return of an execution against goods and chattels ; and the writ against lands and tenements shall not be made returnable in less than twelve months from the teste thereof, nor shall the Sheriff expose the lands to sale within less than twelve months from the day the writ was delivered to him. (43 Geo. 3, c. 1, s. 2.)

Goods and lands not to be included in the same Writ, and Writs against lands not returned in less than 12 months.

2. In case any goods or chattels have been seized in execution under any writ issued out of either of the Superior Courts of Common Law or of any County Court, the Sheriff, his deputy or officer, who has seized the same, shall, on request, deliver to the owner, his agent or servant, an inventory thereof before they are removed from the premises on which they were so seized ; and no Sheriff or other officer shall sell any effects under a writ of execution until at least eight days' public notice in writing of the time and place of sale has been given at the most public place in the Municipality where such effects were taken in execution. (51 Geo. 3, c. 6, s. 2, 3.)

Sheriff to deliver inventory to the owner, &c.

3. Before the sale of real estate upon execution against lands and tenements, the Sheriff shall publish an advertisement in the "Canada Gazette," at least six times before the sale, specifying—(2 Geo. 4, c. 1, s. 20.)

Sales of lands to be advertised in the Canada Gazette.

First—The particular property to be sold ;

Second—The names of the Plaintiff and Defendant ;

Third—The time and place of the intended sale ;

and shall, for three months next preceding the sale, also publish such advertisement in a public newspaper of the County in which the lands lie, or for three months put up and continue a notice of such sale 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 County are usually holden ; but nothing herein contained shall be taken to prevent an adjournment of such sale to a future day.

4. Upon any execution against the person, lands or goods, the Sheriff may, in addition to the sum recovered by the judgment, levy the poundage fees, expenses of the execution, and interest

Poundage fees, expenses of execution and interest

- interests to be levied. interest upon the amount so recovered from the time of entering the judgment; but unless the full amount has been collected by him, he shall not, on any execution against goods and chattels, be entitled to poundage on a greater sum than the value of the property actually seized under the writ, whatever be the sum endorsed thereon. (2 Geo. 4, c. 1, s. 19.) 5
- Sheriff not to receive poundage if no money is levied. 5. In case no money has been actually levied on an execution against the real or personal estate of the defendant, the Sheriff shall not receive poundage, but fees only for the service actually rendered; and the Court out of which the writ issued, or any Judge thereof in vacation, may allow him a reasonable charge for any service rendered in respect thereof, for which no special fee is assigned in the table of costs. (9 V. c. 56, s. 3.) 10
- Stock may be sold in execution. 6. The stock held by any person in any bank or in any corporation or company in Upper Canada, having a joint transferable stock, may be taken and sold in execution in the same manner as other personal property of a debtor. 2 W. 4, c. 6, s. 1—12 W. 4, c. 23, s. 1.) 15
- Cashier to transfer stock to Sheriff. 7. The cashier of any such bank, or the proper officer of any other such company or corporation, shall, upon the production of a certificate under the hand and seal of office of the Sheriff, declaring to whom any stock taken upon the execution has been sold by him, transfer the stock from the name of the original stockholder to the person named in the certificate as the purchaser under the execution; and such purchaser shall thenceforth be entitled to receive all dividends and profits arising from such stock, and in all other respects be considered in the place of the former stockholder. (2 W. 4, c. 6, s. 2.) 20 25
- The interest of a mortgagor in goods mortgaged may be sold in execution. 8. On any writ, precept or warrant of execution against goods and chattels, the Sheriff or other officer to whom the same is directed may seize and sell the interest or equity of redemption therein of the party against whom the writ has issued, and such sale shall convey whatever interest the mortgagor had in such goods and chattels at the time of the seizure. (12 V. c. 73, s. 1.) 30
- Sheriff may seize money and securities for money. 9. The Sheriff or other officer, having the execution of any writ of *feri facias* against goods sued out of either of the Superior Courts of Common Law, or out of any County Court, or of any precept made in pursuance thereof, shall seize any money or bank-notes (including any surplus of a former execution against the debtor), and any cheques, bills of exchange, promissory notes, bonds, mortgages, specialties or other securities for money, belonging to the person against whose effects the writ of *feri facias* has issued, and shall pay or deliver to the party suing out the execution any money or bank-notes seized by him, or a sufficient part thereof, and shall hold any such cheques, bills of exchange, promissory notes, bonds, specialties or 35 40 45

or other securities for money, as a security or securities for the amount by the writ and indorsement thereon directed to be levied, or so much thereof as has not been otherwise levied or raised, and such Sheriff or other officer may sue in his own name for the recovery of the sums secured thereby, when the time of payment thereof has arrived. (20 V. c. 57, s. 22.)

Money seized to be paid over to party taking out the execution.

10 **10.** The payment to such Sheriff or other officer by the party liable on any such cheque, bill of exchange, promissory note, bond, specialty or other security, with or without suit, or the recovery and levying execution against the party so liable, shall discharge him to the extent of such payment or of such recovery and levy in execution, as the case may be, from his liability on any such cheque, bill of exchange, promissory note, bond, specialty or other security. (20 V. c. 57, s. 22.)

Payment thereon to the Sheriff to be valid.

15 **11.** The Sheriff or other officer shall pay over to the party who sued out the writ, the money so recovered, or a sufficient sum to discharge the amount by the writ directed to be levied.

Sheriff to pay over moneys so paid to him.

20 **12.** If, after satisfaction of the amount, together with Sheriff's poundage and expenses, any surplus remains in the hands of the Sheriff or other officer, the same shall be paid to the party against whom the writ issued.

Surplus to be paid to the party against whom the execution issues.

25 **13.** No Sheriff or other officer shall be bound to sue any party liable upon any such cheque, bill of exchange, promissory note, bond, specialty or other security, unless the party who sued out the execution enters into a bond with two sufficient sureties to indemnify such Sheriff or officer from all costs and expenses to be incurred in the prosecution of such action, or to which he may become liable in consequence thereof; the expense of such bond to be deducted out of any money to be recovered in such action. (20 V. c. 57, s. 22.)

Sheriff not bound to sue until secured.

35 **14.** The necessary wearing apparel, the bed and bedding, and one stove and the cooking utensils, of a party against whom any writ of execution issues, or of his family, and also the tools and implements of his trade to the value of fifteen pounds, shall be protected from seizure under any execution from either of the said Superior Courts or from any County Court. (20 V. c. 57, s. 23.)

Apparel, tools, &c., exempted from execution.

40 **15.** Where a writ against the goods of a party has issued from any of such Courts, and a warrant of execution against the goods of the same party has issued from a Division Court, the right to the goods seized shall be determined by the priority of the time of the delivery of the writ to the Sheriff to be executed, or of the warrant to the Bailiff of the said Division Court to be executed; and the Sheriff, on demand, shall, by writing signed by him or his deputy or any clerk in his office, inform the Bailiff of the precise time of such delivery of the writ, and the Bailiff,

Cases of executions from County Courts and Division Courts at the same time against the same debtor provided for.

on demand, shall shew his warrant to any Sheriff's officer; and such writing purporting to be so signed, and the endorsement on the warrant shewing the precise time of the delivery of the same to such Bailiff, shall respectively be sufficient justification to any Bailiff or Sheriff acting thereon. (20 V. c. 57, s. 24.)

C. A. P.

CAP. XXXIII.

An Act respecting the duties of Sheriffs and Coroners
in regard to returning Writs, &c.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. In case a writ has been delivered to a Sheriff for execution
5 fifteen days before the return day thereof, and in case he has not
been delayed from returning the same by an order in writing from
the party, his attorney or agent, from whom he received the
writ, he shall not be entitled to any fees thereon unless within
four days after such return day he returns or encloses the writ
10 by post to such party, his attorney or agent. (S W. 4, c. 8,
s. 18.) Sheriff not entitled to fees on Writs unless returned in 4 days after return day, if delivered 15 days before return day.
2. In case after the return day of any writ, or in case after
the proper day for the performance of any duty or matter relating
to the office of Sheriff, application is made for a rule, or a rule
15 is granted on him by any Court, for the return of the writ or
performance of the duty or matter, he shall, unless the Court
otherwise order, pay to the party making the application or ob-
taining the rule, all taxable costs thereon. (S W. 4, c. 8, s. 17.) Sheriff liable to costs of application for not returning Writs.
3. In case it appears to the Court or Judge that the applica-
20 tion for a rule is frivolous or vexatious, the Court or Judge may,
on discharging the application, order that the Sheriff shall be
paid all taxable costs and expenses of opposing the same. (S
W. 4, c. 8, s. 17.) If application frivolous, may be allowed costs.
4. In case any Sheriff or Coroner fails to return any writ to
25 him directed and delivered for execution, issued out of either of
the Superior Courts of Common Law or any of the County Courts,
within the time within which he has been ordered to return
the same by any rule or order of the Court out of which the writ
issued, any Judge having jurisdiction in the matter may grant
30 to the plaintiff or defendant in the writ (as the case may be) a
summons upon the Sheriff or Coroner to shew cause why a
writ of attachment should not issue against him; and the
same or any other Judge having such jurisdiction may, at the
return of the summons, discharge the same, or order a writ of
35 attachment to issue against the Sheriff or Coroner, or limit a
further period after which such writ of attachment shall issue
unless a return be made in the meantime, or otherwise order,
as to such Judge seems proper under the circumstances. (7
Vic. c. 33, s. 1.) Attachments for non-return of Writs may be issued unless further time for return granted.
- 40 5. In case such writ is not returned at the expiration of the
further time limited by the order of the Judge, made by him at
the return of the summons, and in case the service of such order
and If Writ not returned within extended time given by

Judge, attachment may issue in term or vacation.

and the failure of the Sheriff or Coroner to return the writ is proved, the Court in term time, or any Judge having jurisdiction as aforesaid in vacation, may order a writ of attachment to issue forthwith against the Sheriff or Coroner. (7 V. c. 33, s. 2.)

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Judge in Chambers may order issue of Writs of Habeas Corpus.

6. Upon the return of "*Cepi corpus*" to any attachment in vacation, any Judge having jurisdiction as aforesaid may direct the issue of a writ of "*habeas corpus*," and thereupon may exercise the same powers and discretion in committing the Sheriff or Coroner to close custody, or in admitting him to bail, and in all other respects, as are possessed by the said Courts respectively in Term time. (7. V. c. 33, s. 3.)

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Such Writs may be returnable in term or vacation.

7. All writs of attachment and "*habeas corpus*" issued against any Sheriff or Coroner may be returnable on a day certain in vacation (not more than thirty days from issuing the writ) to be fixed by order of the Judge or Court ordering the same; and when the writ is returnable in vacation, it shall, when issued out of the Superior Courts, be made returnable before the presiding Judge in Chambers, and when issued out of any County Court, before the Judge thereof. (7 V. c. 33, s. 4.)

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Sheriff or Coroner not returning Writs within three months after attachment executed, to forfeit office.

8. Any Sheriff or Coroner who does not return any writ issued out of any of the said Courts within three calendar months after a writ of attachment for not returning the same has been executed against him, shall forfeit his office; and if he continues after the expiration of such period to exercise the duties of his office without having been duly re-appointed to the same, he shall forfeit and pay the sum of one hundred pounds to any person who sues therefor in any of Her Majesty's Courts of Record having competent jurisdiction; but no such suit shall be brought after the expiration of twelve calendar months from the time such forfeiture was incurred. (7 V. c. 33, s. 5.)

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Costs of proceedings to enforce return of Writs to be in discretion of Judge.

9. The cost of any proceedings to enforce the return of process shall be in the discretion of the Court or of the presiding Judge, who may order them to be paid by the Sheriff or Coroner, or by either of the parties in the cause. (7 V. c. 33, s. 6.)

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Act not to interfere with existing remedies.

10. This Act shall not be construed to interfere with or take away any remedy which existed before the passing thereof. (7. V. c. 33, s. 7.)

CAP. XXXIV

An Act respecting the Office of Sheriff.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. No person shall be appointed Sheriff of any County unless—

1. He is possessed of Real Estate in Upper Canada of the actual value of seven hundred and fifty pounds above incumbrances ; (3 W. 4, c. 8, s. 8.) Qualification for office of Sheriff.

2. Nor unless, before he receives his Commission he makes an affidavit to that effect sworn in open session before the Chairman of the Quarter Sessions of the County ; (3 W. 4, c. 8, s. 8.) Qualification how verified.

3. Nor until he has given a Bond to Her Majesty, Her Heirs and Successors, in the penal sum of One Thousand Pounds, together with two sureties in Five Hundred Pounds each, to be approved of by the Inspector General, with a condition that the intended Sheriff will well and faithfully account for and pay over all such moneys as he receives for Her Majesty ; and which Bond and Condition shall be in the form or to the effect in Schedule A hereto annexed ; (3 W. 4, c. 8, ss. 2, 4, 7.) Bond to be given.

4. Nor until he, and two or four sufficient sureties, enter into a joint and several Covenant in Duplicate in the form or to the effect in Schedule B hereto annexed, which sureties shall not be accepted as sufficient unless the Court of General Quarter Sessions of the Peace for the County for which the appointment is to be made, ascertain and determine and the Chairman thereof certifies under his hand and seal, that the Court are satisfied that the persons therein named are respectively worth the full amount for which they are required to become surety ; (3 W. 4, c. 8, ss. 3, 7.) Covenant with sureties to be given.

5. Nor until such Bond and one of such Duplicate Covenants together with the Affidavit of Qualification and the Certificate of the Chairman of the Quarter Sessions hereinbefore required, have been deposited in the office of the Inspector General, and the other of such Duplicate Covenants has been filed in the Office of the Clerk of the Peace of the County, for which filing such Clerk shall be entitled to a fee of two shillings and six pence ; But in case a person has been appointed Sheriff of a Junior County, about to be separated from a Union of Counties, under the Act for the regulation of Municipal Institutions in Upper Canada, he shall have six months after the dissolution of the Union to make the affidavit of Qualification, and give the Securities required Bond and Covenants to be deposited in Inspector general's office.
Covenant to be also deposited in office of Clerk of the Peace.

required by Law, and if he makes default, his office shall, after the expiration of such six months, become vacant. (3 W. 4, c. 8, s. 4,—12 V. c. 78, s. 17.)

Any person may examine Sheriff's Covenant on payment of certain fees.

2. Any person may examine the Covenant of the Sheriff and his sureties and the Clerk in possession thereof shall on demand deliver to any such person a copy thereof, on payment of the following fees :

	£	s.	d.	
For Search and Examination of Covenant.....	0	1	3	
For Copy of Covenant.....	0	5	0	10
(3 W. 4, c. 8, s. 5.)				

Covenant to specify the sums which the Sheriff and sureties covenant to afford indemnity

3. The Covenant entered into shall specify the following sums as the extent to which the several parties thereto shall be considered as covenanting to afford indemnity, that is to say :

The Sheriff £1,000 ; Two Sureties £500 each or four Sureties £250 each ; (3 W. 4, c. 8, ss. 2, 8, 21.) 15

Nature of the liability of the sureties.

And such Covenants shall be available to and may be sued upon by any person suffering damages by the default or wilful misconduct of the Sheriff, and such Sureties shall be liable to indemnify the parties to any legal proceeding against any omission or default of the Sheriff in not paying over moneys received by him, and against any damages sustained by any such party in consequence of such Sheriff's wilful or negligent misconduct in his office, and the Sheriff shall be joined in any action to be brought on such Covenant. (3 W. 4, c. 8. s. 21.) 20

Actions on Sheriff's Covenant not to discharge subsequent actions on same Covenant for other causes.

4. Except as hereinafter mentioned the person so suing, or any other person, may, notwithstanding, bring an action upon the same Covenant for any other default or misfeasance, which action shall not be barred by reason of any prior recovery, or of any judgment for the Defendant rendered in a former action, or of any other action being depending upon the same Covenant for any distinct cause of action. (3 W. 4, c. 8, s. 12.) 25
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Any surety having paid the full amount of his liability, shall be discharged and Sheriff shall procure another surety.

5. In case any of the Sureties has paid or become liable to pay an amount equal to the sum for which he became Surety, the Bond or Covenant shall as to him be deemed discharged and satisfied as to any claim thereon beyond such payment or liability ; and the Sheriff shall, within four months after such discharge, give anew such Securities as required by this Act ; But if the amount which such Surety has paid or has become liable to pay as aforesaid is not equal to the full amount for which he became Security, the Court, after deducting from such full amount the sums which he has so paid or become liable to pay, shall render judgment against him for any sum not exceeding the balance of the sum for which he became Surety. (3 W. 4, c. 8, s. 13.) 35
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6. In case proof be made, by affidavit or otherwise to the Court of General Quarter Sessions of the Peace for the County, that any of the Sureties in any such Bond or Covenant has died or become resident out of Upper Canada, or become insolvent, or that the Covenant has been discharged as aforesaid, the said Court shall give notice thereof to the Sheriff, and the Sheriff shall, within four months after such notice has been given, give anew the like Bond or Covenant, (as the case may be) as hereinbefore required, and the Sheriff shall in all other respects observe the same formalities in furnishing Securities, giving notice of death, bankruptcy, insolvency or removal from the Province of any of his Sureties, and in registering and depositing his Bond and Securities as other persons, and be liable to all the penalties and forfeitures mentioned in the Act of this Province to regulate the giving of Securities by Public Officers. (S W. 4, c. 8, s. 9.)

In case of the death, absence or insolvency of any surety, new sureties to be given.

7. In case during the period for which any Covenant required by this Act has been given, any one of the Sureties apprehends that the Sheriff has become insolvent, or has not property to the amount of seven hundred and fifty pounds, over and above all incumbrances and debts, and transmits to the Governor an affidavit to that effect made by him and sworn before a Commissioner for taking affidavits in one of the Superior Courts of Common Law, the Secretary of the Province, shall thereupon officially notify such Sheriff that he must forthwith furnish new Security in the manner pointed out by this Act, or on affidavit deny that he is insolvent, or allege that he is worth the sum of seven hundred and fifty pounds over and above all incumbrances and debts, and if the Sheriff does not comply with such requisition within one month next after the sitting of the Court of Quarter Sessions next ensuing such notification, he shall for that cause be removed from office. (S W. 4, c-8, s. 10.)

Sureties apprehending insolvency of the Sheriff, may notify the Governor, in which case new sureties may be required.

8. When any new Surety is given either at the end of the stated period or by way of substitution for any other Surety within the period, the former Surety shall only be discharged as to defaults or misfeazances suffered or committed after the perfecting of the new Security, and not as to any previous defaults or misfeazances. (S W. 4, c. 8, s. 11.)

New sureties being given not to discharge prior defaults.

9. Upon any writ of execution under a judgment recovered on such Covenant, the Plaintiff or his Attorney, shall, by an indorsement on the writ, direct the Coroner to levy the amount thereof upon the goods and chattels of the Sheriff in the first place, and in default of goods and chattels of the Sheriff to satisfy the amount, then to levy the same, or the residue thereof, of the goods and chattels of the other defendants in such writ, and so in like manner with any writ against the lands and tenements upon a judgment on any such Covenant. (S W. 4, c. 8, s. 16.)

Executions against Sheriff's and their sureties to be first levied on the Sheriff.

Any Sheriff for letting his office, to continue in office till successor appointed.

10. Notwithstanding the Sheriff of any County may forfeit his office and become liable to be removed therefrom, by reason of his having failed to comply with the provisions of this Act, he shall nevertheless continue in his office to all intents and purposes, and the liability of himself and of his Sureties shall remain until a new Sheriff has been appointed and sworn in his stead. (3 W. 4, c. 8, s. 22.) 5

Sheriff's or Deputies not to trade as shop keepers or purchase goods sold by them under execution.

11. No Sheriff or Deputy Sheriff shall directly or indirectly keep a shop, trade, traffic, sell, or expose for sale any goods wares or merchandize either by wholesale or retail, or maintain any action for the price of any goods so sold, excepting always such as by the duties of his office he is legally commanded or empowered to sell; and no Sheriff, Deputy Sheriff, Bailiff or Constable shall directly or indirectly purchase any goods or chattels by him exposed to sale under any execution. (2 G. 4, c. 1, s. 21.) 15

Office hours at Sheriff's office.

12. Every Sheriff shall each day, except Sunday, Christmas day, Good Friday and the Birth day of the Sovereign, keep his Office open from ten o'clock in the forenoon until four o'clock in the afternoon, and during all that time he, his Deputy, or some Clerk competent to do business for him, shall be present to transact the business of the Office. (16 V. c. 175, s. 14.) 20

Sheriff to return precepts and attend Judge at assize

13. Every Sheriff shall execute and return before the Judge or Judges assigned to hold the Assizes, or to execute any Commission or to hold any Court of Assize and *Nisi Prius*, or of Oyer and Terminer and Gaol delivery in his County, all precepts and writs of *Nisi Prius* and other Jury process delivered to him or his Deputy, and such Sheriff shall give his attendance upon such Judge or Judges as well for the returning of such "*tales de circumstantibus*" as may be prayed for the trial of issues, as for the maintenance of good order in Her Majesty's Courts and for the doing and executing of all other things to the office of Sheriff in such case belonging. (4 G. 4, c. 1, s. 31.) 25 80

Upon death of a Sheriff, his Deputy to continue to execute office in his name until appointment of successor.

14. In case any Sheriff dies, the under Sheriff, or Deputy Sheriff by him appointed, shall nevertheless continue the office of Sheriff, and execute the same, and all things belonging thereunto, in the name of such deceased Sheriff, until another Sheriff has been appointed and sworn into office; and the said under Sheriff or Deputy Sheriff shall be answerable for the execution of the said office, in all things, and to all respects, intents and purposes whatsoever, during such interval, as the Sheriff so deceased would by law have been if he had been living; and the security given to the Sheriff so deceased by the said Under Sheriff and his pledges, shall remain, and be a security to the Queen, Her Heirs and Successors, and to all persons whatsoever, for such Under Sheriff's due performance of his office during such interval. (3 W. 4, c. 8, s. 23.) 35 40 45

Deputy and sureties to be responsible for execution of the office in the interval.

SCHEDULE A.

Know all men by these presents, that we, A. B., of the County of _____, (Sheriff of County of _____ or as the case may be) C. D. of _____, in the County of _____, Esquire, and E. F. of _____, in the County of _____, are held and firmly bound to our Sovereign Lady the Queen, Her Heirs and Successors, in the several sums following, that is to say: The said A. B. in the sum of one thousand pounds; the said C. D. in the sum of five hundred pounds; and the said E. F. in the sum of five hundred pounds: to be paid to our Sovereign Lady the Queen, Her Heirs and Successors; for which payments to be well and truly made, we bind ourselves severally and respectively, and each of us, his heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated this _____ day of _____, in the year of our Lord _____.

The condition of this obligation is such, that if the above bounden A. B., his executors or administrators, shall well and faithfully account for and pay over to Her Majesty's Receiver-General of this Province, or to such person as may be authorized to receive the same, all such sum and sums of money as he shall receive as Sheriff of the County of _____, (or as such Sheriff, as the case may be) as aforesaid, for our said Lady the Queen, Her Heirs or Successors, from the date of this obligation until the _____ day of _____, in the year of our Lord _____, then this obligation to be void, otherwise to remain in full force and virtue.

[L. S.]
[L. S.]
[L. S.]

Signed and delivered }
in presence of }

SCHEDULE B.

Know all men by these presents, that we, A. B., of _____ in the County of _____ (or Sheriff of the County of _____ as the case may be) C. D. of _____, in the County of _____, and E. F. of _____, in the County of _____; (when four sureties are given, the names of the other two to be inserted in like manner,) do hereby jointly and severally, for ourselves, and for each of our heirs, executors and administrators, covenant and promise, that A. B., as Sheriff of the County of _____, shall well and duly pay over to the person or persons entitled to the same, all such moneys as he shall receive by virtue of his said office of Sheriff, from the date of this covenant to the expiration of four years thence next ensuing, and that neither he nor his Deputy shall, within that period, wilfully misconduct himself in his said office, to the damage of any person being a party in
any

any legal proceeding; nevertheless, it is hereby declared, that no greater sum shall be recovered under this covenant, against the several parties thereto, than as follows, that is to say:

Against the said A. B., in the whole ———.

Against the said C. D. ———.

Against the said E. F. ———.

(If other sureties, add them in like manner.)

In witness whereof, we have to these presents set our hands and seals, this ——— day of ———, in the year of our Lord, ———.

[L. S.]
[L. S.]
[L. S.]
[L. S.]

Signed, sealed and delivered, }
in the presence of }

C A P . X X X V .

An Act respecting Interpleading.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. In case after declaration and before plea any Defendant
 5 sued in either of the Superior Courts of Common Law or in
 any County Court in Upper Canada, in any Action of Assump-
 sit, Debt, Detinue or Trover, applies to such Court and shows
 by affidavits or otherwise that he does not claim any interest
 10 in the subject matter of the suit, but that the right thereto is
 claimed or supposed to belong to some third party who has
 sued or is expected to sue for the same, and that such Defen-
 dant does not in any manner collude with such third party, but
 is ready to bring into Court or to pay or dispose of the subject
 matter of the action, in such manner as the Court (or any
 15 Judge thereof,) may order, the Court or any Judge thereof may
 make a Rule or Order calling upon such third party to appear,
 and state the nature and particulars of his claim, and main-
 tain or relinquish the same. (7 V. c. 30, s. 1,—9 V. c. 56, s.
 4,—20 V. c. 57, s. 27.)
2. The Court or Judge may, upon such Rule or Order,
 20 hear the allegations as well of such third party as of the Plain-
 tiff, and in the meantime stay the proceedings in such action,
 and finally, order such third party to make himself Defendant
 in the same or some other action, or to proceed to trial on one
 or more feigned issue or issues, and also direct which of the
 25 parties shall be Plaintiff or Defendant on such trial. (7 V. c.
 30, s. 1.)
3. The Court or Judge may, with the consent of the Plaintiff
 and such third party, their Counsel or Attorney, dispose of the
 merits of their claims, and determine the same in a summary
 30 manner, and make such other rules and orders therein as to
 costs and all other matters, as appear just and reasonable. (7
 V. c. 30, s. 1.)
4. Any such order made by a single Judge not sitting in
 open Court may be rescinded or altered by the Court in like
 35 manner as other orders made by a single Judge. (7 V. c. 30,
 s. 5.)
5. The Judgment in any such action or issue so directed by
 the Court or Judge, and the decision of the Court or Judge in
 a summary manner, shall be final and conclusive upon the
 40 parties, and all persons claiming by, from, or under them. (7
 V. c. 30, s. 6—20 V. c. 57, s. 27.)

When a party
 may apply for
 an Interplead-
 er Order.

The Court or
 Judge may
 hear the
 parties on
 summons and
 grant order.

The Court or
 Judge may by
 consent of
 parties finally
 dispose of the
 matter.

The Court
 may review
 the order of a
 Judge in
 Chambers.

Judgment to
 be final as to
 all parties to
 the suit.

If such third party fail to appear or to obey any Order of the Court, he may be barred from ever prosecuting his claim, and the Court may make such order as shall be right between the Plaintiff and Defendant,

The Judge in Chambers may refer the matter to full Court.

Where claims are made to goods or chattels taken in execution, the Court may, at the instance of the Sheriff, grant interpleading Summons and Order.

Costs discretionally.

When an issue is ordered, the Sheriff may tax his costs and serve *allocatur* on each party, &c.

6. In case such third party has been duly served with the Rule or Order and does not appear to maintain or relinquish his claim, or neglects or refuses to comply with any rule or order made after appearance, the Court or Judge may declare such third party, and all persons claiming by, from, or under him, 5 for ever barred from prosecuting his claim against the original Defendant, his Executors or Administrators, saving the right or claim of such third party against the Plaintiff; and thereupon may make such order between such Defendant and the Plaintiff as to costs and other matters as appears just and reasonable. 10 (9 V. c. 56, s. 5.)

7. In case of any such application to a Judge, he may at any stage of the proceedings, refer the matter to the Court; in which event the Court shall hear and dispose thereof in the same manner as if the proceeding had been originally commenced by rule of Court, instead of the order of a Judge. 15 (9 V. c. 56, s. 6.)

8. In case any claim is made to any goods or chattels taken or intended to be taken under an attachment against an absconding debtor, or in execution under any process issued by 20 or under the authority of any of the said Courts, or to the proceeds or value thereof, by any person not being the person against whom such attachment or execution issued, the Court from which such process issued, or any Judge thereof upon application of the Sheriff (or other officer) to whom the writ is 25 directed made before or after the return of such process, or before or after any action brought against such Sheriff or other Officer may, by rule or order call before such Court or Judge as well the party who issued such attachment or execution as the party making such claim, and thereupon exercise 30 for the adjustment of such claim, and the relief and protection of the Sheriff or other Officer, all or any of the powers and authorities hereinbefore contained, and may make such rules or orders as appear just according to the circumstances of the case. 35 (7 V. c. 30, s. 7.)

9. The costs of all such proceedings shall be in the discretion of the Court or Judge. (7 V. c. 30, s. 6.)

10. In case of an issue being directed to be tried for the determination of the adverse claim in respect of property seized or taken under a Writ of attachment or of execution, the Sheriff (or other Officer) to whom such writ is directed, may tax the costs incurred by him in consequence of such adverse claim, and serve a copy of the *allocatur* of the same when taxed, upon each of the parties to such issue, and the successful party upon the issue shall tax such costs among his costs of the cause, 45 and upon receipt of the same, shall pay them over to such Sheriff or other Officer. (9 V. c. 56, s. 5.)

11. If after the service of such the *allocatur* of the costs, the party succeeding upon the issue neglects or refuses to pay such costs, the Sheriff or other Officer may obtain a Rule upon the successful party for payment of the same. (9 V. c. 56, s. 5.) The successful party liable to the Sheriff for such costs.
- 5 12. If any such proceeding be compromised between the parties thereto, such costs of the Sheriff or other Officer shall be paid by the party, plaintiff or defendant, by whom the execution or attachment was sued out. (9 V. c. 56, s. 5.) If case compromised the Plaintiff, to be liable to the Sheriff for his costs.
- 10 13. In case after the seizure of any property under attachment or in execution, an issue is directed, and the property seized remains pending the trial of the issue, in the custody of the Sheriff or other Officer who seized the same, the Court from which the writ issued, or any Judge thereof in vacation, may make an Order for the payment to the Sheriff or other If goods seized remain in the Sheriff's custody, the Court may award remuneration.
- 15 Officer, of such sum for his trouble in and about the custody of such property, as such Court or Judge deems reasonable, and such Sheriff or other Officer shall have a lien upon the property for payment of the same. (9 V. c. 56, s. 6.)
- 20 14. All rules, orders, matters and decisions made or done in pursuance of this Act, except only the affidavits to be filed, may, together with the declaration in the cause (if any) be entered of record, with a note in the margin expressing the true date of such entry; and every such rule or order so entered shall have the force and effect of a Judgment, except All proceedings may be entered of Record, &c.
- 25 only as to becoming a charge on any lands, tenements or hereditaments. (7 V. c. 30, s. 7.)
- 30 15. In case the costs adjudged are not paid within fifteen days after notice of the taxation and amount thereof given to the party ordered to pay the same or to his Agent or Attorney, execution may issue therefor by writ of *Fieri Facias* or writ of *Capias ad Satisfaciendum* adapted to the case, together with the costs of the entry aforesaid and of the execution. (7 V. c. 30, s. 7.) If costs not paid on demand, execution to issue.
- 35 16. The Sheriff or other Officer executing any such writ shall be entitled to the same fees and no more, as upon similar writs grounded upon a judgment of the Court. (7 V. c. 30, s. 7.) The Sheriff's fees, the same as in other cases.
- 40 17. No writ of *Capias ad Satisfaciendum* shall be sued out upon any such proceeding, except upon a similar affidavit to that required upon the ordinary judgments of such Courts, respectively. (7 V. c. 30, s. 7.) Affidavit necessary to warrant a Ct. Ss.

CAP. XXXVI.

An Act respecting Witnesses and Evidence.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

SUBPENAS IN COUNTY COURT.

County Courts may issue subpoenas to any part of Upper Canada. 1. The several County Courts in Upper Canada may issue writs of *subpœna ad testificandum* to enforce the attendance 5 thereat of any witnesses resident within Upper Canada, and also writs of *subpœna duces tecum* to enforce the attendance of and the production of deeds and papers, by any such witnesses and may proceed against persons who having been duly served with a *subpœna* disregard or disobey the same, with the 10 same powers, in like manner and by the same mode of proceeding as belongs to and is practised in the Superior Courts of Common Law. (20 V. c. 57, s. 7—13 & 14 V. c. 52, s. 3.)

To what allowance such witnesses entitled. 2. Such Witnesses shall be entitled to the same allowance as if attending under *subpœna* from either of the said Superior 15 Courts of Common Law.

QUAKERS, MENONISTS AND TUNKERS MAY AFFIRM IN CASES, CIVIL OR CRIMINAL.

Menonists and Tunkers permitted to make affirmation. 3. In any case, criminal or civil, in which an oath or affirmation is required by law, or upon any lawful occasion whatever on which the oath of any person is by law admissible, a Quaker, Menonist or Tunker, or a member of the church known 20 as the "Unitas Fratrum," or the United Brethren, sometimes called the Moravian Church, having first made the following declaration or affirmation, viz: "I, A. B., do solemnly, sincerely and truly declare, that I am one of the Society called Quakers, Menonists, Tunkers or Unitas Fratrum or Moravians," 25 (as the case may be,) may make his affirmation or declaration in the form following, that is to say: "I, A. B., do solemnly, sincerely and truly declare and affirm, &c.;" which affirmation or declaration shall have the same force and effect to all intents and purposes in all Courts of law and Equity and all other 30 places, as an oath taken in the usual form.

Persons authorized to administer oaths may administer affirmation. 4. Every person authorized or required to administer an oath for any purpose, may administer such affirmation or de- 35 claration. (49 G. 3, c. 6, ss. 1, 2, 3—13 & 14 V. c. 55, s. 94—14 & 15 V. c. 55, s. 2—16 V. c. 19, s. 12.)

COMMISSIONERS TO EXAMINE WITNESSES.

Commissioners may issue 5. In case the Plaintiff or Defendant in any action in either of the Superior Courts of Common Law or in any County Court, 10 is

is desirous of having at the trial thereof, the testimony of any aged or infirm person resident within Upper Canada, or of any person who is about to withdraw therefrom, or who is residing without the limits thereof, the Superior Court in which the
 5 action is pending, or a Judge of either of such Courts, or the County Court in which the action is pending, or a Judge thereof, may, upon the motion of such Plaintiff or Defendant, and upon hearing the parties, order the issue of one or more commission or commissions under the seal of the Court in which the action
 10 is pending, to one or more Commissioner or Commissioners, to take the examination of such person or persons respectively.
 (2 G. 4, c. 1, s. 17.)

to examine persons aged, infirm or absent from Upper Canada.

6. Due notice of every such commission shall be given to the adverse party to the end that he may cause the witnesses to be
 15 cross-examined. (20 V. c. 58, s. 5.)

Notice to be given to the adverse party.

7. In case the examination of any witness or witnesses taken without the limits of Upper Canada pursuant to any such commission is proved by an Affidavit of the due taking of such examination sworn before and certified by the Mayor or Chief
 20 Magistrate of the City or place where the same was taken, and in case such commission with such examination and affidavit thereto annexed is returned to the Court from which such Commission issued close under the hand and seal or hands and seals of one or more of the Commissioners, the same shall
 25 *prima facie* be deemed to have been duly taken, executed and returned, and shall be received as evidence in the cause, unless it is made to appear to the Court in which such examination is returned and published, or before which the same is offered in evidence, that the same was not duly taken; or that the
 30 Deponent is of sound mind, memory and understanding, and living within the jurisdiction of the Court at the time such examination is or offered in evidence to such Court. (2 G. 4, c. 1, s. 18—20 V. c. 6, s. 6.)

How commissions executed abroad are to be proved.

COMPETENCY OF WITNESSES.

8. No person offered as a witness shall, by reason of
 35 incapacity from crime or interest, be excluded from giving evidence, either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any Matter or Question, or on any Inquiry arising in any Suit, Action or Proceeding; Civil or Criminal, in any Court, or before any
 40 Judge, Jury, Sheriff, Coroner, Magistrate, Officer or Person having by Law, or by consent of parties, authority to hear, receive and examine evidence. (16 V. c. 19, s. 1.)

Who may be admitted as witnesses.

9. Every person so offered, shall be admitted and be compellable to give Evidence on Oath, or solemn affirmation, where
 45 an affirmation is receivable, notwithstanding that such person has or may have an interest in the matter in question or in the

An interest in the question not to disqualify.

event of the trial of any Issue, Matter, Question or Inquiry, or of the Suit, Action or Proceeding in which he is offered as a witness, and notwithstanding that such person so offered as a witness, may have been previously convicted of any crime or offence. (16 V. c. 19, s. 1.) 5

Exception.

10. This Act shall not render competent or authorize or permit any party to any suit or proceeding, individually named in the Record, or any Plaintiff, Lessor of the Plaintiff or Tenant of premises sought to be recovered in Ejectment, or the Landlord or other person in whose right any defendant in *replevin* may 10 make cognizance, or any person in whose immediate or individual behalf any Action may be brought or defended either wholly or in part, or the husband or wife of any such party, to be called as a witness on behalf of such party, but such party may in any Civil proceeding be called and examined as a 15 witness in any suit or action at the instance of the opposite party: Provided always, that the wife of the party to any suit or proceeding named in the Record, shall not be liable to be examined as a witness by or at the instance of the opposite party. (16 V. c. 19, s. 1.) 20

A party to any civil suit may be summoned as a witness by the opposite party and how penalty on such party not attending.

11. Whenever any party in such proceeding desires to call the opposite party as a witness, he shall either subpoena such party or give to him or his Attorney at least eight days' notice of the intention to examine him as a witness in the cause, and if such party does not attend on such notice or Subpoena, such 25 non-attendance shall be taken as an admission *pro confesso* against him in any such Suit or Action, unless otherwise ordered by the Court or Judge in which or before whom such examination is pending, and a general finding or Judgment may be had against such party thereon, or the Plaintiff may be 30 non-suit or the proceedings in such Action or such Suit may be postponed by such Court or Judge, on such terms as such Court or Judge sees fit to impose. (16 V. c. 19, s. 2.)

How to proceed if a party resides abroad.

12. In case a party to any such suit or action is resident out of Upper Canada, and in case the opposite party requires a 35 Commission and states by affidavit the facts intended to be proved before such Commission, and in case the Court or Judge is satisfied that such Commission is applied for in good faith and not for purposes of delay, the Court in which such suit or action has been brought, or any Judge thereof, may, at the 40 instance of such opposite party, issue a Commission for the examination of such non-resident party in the same manner as a Commission may be issued for the Examination of Witnesses. (16 V. c. 19, s. 3.)

If he refuses to attend.

13. If such party refuses to attend before the Commissioners, such refusal, proved by affidavit or otherwise, to the satisfaction of a Judge of the Court in which the suit or the trial is 45 pending, shall authorize a verdict or judgment to pass against such party, or he shall become non-suit. (16 V. c. 19, s. 3.)

14.

14. Nothing herein contained shall render any person, who, in any proceeding, is charged with the commission of any indictable offence, or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself, or shall, in any such proceeding, render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband, or shall, in any civil proceeding, render any person compellable to answer any question tending to criminate himself or to subject him to any prosecution for any penalty. (16 V. c. 19, s. 4.)

Persons accused of offences not competent or compellable to give evidence for or against themselves.

15. Whenever any book or other document is of so public a nature as to be admissible in evidence on its mere production from the proper custody, and no Statute exists which renders its contents proveable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any Court of Justice, or before any person having by law or by consent of parties, authority to hear, receive and examine evidence, provided it is proved to be an examined copy or extract, or that it purports to be signed and certified as a true copy or extract by the Officer to whose custody the original is entrusted.

Copies of public books or documents admissible in evidence.

16. Such Officer is hereby required to furnish such certified copy or extract to any person applying for the same at a reasonable time upon his paying therefor a reasonable sum, not exceeding six pence for every folio of one hundred words. (16 V. c. 19, s. 9.)

And if required, copies to be delivered.

17. If any Officer authorized or required by this Act, or by any law or usage in force in Upper Canada, to furnish any certified copies or extracts, wilfully certifies any document to be a true copy or extract, knowing that the same is not a true copy or extract, he shall be guilty of a misdemeanor, and be liable upon conviction to imprisonment for any term not exceeding Eighteen months. (16 V. c. 19, s. 9.)

Copies thereof may be certified.

PROOF OF WILLS.

18. Whenever any person has died or dies after the passing of this Act in any of Her Majesty's possessions out of Upper Canada, having made a will sufficient to pass real estate in Upper Canada, and whereby any such estate has been devised, charged or affected, and such Will has been duly proved in any Court having the proof and issuing probate of wills in any of such possessions, and remains filed in such Court, then in case notice of the intention to use such Probate or Certificate in the place of the original Will, has been given to the opposite party in any such proceeding one month before the same is to be so used, the production of the Probate of such Will, or a certificate of the Judge, Registrar or Clerk of such Court, that the original is filed and remains in such Court, and purports to have been executed

Probate of Wills of persons dying in H. M.'s Dominions out of U. C., may be received in evidence.

executed before two witnesses, shall, in any proceeding concerning such Real Estate, be sufficient *prima facie* evidence in any Court of Law or Equity in Upper Canada of such Will and the contents thereof, and of the same having been executed so as to pass Real Estate, without the production of the original Will; but such Probate or Certificate shall not be used if, upon cause shewn before any such Court, or any Judge thereof, such Court or Judge finds any reason to doubt the sufficiency of the execution of such Will to pass such Real Estate as aforesaid, and makes a rule or order disallowing the production of such Probate. (16 V. c. 19, s. 5.)

Certificate to be *prima facie* evidence.

19. The production of the certificate in the last preceding section mentioned, shall be sufficient *prima facie* evidence of the facts therein stated, and of the authority of the Judge, Registrar or Clerk, without any proof of his appointment, authority or signature; but subject to the provisions in that section contained, as to notice to the opposite party of the intention to use such Probate or Letters in place of the original Will, and to any order that may be made by the Judge or Court disallowing the production of the same as therein mentioned. (16 V. c. 19, s. 6.)

Probate of Will receivable in evidence.

20. Whenever in any suit or action pending or brought after the passing of this Act in either of Her Majesty's Superior Courts of Law or Equity, any party is desirous of proving the Execution of the Will of any person deceased, the production of the Probate of such Will or of Letters of Administration with the Will annexed, shall be received and taken as *prima facie* evidence of the due execution of such Will and of the contents thereof in the same manner as if the original Will had been produced and the execution thereof proved by the subscribing witnesses thereto. (16 V. c. 19, s. 7.)

PRACTICE IN THE EXAMINATION OF WITNESSES.

Cross-examination as to previous statements in writing.

21. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shewn to him; but if it is intended to contradict such witness by the writing, his attention must before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him; and the Judge at any time during the trial, may require the production of the writing for his inspection, and he may thereupon make such use of it for the purposes of the trial as he thinks fit. (19 V. c. 43, s. 161.)

Proof of previous conviction of a witness may be

22. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and upon being so questioned, if he either denies the fact or refuses to answer, the opposite party may prove such conviction, and a certificate

5 tificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court at which the offender was convicted, or by the Deputy of such Clerk or Officer, (for which certificate a fee of *five shillings* and no more shall be demanded or taken,) shall, upon proof of the identity of the witness as such convict, be sufficient evidence of his conviction, without proof of the signature or official character of the person appearing to have signed the certificate. (19 V. c. 43, s. 162.)

15 **23.** It shall not be necessary to prove by the attesting witness, any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission or otherwise, as if there had been no attesting witness thereto. (19 V. c. 43, s. 163.)

20 **24.** Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine, shall be permitted to be made by witnesses; and such writings and the evidence of witnesses respecting the same, may be submitted to the Court and Jury, as evidence of the genuineness or otherwise of the writing in dispute. (19 V. c. 43, s. 164.)

25 **25.** A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may in case the witness shall, in the opinion of the Judge, prove adverse, contradict him by other evidence, or by leave of the Judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he did make such statement. (19 V. c. 43, s. 159.)

35 **26.** If a witness upon cross-examination as to a former statement made by him relative to the subject matter of the cause, and inconsistent with his present testimony, does not distinctly admit that he did make such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he did make such statement. (19 V. c. 43, s. 160.)

CAP. XXXVII.

An Act relating to Jurors, Juries and Inquests in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

INTERPRETATION.

Interpreta-
tion clause.

1. The word "County," whenever it occurs in this Act, shall include and apply to "Unions of Counties" for Judicial purposes, and the word "Township" shall include and apply to "Unions of Townships." 5

ALL ISSUES TO BE TRIED BY JURY.

Issues of fact
to be tried by
a Jury unless
otherwise
provided.

2. All issues of fact now or hereafter joined in any action, real, personal or mixed, brought in any of Her Majesty's Courts of Justice within Upper Canada, and the assessment or inquiry of damages in any such action the trial or assessment of which is not otherwise provided for, shall be tried and determined or assessed and inquired of by the unanimous verdict of twelve Jurors, duly sworn for the trial of such issue or issues, or for the assessment or inquiry of such damages ; and the said Jurors may bring in a special verdict upon the trial of any such issue. (32 Geo. 3, c. 2.) 10 15

II.—QUALIFICATIONS, EXEMPTIONS AND DISQUALIFICATIONS OF JURORS.

Who shall be
qualified as a
juror.

3. Every man not herein exempted, over the age of twenty-one years, residing in any County, City, or other local judicial division in Upper Canada in the possession of his natural faculties and not infirm or decrepit, and who is assessed for local purposes for property, real or personal, belonging to him in his own right or in that of his wife, to the amount hereinafter mentioned, shall be qualified and liable to serve as a Juror both on Grand and Petit Juries in Her Majesty's Superior Courts of Common Law at Toronto having General Criminal or Civil Jurisdiction throughout Upper Canada, and in all Courts of Civil or Criminal Jurisdiction within the County, City, or other local judicial division of the County in which he resides. (13, 14 V. c. 55, s. 1.) 20 25 30

Parting with
property after
assessment not
to disqualify.

4. No person enrolled as a Juror in respect of property of which he was at the time seized or possessed shall be disqualified or exempted from serving as such Juror in consequence of his having ceased to be seized or possessed of such property between the time of enrollment and his being called upon to serve as such Juror, nor shall the same form any ground of challenge to such Juror. (13, 14 V. c. 55, s. 2.) 35

5. Whenever property is assessed on the assessment-roll of any Township, Village or Ward, as the property of two or more persons jointly, the Selectors of Jurors to whom it belongs to extract from such roll the names thereon of those qualified and liable to serve as Jurors, may, and if they have the requisite information as to the names of the parties to enable them to do so, shall, in making such extract, and for all the purposes of this Act, treat such property as if it belonged to such persons in equal proportions, and such Selectors shall treat each of such persons as respects his qualification and liability to serve as such Juror as if he had been severally assessed for such equal proportion of such property. (13, 14 V. c. 55, s. 3.)

Joint proprietors to be deemed equally interested.

6. The amount of property in respect of which a person is qualified and liable to serve as such Juror shall, by the Selectors for each Township, Village or Ward, be determined by the relative amount of property for which the person is assessed on the assessment-roll of the Township, Village or Ward of which he is a resident inhabitant at the time of the annual selection of Jurors, and the mode for ascertaining the same shall be as follows, that is to say: The names of one half of the assessed resident inhabitants of the Township, Village or Ward shall be copied from the assessment-roll of such Township, Village or Ward, commencing with the name of the person rated at the highest amount on such roll and proceeding successively towards the name of the person rated at the lowest amount until the names of one half of the persons assessed upon such roll have been copied from the same; and the amount for which the last of such persons is assessed upon the said roll, shall be that which qualifies every resident inhabitant of such Township, Village or Ward, and renders him liable to serve as such Juror. (13, 14 V. c. 55, s. 4—16 V. c. 120, s. 2.)

Property qualifications.

7. All persons upwards of sixty years of age,—all members of the Executive Council of this Province,—the Secretary of the Governor, and all officers and others in the service of the Governor for the time being,—all officers of the Provincial Government, and all clerks and servants belonging to either House of the Provincial Parliament, or to the Public Departments of the Province,—the Warden of the Provincial Penitentiary, and all the officers and servants of the said Penitentiary,—all Judges of Courts having general jurisdiction throughout Upper Canada,—the Judges of the County Courts and the Judges of all other Courts except the Quarter Sessions of the Peace, having jurisdiction throughout any County or City in Upper Canada,—all Sheriffs, Coroners, Gaolers and Keepers of Houses of Correction and of Lock-up Houses,—all Priests, Clergymen and Ministers of the Gospel, recognized by law, to whatever denomination of Christians they may belong,—all members of the Law Society of Upper Canada actually engaged in the pursuit or practice of their profession, whether as Barristers or Students,—all Attorneys,

Persons over 60, &c. holding certain offices, or exercising certain professions or callings exempted from serving as jurors.

tomies, Solicitors and Proctors actually practising,—all Officers of the Courts of Justice whether of general, County, City, or other local jurisdiction, actually exercising the duties of their respective offices,—all Physicians, Surgeons and Apothecaries actually practising,—all Officers in Her Majesty's Army or Navy on full pay,—all Pilots and Seamen actually engaged in the pursuit of their calling,—all Officers of the Post Office, Customs, and Excise,—all Sheriff's Officers and Constables,—all County, Township, City, Town and Village, Treasurers and Clerks,—all Collectors and Assessors,—all Professors, Masters and Teachers of any University, College, County Grammar School, Common School or other School or Seminary of learning, actually engaged in performing the duties of such appointments respectively,—and all officers and servants of any such University, College, School or Seminary of learning, actually exercising the duties of their respective offices or employments,—all Millers, and all Firemen belonging to any regular Fire Company, are hereby absolutely freed and exempted from being returned and from serving as either Grand or Petit Jurors in any of the Courts aforesaid, and shall not be inserted in the Rolls to be prepared and reported by the Selectors of Jurors as hereinafter mentioned. (13, 14 V. c. 55, s. 5.)

Members of the Legislature and certain municipal functionaries exempted from serving at certain Courts.

8. All Members of the Legislative Council and of the Legislative Assembly of this Province,—all Wardens of Counties, and all other Members of any County Council,—all Mayors, Townreeves and Deputy Townreeves of any City, Town, Township or Village,—all Justices of the Peace, and all other Members and Officers of any Municipal Corporation, are hereby absolutely freed and exempted from being selected by the Selectors of Jurors hereinafter mentioned to serve as Grand or Petit Jurors in Her Majesty's Inferior Courts, and the names of such persons shall not be inserted in the rolls from which Jurors are to be taken for such purposes, and if any such name is at any time accidentally inserted in any such roll, it shall, if drawn in balloting any Jury List or drafting any Panel therefrom, be set aside and not inserted therein, and all such persons are moreover absolutely freed and exempted from being returned upon any General Precept to serve as Petit Jurors at any Sessions of Assize or *Nisi Prius*, Oyer and Terminer or Gaol Delivery, and the names of such persons, if drawn in drafting such panel, shall be set aside and not inserted in the same. (13, 14 V. c. 55, s. 6—14, 15 V. c. 63, Sch. Nos. 1 and 2.)

Exemptions arising from having actually served as a juror within a certain time previously.

9. Every person whose name was inserted in any of the Jury Lists as hereinafter provided, for the year next before that in which his name is again drawn in any of such Lists, or for some prior year within the Rule of Exemption hereby established, and who has duly served on some Panel returned under a general Precept from such Jury List, until discharged by the Court to which such Panel was returned, shall be exempt from having his name inserted in any such list for any subsequent year

year within such rule of exemption, that is to say : if the Jurors' Roll from which such name is drawn contains a sufficient number of names to make two complete Jury Lists of the denomination of such Jurors' Roll, and if it appears by the Jurors' Book 5 of the preceding year that the name of such person was inserted in any of the Jury Lists for that year, and that he duly attended and served upon any such Panel as aforesaid, the name of such person shall not be inserted in such Jury List ; and if there is a sufficient number of names on such Jurors' 10 Roll to make three such complete Jury Lists, and if it appears by the Jurors' Books of either of the two preceding years, that his name was inserted in any of such Jury Lists for either of such years, and that he duly attended and served as aforesaid for either of such years, the name of such person shall not be 15 inserted, and so on, *loties quoties*, allowing one additional year's exemption for each complete additional Jury List that such Jurors' Roll furnishes as aforesaid. (13, 14 V. c. 55, s. 7.)

10. But service as a Juror upon any Panel returned by the 20 Sheriff of a County, shall not exempt such person from again serving as a Juror upon any Panel returned by the High Bailiff or other proper Officer of a City embraced within the County of such Sheriff, though within the period of exemption provided for by the last preceding section, nor shall any such service 25 upon any Panel returned by the High Bailiff or other proper Officer of any City having a Recorder's Court established in the same, exempt the person who so served, from again serving as a Juror upon any Panel returned to any of the Superior Courts of Criminal or Civil Jurisdiction, by the Sheriff of the County 30 within the limits of which such City is embraced : and for Jury Lists for such Superior Courts for such County and for such City respectively, shall be balloted without any regard being had to any such service, but the inhabitants of every such City shall be exempt from serving on Juries at any other than 35 the City Courts, or on trials at the Bar of either of Her Majesty's Superior Courts of Common Law at Toronto, or at the Courts of Assize and *Nisi Prius*, Oyer and Terminer, and General Gaol Delivery for the County within the limits of which such City is situate. (13, 14 V. c. 55, s. 8.)

40 11. Except only in the cases hereinafter expressly provided for, no man not being a natural born or naturalized subject of Her Majesty, is qualified to serve as a Grand or Petit Juror in any of the Courts aforesaid on any occasion whatsoever. (13, 14 V. c. 55, s. 9.)

45 12. No man attainted of any Treason or Felony, or convicted of any crime that is infamous, unless he has obtained a free pardon, nor any man who is under outlawry, is qualified to serve as a Grand or Petit Juror in any of the said Courts on any occasion whatsoever. (13, 14 V. c. 55, s. 10.)

III.—SELECTION AND DISTRIBUTION OF JURORS.

- 13.** The Mayor or Townreeve, the City, Town, Village or Township Clerk, and the Assessor or Assessors if there be more than one, of the respective Cities, Towns, Villages and Townships in Upper Canada, shall be *ex officio* Selectors of Jurors for every such Township and Village, and for each of the Wards of every such City or Town. (13, 14 V. c. 55, s. 11.)
- 14.** Such Selectors shall assemble annually on the first day of September, or if a Sunday or Statutory Holiday, or the first day thereafter not being such Holiday, at the place where the Meetings of the Municipal Council of such City, Town, Village or Township are usually held, or at such other place within the Municipality as may for that purpose be appointed by the Head of such Municipal Corporation, or during his absence, or the vacancy of the Office, by the Clerk thereof for the purpose of selecting from the Assessment Rolls of such City, Town, Village or Township, the names of such persons qualified and liable to serve as Jurors under this Act.
- 15.** The Selectors shall select such persons as in the opinion of such Selectors, or of a majority of them, are from the integrity of their characters, the soundness of their judgments, and the extent of their information, the most discreet and competent for the performance of the duties of Jurors.
- 16.** The City, Town, Village or Township Clerk, or the Assessor or Assessors, or the other officer or person who has the actual charge or custody of the Assessment Rolls for every such City, Town, Village or Township for such year, shall at the time aforesaid bring such Assessment Rolls to every such annual meeting of the Selectors of Jurors for such City, Town, Village or Township and permit the use of the same for the purpose aforesaid.
- 17.** Such Selectors shall annually, on the said first day of September, or if they have been unable to complete the duty hereby imposed upon them on such first day, then on the first day next thereafter not being a Sunday or Statutory Holiday, proceed to select such names from such Rolls accordingly.
- 18.** The Selectors after striking from the said Rolls the names of all persons exempt from serving as Jurors on any of the divisions of Jurors mentioned in the twentieth section of this Act, and also the names of those who are disqualified from serving as Jurors, shall select, as qualified to serve on Juries, at least two thirds of the persons whose names may then remain on the said Rolls.

Certain municipal functionaries to be selectors of jurors

When the selection shall be made.

Principles by which the selectors are to be governed.

The Clerks of Councils to produce assessment rolls, &c.

Meeting of selectors.

How selection to be made.

19. In case of an equality of votes amongst such Selectors as to any one or more of the names to be so selected, or as to the Division of the Report of such Selectors in which any such name should be inserted in the distribution of such names as hereinafter provided, or as to any other incidental question which may arise, the Mayor or Townreeve, or in case of his absence or the vacancy of the office, the City, Town, Village or Township Clerk, or in the absence or vacancy of the offices of both, then the Assessor whose Roll for the year contains the greatest number of assessed names, and in the case of joint Assessors the Assessor first named in the appointment of such Assessors, shall have a casting or double vote in the decision of the question.

In case of an equality of votes among the selectors who to have the casting vote.

20. The said Selectors having made such Selection, shall for the purpose of the Report thereof as hereinafter provided, distribute the names of the persons so selected from each Roll into four divisions; the first, consisting of persons to serve as Grand Jurors in the Superior Courts; the second, of persons to serve as Grand Jurors in the Inferior Courts; the third, of persons to serve as Petit Jurors in the Superior Courts; and the fourth, of persons to serve as Petit Jurors in the Inferior Courts, and shall make such distribution according to the best of their judgment as to the relative competency of the parties with reference to the duties to be required of them respectively. (13, 14 V. c. 55, s. 13.)

Names of jurors to be distributed into four divisions, and how.

21. The said Selectors shall make such distribution amongst the said four divisions, as nearly as may be in the following proportions relatively to the whole number of persons so selected by them from each of such Rolls for that purpose, that is to say: One fifteenth as nearly as may be under the first of such Divisions; two fifteenths as nearly as may be under the second of such Divisions;—four fifteenths as nearly as may be under the third of such Divisions;—and eight fifteenths as nearly as may be under the fourth of such Divisions. (13, 14 V. c. 55, s. 14—14, 15 V. c. 65, sch. 5.)

Proportionate number in each division.

22. The said Selectors of Jurors shall thereupon;

1. Make out in duplicate under their hands and seals, or under the hands and seals of such of them as perform such duty, a report of such Selection and Distribution for every such Township, Village or Urban Ward, which Report shall be as nearly as may be in the form set forth in the Schedule to this Act annexed, marked A, and be filled up agreeably to the directions contained in the notes to such Schedule.

Selectors to make out a duplicate report, &c.

2. There shall be subjoined to such Report a written declaration subscribed by such Selectors of Jurors, stating each for himself, that they had made such Selection and Distribution to the best of their judgment and information pursuant to this

Declaration to be subjoined to the report.

this Act, and without fear, favour or affection of, to, or for any person or persons whomsoever, gain, reward or hope thereof, other than such fees as they may be lawfully entitled to receive for the same under the authority of this Act; and

A duplicate report shall be deposited with Clerks of the Peace. 3. One of such Duplicate Reports shall on or before the fifteenth day of the same month of September, be deposited by such Selectors with the Clerk of the Peace for the County in which the Town, Village or Township lies, or within the limits of which such City is embraced; and the other, duplicate with the City, Town, Village or Township Clerk of such City, Town, Village or Township respectively; (14, 15 V. c. 65, sch. 7.) 5

Who shall keep the same on file. 4. And such Clerks respectively, shall keep the same on file in their respective offices for the use and information of all who may have lawful occasion to examine or make use of the same; and (14, 15 V. c. 65, sch. 8.) 15

In case of loss, a copy of such duplicate report to be filed. 5. In the event of the loss or destruction of any such Duplicate Report, by fire or other accident, a copy thereof made from the other of such Duplicates and certified to be a true copy thereof, by the Officer to whom the legal custody of such last mentioned Duplicate belongs, shall be filed in the office in or out of which such first mentioned Duplicate Original was so lost or destroyed as aforesaid, and shall be thenceforth taken, received, and acted upon in all respects as if it were the said Duplicate Original Report so lost or destroyed as aforesaid; and 20

In case of loss of the original report, a similar copy to be filed, &c. 6. In case of the destruction of any original Selectors' Report, the Officer in whose office the same was when so destroyed, shall procure as soon as reasonably may be, a certified copy of such Report from the other Officer to whom the legal custody of the other Duplicate original of such Report belongs, and file the same in his office accordingly. (14, 15 V. c. 65, sch. 9.) 25

IV.—JURORS' BOOK.

Clerk of the peace to prepare jurors' books in form of Schedule B. 23. The Clerk of the Peace for every County in Upper Canada, shall annually procure a Book and keep the same as nearly as may be in the Form set forth in the Schedule to this Act annexed marked B, and agreeably to the directions contained in the notes to such Schedule, and such book shall be called "The Jurors' Book" for the County of which he is such Clerk of the Peace, and the year for which such Book is to be used as hereafter provided shall be inserted therein. (13, 14 V. c. 55, s. 16—14, 15 V. c. 65, sch. 10 & 11.) 35

In which shall be entered the names of grand and petit jurors. 24. Such Clerk shall, between the fifteenth day of September and the thirty-first day of October in each year, transcribe or procure to be transcribed into such Book, from the Reports of the Selectors of Jurors for the different Townships, Villages and Urban 40

Urban Wards, or other like local divisions of his County, so made to him for such year as aforesaid, or from such of them as have been so made to him, on or before such fifteenth day of September, the names and additions of all persons selected to serve as Grand or Petit Jurors, as the same are set forth and distributed in such Reports.

25. Such names shall be transcribed into the Book in four Rolls, the first to be called "Roll of Grand Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction," the second, "Roll of Grand Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction," the third, "Roll of Petit Jurors to serve in Her Majesty's Superior Courts of Criminal and Civil Jurisdiction," and the fourth, "Roll of Petit Jurors to serve in Her Majesty's Inferior Courts of Criminal and Civil Jurisdiction."

Such book to contain four rolls of jurors.

26. In each of such Rolls shall be transcribed the names and additions of all persons so selected and reported by the Selectors of Jurors as aforesaid to serve as such Jurors in such County respectively. (13, 14 V. c. 55, s. 16.)

Names and addition of jurors.

27. The Clerk of the Peace shall, on or before the thirty-first day of December, cause a correct copy of such Jurors' Book, certified by him to be a true copy of the original, to be made and deposited in the office of the Clerk of the Crown and Pleas to Her Majesty's Court of Queen's Bench at Toronto, and from it, in the event of the loss or destruction of the original by fire or other accident, a duplicate original of such Jurors' Book shall be made, and being certified by the said Clerk of the Crown and Pleas, to be truly copied from the copy deposited in his office, shall, upon such loss or destruction being established upon oath or affirmation before two or more Justices of the Peace of the County, be received and used on all occasions and for all purposes, as the original which had been so lost or destroyed. (16 V. c. 120, s. 4.)

Deposit of certified jurors' book with Clerk of the Crown, Queen's Bench.

28. In every case of the destruction of any original Jurors' Book, the Clerk of the Peace for the County shall procure, as soon as reasonably may be, such duplicate original of such book so certified as aforesaid, and deposit the same in his office as above provided.

When copies therefrom to be procured.

29. In every such case the Clerk of the Peace shall as soon as may be thereafter, give to the Sheriff or other Officer or Minister of the County to whom the return of Jury Process belongs, notice of such destruction, and of the procurement and deposit of such duplicate original in lieu thereof; Whereupon such Sheriff, Officer or Minister shall furnish to such Clerk of the Peace copies of all Panels of Jurors drafted by such Sheriff or other Minister from the Jury Lists in such book; and such Clerk of the Peace shall thereupon enter such Panels in such duplicate

Notice to be given to the Sheriff, &c.

duplicate Original Jurors' Book accordingly, as the same were entered in the said Original Jurors' Book.

When united Counties dissolved, what shall be done by Clerk of the peace.

30. In every case in which a Proclamation issues disuniting a Junior County from a Senior County or Union of Counties from and after the first day of January of the then following year, the Clerk of the Peace for the Union of Counties of which such Junior County is at the time a member, shall procure two of such Jurors' Books, one for the County or Counties from which such Junior County is to be so disunited, and the other for such Junior County itself. (14, 15 10 V. c. 65, sch. 12.)

How the jurors' names shall be arranged in the books and rolls.

31. Such Clerk shall transcribe into the former of such Books the names and additions of all persons so selected for the different Townships, Villages and Urban Wards of such Senior County or Counties, and into the latter of such Books, the names and additions of all persons so selected for the different Townships, and Urban Wards of such Junior County respectively. 15

Clerk of the peace to prepare ballots, &c.

32. In every such case the preparing of the Ballots, the balloting of the Jury Lists, and the performing of all other acts and things required by this Act to be done for such Junior County for such following year, shall be done and performed by the Clerk of the Peace and Court of General Quarter Sessions of the Peace for such original Union of Counties and by the Chairman and Officers thereof. 20

Clerk of the peace of senior County to deliver jurors' book to Clerk of the peace of junior County.

33. In every such case as soon as may be after the Jurors' Book for the Junior County has been completed and the Copies thereof made and deposited in the proper offices, the Clerk of the Peace of the original Union of Counties shall, on demand thereof, deliver the same to the Clerk of the Peace of the Junior County, who shall thereupon give him a receipt for such Book. 25 30

Treasurer of junior County to pay accounts therefor.

34. Upon such receipt being filed with the Treasurer of such Junior County, and upon the accounts of the Clerk of the Peace and Crier of the said Court of Quarter Sessions of such original Union of Counties for the services thus performed for such Junior County being verified, in the manner hereinafter provided by affidavit before any Commissioner for taking affidavits for any of such Counties or the Union of which they may be members, the Treasurer of such Junior County shall pay the amount of such accounts out of the like moneys as are hereinafter provided with respect to the payment of similar accounts by the Treasurers of other Counties, and such payments shall in like manner be allowed in the accounts of such Treasurer accordingly. 35 40

How such jurors' rolls are to be divided.

35. Such Jurors' Rolls shall be each divided into Townships, Wards and Villages, or other like sub-divisions answering to the local divisions of the Counties, and of Cities and Towns embraced 45

embraced within the limits thereof, and such sub-divisions, and also the names within each sub-division respectively, shall be arranged alphabetically, and all the names in each of such Rolls thus arranged, shall be numbered with a series of current numbers from one forward. (13, 14 V. c. 55, s. 17.)

36. To each of such Rolls in the Jurors' Book shall be subjoined a certificate from the Clerk of the Peace, who prepared the same, that he had carefully compared such Roll with the Reports made by the several Selectors of Jurors for the different Townships, Wards and Villages and other local divisions of the County or Union of Counties, and the Cities and Towns embraced within the limits of the same for the year, as such Reports remained on file in his office on the Fifteenth day of September in such year, and that such Roll contains a true and correct transcript of the names and additions of all persons so selected and reported to serve as such Jurors as aforesaid.

How the rolls are to be certified.

V.—BALLOTING JURY LISTS FROM JURORS' ROLLS.

37. The Clerk of the Peace, for every County or Union of Counties, shall annually prepare for each of the said Jurors' Roll in such Jurors' Book, a separate and distinct set of ballots or pieces of parchment, card or paper of uniform and convenient size, each set containing the same number of ballots as there are numbers in the Jurors' Roll to which the set belongs, and upon each set of such ballots he shall cause to be printed or written the whole of the numbers of such Jurors' Roll, allowing one number to each ballot, and shall carefully fold and enclose the whole of each of the said set of ballots in a separate and distinct envelope, and seal the same so as to prevent any of such ballots from being lost from or out of the same, and shall endorse each of such parcels of ballots with the year and name of Jurors' Roll to which the same relates. (13, 14 V. c. 55, s. 18.)

Clerks of the peace to prepare ballots, and how.

38. The Clerk of the Peace for each respective County shall on the first day of the Court of General Quarter Sessions of the Peace for the County, held next after the Thirty-first day of October in each year, bring into Court and publicly deliver to the Chairman of such Court *sedente curia*, the Jurors' Book so prepared by him as aforesaid for the then next year, and also the four parcels of ballots belonging to the same as aforesaid, together with the Jurors' Books for such and so many of the then next preceding years as may be required for proceeding with the balloting of the Jury Lists as hereinafter directed, and shall thereupon make oath in open Court. (13, 14 V. c. 55, s. 19—14, 15 V. c. 65, sch. 13):

Jurors' book to be brought into Q. S. (sitting the Court) yearly after 1st Oct.

Oath to be taken by the Clerk of the peace;

1. That he has carefully compared the Jurors' Rolls in such first mentioned Jurors' Book with the Reports made by the several

That he has compared jurors' rolls.

several Selectors of Jurors for the several Townships, Villages and Wards within the County as the same remained on file in his office on the Fifteenth day of September preceding, and that to the best of his knowledge and belief the said Jurors' Rolls contain a true and correct transcript of the names and 5 additions of all persons so selected and reported by such Selectors of Jurors as aforesaid ;

Has examined and compared the ballots.

2. That he has carefully examined and compared the ballots in each of the parcels so delivered into Court as aforesaid, with the Jurors' Roll to which such ballots by the indorsement 10 on such parcel purports to belong, and that each parcel of such ballots so delivered into Court contains to the best of his knowledge and belief the whole of the numbers on the Jurors' Roll, to which by such indorsement such parcel purports to belong ; 15

That the jurors' books are those remaining on file

3. That the Jurors' Books secondly above mentioned are those remaining on file in his office for the years to which they purport respectively to belong, and that all entries in such last mentioned Books were truly and faithfully made therein, without fraud or collusion of any kind, and according to the very 20 truth.

If the Clerk has been changed, the oath modified.

39. If such Clerk of the Peace has not been in office during all the time that such Jurors' Books have been on file in the office of the Clerk of the Peace for such County or Union of Counties, then, that all entries in such Books made 25 during the time that he has been in office, have been truly and faithfully made therein, without fraud or collusion of any kind, and according to the very truth, and that he hath no reason but to believe, and doth therefore verily believe that all other entries made therein prior to his appointment, were in like manner truly and faithfully made therein as aforesaid. 30

The oath to be modified also when the books are brought in for the first time.

40. On the first occasion of bringing into Court a Jurors' Book for any County or Union of Counties, or for any City, there being no Jurors' Book for any preceding year for such County, Union of Counties or City, the oath to be made by the Clerk of the Peace or Clerk of the Recorder's Court respec- 35 tively, shall be modified so as to be adapted to such circumstances.

If the Clerks for the time being suspects previous errors or fraud, he is to state the same.

41. If any Clerk of the Peace or Clerk of the Recorder's Court is unable to make the oath required by the thirty-eighth section of this Act, as to the Entries made in any of such Jurors' 40 Books previous to the time of such Book coming into his custody from his predecessor, or has reason to suspect that any original entries in any of such Books have after their original completion been erased, mutilated or altered, he shall in lieu of that part of the said oath, make oath that, as to such entries, 45 he is unable to speak, but that from circumstances which have come

come to his knowledge, or of which he has been informed, he has reason to doubt the correctness thereof, or of some parts thereof, or has reason to suspect that some of the original entries in some of such Books have been erased, mutilated or
5 altered, as the case may be.

12. In every case in which the Clerk of the Peace has made an affidavit in the terms of the forty-first section of this Act the Court of Quarter Sessions shall immediately after the balloting has been completed, either on the same or some subsequent day, examine and enquire by the oath of such persons as may be informed thereof into such supposed incorrect entries, erasure, mutilations or alterations, their nature and extent, and by whom, when and for what purpose they were made, and shall punish the parties who are found to have made such incorrect entries,
10 erasures, mutilations or alterations, by fine or imprisonment in their discretion, and shall cause such incorrect entries, erasures, mutilations or alterations to be rectified, and such Books restored to their original state as nearly as may be according to the best information they have been able to obtain of or concerning the same.
20

The Quarter Sessions shall inquire into the matter.

43. The Chairman of such Court shall thereupon certify under his hand and seal in such Books respectively, the receipt of such Books and the oath or affirmation upon which the same were received, and a remembrance of the same shall by the proper
25 officer be also made in the minutes of such Court. (13, 14 V. c. 55, s. 19.)

The receipt of the books, &c., to be certified by the Chairman.

44. The Court shall then proceed to consider and resolve with reference to the probable amount of judicial business to be disposed of through the instrumentality of the Jurors to be balloted
30 on that occasion and the whole number of Jurors from whom the balloting is to be had, whether it is most expedient upon such occasion to ballot a full Jury List, a two-third Jury List or a half Jury List, and a remembrance of the resolution shall by the proper officer be duly entered upon the minutes of such
35 Court.

The Court to determine the number of jurors to be drawn.

Lists.

45. On all such occasions the names of the different members of the said Court who are present and vote upon any such resolution, shall be entered on the Minutes of such Court, and in the event of the votes of the members present being
40 equal, the Chairman of the said Court for the time being shall have a double or casting vote upon the same. (13, 14 V. 55, s. 19.)

Names of Justices present to be recorded.

46. In the event of such resolution affirming the expediency of balloting a full Jury List, the numbers to be so balloted
45 from the said Rolls according to the provisions of the fifty-first section of this Act, shall be: 1. From the Roll of Jurors to serve as Grand Jurors in the Superior Courts, Forty-eight;

How a full jury list to be balloted.

2. From the Roll of those to serve as Grand Jurors in the Inferior Courts, Ninety-six ; 3. From the Roll of those to serve as Petit Jurors in the Superior Courts, One Hundred and Forty-four ; and 4. From the Roll of those to serve as Petit Jurors in the Inferior Courts, Two Hundred and Eighty-eight. (13, 14 V. c. 55, s. 19.)

Or a two-third list. **47.** In the event of such resolution affirming the expediency of balloting a two-third Jury List, the numbers to be so ballotted as aforesaid shall : 1. From the said first named of such Rolls, Thirty-eight ; 2. From the second, Sixty-four ; 3. From the third, Ninety-six ; and 4. From the fourth, Two Hundred and Sixteen. (13, 14 V. c. 55, s. 19.)

Or a half list. **48.** In the event of such resolution affirming the expediency of balloting a half Jury List, the numbers to be so ballotted as aforesaid shall be : 1. From the said first named of such Rolls, Twenty-four ; 2. From the said second, Forty-eight ; 3. From the said third, Seventy-two ; and 4. From the said fourth, One Hundred and Forty-four.

The County of York specially provided for. **49.** As respects the County of York, or any Union of which that County is for the time being the Senior County, the numbers to be ballotted from the first and third of such Jurors' Rolls shall be as follows: When a full Jury List is to be ballotted, then from the first of such Rolls, ninety-six, and from the third, two hundred and eighty-eight ; when a two-third Jury-List is to be ballotted, then from the first of such Rolls, seventy-two, and from the third, two hundred and sixteen ; and when a half Jury List is to be ballotted, then from the first of such Rolls, forty-eight, and from the third, one hundred and forty-four. (14, 15 V. c. 65, sch. 14.)

How the balloting is to be conducted. **50.** Immediately after such resolution has been so adopted, or if it is the unanimous opinion of all the Justices then present that the balloting should be proceeded with at an adjourned sitting of such Court, then on the day to which such balloting may be adjourned, the said Court shall cause proclamation to be made, *firstly* for all persons to keep silence while the names of the persons to serve as Jurors for the next year for such County or Union of Counties (and City if there is one having a Recorder's Court established therein within the limits of such County or Union of Counties,) are openly ballotted ; and *secondly*, that if any one can inform the Court why the name of any person which may be drawn upon such ballot should not be inserted in the Jury List for which it may be drawn, he is to come forth and he will be heard. (13, 14 V. c. 55, s. 20 — 14 & 15 V. c. 65, Sch. 15 & 16.)

The Chairman shall proceed to ballot. **51.** The Chairman of such Court and the Clerk of the Peace for such County or Union of Counties, shall immediately proceed to ballot the names of the requisite number of persons from the

the said Rolls to serve as Jurors for such year, which balloting shall be conducted in the following manner: (14 & 15 V. c. 65, Sch. 15 & 16.)

- 5 1. The Chairman of the Court of Quarter Sessions shall first openly break the seals of the parcels of ballots belonging to the Roll of Jurors to serve as Grand Jurors in the said Superior Courts, and place such ballots promiscuously in a box or urn to be procured for that purpose by the said Clerk of the Peace; To open the parcels of ballots of Grand Jurors of Superior Courts.
- 10 2. And the said Chairman shall thereupon cause the said box or urn to be shaken so as sufficiently to mix the said ballots; To cause box to be shaken.
- 15 3. And the said Chairman shall then openly draw from the said box or urn indiscriminately, one of the said ballots and declare openly the number of such ballot; To draw a name.
4. The Clerk of the Peace shall immediately declare aloud the name to which such number is appended in the said Roll; To proclaim such name.
- 20 5. And if by reference to the Jurors' Book of preceding years, or any of them, it appears (regard being had to the number of names on such Roll,) that such person is exempt from having his name inserted in such Jury List, on the ground of its having been inserted in some one of the Jury Lists, for some former year sufficiently recent to entitle him to such exemption, and of his having duly served on some Panel returned from such Jury List as aforesaid under a general precept the same shall be so publicly announced by the Chairman of such Court, and that such person is on that account exempted from serving for the next year accordingly; If exempt by reason of former service, what to be done.
- 25 6. And the Clerk of the Peace shall thereupon note in the said Roll for such next year opposite the name of such person, that he was exempted from serving as having served on one of the Grand or Petit Jury Lists for such a year, stating the List and the year; Exemption to be noted.
- 30 7. But if such person is found not entitled to such exemption, then the name and addition of such person shall be again openly declared aloud by the Clerk of the Peace as having been balloted to serve as a Grand Juror for the Superior Courts; (14 & 15 V. c. 65, Sch. 17.) If not exempt on that ground.
- 35 8. Whereupon, if the party himself in person or by his Counsel, or his Attorney in the absence of Counsel, by his own oath or by the testimony of witnesses, or if any other person by his own oath or by the testimony of witnesses, satisfies the Court that the person whose name has been so drawn, is either exempt or disqualified from serving as a Grand Juror for which he has been so drawn, such person's name shall If exempt on other grounds, to be noted accordingly.
- 40
- 45

shall not be inserted in such Jury List for such next year; (13 & 14 V. c. 55, s. 20.)

And the grounds of exemption. 9. And the cause with the name of the person so objecting, and the names of the witnesses upon whose testimony such name is set aside, shall by the Clerk of the Peace be stated in the Minute Book of such Court, and a short note of the cause of rejection be made on the proper Juror's Roll opposite the name of such person; 5

If not privileged, name to be minuted. 10. But if no such objection is made or established to the satisfaction of the Court, the names and additions at length, of such person shall by the said Clerk of the Peace be forthwith inserted in the Minute Book of the Court; 10

And so on to ties quotas. 11. Which being done, the Chairman and Clerk of the Peace shall in like manner proceed to ballot, canvass and set aside, or pass, another name, and so on till they have transferred the required number of names from such Roll; 15

Clerk of the peace to enter names in the book and lists of grand jurors for Superior Courts. 12. After which the names so balloted, with the places of residence and additions of the parties alphabetically arranged, shall by such Clerk of the Peace be copied into the Juror's Book with the title of "The Grand Jury List for the Superior Courts," and which List shall have a series of current numbers from one forward as is hereinbefore provided with respect to the Juror's Rolls, and also a reference to the number of each name on the Roll of Grand Jurors for the Superior Courts; 20

And refer to the number in the roll of jurors, &c. 13. And each of such names shall by the said Clerk of the Peace, be thereupon marked on such last mentioned Roll as transferred to such Jury List, by a reference to the number belonging to such name on that List; 25

The persons so balloting to be such jurors for Superior Courts. 14. And such List so balloted, canvassed and transferred shall be the Grand Jury List for the Superior Courts for the year next after the same has been so balloted. 30

The Court to ballot. 52. After the said Grand Jury List for the Superior Courts has been so balloted, canvassed and transferred as aforesaid, the said Chairman and Clerk of the Peace; (13 & 14 V. c. 55, s. 21.) 35

Grand jurors for inferior Courts. 1. Shall in like manner proceed to ballot, canvass and transfer from the Roll of Jurors to serve as Grand Jurors in the said Inferior Courts, to a similar List in the same Book, to be called "The Grand Jury List for the Inferior Courts" for such next year, the required number of names from such Roll, which last mentioned List so balloted, canvassed and transferred, shall be the Grand Jury List for the Inferior Courts for the year next after the same has been so balloted as aforesaid; 40

2. After which the Chairman and Clerk of the Peace shall in like manner proceed to ballot, canvass and transfer from the Roll of Jurors to serve as Petit Jurors in the said Superior Courts, the Petit Jury List for the Superior Courts for such year, and lastly from the Roll of Jurors to serve as Petit Jurors in the said Inferior Courts, the Petit Jury List for the Inferior Courts for such year.

And petit jurors for both Superior and Inferior Courts.

53. So soon as the four Jury Lists have been so balloted, canvassed and transferred, the Chairman and Clerk of the Peace shall certify under their hands in the said book, immediately after each of such Jury Lists, that the same was on such a day duly balloted, canvassed and transferred from the proper Roll in open Court as the Law directs; whereupon such Juror's Book, with the Jury-Lists so certified, shall be deposited with the said Clerk of the Peace to be kept on file in his office. (13 & 14 V. c. 55, s. 22.)

The Chairman and Clerk of the Peace to certify books.

54. All the duties by this Act required of the Chairman of the Quarter Sessions of the Peace, shall and may in his absence be performed by the presiding member of such Court for the time being; any thing herein contained to the contrary thereof notwithstanding.

If Chairman absent, another Justice to preside.

55. In case from any cause such lists or either of them are not balloted pursuant to the provisions of this Act, in any County or City, the Governor may by warrant under his privy Seal, of which a copy shall be published in the Official Gazette of the Province, and also (if there be such) in one public newspaper published in such County or City, as the case may be, fix any day not sooner than fourteen days from the publication of the warrant in the Gazette, and also a place in such County or City for holding a Special Sittings or Sessions of the Court of Quarter Sessions of the Peace or Recorder's Court as the case requires, for the purpose of balloting such Jury lists as hereinbefore directed; and the several provisions and clauses of this Act, relating to the Sittings or Sessions of such Court, in which the balloting of such Jury lists are hereinbefore directed to be done, shall extend and apply to and be in force with respect to any such Special Sittings or Sessions. (13 & 14 V. c. 55, s. 28.)

If jury lists not balloted at the day, the Governor may make a day, &c.

35

VI.—JURY PROCESS.

56. The Judges, Justices and others to whom the holding of any Sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, by law belongs, or some one or more of such Judges, Justices or others, shall for that purpose issue Precepts to the Sheriff or other proper Officer or Minister for the return of a competent number of Grand Jurors, for cases criminal for such sittings or Sessions, and of a competent number of Petit Jurors

General Precepts may be issued to Sheriffs.

Jurors for the trial of such issues of fact, in cases criminal and civil, as it may be competent to such Petit Juries to try at such Sittings or Sessions according to law. (13 & 14 V. c. 55, s. 29.)

At what period to issue.

57. The several precepts for the return of Panels of Grand and Petit Jurors for any Sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, shall be issued to the Sheriff or other Officer or Minister to whom the return of such precepts belongs as soon as conveniently may be after the Commission, or other day is known upon which the Jurors to be returned upon such precepts, are to be summoned to attend and where such day is fixed by law, then as soon as conveniently may be after the close of the last preceding Sittings or Sessions of the like Court: but the Sheriff may return the same panels to the precepts, for the return of panels of Petit Jurors for the Sittings or Sessions of the Peace and for the Sittings or Sessions of the County Court, in all cases where the same day is appointed for holding such respective Sittings or Sessions. (13 & 14 V. c. 55, s. 30.)

Number to be summoned.

58. The number of the Petit Jurors to be returned on any General Precept for the return of Petit Jurors for any sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace nor County Court, shall not in any case be less than forty-eight nor more than seventy-two, unless by the direction of the Judges appointed to hold such Sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, or one of them, who are hereby empowered, by order under hand and seal, to direct that a greater or lesser number shall be the number to be returned. (13 & 14 V. c. 55, s. 28.)

According to the precept.

59. In any County in which the Justices of Assize think fit so to direct the Sheriff to whom the return of the precept for the trial of causes at *Nisi Prius* for such County belongs, shall: (13 & 14 V. c. 55, s. 85,—14 & 15 V. c. 65, Sch. 23.)

Within certain limits as to numbers.

1. Summon and impanel such number of Petit Jurors not exceeding one hundred and forty-four in any County, except the County of York or any Union of which that County for the time being is the Senior County, (and in the said County or Union of Counties last mentioned, not exceeding two hundred and eighty-eight,) as such Justice may think fit to direct, to serve indiscriminately on the criminal and civil side; and

Where two sets of jurors may be summoned.

2. Where such Justices so direct, the Sheriff shall divide such Jurors equally into two sets, the first of which sets shall consist, except as hereinafter provided, of the necessary number of those first drawn upon such Panel, and which shall attend and serve for so many days at the beginning of each Assize as such Justice, within a reasonable time before the

the commencement of such Assize directs, and the other of which sets shall consist, except as before excepted, of the residue of such Jurors, and which Jurors shall attend and serve for the residue of such Assize ; but

5 3. Such Sheriff shall in the summons to the Jurors, in each of such sets, specify whether the Juror named therein, is in the first or second set, and at what time the attendance of such Juror will be required ; and

Names therein to be designated.

10 4. During the attendance and service of the first of such sets, the Juries on the civil side shall be drawn from the names of the persons in that set, and during the attendance and service of the second of such sets, from the names of the persons in such second set ; and

Attendance of first set and second set.

15 5. In case a Rule for a view has been obtained, in a cause to be tried by a Jury taken from such Panel, the Judge before whom such case is to be tried, shall, on the application of the party obtaining such Rule, appoint that in case the names of any one of the viewers stands in such Panel among the first half of the names in the same, the names of all the viewers shall by such Sheriff be placed in the first of such sets, and that the case shall be tried during the attendance and service of that set of Jurors.

If a view has been granted.

25 60. Her Majesty's two Superior Courts of Common Law at Toronto, and all Courts of Oyer and Terminer, and Gaol Delivery in Upper Canada, shall respectively have the same powers and authority as heretofore in issuing any writ or precept, or in making any award or order orally or otherwise for the return of a Jury for the trial of any issue before any of such Courts respectively, or for the amending or enlarging the Panel of Jurors returned for the trial of any such issue ; and the return to any such writ, precept, award or order shall be made in the manner heretofore used and accustomed in such Courts respectively, save and except that the Jurors shall be returned from the body of the County, and not from any township or from any particular venue within such County, and shall be qualified according to this Act. (13, 14 V. c. 55, s. 84.)

The Courts may issue Writs and Precepts as heretofore.

40 61. In case the Court of Chancery issues a precept or order, directed to the Sheriff of any County, requiring him to strike or summon a Jury for the trial of any issue or issues, such Jury shall be struck and summoned (as nearly as may be) in the same manner as is herein provided for striking and summoning Petit Jurors for the Superior Courts of Common Law. (20 V. c. 56, s. 13.)

The Court of Chancery may issue precepts.

45 62. The several directions in this Act contained, respecting the issue of precepts for the return of a Panel of Grand Jurors for the sittings or Sessions of Oyer and Terminer, and Gaol

The directions for precepts, &c., at the Gaol

Assizes to apply also to Quarter Sessions, &c.

Gaol Delivery, as well as for the execution and return of such precepts, with all things touching the same, shall in all particulars, be observed and followed, with respect to the Sittings or Sessions of the General Quarter Sessions of the Peace, and with respect to the Sittings or Sessions of the several Recorder's Courts of the Cities in which such Courts are established. (13, 14 V. c. 55, s. 79.) 5

And County Courts.

63. The several directions in this Act contained respecting the issue of precepts for the return of a General Panel of Petit Jurors, for the Sitting or Sessions of Assize and *Nisi Prius*, as well as for the execution and return of such precepts with all things touching the same, except only those contained in the sixtieth section of this Act, shall be observed and followed in all particulars with respect to the Sittings or Sessions of the several Quarter Sessions and County Courts and the Sittings or Sessions of the several Recorder's Courts of the Cities in which such Courts are established. (13, 14 V. c. 55, s. 80.) 10 15

If the Sheriff is a party, the County Courts to issue a precept to the Coroner.

64. The Judges of the County Courts respectively, if required by either Plaintiff or Defendant in a suit where the Sheriff is the opposing party, shall issue a precept to any Coroner of their respective Counties, at least fourteen days before the week in which the General Quarter Sessions of the Peace are to be holden, requiring him to summon, and he is hereby directed thereupon to summon the number of Jurors expressed in such precept, to be and appear at the time and place when and where the General Quarter Sessions are to be holden, on the same day on which such Sessions are generally holden, from whom a jury shall be taken for the trial of the issue or the assessment of damages, in like manner as practised in cases at *Nisi Prius*; and each Juror sworn in any cause shall be entitled to receive the sum of seven pence half-penny, and no more. (8 V. c. 13, s. 40.) 20 25 30

Writs of *Venire Facias Juratores* to direct the return of 12 jurors.

65. When necessary, every Writ of *venire facias juratores*, for the trial of any issue, civil or criminal, or on any penal Statute, in any of the Courts of Upper Canada hereinbefore mentioned, shall direct the Sheriff or other Officer or Minister to whom the same is directed, "to return twelve good and lawful men of the body of his County, qualified according to law," and the rest of the Writ shall proceed in the accustomed form. (13, 14 V. c. 55, s. 31.) 35 40

What precepts shall express.

66. Every precept issued for the return of Jurors for Sittings or Sessions of Assize, and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, shall in like manner direct the Sheriff or other Officer or Minister to whom the same is directed, "to return a competent number of good and lawful men of the body of his County, qualified according to law," and shall not require the same to be returned from any Township, or from any particular *venue* within such County. 45

67.

67. Except in trials at Bar, the Writ of *venire facias* Teste, &c., of Writs for the summoning of jurors in special instances. *juratores*, where by Law necessary, may be tested on the day on which the same issues and be made returnable on any day in Term or vacation, and except in trials at Bar, the Writ of *distringas juratores* and *habeas corpora* may be tested either on 5 the return day of the *venire* or on any subsequent day in Term or vacation and as well after as before or on the Commission day of the Assizes at which the cause in which the same may be sued out is intended to be tried, and any such process may be sued out of the office of the Deputy Clerk of the Crown 10 and Pleas in the County, as well as out of the principal office at Toronto. (14, 15 V. c. 55, s. 32.)

68. In any Writ of *habeas corpora juratorum* or *distringas* subsequent to and founded upon any Writ of *venire facias* Contents of Writs of Habeas Corpus Juratores, &c. *juratores*, it shall not be requisite to insert the names of all 15 the Jurors contained in the panel, but it shall be sufficient to insert in the mandatory part of such Writs respectively—"the bodies of the several persons in the panel to this Writ annexed, named," or words of the like import, and to annex to such Writs respectively, panels containing the same names as were 20 returned on the panel to such *venire facias*, with their places of abode and additions. (13, 14 V. c. 55, s. 33.)

69. For the trial of issues in cases whether criminal or civil which come on in course for trial at any Sittings or Sessions of Assize, and *Nisi Prius*, Over and Terminer, Goal Delivery, Sessions of the Peace, or County Court, it shall not be 25 necessary to sue out any Writ of *venire facias juratores* or other Jury process, but the award of such process by the Court and the entry of such award where necessary on the Roll, together with the return of a panel of Jurors upon the general 30 precept issued for such Sittings or Sessions, and the trial of such issues respectively, by a Jury taken from such general Panel in the manner hereinafter provided, shall be sufficient and shall be as valid and effectual in law to all intents and purposes whatsoever, as if such *venire facias juratores*, or other 35 process, had been actually and regularly sued out in each case, and the names of the Jurors who so try such issues, respectively, had been regularly returned upon such Jury process. (13, 15 V. c. 55, s. 34.) Writs of Venire Facias Juratores, &c., not necessary at the Assizes, &c.

1. But nothing in this section contained shall extend to 40 any issue, to be tried at Bar, or by a Special Jury, or by a Jury *de medietate lingue*, or *de ventre inspiciendo*, or in a case in which a view has been granted. (13, 14 V. c. 55, s. 34): Trials at Bar not to be affected.

2. Every Jury of which some of the Jurors have been regularly taken from such general Panel, shall, notwithstanding 45 its being completed by the award of a *tales de circumstantibus*, if regularly awarded according to law, be deemed to have been taken from such general Panel for the purposes of this section. (13, 14 V. c. 55, s. 34); Talermen to be deemed taken from the general panel.

When view granted, what Sheriff shall do on the *Venire Facias Juratores*.

3. To every *venire facias* directed to any Sheriff in any case in which a view has been granted, and which *venire facias* is not endorsed for the return of a Special Jury thereon, such Sheriff shall return the same Jurors as those whose names are inserted in the panel returned upon the general precept for the Sittings or Sessions at which such cause is to be tried. 5

What to be done if cause not tried at the first Court in which a *Venire Facias Juratores* is returnable.

70. If when the cause is at issue, any Plaintiff or Demandant or any Defendant in *Quare impedit* or *Replevin* has sued out a Writ of *Venire Facias* upon which a Writ of *Habeas Corpora* or *distringas* with a *Nisi Prius* has issued in order to the trial of the said issue at the Assizes or Sessions of *Nisi Prius*, and does not proceed to trial at the first Assizes or Sessions of *Nisi Prius* after the teste of such Writ of *Habeas Corpora* or *distringas*, then, (except when a view by Jurors is directed) such Plaintiff, Demandant or Defendant, whenever he intends to try the issue at any other Assizes or Sessions of *Nisi Prius*, shall sue forth a new Writ of *Venire Facias*, commanding the Sheriff or other Minister to return anew, twelve good and lawful men of the body of the County qualified according to Law, and the rest of the Writ shall proceed in the accustomed manner, which Writ being duly returned, a Writ of *Habeas Corpora* or *distringas* with a *Nisi Prius* shall issue thereupon, upon which such Plaintiff, Demandant or Defendant, may proceed to trial, as effectually to all intents and purposes, as if no former Writ of *Venire Facias* had been prosecuted in that cause, and so *toties quoties* as the case may require. (13, 14 V. c. 55, s. 35. See 19 V. c. 43, s. 149 and 151.) 10 15 20 25

Former powers of Courts and Judges in trials by jury not abridged, unless by express provisions.

71. Nothing herein contained shall extend to alter, abridge or affect any power or authority, which any Court or Judge now hath, or any practice or form in regard to trials by Jury, Jury Process, Juries or Jurors, except in those cases only where any such power or authority, practice or form is repealed or altered by this Act, or is inconsistent with any of the provisions thereof, or to change or alter any privilege of Parliament. (13, 14 V. c. 55, s. 96.) 30 35

VII.—DRAFTING PANELS FROM JURY LISTS.

How Sheriffs to draft panels of jurors.

72. Every Sheriff or other Officer to whom any Writ of *Venire Facias* or precept for the return of Jurors is directed, shall to such Writ or precept return a panel of the names of the Jurors contained in the proper Jury List for the year, whose names shall be drafted from such List in the manner hereinafter mentioned. (13, 14 V. c. 55, s. 24.) 40

If no jurors' book for the year.

73. If there is no Jurors' Book, or certified copy thereof, in existence for the year, the Sheriff may return to any such Writ or precept, a panel of Jurors selected in like manner from the proper Jury List in the Jurors' Book of the nearest preceding year, 45

year, for which there is a Jurors' Book or certified copy thereof in existence. (13, 14 V. c. 55, s. 24.)

74. If there are no Jurors or if there is not a sufficient number of such Jurors upon any Jury List from which any panel is so required to be drafted, liable to be drafted and to serve upon such panel, the Sheriff may return to any such Writ or precept, a panel of Jurors selected in like manner, or the residue of whom respectively have been selected in like manner, from the proper Jury List in the Jurors' Book of the nearest preceding year for which there is a Jurors' Book or certified copy thereof in existence. (13, 14 V. c. 55, s. 24.)

If not a sufficient number in such lists.

75. Upon any Sheriff or other officer being called upon to return a Panel of Jurors, whether Grand or Petit, he shall give notice by Public written Advertisement in his office and also on the door of the Court House of the County, or if there be no Court House, then in some other public place, of the day and hour at which he will attend at the office of the Clerk of the Peace to draft such panel of Jurors from the Jury List, at which time and place he shall proceed publicly to draft such panel by ballot from the Jury List in manner hereinafter mentioned, in the presence of the Clerk of the Peace and any two Justices of the Peace of such County, who, upon reasonable notice from such Sheriff, are hereby required to attend, and in the presence of any other person or persons who may desire to be present. (13, 14 V. c. 55, s. 25.)

What notice Sheriffs shall give.

76. If such Sheriff or other officer has sufficient time every such notice shall be given by such sheriff or officer, at least eight days before the drafting of such panel, and if there is not sufficient time for that purpose, the said notice shall be given as soon after his receipt of the precept or writ as conveniently may be. (13, 14 V. c. 55, s. 25.)

To be eight days if time admits.

77. In the event of the drafting of such panel being prevented from taking place, or from being completed by unavoidable accident at the time so appointed, the same may be had or completed at any other time in the presence of the Clerk of the Peace, and two Justices of the Peace, upon a similar notice being first given of such time. (13, 14 V. c. 55, s. 25.)

The drafting if not completed may be resumed.

78. In proceeding to draft such panel of Jurors from the Jury List as hereinafter directed, the Sheriff or other officer to whom the return of such panel belongs shall in the first place prepare a proper title or heading for the panel of Jurors to be returned, to which he shall fix an appropriate number according as such panel by the Juror's Book appears to be the first, second, third or subsequent panel drafted from such Jury List, and which title or heading shall set forth the number of Jurors to be returned in words at length, or (where such Sheriff shall have a discretion as to such number,) the number that in the exercise

How Sheriffs to prepare a panel.

cise of such discretion, he has previously determined to return, and which number when discretionary, shall not be altered after the same has been so inserted in such title or heading. (13, 14 V. c. 53, s. 26.)

Same subject. 79. And, in the second place, such Sheriff or other officer shall append to such title or heading, a list of numbers from one forward to the number required, and shall prepare a set of Ballots or pieces of Parchment, Card or Paper of uniform and convenient size, such set containing the same number of ballots as there are numbers on the Jury List from which the panel is to be drafted, allowing one number to each Ballot printed or written on the same, and shall then proceed to draft such panel of Jurors in the manner hereinafter mentioned. 5 10

How panel of jurors to be drafted. 80. The manner of drafting such panel shall be as follows, that is to say : (16 V. c. 120, s. 5.) 15

1. The Sheriff, or other officer to whom the return of such panel belongs, shall place the Ballots promiscuously in a Box or Urn to be procured by him for that purpose, and shall cause such Box or Urn to be shaken so as sufficiently to mix the ballots, and he shall then openly draw from the said Box or Urn indiscriminately, one of the said ballots, and declare openly the number of such ballot, -whereupon the Clerk of the Peace, or one of the Justices of the Peace present as aforesaid at such drawing, shall immediately declare aloud the name to which such number is appended in the Jury List from which the Panel is drafted ; 20 25

Same subject. 2. And thereupon, if such person is exempt from being drafted or serving upon such panel, under the seventh section of this Act, or if upon the face of such Jury List it appears that the person whose number has been so drafted had previously been drafted to serve on a panel drafted from such Jury List in obedience to a precept for the return of a general panel for any sessions or sittings of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, General Quarter Sessions of the Peace, or County Court, and that such person had actually attended and served upon such panel and if a sufficient number of names to complete the panel then in course of being drafted, remain on such Jury List without taking any of those who had been previously drafted from the same list upon any former panel, the sheriff shall publicly announce the same, and that the name of the person so drafted is on such account, not inserted in the panel ; 30 35 40

Same subject. 3. But if upon examination of such Jury List, no such cause appears for omitting the name of such person from the panel then being drafted, the name and addition of the person whose name has been so drafted, shall be thereupon written down on a sheet of paper provided for that purpose, 45

pose, and such name shall, by the said Sheriff or other Officer, be thereupon marked on the said Jury List, with a reference to the number which will belong to such panel in the Jurors' Book ;

5 4. Which being done, the Sheriff shall proceed in like Same subject. manner to draft and dispose of other numbers from the said Box or Urn, until the necessary number for the panel to be so drafted has been completed ;

10 5. After which, the names so drafted, with the places of residence and additions of the parties, arranged alphabetically, shall, by such Sheriff or other officer, be transcribed on another sheet of paper, with a reference to the number of such name on the Jury List, and such name shall, by the said Sheriff or other Officer, or his Deputy, be thereupon
15 marked in the said Jury List, with a reference to the number which will belong to such panel in the Jurors' Book ;

20 6. Whereupon, such panel so alphabetically arranged and numbered, with a short statement of the Writ or Precept in obedience to which it has been drafted, the date and place of such drafting, and the names of the Sheriff or other officer or Minister, or his Deputy, and of the Clerk of the Peace and Justices of the Peace, present at such drafting, or at least of two of them, shall be fairly entered in the said Jurors' Book, and attested by the signatures of such Sheriff or other Officer or Minister, or his Deputy, and
25 of the said Clerk of the Peace and the said Justices, or at least two of them. Same subject.

30 81. The said Sheriff shall, upon his return of the Writ of *venire facias*, or Precept under authority of which such panel was drafted, annex a panel to the said Writ, or Precept containing the names, together with the places of abode and additions of the persons so drafted upon such panel, and shall transmit one copy thereof to the office of the Clerk of the Peace, and another to the Clerk of the Crown and Pleas of Her Majesty's Court of Queen's Bench at Toronto. The panel to be annexed to the Writ or precept and a copy sent to the Clerk of the Queen's Bench.

35 82. Each of such copies, as well as the Jurors' Book, shall at all reasonable times be open to inspection by litigants or their professional Agents, without fee or reward. Jury books, &c. to be open to inspection.

JURIES, WHEN SUMMONED BY CORONERS, ELISORS, &C.

40 83. The manner of drafting or striking, returning and summoning Juries by the Sheriff upon writs of *venire facias juratores* as prescribed by this Act, shall be observed and followed by all Coroners, Elisors, and other Officers and Ministers having the return of Jury process, and they shall for such purpose have free access at all reasonable times to the Jurors' Book in the Office of the Clerk of the Peace, and every such
Coroner, How jurors to be summoned by Coroners and Elisors.

Coroner, Elisor, and other Officer and Minister shall possess all the powers and perform all the duties, in any way connected with the drafting, striking, returning and summoning such Juries, as in and by this Act are prescribed to or vested in the Sheriffs of the different Counties, with respect to Juries returned by them upon similar process. (13, 14 V. c. 55, s. 78, 14, 15 V. c. 65, No. 20.)

VIII.—SUMMONING JURORS.

Jurors to be summoned; eight days.

84. The proper Officer shall summon every man bound to serve on Grand Juries or on Petit Juries, not being Special Juries, in any of the Courts aforesaid, eight days at least 10 before the day on which the Juror is to attend, by delivering to the man to be summoned, or in case of his absence from the usual place of his abode, by leaving with some grown person there inhabiting, a note in writing under the hand of the Sheriff or other proper Officer, containing the 15 substance of such summons. (13, 14 V. c. 55 s. 61.)

Special jurors to be summoned three days.

85. The proper officer shall summons every man to serve on Special Juries in any of the Courts aforesaid, in the like manner as aforesaid, three days at the least before the day on which the Special Juror is to attend; which last mentioned day 20 may be upon, or any day after the commission day of the Assizes at which the cause is to be tried.

The Judges may make order as to calling on special jury cases for trial.

86. The Judges of the different Courts may, by any general rules to be made by them for that purpose, make such regulations as they may deem expedient for regulating the time 25 and manner of bringing on such Special Jury trials at *Nisi Prius*.

The proper officer to summon jurors whenever required.

87. The proper officer notwithstanding any thing in this Act contained shall summon in the manner heretofore used and accustomed, every person required to serve upon any Inquest or Inquiry before any Sheriff or Coroner, or before any 30 Commissioners appointed under the Great Seal of this Province or under the Seal of either of Her Majesty's Superior Courts of Common Law at Toronto, or to serve as a talesman upon any Jury either for the trial of an issue, or assessment of damages, in any of the Courts aforesaid, or any matron to 35 serve on a Jury *de ventre inspiciendo*. (13, 14 V. c. 55, s. 62.)

Sheriff indemnified for returning unqualified persons if in the rolls of jurors.

88. Every Sheriff and other Officer or Minister to whom the return of Jurors belongs, is hereby indemnified for empanelling and returning any man as a Grand or Petit Juror respectively, who was named in the Grand or Petit Jurors' Rolls from which 40 he was taken for the year in which he was summoned, although he may not have been qualified or liable to serve as such Juror for such year. (13, 14 V. c. 55, s. 87.)

IMPANELLING GRAND JURY.

89. When there do not appear as many as twelve of the Grand Jurors summoned upon a Panel returned upon any Precept to any Court of Criminal Jurisdiction, every such Court, upon request made for the Queen by Her Attorney or Solicitor General, or any of Her Counsel Learned in the Law, or in their absence, by any one thereto authorized or assigned by such Court, shall command the Sheriff or other Officer or Minister to whom the making of the return belongs, to name and appoint, so many of such other able men of the County or City, as the case may be, then present, as will make up a Grand Inquest of twelve, and the Sheriff or other Officer or Minister aforesaid, shall at such command of the Court, return such duly qualified men as are present or can be found, to serve on such Grand Inquests, and shall add and annex their names to the Panel returned upon such Precept; and the Court shall proceed with those Grand Jurors who were before empannelled, together with the Talesmen so newly added and annexed, as if all the said Jurors had been originally returned upon such precept. (14, 15 V. c. 65, s. 1.)

How grand jurors to be empannelled if a sufficient number do not appear.

. XI.—DRAWING JURY AT TRIAL.

90. The name of each man summoned and empannelled as a Petit Juror upon the general precept for any sittings or Sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace or County Court, with his place of abode and addition, shall by the Sheriff be written distinctly on a piece of Parchment, Card, or Paper, as nearly as may be of the form and size following, viz :

Impaneling jury at the trial.

<p>DAVID BOOTHE, of Lot No. 11, in the 7 Con. of Albion, MERCHANT.</p>
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and such names so written shall by the direction and care of such Sheriff be put together in a Box or Urn to be by him provided for that purpose, and shall be by him delivered to the Clerk of Assize, or other Clerk of such Court. (16 V. c. 120, s. 6.)

91. When any issue is brought on to be tried, such Clerk of Assize or other Clerk shall : (16 V. c. 120, s. 6.)

How the Clerk is to proceed.

1. In open Court, cause such Box or Urn to be shaken so as sufficiently to mix such names, and then draw out twelve of the said Parchments, Cards or Papers one after another, (causing the said Box or Urn to be shaken after the drawing of each name) and if any of the men whose names are so drawn do not appear or are challenged and set aside, then such further number until twelve Jurors are drawn, who do appear, and who after all just causes of challenge allowed, remain as fair and indifferent, and the first twelve Jurors so drawn and appearing and approved as indifferent, their names being noted in the minute Book of such Clerk of Assize, or other Clerk of such Court, shall be sworn or affirmed (as the case may be), and shall be the Jury to try the issue ; and (16 V. c. 120, s. 6.) 5

2. The names of the men so drawn and sworn shall be kept apart by themselves until such Jury have given in their verdict, and the same has been recorded, or until such Jury are by consent of the parties, or by leave of the Court, discharged, and then the same names shall be returned to the Box or Urn, there to be kept with the other names remaining at that time undrawn, and so *toties quoties* as long as any issue remains to be tried. (16 15 V. c. 120, s. 6.)

Names of jurors sitting on a jury to be kept apart.

92. If any issue is brought on to be tried at any of the said Sittings or Sessions before the Jury in any other cause have brought in their verdict, or been discharged, the Court may order twelve of the residue of the said Parchments, Cards or Papers (not containing the names of any of the Jurors who have not brought in their verdict or been discharged,) to be drawn in the manner last aforesaid, for the trial of the issue so brought on to be tried. (13, 14 V. c. 55, s. 37.) 20

Several causes may be tried in succession by the same jury.

93. Notwithstanding the two last preceding Sections, where no objection is made on the part of the Queen, or any other party, the Court may try any issue with the same Jury that have previously tried, or been drawn to try any other issue, without their names being returned to the box or urn, and redrawn, or may order to retire any of such Jurors whom both parties consent to withdraw, or who may be justly challenged or excused by the Court, and may cause another name or other names to be drawn from the box or urn, and shall try the issue with the residue of the original Jury, and such new Jurors who appear and are approved as indifferent, and so *toties quoties* as long as any issue remains to be tried. (13, 14 V. c. 55, s. 38.) 25 30

If a full jury do not appear a tales may be granted.

94. When a full Jury does not appear before any Court of Assize and *Nisi Prius*, or before any sittings of any County Court for the trial of issues or assessment of damages as at *Nisi Prius* or before any Court of a City when engaged in the trial of a civil suit, or where after the appearance of a full Jury, by challenge of any of the parties, the Jury is likely to remain untaken for default of Jurors, every such Court, 35 40

Court, upon request made for the Queen by any one thereto authorized or assigned by the Courts, or on request made by the parties Plaintiff, Demandant, Delendent, or Tenant, or their respective Attornies, in any action or suit whether popular or private, shall command the Sheriff or other Officer or Minister to whom the making of the return belongs, to name and appoint as often as need requires so many of such other able men of the County or City, as the case may be, then present, as will make up a full Jury, and the Sheriff or other Officer or Minister aforesaid, shall, at such command of the Court, return such duly qualified men as may be present, or can be found, to serve on such Jury and shall add and annex their names to any Panel that has been returned upon any *venire facias*, in such cause. (13, 14 V. c. 55, s. 86.)

X.—CHALLENGES.

15 95. If any man not duly qualified is returned as a Juror for the trial of any issue in any cause civil or criminal, or on any Penal Statute, the want of such qualification shall be a good cause of challenge, and he shall be discharged upon such challenge, if the Court is satisfied of the fact. But the want of freehold shall not, at the trial of any such case, be a good cause of challenge, either by the Crown or by the party, nor a cause for discharging the Juror upon his own application. And nothing herein contained shall extend in any wise to any Special Juror. (13, 14 V. c. 55, s. 55—13, 14 V. c. 55, s. 56.)

The want of qualification a good ground w of challenge. Not the want of freehold.

25 96. No challenge shall be taken to any Panel of Jurors for want of a Knight's being returned on such Panel, nor any array quashed by reason of any such challenge. (13 & 14 V. c. 55, s. 57.)

Certain grounds of challenge re- pealed.

30 97. No person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of twenty. (13 & 14 V. c. 55, s. 58.)

Peremptory challenges li- mited to twenty in felony.

35 98. A defendant arraigned for a misdemeanor, or if there be more than one, such of them as are tried together and unite in their challenges, may challenge peremptorily without assigning any cause for the same, any two of the Jurors called upon to serve on such trial.

In misde- meanors li- mited to two.

40 99. In all inquests to be taken before any of the Courts in Upper Canada wherein the Queen is a party, howso'ever it be, notwithstanding it be alleged by them that sue for the Queen, that the Jurors of those inquests or some of them be not indifferent for the Queen, yet such inquests shall not remain untaken for that cause; but if they that sue for the Queen will challenge any of those Jurors, they shall assign of their challenge a cause certain, and the truth of the same chal-
45 lenge shall be inquired of according to the custom of the Court, and

When the Crown bound to shew cause of challenge.

and it shall be proceeded to the taking of the same inquisitions as it shall be found if the challenges be true or not, after the discretion of the Court ; But nothing herein contained shall affect or be construed to affect the power of any Court in Upper Canada, to order any Juror to stand by until the panel is gone through, at the prayer of them that prosecute for the Queen, as has been heretofore accustomed. (16 V. c. 120, s. 7.) 5

In civil cases each party may challenge two.

100. In all civil cases, and cases upon any Penal Statute, each party, the plaintiff or plaintiffs, demandant or demandants, on one side, and the defendant or defendants, tenant or tenants, on the other, may, except in the case of special Jurors, each challenge peremptorily without assigning any cause for the same, any two of the Jurors drawn to serve on the trial of any such cause. (13 & 14 V. c. 55, s. 60.)

THAT JURORS AFFIRM, NO CAUSE OF CHALLENGE.

What a juror affirm, no cause of challenge.

101. It shall not be a good ground of challenge against any person, who may be called upon to serve as a Juror, that he belongs to any Religious persuasion or denomination allowed by Law to affirm instead of taking an Oath, but every such person shall be as eligible and liable to serve on all Juries and inquests on his being affirmed, as if he had been sworn in the usual way. (16 V. c. 120, s. 8.) Post s. 181. 20

ENTRY AND CERTIFICATE OF SERVICE OF JURORS.

The Sheriff to keep a record of jurors who serve.

102. Immediately after the Sittings or Sessions of any Court of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, or County Court, the Sheriff shall, on the Jury List from which the Panel of Grand Jurors (if any) returned to such Sittings or Sessions was drafted, and on the Jury List from which the Panel of Petit Jurors returned upon the General Precept to such Sittings or Sessions was drafted, opposite the names of the Jurors respectively, note the non-attendance or default of all such of the Jurors in such Panels as have not duly attended and served upon such Panels until discharged by the Court. (13 & 14 V. c. 55, s. 88.) 25 30

And grant a certificate thereof if demanded.

103. Every Juror who has so attended and served upon any such Panel as last aforesaid, shall (upon application by him made to such Sheriff or Deputy Sheriff, before he departs from the place of trial), receive a certificate testifying such his attendance and service, which certificate the Sheriff or Deputy Sheriff shall give upon payment of One Shilling. (13 & 14 V. c. 55, s. 89.) 35

The High Bailiff to perform similar duties in Recorder's Courts.

104. Immediately after every Session of the Recorder's Court for any City, the High Bailiff of such City shall, on the Jury List from which the Panel of Grand Jurors returned to such Session was drafted, and on the Jury List from which the Panel 40

Panel of Petit Jurors returned upon the General Precept to such Session was drafted, opposite the names of the Jurors respectively, note the non-attendance or default of all such of the Jurors in such Panels respectively as have not duly attended
5 and served upon such Panels until discharged by the Court. (13 & 14 V. c. 55, s. 90.)

105. Every Juror who has so attended and served upon any such Panel as last aforesaid, shall (upon application by him made to such High Bailiff or his Deputy before he departs from
10 the place of trial) receive a certificate testifying such his attendance and service, which certificate the High Bailiff or his Deputy shall give upon payment of one shilling. (13 & 14 V. c. 55, s. 91.) Same subject.

XI.—SPECIAL JURIES.

106. Her Majesty, or any prosecutor, Relator, Plaintiff, or
15 Demandant, and any Defendant or Tenant in any case whatsoever, whether civil or criminal, or on any Penal Statute, excepting only on Indictments for Treason or Felony, may have the issues joined in any such case and triable by a Jury, tried
20 by a Special Jury upon suing out the necessary Jury Process for that purpose, and procuring such Special Jury to be struck and duly summoned for the day on which the trial of such case is to be had, and every Jury so struck shall be the Jury returned for the Trial of such issue. (13 & 14 V. c. 55, s. 39.) Either party may strike a special jury.

107. In the event of a new Trial being ordered in any
25 such case after a verdict of any such Jury, the *venire facias juratores* shall set forth the names of the Jurors who sat on the first trial of such cause, or in the event of more trials than one having been previously had, the names of all Jurors who sat upon any of such trials, and none of the Jurors who so sat
30 on any such former trial shall be returned or sit as Jurors upon any subsequent trial of the same cause. New trial in special jury cases.

108. In every such case, the party desiring such Special
Jury to be struck, whether an actor in such cause or not, shall have a right in person, or by his Attorney or Agent, to sue out
35 a Writ of *venire facias juratores* for that purpose, and every such Writ before being delivered to the Sheriff or other Officer or Minister to whom it is directed, shall be indorsed with a direction to such Sheriff or other Officer or Minister requiring him to return a Special Jury on the same, and every such Sheriff or
40 other Officer or Minister upon receipt thereof shall, by a Memorandum in writing upon such Writ, appoint some convenient day and hour for striking such Special Jury, the day and hour so fixed being sufficiently distant to enable the party suing out the said *venire* to give the necessary notice to the opposite
45 party, as hereinafter provided. (13 & 14 V. c. 55, s. 40.) The party requiring a special jury may sue out a Writ of *Venire Facias Juratores*.

Such party to give notice to the opposite party.

109. In any such case the party, his Attorney or Agent suing out such *venire facias*, shall give notice in writing to the opposite party, his Attorney or Agent, that he has sued out a *venire facias* in the cause for the purpose of having a Special Jury struck therein, and of the day and hour appointed by the Sheriff or other Officer or Minister for striking the same, which notice shall be served on such opposite party, his Attorney or Agent, four full days before the day so appointed, and an Affidavit or Affirmation of such service, or an admission in writing under the hand of the Attorney or Agent on whom it was served, shall be produced to such Sheriff or other Officer or Minister at the time appointed for striking such Special Jury, and in default thereof the Sheriff or other Officer or Minister shall not proceed to strike such Special Jury upon such appointment. (13 & 14 V. c. 55, s. 41.)

Qualification of special jurors, to be struck under the 106th section.

110. Every Special Jury to be struck under the authority of the one hundred and sixth section of this Act, shall, except as hereinafter provided, consist solely of persons whose names appear on either the Roll of Grand Jurors for the Superior Courts or on the Roll of Grand Jurors for the Inferior Courts for the year in which the Writ of *venire facias* is returnable, and the same shall be struck in the manner hereinafter provided. (13 & 14 V. c. 55, s. 42.)

How a special jury is to be struck.

111. Every such Special Jury shall be struck in the following manner, that is to say: (13 & 14 V. c. 55, s. 43.)

1. The Sheriff shall furnish himself with a set of Ballots or pieces of parchment, card or paper, of as uniform and convenient a size as reasonably may be, and containing the same number of Ballots as there are numbers on the respective Grand Jurors' Rolls from which the said Special Jury is to be struck, upon which ballots shall be printed or written, the whole of the numbers of such Grand Jurors' Rolls allowing one number to each Ballot, and distinguishing each number by the letters S. C. or I. C. according as it belongs to the Roll of Grand Jurors for the Superior Courts, or to the Roll of Grand Jurors for the Inferior Courts;

2. And the Sheriff at the office of the Clerk of the Peace, at the time appointed for such purpose in the presence of all the parties in the case and of their Attorneys and Agents (if they respectively choose to attend, or if none of the said parties, their Attorneys or Agents, attend, then upon such proof as is hereinbefore provided, of the service of the notice of striking such Special Jury) shall put all the said Ballots in a box or urn, to be by him provided for that purpose, and after having caused the said box or urn to be shaken so as sufficiently to mix the said Ballots, he shall draw out of the said box or urn forty of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the Grand Jurors' Roll to which such Ballot may belong, and read aloud

aloud the name to which such number is appended in the said Roll ;

3. And if at the time of so reading any such name, either party, or his Attorney or Agent, objects that the man whose
5 name has been so drawn is in any manner incapacitated from serving on the said Jury, and also then and there proves the same to the satisfaction of such Sheriff, the name shall be set aside, and the said Sheriff shall instead thereof draw out of the said box or urn another number, and shall in like manner refer
10 to the corresponding number in the Grand Jurors' Roll, to which such Ballot may belong, and read aloud the name to which such number is appended in the said Roll, and such name may be in like manner set aside, and other numbers and names be drawn according to the mode of proceeding here-
15 inbefore described, for the purpose of supplying names in the places of those set aside, until the whole number of forty names not liable to be set aside is completed ; 13 & 14 V. c. 55, s. 43.

4. And if in any case it so happens that the whole number of forty names cannot be obtained from the said Grand Jurors'
20 Rolls, the Sheriff shall in like manner from the Grand Jurors' Rolls in the Jurors' Book of the nearest year for which there is a Jurors' Book or certified copy thereof, in the office of the said Clerk of the Peace, ballot, in addition to those already taken from the first mentioned Grand Jurors' Rolls, the number
25 of names required to make up the full number of forty names ; 13 & 14 V. c. 55, s. 43.

5. And the said Sheriff shall thereupon make out a List of the forty names, together with their respective places of abode and additions, from which List, after a reasonable time allowed
30 in the discretion of such Sheriff for enquiry and consideration respecting the same, each party, his Attorney or Agent shall strike out twelve names, such names being so struck out by such parties one by one alternately, the party suing out such *venire facias* commencing ; 13 & 14 V. c. 55, s. 43.

35 6. And the Sheriff shall thereupon return upon such *venire facias*, and summon thereon the sixteen persons whose names remain on such List, to appear on the day appointed for the trial of such cause ; 13 & 14 V. c. 55, s. 43.

7. And from such sixteen persons, or so many of them as
40 appear in obedience to such summons, shall be taken by Ballot in the manner hereinbefore by the seventieth section of this Act prescribed for the drawing of Petit Jurors from the General Panel therein mentioned, a Special Jury for the trial of such cause. 13 & 14 V. c. 55, s. 43.

45 **112.** If any of the parties in the cause neglect to attend in person or by Attorney or Agent at the striking of such
Special How to proceed if either

party fails to attend. Special Jury, the Sheriff, upon production of such affidavit, affirmation or admission of service of such notice aforesaid, and after waiting at least half an hour for such absent party, shall, if requested by the other party, his Attorney or Agent, proceed to strike such Special Jury, and in case of the continued absence of such first mentioned party, shall, on his behalf, strike out of the said List the twelve names to be by such party struck out of such List as aforesaid. (13 & 14 V. c. 55, s. 44.) 5

How if the Court of Chancery direct a trial by special jury. 113. In case the Court of Chancery directs any issue or issues to be tried by a Special Jury, such Special Jury shall be struck and summoned in (as nearly as may be) the same manner as for the Superior Courts of Common Law. (20 V. c. 56, s. 13.) 10

JURIES OF MERCHANTS, &c.

- In what cases Juries of Merchants may be had. 114. In suits: 15
1. Between Merchant and Merchant; or
 2. Trader and Trader; or
 3. Merchant and Trader, involving one or more questions of mercantile consideration; and
 4. In suits between Manufacturer and Manufacturer; or 20
 5. Mechanic and Mechanic; or
 6. Manufacturer and Mechanic, involving one or more questions of Mechanical or scientific consideration; and
 7. In suits between any of the former and any of the latter involving one or more of any of such questions; and 25
 8. In suits between any other persons involving one or more questions of scientific consideration;

When only upon summons and order.

Either of Her Majesty's Superior Courts of Common Law at Toronto, in Term time, or any Judge thereof, in Vacation, may, without consent of parties in all but the last mentioned case, and with consent of parties in the eighth or last mentioned case, order and direct any such cause to be tried by a Special Jury of men belonging to the appropriate kind or kinds of business as aforesaid, or of scientific men respectively, as the case may be; but any such Rule not made with the consent of parties, shall be made only upon a rule to shew cause or summons upon which the adverse party has had the usual opportunity of being heard as in other cases. (13 & 14 V. c. 55, s. 45.) 35

115.

115. In every Rule for striking any such Special Jury, it shall be ordered that such Special Jury shall be struck, and the names of such Special Jury be certified to the Sheriff by three Elisors to be appointed in writing by endorsement upon such Rule, one by the Plaintiff in the cause his Attorney or Agent, another by the Defendant his Attorney or Agent, and the third by the Clerk of the Crown and Pleas of the Court in which the cause is pending, or in case of such Elisors disagreeing, then by the majority of such Elisors all three being present. (13 & 14 V. c. 55, s. 46.)

Contents of the order for such jury. To be struck by Elisors.

116. The Sheriff shall return and summon upon the *venire facias* in such cause, the persons whom such Elisors or the majority of them certify to him to have been struck as Special Jurors for the trial of the same.

The Sheriff to summon.

117. The indorsement to return a Special Jury on the *venire facias* in every such cause, shall direct the Sheriff to return a Special Jury of men of the appropriate kind of business as aforesaid, or of scientific men, as the case may be, pursuant to such certificate as he may receive from the Elisors (naming them,) or a majority of them in that behalf appointed by such Rule. (13 & 14 V. c. 55, s. 46.)

How Writ of Vin. Fa. to be indorsed.

118. Every such Special Jury shall be struck in the following manner, that is to say : (13 & 14 V. c. 55, s. 47.)

How such special juries are to be struck.

1. The three Elisors or a majority of them, upon the delivery to them of a copy of the Rule for such Special Jury and of the *venire facias* for the return of such Jury, shall, at the request of either of the parties in such cause, make an appointment in writing of a day, hour and place for striking such Special Jury as by the one hundred and ninth section of this Act is provided with respect to other Special Juries ;

2. And upon notice of such appointment being served upon the opposite party, and such service being proved as in the same section is provided with respect to other Special Juries, the said Elisors shall, at the time and place so appointed and after waiting the time prescribed by the one hundred and twelfth section, proceed to make a list of the names and additions of all the persons whose names appear on any of the Jurors' Rolls for the year in which such *venire facias* is returnable, and who in their judgment come within the description of persons required to be struck on such Jury according to the exigency of such Rule ;

3. And if there are not forty of such persons to be found upon such Rolls, and if the said Elisors, or the majority of them, know of a sufficient number of persons answering such description within the County, whether such persons are otherwise qualified and liable to serve, or exempt from serving as Jurors or not, provided they be not persons disqualified from any of the causes

causes set forth in the twelfth section of this Act, the said Elisors, or a majority of them shall add the names and additions of a sufficient number of such persons to such list to complete the same to forty names

4. And if there are the names of more than forty of such persons on such Rolls, the said Elisors, or the majority of them, from the names of all persons on such Rolls who answer such description, shall, in the manner prescribed by the one hundred and eleventh section of this Act for the striking other Special Juries, select forty of such names;

5. And the List of such forty names being thus completed the same shall be reduced in the same manner as hereinbefore by the said one hundred and eleventh section provided with respect to such other Special Juries;

6. And the said Elisors shall thereupon give a certificate to each of the parties to such suit, their Attorney or Agent, certifying the names and additions of the sixteen persons whose names remain upon such List;

7. And every such person so struck on any such Special Jury shall be liable to serve on the same although exempted from serving upon Juries by the general provisions of the seventh, eighth and ninth sections of this Act.

8. And the Sheriff or other Officer to whom such *venire facias* is directed, shall, upon receipt of either of such certificates, return and summon such sixteen persons upon such *venire facias* accordingly

9. And from these sixteen persons so returned, shall be selected the Jury to try such cause, in the same way and under and subject to the like restrictions as by the one hundred and eleventh section of this Act is enacted with respect to other Special Juries;

In special jury cases, talesmen to be taken from the general panel.

10. In case a Special Jury has been struck for the trial of any issue, the talesmen if any are required, shall be selected from those empannelled upon the Common Jury Panel to serve at the same Court, if a sufficient number of such men can be found, and the Queen by any one duly authorized or assigned, and every party, may in every such case, have their respective challenges to the talesmen so added, and the Court shall proceed to the trial of every such issue with those Jurors who were before empannelled together with the talesmen so newly added and annexed, as if all the said Jurors had been returned upon the writ or precept awarded to try the issue. (13. 14 V. c. 86. proviso.)

120. Nothing herein contained shall prevent the same Special Jury, however nominated, from being summoned and returned, to try any number of causes, provided the parties in every such cause or their Attornies have signified in writing to the Sheriff or other Officer to whom the return of Jurors in such cases belongs, their assent to the nomination and return of such special Jury for the trial of their respective causes: But the Court at which any such Juror has been summoned to attend, may upon the application of such Juror if he has served upon one or more Special Juries at the Assizes or Session of *Nisi Prius*, discharge such man from serving upon any other Special Jury during the same Assizes or Session of *Nisi Prius*. (13, 14 V. c. 55, s. 48.)

The same Special Jury may try several such cases—when

121. The party who sues out a *venire facias* for a Special Jury in any cause, shall pay the fees for striking such Special Jury, the fees of the Jurors, and all the expenses occasioned by the trial of the cause by such Special Jury, and shall not have any further or other allowance for the same upon taxation of costs than such party would be entitled to in case the cause had been tried by a common Jury, unless the Judge who tried the cause certifies under his hand, in open Court, immediately after the verdict, or afterwards upon a Summons at Chambers, that the same was a cause proper to be tried by a Special Jury. (13, 14 V. c. 55, s. 49.)

The party who sues out the Writ, to pay fees of striking, &c.

X.—VIEWS, JURIES DE MEDITATE LINGUÆ AND INQUESTS.

122. When in any case either Civil or Criminal, or on any Penal Statute depending in either of Her Majesty's Superior Courts of Common Law at Toronto, it appears to such Court or to any Judge thereof in vacation, that it will be proper and necessary that some of the Jurors who are to try the issues in such case, should have view of the place in question, in order to their better understanding the evidence that may be given upon the trial of such issues, such Court, or Judge in vacation, may order a Rule to be drawn up containing the usual terms, and if such Court or Judge thinks fit, also requiring, the party applying for the view to deposit in the hands of the Sheriff a sum of money to be named in the Rule for payment of the expenses of the view. (13, 14 V. c. 55, s. 50.)

When a view may be granted.

123. Such Rule shall also command Special Writs of *venire facias* and *distringas* to issue, to the Sheriff or other Officer, to whom the said Writs are to be directed, commanding him to have six or more of the Jurors named in such Writs or in the Panels thereunto annexed, (who are mutually consented to by the parties, or if they cannot agree, are drawn by ballot from such Panel as hereinafter provided,) at the place in question, some convenient time before the trial.

Writ therefor

*Locus in quo
to be shewn to
the viewers.*

124. The Viewers shall, then and there have the place in question shewn to them by two persons in the said writs named to be appointed by the Court or Judge; and the said Sheriff or officer who is to execute such writ, shall, by a Special return thereto, certify that the view hath been had according to the command of the same, and shall specify the names of the viewers. 5

*How the view-
ers to be de-
cided upon.*

125. When the parties in any such case do not agree as to the Jurors to be nominated to take the view, the viewers shall, by the Sheriff or other Officer to whom the *venire facias juratores* in such case is directed, be drawn by ballot from the Panel returned upon such *venire facias*, at some time and place to be appointed by such Sheriff or other Officer for that purpose, in the like manner as by the ninetieth and ninety-first sections of this Act is provided for drawing Juries from the 15 General Panel at *Nisi Prius*: But no such Sheriff or other Officer shall proceed to draw such viewers from such Panel without having first given at least forty-eight hours' notice in writing to the respective parties in such suit, of the day, hour and place of such drawing. (13, 14 V. c. 55, s. 51.) 20

*The viewers to
be the first
sworn on the
jury.*

126. When a view has been allowed in any case, those men who have had the view, or such of them as appear upon the Jury to try the issue, shall be first sworn, and so many only shall be added to the viewers who appear, as shall, after all defaults and challenges allowed, make up a full Jury of twelve. 25 (13, 14 V. c. 55, s. 52.)

*As to juries of
matrons, &c.*

127. Nothing herein contained shall extend to any Jury of matrons, or to any Writ *de ventre inspiciendo*, or to deprive any alien not naturalized who has been indicted or impeached of any felony or misdemeanor of the right of being tried by a Jury *de medietate linguæ*, but on the prayer of every such alien so indicted or impeached, the Sheriff shall by command of the Court return for one half of the Jury a competent number of aliens if so many there be in the Town or place where the trial is had, and if not, then so many aliens if any, as are found in the same 30 town or place, and no such alien Juror shall be liable to be challenged for want of any qualification required by this Act, but every such alien may be challenged for any other cause in like manner as if he were qualified by this Act. (13, 14 V. c. 55, s. 53.) 40

*No person to
be summoned
on juries
where name is
not on the
roll of jurors.*

128. No man shall be liable to be summoned or impelled to serve as a Juror in any County, City or Town upon any inquest or inquiry to be taken or made before any Sheriff or Coroner, by virtue of any writ of inquiry, or by or before any Commissioners appointed under the Great Seal of the Province, or the Seal of any Court in Upper Canada having general jurisdiction throughout the same, or having general jurisdiction throughout any County of the same or throughout 45

out any City, or Town within the same, unless the name of such person appears upon one or other of the Jurors' Rolls for the year in which such person is called upon to serve on such inquest or inquiry. (13, 14 V. c. 55, s. 54.)

- 5 **129.** But nothing herein contained shall extend to any inquest to be taken by or before the Coroner of any County, Union of Counties, City or Town by virtue of his office, or to any inquest or inquiry to be taken or made by or before any Sheriff, High Bailiff, or Coroner, of any County, City or Town, but the Coroners, Sheriffs
 10 and High Bailiffs aforesaid, in all such Counties, Cities and Towns respectively, such Inquest or Inquiry not being under a writ of inquiry, shall respectively take and make all inquests and inquiries by Jurors of the same description as they have been used and accustomed to do before the passing of this Act. (13
 15 & 14 V. c. 55, s. 54, and see *C. L. Procedure Act*, s. 147.

Except on Coroner juries, &c.

XIII.—APPLICATION OF CERTAIN PROVISIONS TO CITIES, AND RECORDER'S COURTS.

- 130.** In every City in Upper Canada in which there is a Recorder's Court, or any other Court either Civil or Criminal or both having local jurisdiction within such City, and in which Court or any Sittings or Sessions thereof, Jurors are required
 20 for the trial of issues of fact joined therein according to the course of common Law. (13 & 14 V. c. 55, s. 75.)

Provisions applicable to Recorder's Courts.

1. The Clerk of the Recorder's Court of every such City shall, annually within the same period as is hereinbefore provided for the performance of a similar duty by the Clerks of the Peace and in a similar manner, prepare from such Reports
 25 of the Selectors of Jurors of the County within the limits of which the City is embraced; as have been returned for Wards or other local divisions lying within such City, a Jurors' Book for such City, inserting in the respective Jurors' Rolls in such Book, the names of the persons resident within such City,
 30 who, upon such Reports or upon such of them as have then come in as aforesaid, are returned as qualified and liable to serve as Grand or Petit Jurors respectively, either in the Superior or Inferior Courts;

The Clerk of Recorder's Court to perform the same duties as the Clerk of the Peace, &c.

2. Except only that there shall, in every such case, be but
 35 two Rolls, one of Grand Jurors consisting of all such persons as have been so selected and reported for Grand Jurors in either the Superior or Inferior Courts, and the other of all such persons as have been in like manner selected and reported for Petit Jurors in either the Superior or Inferior Courts, and the heads
 40 of such Rolls in such Jurors' Books shall be adapted to the same accordingly;

But only two rolls required.

3. And such Recorder's Court, the Recorder of such City, or the Chairman or other presiding Member thereof, and the Clerk of
 such Court for the time being, shall respectively perform the
 like

The Recorder to preside, &c.

like duties in respect of such Books, the preparing the Ballots and the balloting of the Jury Lists from the Jurors' Rolls, as are hereinbefore prescribed to the Quarter Sessions of the Peace, the Chairman thereof, and the Clerk of the Peace for the respective Counties; and

High Bailiff to execute the duties required of Sheriff, &c.

4. All other duties which are by this Act prescribed to the Sheriffs of Counties, in respect of Jurors, whether Grand or Petit, within their respective Counties, shall, as respects Grand or Petit Juries, for the Courts of any such Cities, be performed by and required of such High Bailiff or other officer, as aforesaid; and

In drafting juries, &c.

5. The manner of drafting, striking, returning and summoning Juries by the Sheriff, upon writs of *venire factus juratores*, as prescribed by this Act, shall be observed and followed by the High Bailiff, Coroners, Elisors and other Officers having the return of Jury process, within every such City, which Coroners, Elisors and other Officers and Ministers shall for such purpose have free access, at all reasonable times, to the Jurors' Book, in the office of the Recorder's Court or other similar office of such City; and

Same subject.

6. Such High Bailiffs, Coroners, Elisors, and other officers and ministers of every such City shall possess all the powers and perform all the duties in any way connected with the drafting, striking, returning and summoning such Juries by this Act prescribed to or vested in the Sheriffs of Counties with respect to Juries returned by them upon similar process. (13 & 14 V. c. 53, s. 75.)

Jurors' book when a Town becomes a City

131. In every case in which a Proclamation issues erecting any Town into a City upon, from and after the first day of January of the following year, a Jurors' Book shall be prepared, and Jury Lists balloted for such City for such following year as above directed with respect to other Cities. (14 & 15 V. c. 65, No. 19.)

Clerk of the peace to perform the duties pro tem. of the Clerk of Recorder's Court

132. In every such case, the preparing of the Ballots, the balloting of the Jury Lists and the performing of all other acts and things required by this Act to be done for such newly proclaimed City, shall be done and performed by the Clerk of the Peace and Court of General Quarter Sessions of the Peace for the County within the limits of which such Town lies in the like manner as according to the provisions hereof would in the case of other Cities be done and performed by the Clerk of the Recorder's Court of such Cities, the Recorder and Recorder's Court and the Officers of such Court respectively. (14 & 15 V. c. 65, No. 19.)

Clerk of the peace to hand over Jurors' book to Clerk of Recorder's Court

133. In every such case, the Clerk of the Peace, shall on demand deliver over to the Clerk of the Recorder's Court of the City so erected as aforesaid, the Jurors' Book for such newly erected City as soon as may be after the same has been

been completed and the copies thereof made and deposited in the proper office, and the Clerk of the Recorder's Court shall thereupon give him a receipt for such Book.

5 **134.** Upon such receipt being filed with the Chamberlain of such City, the Clerk of the Peace and Crier of the Court of Quarter Sessions of such County, their accounts for the services thus performed for such City being first verified by affidavit before any Commissioner for taking affidavits for such County, shall be paid the amount of such accounts by the Chamberlain of such City out of the like moneys as are hereinafter provided with respect to the payment of similar accounts, by the Chamberlains of other Cities, and such payment shall, in like manner, be allowed in the accounts of such Chamberlain. (14, 15 V. c. 65, No. 19.)

Who to pay the expenses thereof

15 **135.** All the powers conferred and the duties imposed by this Act upon Justices of the Peace, with respect to Counties, are hereby conferred and imposed upon the Aldermen of Cities, in which a Recorder's Court is established. (13, 14 V. c. 55, s. 76.)

Powers of Justices conferred upon Aldermen

20 **136.** The duties by this Act required of the Sheriffs of the different Counties and of the High Bailiffs, or other similar Officers of Cities, and those also required of the Clerks of the Peace, and Clerks of the Recorder's Courts of Cities as aforesaid, may be performed either by the principal Officer himself, or by his Under-Sheriff or Deputy. (13, 14 V. c. 55, s. 77.)

The Duties of Sheriffs and High Bailiffs may be performed personally or by Deputy.

XIV. OMISSIONS NOT TO VITIATE VERDICTS.

25 **137.** No omission to observe the directions in this Act contained, or any of them, as respects the qualification, selection and distribution of Jurors, the preparation of the Jurors' Book, the balloting Jury Lists from the Jurors' Rolls, the drafting panels from the Jury Lists or the striking of Special Juries, shall be a ground of impeaching the verdict in any cause, or be allowed for error upon any writ of error or appeal to be brought upon any judgment hereafter rendered in any case, criminal or civil, by any Court in Upper Canada. (13, 14 V. c. 55, s. 95.)

Omissions to observe the directions of this Act, not to vitiate the verdict, &c.

XV. PAYMENT OF JURORS.

1. GRAND JURORS.

35 **138.** The several County Councils may by By-law, in their discretion, provide for the payment to Grand Jurors, either at the Courts of Oyer and Terminer and General Gaol Delivery, or at the General Quarter Sessions, out of the County funds, such sum per diem as they deem reasonable. (14, 15 V. c. 14, s. 11.)

County Councils to provide funds for paying jurors.

2. PETIT JURORS.

- 139.** Every Petit Juryman actually attending any of the Courts of Assize and Nisi Prius, Oyer and Terminer, General Gaol Delivery, General Quarter Sessions of the Peace, or County Courts in Upper Canada, shall be entitled to receive in the manner hereinafter provided, the sum of Five Shillings per day, for every day he attends such Court, and the sum of Six Pence per mile for every mile he necessarily travels from his place of residence to the said Court, or such other sums as any County Council by By-law from time to time fixes and determines, and the distance travelled shall be ascertained by the declaration of the Sheriff's Bailiff who summoned such Juror, or by the declaration of the Juror himself: But every such Juror who makes a false declaration respecting such distance, shall forfeit his right to receive any payment for travelling to or attending such Court as a Juror. (14, 15 V. c. 14, s. 1.) 5
- 140.** No Petit Juror shall be entitled to any fee or allowance other than is provided by or under this Act. (14, 15 V. c. 14, s. 1.) 15
- 141.** Every Sheriff shall make a pay list for the Petit Jurors summoned to attend any of the aforesaid Courts in the form set forth in the Schedule to this Act annexed marked C, and shall attend or cause some Officer to attend at the opening of the Court, on the morning of every day on which such Court sits for the trial of causes by Jury, and upon the Petit Jurors being called over, shall check and mark the word "present," or "absent," as the case may be, in the proper column of such list opposite the name of every such Juror, and on the last day of the sitting of such Court shall certify and return the said pay list to the Treasurer of the County. (14, 15 V. c. 14, s. 2.) 20
- 142.** The said pay list, checked and certified as aforesaid, shall be a sufficient authority for the Treasurer to pay to each Petit Juror the sum to which he appears entitled, as certified by such list, and the Treasurer shall forthwith pay every such Juror the sum so appearing due to him on such list. (14, 15 V. c. 14, s. 3.) 25
- 143.** Every Sheriff shall be entitled to receive from the Treasurer of the County of which he is Sheriff, such sum for each pay list and such sum per diem for checking the same every day at the opening of the Court, and for certifying and returning the same to the Treasurer as the County Council by By-law determines; and the Courts of Oyer and Terminer and General Gaol Delivery and of Assize and Nisi Prius, when holden at the same time and under the same precept and panel of Jurors, shall be one Court; and the County Court and General Quarter Sessions shall be one Court for the purposes of this Act, and the duty of calling over Jurors at the opening of the 40 45

Allowance to
petit jurors
attending
certain
Courts.

To what fees
only jurors
are to be en-
titled.

Sheriff to
make a pay
list for petit
jurors

Treasurer to
pay the jurors.

Allowances to
Sheriffs.

the Court daily shall be performed by the Clerk of whichever of the said Courts respectively is first opened. (14, 15 V. c. 14, s. 4.)

144. The Marshal or Clerk of Assize, the Clerk of the County Court or Clerk of the Peace, *as the case may be*, shall, at the opening of the Court, and before any other business is proceeded with, call over the names of the Petit Jurors, that the Sheriff or his Officer may check who are present or absent. (14, 15 V. c. 14, s. 5.)

List of jurors to be called over daily when Court opens.

145. A Petit Juror not appearing when so called shall not be entitled to any pay for the day on which he makes default, and shall for every default he makes during the day, be liable to such a fine as to the Court seems meet. (14, 15 V. c. 14, s. 6.)

Jurors not attending to be fined

FUND FOR PAYMENT OF JURORS.

FEES ON ENTRY OF NISI PRIUS RECORDS.

146. To the Clerk of Assize for every County there shall be paid, with every record entered for trial or assessment, the sum of Fifteen Shillings, and to the Clerks of the several County Courts the sum of Seven Shillings and Six Pence, which sums shall forthwith be paid over to the Treasurer, and shall form part of the fund from which Petit Jurors are to be paid as hereinbefore provided. (14, 15 V. c. 14, s. 7.)

Sums to be paid with record when entered for trial.

147. No Record shall be entered for trial or assessment unless the sums before mentioned are paid. (14, 15 V. c. 14, s. 7.)

Record not to be entered unless sum is paid

FEES IN CRIMINAL CASES.

148. In all criminal cases in which by law the party prosecuting or the party prosecuted is liable to pay the costs of the prosecution, the Officer of the Court shall charge against and receive from the party so liable the sum of Fifteen Shillings, over and above the sum to which he is otherwise liable, and such sum of fifteen shillings shall form part of the fund for the payment of Petit Jurors, and shall forthwith be paid over by the Officer receiving it to the Treasurer of the County in which the prosecution has been carried on. (14, 15 V. c. 14, s. 8.)

The like in criminal cases where either party is liable to pay costs.

149. All fines and penalties imposed upon and levied in the several Counties in Upper Canada, not payable to the Receiver General or to any Municipal Corporation, and all fines upon Jurors for non-attendance levied therein, shall be paid to the Treasurers of each of the said Counties respectively, and shall form part of the fund for the payment of Petit Jurors under this Act. (14, 15 V. c. 14, s. 9.)

Certain fines to go towards payment of jurors.

COUNTY

COUNTY COUNCILS TO SUPPLY DEFICIENCY.

150. In case the sums appropriated by this Act are not sufficient to pay the said Jurors, the several County Councils may raise and appropriate such sums of money as in their judgment are sufficient to pay the Petit Jurors according to the terms of this Act. (14, 15 V. c. 14, s. 10.)

County Councils to provide funds for paying jurors.

151. The thirteen last preceding clauses of this Act being sections numbered from one hundred and thirty-seven to one hundred and forty-nine, both included, shall not be in force in or apply to any County in Upper Canada until the County Council desirous of availing themselves of the provisions thereof, appropriate such a sum of money as in their judgment, with the moneys applicable under the said last preceding thirteen clauses, form a fund sufficient to pay the Petit Jurors under the provisions therein contained, nor to any County in which the County Council do not appropriate a sum of money for payment of any deficiency that may occur in the Petit Jury fund of such County. And until such appropriation is made as aforesaid, every Petit Juror shall be allowed the sum of one shilling and three pence in every cause in which he is sworn as a Juror in any civil case in the Superior Courts or at the Assizes, and the sum of seven pence half penny in cases in the County Courts, such fee to be paid by the plaintiff or his Attorney, and to be accounted for in costs by the party charged with the payment thereof. (14, 15 V. c. 14, s. 12—2 Geo. 4, c. 1, s. 30—8 V. c. 13, s. 40.)

County Treasurer to notify Sheriff when funds are provided.

152. In every County in which a Petit Jury fund is provided, the Treasurer of such County shall give notice to the Sheriff of the County, who shall thereupon perform the duties imposed upon him under this Act. (14, 15 V. c. 14, s. 13.)

Cities bound to contribute.

153. The Municipal Corporation of any County in Upper Canada of which a City forms part for judicial purposes, may demand and recover from the Municipal Corporation of such City a portion of the expenses incurred by such County, in any year, for the payment of Jurors, which portion shall be determined as follows:

Deduction to be made from total sum expended.

1. From the total sum expended in the County in any year, for the payment of Jurors and other fees and disbursements under this Act, and the sections numbered from one hundred and thirty-seven to one hundred and forty-nine inclusive, there shall be deducted the sums paid to Jurors for attendance at the Courts of Quarter Sessions, and the sum actually received by the County in such year for fees and penalties, which under the said clauses are appropriated towards the payment of Jurors;

Portion to be finally borne

2. Of the sum remaining after such deduction, the portion to be finally borne by the City and by the County respectively, shall

shall be in proportion to the assessed value of all the rateable property in each, and the sum to be finally borne by the City &c. shall be the sum to be repaid by the Municipal Corporation thereof to that of the County ;

- 5 3. In comparing the value of the rateable property in any City and County for the purposes of this Act, the assessed annual value shall be held to be ten per cent of the actual value. Assessed annual value, &c.

- 10 154. The actual or annual value of rateable property in a City or County for the purposes of this Act, shall be that shewn by the Assessment Rolls of each, for the year in which the expenses to be divided between them have been incurred, and the portion of such expenses to be finally borne by the City shall be payable to the County immediately after the close of each year. (18 V. c. 130, s. 3.) Annual value of rateable property to be that shewn by assessment rolls.

- 15 155. The Common Council of any City shall raise by assessment the sum of money required by such City for the purposes of this Act, or shall pay such sum out of any moneys belonging to the City and applicable to municipal purposes generally. (18 V. c. 130, s. 4.) The Council of Cities to raise the necessary funds by Assessment, &c.

XVI. FEES TO OFFICERS.

1. TO SELECTORS.

- 20 156. The Selectors of Jurors, for every selection and distribution of Jurors, and the Report thereof made by them under this Act, shall be entitled to such sum of money as is authorized to be awarded them by the Municipality of which they are respectively Officers ; and such sum of money shall be paid to them respectively by the Treasurers (or Chamberlains, *as the case may be,*) of their respective Townships, Villages, Towns and Cities, in such manner as such Municipalities may severally direct, and which money shall be paid by such Treasurers (or Chamberlains) to every such Selector of Jurors upon receipt of a Certificate from the Clerk of the Peace for the County or Union of Counties, that such Report was duly made to him within the time for that purpose prescribed by this Act. (16 V. c. 120, s. 9.) Allowance to selectors, and how payable.

2. TO CLERKS OF THE PEACE, AND OF RECORDER'S COURTS.

- 35 157. The Clerk of the Peace of every County and the Clerks of the Recorder's Courts in every City in which a Recorder's Court is established, shall be entitled to the following sums of money for the respective services performed by them under this Act, that is to say : (19, 20 V. c. 92, s. 2.) Fees to Clerks of Peace and of Recorder's Courts.

1. For receiving and examining the Reports of Selectors for each City, Town, Village and Township, causing any deficiency which

which may be found therein to be supplied, and filing the same in his office, three shillings and nine pence ;

2. For giving certificates to Selectors of Jurors, of Report having been made, two shillings and six pence ;

3. For preparing in proper form each Juror's book and superintending the making up of the same (besides actual disbursements for stationer's charges), thirty shillings ; 5

4. For arranging alphabetically and in order the names contained in Selector's Report, per one hundred names, fifteen shillings ; 10

5. For making up Juror's books, entering all the names and numbers, and all other matters required to be entered therein, per one hundred names, fifteen shillings ;

6. For each copy of the Juror's book required by the Jury Act, per one hundred names, fifteen shillings ; 15

7. For preparing on cards the ballots for Jurors, to correspond with the numbers of the Juror's book, per one hundred names, two shillings and six pence ;

8. For each certificate required to be entered on the Juror's book to verify same, five shillings ; 20

9. For balloting and entering each jury list, per one hundred names, thirty shillings ;

10. For copy of Jury list required to be entered, per one hundred names, fifteen shillings ;

11. For each panel of Jurors drafted from the Jury list, per one hundred names on such Jury list, twenty shillings ; 25

12. For entering each panel in the Juror's book, with the numbers corresponding to the Jury list, ten shillings ;

13. For making up aggregate return in detail of Jurors, forty shillings ; 30

14. For copy thereof and transmitting same to Provincial Secretary when required, and for office copy of the same, each, twenty shillings ;

3. TO SHERIFFS, &c.

Fees to Sheriffs, High Bailiffs, &c.

158. The Sheriff, High Bailiff or other officer of every such County, or City shall, exclusive of such fees as he may be entitled to from the parties in any suit, be entitled to the following 35

following sums of money for the respective services performed by him under the Jury Act, that is to say: (19 & 20 V. c. 92, s. 2.)

1. For each panel of Jurors whether Grand or Petit returned and summoned by him in obedience to any general precept for the Return of Grand or Petit Jurors for any sittings or sessions of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace or County or Recorder's Court respectively, under this Act, twenty-five shillings;
- 10 2. For copies of such panel to be returned to the offices of the Superior Courts of Common Law at Toronto, each, five shillings;
3. For every summons served upon the Jurors on such panel, the sum of two shillings and six pence;
- 15 4. And in case of the Sheriffs of Counties, the further sum of six pence for every mile that the Sheriff or his Deputy or Bailiffs necessarily and actually travelled from the County Town for the purpose of serving such summonses.
5. And for every certificate given to any of such Jurors of his 20 having served, to evidence his exemption from serving again until his time for doing so returns in its course, the sum of one shilling and three pence;

4. TO CRIERS.

159. And the Crier of every such Court of Quarter Sessions, or Recorder's Court, shall, for making the Proclamations, calling the names of all those drawn in the course of balloting such Jury Lists, and performing all other duties required of him under this Act, be entitled to the sum of Fifteen Shillings, for every one hundred names so drawn. (19 & 20 V. c. 92, s. 2.)
- 25 Fees to Criers
Quarter Ses-
sions.
- 30 160. In all the foregoing cases, when there are more than one hundred, or more than an even number of hundreds of such names, if the broken number beyond such hundred or hundreds falls short of fifty names, the same shall not be reckoned, and if such broken number shall amount to fifty names or upwards, the same shall be reckoned as a full hundred, but in all cases of there being altogether less than a single hundred, the same shall be reckoned as a full hundred. (19 & 20 V. c. 92, s. 2.)
- 35 If there are
more than one
hundred
names.
- 40 161. Upon proof by affidavit made before a Commissioner for taking affidavits in one of Her Majesty's Superior Courts of Common Law, of such several services having been executed, or of such travel having been necessarily performed in
- How the said
fees shall be
paid.
- 22* the

the service of such summonses, the Treasurer of the County or the Chamberlain of the City, *as the case may be*, shall pay such fees to such officers respectively, out of any money in his hands belonging to such County or City respectively, not otherwise specially appropriated by Act of Parliament: and for all such moneys so to be paid, every such Treasurer and Chamberlain shall be allowed in his accounts with the County, or City, as if the same had been paid under the special authority and direction of the Municipal Council of such County, or City respectively. (19 & 20 V. c. 92, s. 2.)

XVII.—PENALTIES.

Attaints of jurors abolished.

162. The Queen shall not, nor shall any one on her behalf, nor shall any party or parties in any case whatsoever, commence or prosecute any writ of attaint against any Jury or Jurors for the verdict by them given, or against the party or parties who have Judgment upon such verdict, and no inquests shall be taken to inquire of the concealments of other inquests but all such attaints and inquests have been and are abolished. (13 & 14 V. c. 55, s. 92.)

Embracery punishable as heretofore.

163. Notwithstanding any thing herein contained, every person who is guilty of the offence of embracery, and every Juror who wilfully or corruptly consents thereto, shall be respectively proceeded against by indictment or information and be punished by fine and imprisonment, in like manner as every such person and Juror might have been before the passing of this Act. (13 & 14 V. c. 55, s. 93.)

On jurors for non-attendance.

164. If any man having been duly summoned to attend on any kind of Jury, in any of the Courts hereinbefore mentioned, does not attend in pursuance of such Summons, or being there called does not answer to his name; or if any such man or any talesman after having been called is present, but does not appear, or after his appearance wilfully withdraws himself from the presence of the Court, the Court shall set such fine upon every such man or talesman so making default, (unless some reasonable excuse is proved by oath, affidavit or affirmation,) as the Court thinks meet. (13 & 14 V. c. 55, s. 63.)

On viewers for non-attendance.

165. Where any viewer having been duly summoned to attend on a Jury makes default, as in the last preceding section is set forth, the Court at which he has been summoned to attend for the trial of such cause, is hereby required to set upon such viewer, (unless some reasonable excuse is proved as aforesaid,) a fine in the discretion of such Court to the amount of five pounds at the least. (13 & 14 V. c. 55, s. 64.)

On jurors upon inquests

166. If any man having been duly summoned and returned to serve as a Juror in any County, City or Town in Upper

Upper Canada, upon any inquest or inquiry, before any Sheriff and inquiries, or Coroner, or before any of the Commissioners aforesaid, does &c. not after being openly called three times, appear and serve as such Juror, every such Sheriff, Coroner and Commissioners 5 respectively, are hereby required (unless some reasonable excuse is proved on oath, affidavit, or affirmation) to impose such fine upon any man so making default, as they respectively think fit, not exceeding Five Pounds. (13 & 14 V. c. 55, s. 65.)

167. Every such Sheriff, Coroner and Commissioners re- Sheriff to cer-
10 spectively, shall make out and sign a certificate containing the tify defaults
christian and surname, the residence and addition of every man and transmit
so making default, together with the amount of the fine imposed copies.
and the cause of such fine, and transmit such certificate to the
Clerk of the Peace for the County or Clerk of the Recorder's
15 Court of the City in which such defaulter resides, on or before
the first day of the General Quarter Sessions of the Peace, or
Sessions of the Recorder's Court next ensuing. (13 & 14 V. c.
55, s. 65.)

168. And every such Clerk shall copy the fines so Fines to be
20 certified on the Roll on which all fines and forfeitures estreated.
imposed at such Quarter Sessions, or Sittings, or Sessions
of such Recorder's Court, are copied, and the same shall
be estreated, levied and applied in like manner, and subject to
the like powers, provisions and penalties in all respects as if
25 they had been part of the fines imposed at such Quarter Ses-
sions or Sittings respectively. (13 & 14 V. c. 55, s. 65.)

169. If any Sheriff or other Officer or Minister as afore- On Sheriffs,
said wilfully impanels and returns any man to serve on any Jury &c. for de-
in any of the Courts aforesaid, such man's name not being duly fult to per-
30 drawn upon such Panel, in the manner in this Act pre- form duties
scribed, — or if any Clerk of Assize, Clerk of the Peace, assigned to
Clerk of the Recorder's Court or other Officer of any of the them.
Courts aforesaid, wilfully records the appearance of any man
so summoned and returned who did not really appear,—in every
35 such case, the Court shall, upon examination in a summary
way, set such fine upon such Sheriff, Officer or other Minister,
Clerk of Assize, Clerk of the Peace, Clerk of the Recorder's
Court or other Officer offending, as the Court thinks meet. (13
& 14 V. c. 55, s. 66.)

40 170. No Sheriff, Deputy-Sheriff, Coroner, Elisor, Bai- On Sheriffs,
liff or other Officer, or person whatsoever, shall directly &c., taking
or indirectly, take or receive any money or other reward money as a
or promise of money or reward, to excuse any man from serv- bribe.
ing or being summoned to serve on Juries, or under any such
45 colour or pretence; and no Bailiff or other officer, appointed by
any Sheriff, under-Sheriff, Coroner, or Elisor to summon Jurors,
shall summon or pretend to summon any man to serve thereon
other than those whose names are specified in a Warrant or
Mandate

Mandate signed by such Sheriff, under-Sheriff, Coroner or Elisor, and directed to such Bailiff, or other officer; and if any Sheriff, Deputy-Sheriff, Coroner, Elisor, Bailiff, or other officer, wilfully transgresses in any of the cases aforesaid, or summons any of the Jurors, not being a Special Juror, less than eight days before the day on which he is required to attend, or summons any Special Juror less than three days before the day on which he is to attend, except in the cases hereinbefore excepted, the Court of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, County and Recorder's Court respectively, within whose jurisdiction the offence has been committed, shall, on examination and proof of such offence in a summary way, set such fine upon every person so offending, as the Court thinks meet. (13, 14 V. c. 55, s. 67.)

On Sheriffs, &c., making any unauthorized alteration in any juror's book, or neglecting to return the same, &c.

171. If any Sheriff or Deputy Sheriff of any County or any High Bailiff or other Officer of any City, makes or causes to be made any alteration whatever in any of the Rolls, Lists or Panels in any Jurors' Book, or in the certified copies thereof in their official custody respectively, except in compliance with the directions in this Act contained, or neglects or refuses to prepare the Jurors' Book, the Ballots necessary for balloting the Jury Lists, drafting the Panels, striking Special Juries, and drawing Juries at the trial, or neglects or omits to return such Juror's Book, and the ballots for drafting such Jury Lists, to the Court to which by this Act he is required to return the same, or neglects or omits to perform any other duty required of him by this Act, or wilfully does any thing inconsistent with the provisions of this Act, every such Sheriff, Deputy Sheriff, High Bailiff, or other Officer so offending, shall forfeit the sum of Fifty Pounds, one moiety thereof to the use of Her Majesty, and the other moiety, with full costs, to such person as sues for the same in any Court of competent jurisdiction, by action of debt or information. (13, 14 V. c. 55, s. 68.)

On Clerks of Crown and Pleas making such alterations or certifying falsely, &c.

172. If any Clerk of the Crown and Pleas, or any of his Deputies, makes or causes to be made any alteration whatever in the Rolls, Lists or Panels in any Jurors' Book, or in any copy thereof, deposited in his office, or wilfully certifies as true any copy of any Jurors' Book, or any Roll, List or Panel therein, which is not a true copy thereof, such offender, shall, for such offence, forfeit the sum of Fifty Pounds, one moiety thereof to the use of Her Majesty, and the other moiety thereof, with full costs, to such person as may sue for the same in any Court of competent jurisdiction by action of debt or information. (13, 14 V. c. 55, s. 69.)

On assessors not making and returning the assessment roll in proper time.

173. If any Assessor of any Township, Village or Ward in Upper Canada, neglects or omits to make out and complete his Assessment Roll for such Township, Village or Ward, and to return the same to the office of the Clerk of such Township or Village, or of the City or Town in which any such

such Ward is situated, or other office or place of deposit for such Roll, on or before the first day of September of the year for which he is such Assessor, such Assessor so offending shall forfeit for such offence the sum of Fifty pounds, one moiety thereof to the use of Her Majesty, and the other moiety thereof, with full costs, to such person as may sue for the same in any Court of competent jurisdiction by action of debt, or information; but nothing herein contained shall be construed to relieve any such Assessor from the obligation of returning such Assessment Roll at an earlier period of the year, or from any penalty he may incur by not returning the same accordingly. (13, 14 V. c. 55, s. 70.)

174. If any City, Town, Village or Township Clerk, or any Assessor or other officer or person who, at the time of the annual meeting of the Selectors of Jurors for any City, Town, Village or Township, has the actual charge or custody of the Assessment Rolls or Assessment Roll of such City, Town, Village or Township for such year, neglects or omits to perform the duties required of him by the sixteenth section of this Act, as regards the production of such Roll or Rolls at the annual meeting of such Selectors, or the permitting such Selectors to have the necessary access to the same for the purposes of their duty, every such Clerk or other officer or person so offending shall for every such offence forfeit the sum of Twenty-five pounds, one moiety thereof to the use of Her Majesty, and the other moiety thereof, with full costs, to such person as may sue for the same in any Court of competent jurisdiction, by action of debt or information. (13, 14 V. c. 55, s. 71.)

On municipal officers not producing assessment roll as required.

175. If any Selector of Jurors for any Township, Village or Ward in Upper Canada, wilfully selects and reports as qualified and liable to serve as a Grand or Petit Juror, any person who, according to the provisions of this Act, ought not to be so selected or reported, or takes any money or other reward for so selecting or reporting or omitting to select or report any person whomsoever, or wilfully inserts in any such Report a wrong description of the name, place of abode, or addition of any one so selected and reported, or neglects or omits to complete his selection and Report and to deposit the same in the proper office on or before the fifteenth day of September of the year for which he acts as such Selector of Jurors, every such Selector of Jurors offending in any of the foregoing cases, shall for every such offence, forfeit a sum not exceeding Twenty pounds, nor less than Five pounds, at the discretion of the Justice before whom he may be convicted. (13, 14 V. c. 55, s. 72.)

On selectors of jurors for wilful dereliction of duty.

176. If any Clerk of the Peace, or Clerk of any Recorder's Court of any City, or his Deputy, when acting in performance of the duties required of him by the sections of this Act numbered

On Clerks of Peace for wilful dereliction of duty.

bered thirty-seven to fifty-three, both included, neglects or omits to perform any duty required of him by those sections in the manner therein prescribed, or wilfully does any thing inconsistent with the provisions of the same, such Clerk of the Peace, or other Clerk or his Deputy, so offending, shall, for such offence, forfeit the sum of Fifty pounds, one moiety thereof to the use of Her Majesty, and the other moiety thereof, with full costs, to any person who sues for the same, in any Court of competent jurisdiction, by action of debt or information. (13, 14 V. c. 55, s. 73.)

How pecuniary penalties shall be levied and applied.

177. Except as otherwise provided by the one hundred and forty-eight section of this Act, all fines imposed under this Act by either of Her Majesty's Superior Courts of Common Law at Toronto, or by any Court of Assize and *Nisi Prius*, Oyer and Terminer, Gaol Delivery, Sessions of the Peace, County Court, or Recorder's Court, shall be levied and applied in the same manner as any other fines imposed by the said Courts respectively. (13, 14 V. c. 55, s. 74.)

Mitigation of penalty where no application is directed.

178. All other penalties under this Act for which no other remedy is given may be recovered by summary proceeding before any Justice of the Peace having jurisdiction over the offence, which Justice may on any complaint hear and examine witnesses on oath or affirmation and determine the same, and if he sees fit, may mitigate the penalty to the extent of a moiety thereof. (13, 14 V. c. 55, s. 74.)

Committal for non-payment.

179. Unless the penalty be forthwith paid, upon conviction such Justice shall by warrant under his hand and seal, levy the same, by distress and sale of the offenders goods and chattels, and for want of sufficient distress, the offender shall be committed by warrant, under the hand and seal of such Justice, to the Common Gaol or House of Correction, for such term not exceeding six calendar months, as such Justice thinks proper, unless such penalty be sooner paid; and all penalties, the application whereof is not herein particularly directed, shall be paid to the complainant. (13, 14 V. c. 55, 74.)

XVIII.—MISCELLANEOUS PROVISIONS.

180. The year for the purposes of this Act shall be the calendar year. (13, 14 V. c. 55, s. 74.)

Affirmations instead of oaths.

181. Nothing herein contained shall be construed to affect or alter any Statute or Law whereby the affirmation of any person belonging to certain religious societies, classes or descriptions of persons is allowed, or directed to be in all cases received and taken from such person in lieu of an oath. (13, 14 V. c. 55, s. 94.) Ante s. 101.

Certain allegations not ne-

182. Whenever any legal proceeding in which a Jury was impanneled is required to be set out, it shall not be necessary to

to specify that any particular person or persons who acted as Jurors made affirmation instead of oath, but it may be stated that they served as Jurymen, in the same manner as if no Act had passed for enabling persons to serve as Jurymen without oath. 16 V. c. 19, s. 12.)

183. In pleading, citing or otherwise referring to this Act, and any other Acts that may be hereafter passed touching or concerning or in any wise relating to Jurors, Juries or Inquests generally, it shall, be sufficient to use the expression, *The Upper Canada Jurors' Act*, (or Acts as the case may be,) or words of equivalent import. (14, 15 V. c. 5, s 5.)

Short titles by which the said Act and others relative to jurors in Upper Canada may be referred to.

SCHEDULE A.

REPORT of the selection and distribution of Jurors for the Township of Albion (or for the Ward of St. James, in the City of Toronto), in the County of York, for the year 1851, made at the Town (or City) Hall of the said Township (or City) by A. B. Townreeve (or Mayor), C. D. Town (or City) Clerk, and E. F., G. H. and I. J. Assessors of the said Township (or Ward), on the _____ day of _____ in the year 1850, pursuant to the directions of the Act of Parliament of (1)

FIRST DIVISION

For the Roll of Grand Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction.

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Unincorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
John Anderson.....	16	2	Esquire.
Peter Cameron.....	4	6	Yeoman.
William O'Leary.....	—	Oatlands	Gentleman.
Alfred Piper.....	17	1	Esquire.
&c.			

SECOND DIVISION

For the Roll of Grand Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction.

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Unincorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
William Adams.....	9	4	Gentleman.
Richard House.....	7	5	Yeoman.
Jacob Wyse.....	2	1	Tailor.
Allan Thomas.....	24	5	Esquire.
&c.			

T H I R D

THIRD DIVISION

For the Roll of Petit Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction.

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Unincorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
David Boothe.....	11	7	Merchant.
George Sullivan.....	3	4	Esquire.
Nathan Lowe.....	6	1	Shoemaker.
Henry Grace.....	24	7	Yeoman.
&c.			

FOURTH DIVISION

For the Roll of Petit Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction.

NAMES.	No. of Lot or House, where known to the Selectors.	Concession or Street, or Unincorporated Village or Hamlet, where known to the Selectors.	ADDITIONS.
George Gule.....	7	8	Tailor.
Samuel Jones.....	15	3	Yeoman.
William Carpenter.....	7	2	Esquire.
Thomas Hoole Rogers.....	11	1	Gentleman.
&c.			

We, the above-named Selectors of Jurors for the Township of Albion (2) do hereby solemnly declare, each severally for himself, that we have made the Selection and Distribution of Jurors in this Report from the Assessment Roll of the said Township for the present year to the best of our judgment and information, pursuant to the directions of the Act of Parliament of (1) and that we have so made the same without fear, favour or affection of, to or for any person or persons whomsoever, gain, reward or hope thereof, other than the fees to which we are entitled under the provisions of the said Act of Parliament.

Witness our Hands and Seals, the day and year last above written.

A. B. [L. S.] *Townreeve.*

C. D. [L. S.] *Town Clerk.*

E. F. [L. S.] *Assessor.*

G. H. [L. S.] *Assessor.*

I. J. [L. S.] *Assessor.*

SCHEDULE

SCHEDULE B.

The Jurors' Book for the County of York, for the year 1851. (1)

1.—ROLL OF GRAND JURORS

To serve in Her Majesty's Superior Courts (2) of Criminal Jurisdiction.

No. on Roll.	NAMES.	No. of Lot or House as in Report of Selectors.	Concession or Street, or Unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
1 ALBION, (Township.)						
1	Anderson John.....	16	2	Esquire, Gentleman, Merchant, Yeoman,	3	Exempted, having served on G. J. List, S. C., 1820.
2	Aylof Graham.....	9	4			
3	Bosworth David....	11	7			
4	Cameron Peter.....	4	6			
20	Young David.....	7	8	Tailor,	3	
2 BROCK, (Township.)						
21	Allan Simon.....	21	7	Yeoman, Gentleman,	2	
22	Bolland George....	5	12			
31	Wilkinson James... (<i>etc., to, say</i>)	13	4	Esquire, Yeoman,	144	
32	Yates Edward.....	1	5			
3 YORKVILLE, (Village.)						
4 ST. JAMES WARD, (City of Toronto.) [<i>etc., to, say</i>]						
26 YORK, (Township.)						
503	Arthur Thomas.....	3	2 From Bay.	Yeoman, Yeoman,	1	
504	Bull Peter.....	14	1 E. Yonge St.			

These are to certify that I have carefully compared the above Grand Jurors' Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto, as embraced within the same for certain judicial purposes, for the year one thousand eight hundred and fifty-eight as such Reports remained with me as Clerk of the Peace on the fifteenth day of September in that year, and that such Grand Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Grand Jurors in Her Majesty's Superior Courts of Criminal Jurisdiction for such County.

Witness my hand, this
eight hundred and fifty-

day of one thousand

E. F., Clerk of the Peace.

2.—THE GRAND JURY LIST

For the Superior Courts, (2) as balloted in open Court, at a General Quarter Session of the Peace for the County, on the _____ day of _____ 1850, being the first day of the first General Quarter Sessions of the Peace for the County, held next after the first day of October in that year, by C. D. Chairman of the said Court, and E. F. the Clerk of the Peace, pursuant to the directions of the Act of Parliament of (3)

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or Unincorporated Village or Hamlet, as in Jurors' Roll.	Township, Village or Ward.	Additions.	No. of Roll.		Remarks.
1	Arthur Thomas.	3	2 From Bay,	York	Yeoman	503	1	Served accordingly.
2	Bollands George.	5	12	Brock	Gentleman	22	1	Omitted to attend altogether.
3	Young David. (&c. to)	7	8	Albion	Tailor	20		
144	Yates Edward.	1	5	Brock	Yeoman	32	1	Served accordingly.

These are to certify that on _____ the _____ day of _____ instant, being the first day of the first General Quarter Sessions of the Peace for the County of York, next after the first day of October in this year (6) the foregoing Grand Jury List for the Superior Courts for this County for the year one thousand eight hundred and fifty-nine, was in open Court duly balloted, canvassed and transferred from the Roll of Grand Jurors to serve in Her Majesty's Superior Courts of Criminal Jurisdiction for the same year, pursuant to the directions of the Act of Parliament of (3)

Witness our hands, this _____ day of _____ one thousand eight hundred and fifty-

_____ day of _____ one thousand

C. D. Chairman.
E. F. Clerk of the Peace.

3.—GRAND JURY PANELS FOR THE SUPERIOR COURTS. (2)

(a) No. 1.

PANEL of Grand Jurors returned upon a precept from the Honorable G. H., the Honorable I. J., [&c.] Her Majesty's Justices in that behalf, tested the _____ day of _____ 185 _____, for the return of twenty-four of such Jurors for the Sessions of *Oyer and Terminer* and Gaol Delivery, to be held for this County on the _____ day of _____ one thousand eight hundred and fifty-one, as drafted on _____ the _____ day of _____ one thousand eight hundred and fifty-nine, at the Office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff, in the presence of K. L. and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of the Act of Parliament of (3)

No. of Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or Unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Arthyr Thomas.....	3	2 From Bay,	York	Yeoman	1	
2	Bolland George..... (&c. to)	5	12	Brock	Gentleman	2	
24	Yates Edward.....	1	5	Brock	Yeoman	144	

Witness our hands the day and year last above written.

A. B. Sheriff.
K. L. J. P.
M. N. J. P.

(b) No. 2. (5) &c.

4.—ROLL OF GRAND JURORS

To serve in Her Majesty's Inferior Courts (2) of Criminal Jurisdiction. (4)

No. on Roll.	NAMES.	No. of Lot or House as in Report of Selectors.	Concession or Street, or Unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1 ALBION, (Township)					
1	Acland White.....	16	2	Esquire,		Exempted, having served on G. J. List, S. C. 1850.
2	Adams William.....	9	4	Gentleman,		
3	Eswald David.....	11	7	Merchant,		
4	Hamilton Peter..... (<i>See, to, say</i>)	4	6	Yeoman,		
20	Large George.....	7	8	Tailor,	3	
	2 BROCK, (Township)					
21	Ash Simon.....	21	7	Yeoman,		144
22	Borland George.... (<i>See, to, say</i>)	5	12	Gentleman,	2	
31	Wilkins James.....	13	4	Esquire,		
32	Waters Edward.....	1	5	Yeoman,		
	3 OSHAWA, (Village)					
	4 ST. JAMES WARD (City of Toronto) [<i>See, to, say</i>]					
	26 YORK, (Township)					
503	Astor Thomas.....	3	2 From Bay,	Yeoman,	1	
504	Peel Peter.....	14	1 E. Yonge St.	Yeoman,		

These are to certify that I have carefully compared the above Grand Jurors' Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto, as embraced within the same for certain judicial purposes for the year one thousand eight hundred and fifty-eight as such Reports remained with me as Clerk of the Peace on the Fifteenth day of September in that year, and that such Grand Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Grand Jurors in Her Majesty's Inferior Courts of Criminal Jurisdiction for such County.

Witness my hand, this
eight hundred and fifty-

day of

one thousand

E. F. Clerk of the Peace.

5.—THE GRAND JURY LIST

For the Inferior Courts, (2) as balloted in open Court at a General Quarter Sessions of the Peace for the County, on the day of 1850, being the first day of the first General Quarter Sessions of the Peace for the County held next after the First day of October in that year by C. D. Chairman of the said Court, and E. F. Clerk of the Peace, pursuant to the directions of the Act of Parliament of (3)

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or Unincorporated Village or Hamlet, as in Jurors' Roll.	Township, Village or Ward.	Additions.	No. on Roll.	No. on Panel.	Remarks.
1	Astor Thomas...	3	2 From Bay.	York	Yeoman,	503	1	Served accordingly.
2	Borland George.	5	12	Brock	Gentleman,	22	1	Omitted to attend altogether.
3	Large George... (<i>sc. to</i>)	7	8	Albion	Tailor,	20		
144	Waters Edward.	1	5	Brock	Yeoman,	32	1	Served accordingly.

These are to certify that on the day of instant, being the first day of the first General Quarter Sessions of the Peace for the County of York next after the First day of October in this year (6), the foregoing Grand Jury List for the Inferior Courts for this County, for the year one thousand eight hundred and fifty-nine, was in open Court duly balloted, canvassed and transferred from the Roll of Grand Jurors to serve in Her Majesty's Inferior Courts of Criminal Jurisdiction for the same year, pursuant to the directions of the Act of Parliament of (3)

Witness our hands, this day of one thousand eight hundred and fifty-

C. D. Chairman,
E. F. Clerk of the Peace.

6.—GRAND JURY PANELS FOR THE INFERIOR COURTS. (2)

(a) No. 1.

Panel of Grand Jurors returned upon a precept from S. B. H., and K. L. M., Esquires, two of Her Majesty's Justices of the Peace in and for the County of York, tested the day of 185 , for the return of twenty-four of such Jurors for the General Quarter Sessions of the Peace to be held for this County on the day of one thousand eight hundred and fifty-one, as drafted on the day of one thousand eight hundred and fifty-nine, at the Office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff,

Sheriff, in the presence of K. L., and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of the Act of Parliament of (3)

No. on Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or Unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Astor Thomas..	3	2 From Bay.	York	Yeoman,	1	
2	Borland George . (<i>&c., to</i>)	5	12	Brock	Gentleman,	2	
24	Waters Edward	1	5	Brock	Yeoman,	144	

Witness our hands, the day and year last above written.

A. B. Sheriff.
K. L. J. P.
M. N. J. P.

(b) No. 2. (5) &c.

7.—ROLL OF PETIT JURORS

To serve in Her Majesty's Superior Courts (2) of Criminal and Civil Jurisdiction. (4)

No. on Roll.	NAMES.	No. of Lot or House, as in Report of Selectors.	Concession or Street, or Unincorporated Village or Hamlet, as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1 ALBION. (Township.)					
1	Parley Peter.....	16	2	Esquire,		
2	Alley Simon.....	21	7	Yeoman,	2	
3	Aikins William....	25	3	Yeoman,		
4	Ashford Thomas....	19	5	Yeoman,	3	
5	Adams George.....	5	5	Gentleman,	1	
6	Worth David.....	11	7	Merchant,	5	
7	Barclay John.....	9	2	Shoemaker,	4	
8	Cameron William..	4	6	Yeoman,		
9	Daniels George....	22	11	Yeoman,	6	
10	Small William....	7	8	Tailor,	7	
	(<i>&c., to say</i>)					
1060	Yarold George....	14	9	Baker,	288	Excepted, having served on P. J. List S. C. 1850,
	2 BROCK. (Township.) &c.					

These are to certify that I have carefully compared the above Petit Jurors' Roll with the Reports made by the several Selectors of Jurors for the different

different Townships, Villages and Wards in the County of York, including the City of Toronto, as embraced within the same for certain judicial purposes, for the year one thousand eight hundred and fifty, as such Reports remain with me as Clerk of the Peace on the fifteenth day of September of that year, and that such Petit Jurors' Roll contains a true and correct transcript of the names, description and additions of all persons so selected and reported as competent, qualified and liable to serve as Petit Jurors in Her Majesty's Superior Courts of Criminal and Civil Jurisdiction for such County.

Witness my hand, this day of 1850.

E. F. Clerk of the Peace.

8.—THE PETIT JURY LIST.

For the Superior Courts, (2) as balloted in open Court at a General Quarter Sessions of the Peace for the County, on the day of 185 , being the first day of the first General Quarter Sessions of the Peace for the County held next after the first day of October in that year by C. D. Chairman of the said Court, and E. F. the Clerk of the Peace, pursuant to the directions of the Act of Parliament of (3)

No. on List.	NAMES	No. of Lot or House, as in Jurors' Roll.	Concession or Street, or Unincorporated Village or Hamlet, as in Jurors' Roll.	Residence.	Additions.	No. on Roll.	No. of Panel.	Remarks.
1	Adams George..	5	5	Albion	Gentleman	5		
2	Alley Simon....	21	7	Albion	Yeoman	2		Served accordingly.
3	Ashford Thomas.	2	19	Albion	Yeoman	4		
4	Barclay John....	19	8	Albion	Shoemaker	7		
5	Worth David....	9	5	Albion	Merchant	6		
6	Daniel George..	11	16	Albion	Yeoman	9		
	(&c. to)							
189	Yarold George..	14	9	Albion	Baker	1060	1	Attended, but made default.

These are to certify that on the day of instant, being the first day of the first General Quarter Sessions of the Peace for the County of York next after the first day of October in this year, (6) the foregoing Petit Jury List for the Superior Courts for this County for the year 1851, was in open Court duly balloted, canvassed and transferred from the Roll of Petit Jurors to serve in Her Majesty's Superior Courts of Criminal and Civil Jurisdiction for the same year, pursuant to the directions of the Act of Parliament of (3)

Witness our hands, this day of 1850.

C. D. Chairman.
E. F. Clerk of the Peace.

9.—PETIT JURY PANELS

FOR THE SUPERIOR COURTS (2)

(a) No. 1.

Panel of Petit Jurors returned upon a precept from the Honorable G. H., the Honorable J. J. (&c.) Her Majesty's Justices, in that behalf tested the day of one thousand eight hundred , for the return of forty-eight of such Jurors for the Sessions of Assize and *Nisi Prius*, *Oyer* and *Terminer*, and Gaol Delivery, to be held for this County, on the day of one thousand eight hundred and fifty-one, as drafted on the day of one thousand eight hundred and fifty-one, at the Office of the Clerk of the Peace in Toronto, by A. B. Esquire, Sheriff, in the presence of K. L. and M. N. Esquires, Justices of the Peace for the said County, pursuant to the directions of the Act of Parliament of (3)

No. on Panel.	NAMES.	No. of Lot or House, as in Juror List.	Concession or Street, or Unincorporated Village or Hamlet, as in Jury List.	Township, Village or Ward.	Additions.	No. on List.	Remarks.
1	Alley Simon.....	21	7	Albion	Yeoman	2	
48	(&c. 10) Yarrod George...	14	9	Albion	Baker	288	

Witness our hands, the day and year last above written.

A. B. Sheriff,
K. L. J. P.
M. N. J. P.

(b) No. 2, (5) &c.

10.—ROLL OF PETIT JURORS

To serve in Her Majesty's Inferior Courts (2) of Criminal and Civil Jurisdiction, (4)

No. on Roll.	NAMES.	No. of Lot or Houses as in Report of Selectors.	Concession or street, or Unincorporated Village or Hamlet as in Report of Selectors.	Additions.	No. on List.	Remarks.
	1 Alston. (Township.)					
1	Alford Peter...	16	2	Esquire		
2	Adams Simon...	21	7	Yeoman	2	
3	Addie William...	25	3	Yeoman		
4	Ashton Thomas...	19	5	Yeoman	3	
5	Aylwin William...	5	5	Gentleman	1	
6	Brooks David...	11	7	Merchant	5	
7	Burley John...	9	2	Shoemaker	4	
8	Catty Peter...	4	6	Yeoman		
9	Davis George...	22	11	Yeoman	6	} Exempt, having served on P. J. List, S.C. 1850.
10	Gale George... &c. (to, say)	7	8	Tailor	7	
1060	Yold George...	14	9	Baker.	288	
	2 Bacc. (Township.)					
	&c.					

These are to certify that I have carefully compared the above Petit Juror's Roll with the Reports made by the several Selectors of Jurors for the different Townships, Villages and Wards in the County of York, including the City of Toronto, as embraced within the same for certain judicial purposes, for the year one thousand eight hundred and fifty, as such Reports remained with me as Clerk of the Peace, on the fifteenth day of September in that year, and that such Petit Jurors' Roll contains a true and correct transcript of the names, descriptions and additions of all persons so selected and reported as competent, qualified and liable to serve as Petit Jurors in Her Majesty's Inferior Courts of Criminal and Civil Jurisdiction for such County.

Witness my hand, this

day of 1850.

E. F., Clerk of the Peace.

11.—THE PETIT JURY LIST

For the Inferior Courts, (2) as balloted in open Court at a General Quarter Sessions of the Peace for the County, on the day of one thousand eight hundred and fifty, being the first day of the first General Quarter Sessions of the Peace for the County held next after the First day of October in that year, by C. D., Chairman of the said Court, and E. F., Clerk of the Peace, pursuant to the directions of the Act of Parliament of (3)

No. on List.	NAMES.	No. of Lot or House, as in Jurors' Roll.	Concession or street, or Unincorporated Village or Hamlet, as in Jurors' Roll.	Residence.	Additions.	No. on Roll.	No. of Panel.	Remarks.
1	Aylwin William	5	5	Albion,	Gentleman,	5		Served accordingly.
2	Adams Simon	21	5	Albion,	Yeoman,	2	1	
3	Ashton Thomas	19	5	Albion,	Yeoman,	4		
4	Hurley John	9	2	Albion,	Shoemaker	7		
5	Brooks David	11	7	Albion,	Merchant,	6		
6	Davis George (&c., to)	22	11	Albion,	Yeoman,	9		
288	Yold George	14	9	Albion,	Baker,	1060	1	Attended, but made default.

These are to certify that on the day of instant, being the first day of the first General Quarter Sessions of the Peace for the County of York, next after the First day of October in this year, (6) the foregoing Petit Jury List for the Inferior Courts for this County for the year one thousand eight hundred and fifty-one, was in open Court duly balloted, canvassed and transferred from the Roll of Petit Jurors to serve in Her Majesty's Inferior Courts of Criminal and Civil Jurisdiction for the same year, pursuant to the directions of the Act of Parliament of (3)

Witness our hands, this day of one thousand eight hundred and fifty-

C. D. Chairman,

E. F. Clerk of the Peace.

12.—PETIT JURY PANELS FOR THE INFERIOR COURTS. (2)

(a) No. 1.

Panel of Petit Jurors returned upon a precept from S. B. H., and K. L. and M. N., Esquires, two of Her Majesty's Justices of the Peace in and for the County of York, tested the day of 185 , for the return of forty-eight of such Jurors, for the General Quarter Sessions of the Peace to be held for this County, on the day of 1851, as drafted on the day of 1851, at the Office of the Clerk of the Peace in Toronto, by A. B., Esquire, Sheriff, in the presence of K. L. and M. N., Esquires, Justices of the Peace for the said County, pursuant to the directions of the Act of Parliament of (3)

No. of Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or street, or Unincorporated Village or Hamlet, as in Jury List.	Towship, Village or Ward.	Additions.	No. on List.	Remarks.
1	Adams Simon... (&c., &c)	21	7	Albion,	Yeoman,	2	
48	Yold George...	14	9	Albion,	Baker,	288	

Witness our hands, the day and year last above written.

A. B., Sheriff,

K. L., J. P.

M. N., J. P.

(b) No. 2.

Panel of Special Jurors returned upon a Writ of *venire facias juratores*, out of the Court of Queen's Bench, in the case of N. O. Plaintiff, against P. Q. Defendant, tested (&c.,) and returnable (&c.,) as struck at the Office of the Clerk of the Peace in Toronto, on the day of 185 , by A. B. Esquire, Sheriff, in the presence of R. S. Attorney for the Plaintiff, and T. A. Agent for the Attorney of the Defendant, (or in the presence of R. S. Attorney for the Plaintiff, the Defendant's Attorney, though served with the appointment, not appearing) pursuant to the directions of the Act of Parliament of (3)

No. on Panel.	NAMES.	No. of Lot or House, as in Jury List.	Concession or Street, or Unincorporated Village or Hamlet, as in the Jury List	Township, Village or Ward.	Additions.	No. on Grand Jurors' Rolls.	Remarks.
1	Abbott William.	11	9	Albion,	Gentleman,	I. C. 31	From G. J. Roll for S. C. for year 1850 No. 10. the G. J. Roll for this year being exhausted.
2	Wilkins James. (<i>Sec. to</i>)	13	4	Brook,	Esquire,		
16	Young David.	7	8	Albion,	Tailor,	S. C. 20	

Witness my hand, the day and year last above written.

A. B., Sheriff.

(c) No. 3. (5) &c.

NOTES TO SCHEDULE A.

- (1) Here insert the year and Chapter of this Act.
- (2) Or as the case may be.

NOTES TO SCHEDULE B.

- (1) This Title to be placed at the head of each page or folio throughout the Book.
- (2) So much of this Sub-Title as ends with this word, to be placed at the head of each page or folio of the Book appropriated to this class of entries.
- (3) Here insert the year and Chapter of this Act.
- (4) This Roll to be commenced on a new page or folio after leaving a sufficient number of leaves for the Jury List to be balloted from the preceding Roll and the probable number of Panels that may be drafted from such List in the course of the year.
- (5) The subsequent Panels following immediately may be commenced on the same page or folio on which the preceding one is closed.
- (6) Or, if at a Special Sessions held under the authority of the fifty-fifth section of this Act, say, "On a Special General Sessions of the Peace for the County of York, held for that purpose under the warrant of His Excellency the Governor General," (or Lieutenant Governor, as the case may be,) the foregoing Grand or Petit Jury List, &c., was in open Court, &c.

SCHEDULE

SCHEDULE C.

PAY LIST for Petit Jurors who have attended "the Assize" or "County Court and Quarter Sessions" (as the case may be) held for the County of _____, and ended on the _____ day of _____, 185 .

Name of Jurors.	Number of Miles travelled in coming to Court.	Check of Attendance.							Amount to be paid to Juror.				Juror's signature, acknowledging receipt of money.
		1st day.	2nd day.	3rd day.	4th day.	5th day.	6th day.	7th day.	8th day.	£	s.	d.	
John Just..... Charles Careless—	21	present	present	present	absent	present	present	present					

I, _____, Sheriff of the County of _____ do hereby certify to the Treasurer of the said County, that the above is, to the best of my knowledge, a correct return of the number of miles travelled by each Juror in coming to the said Court, a true check of the number of days of every such Juror attended the Court, and the just sum to which every Juror on the above list is entitled.

A. B., Sheriff.

C A P . X X X V I I I .

An Act respecting the Registration of Deeds and Instruments creating Debts to the Crown.

HER Majesty, by and with the advice and consent of the **L**egislative Council and Assembly of Canada, enacts as follows :

Instruments creating debts to the Crown to be registered in Queen's Bench.

1. No deed, bond, contract or other instrument, under seal, or of record, whereby any debt, obligation or duty is incurred or created to Her Majesty, shall be valid or sufficient to charge or affect any lands or any interest in lands, of the person executing the same or affected thereby, as against any subsequent purchaser or mortgagee for valuable consideration of the same lands of such person or against any subsequent registered judgment on the same lands against such person, unless a copy of such deed, bond, contract or other instrument, certified by the proper officer having the custody of the same, was registered in the Office of the Clerk of the Court of Queen's Bench in Toronto, before the execution of the deed, conveyance or agreement of such subsequent purchaser or mortgagee, or the registry of such subsequent judgment. 14, 15 V. c. 9, s. 1. 5 10 15

Clerk to register the instrument on production of certified copy for proper office.

2. Upon production to such Clerk of a copy of any such deed, bond, contract or other instrument so certified as aforesaid, he shall enter and register the same in a book to be kept by him for that purpose, and after such registry all the lands of the person executing such deed, bond, contract or other instrument, shall be bound and charged thereby. 14, 15 V. c. 9, s. 2. 20

Governor may order property bound by the registered instrument to be released.

3. The Governor in Council, may order that all or any lands bound by such deed, bond, contract or other instrument, shall be released from the charge created thereby, and upon the production of such order certified by the President or Clerk of the Executive Council, the Clerk of the Court of Queen's Bench shall enter and register the same in the said book as a release of the lands mentioned in the order, whereupon the lands shall be released accordingly. 14, 15 V. c. 9, s. 3. 25 30

Clerk's fee.

4. The Clerk of the Court of Queen's Bench shall be entitled to demand from the person producing the same for registry, the sum of Five Shillings, to be paid to the fee fund in the same manner as other fees are paid to such fund. 14, 15 V. c. 9, s. 4. 35

CAP. XXXIX.

An Act respecting absconding Debtors.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. If any person resident in Upper Canada indebted to any other person, departs from Upper Canada with intent to defraud his creditors, and at the time of his so departing, is possessed to his own use and benefit, of any real or personal property, credits or effects therein, he shall be deemed an absconding debtor, and his property, credits and effects aforesaid, may be seized and taken for the satisfying of his debts by a Writ of Attachment, which shall also contain a Summons to the absconding debtor, and shall be in the form in the Schedule to this Act annexed, and such Writ shall be dated on the day on which it is issued, and shall be in force for six months from its date, and may be renewed for the purpose of effecting service on the Defendant, in like manner as a Writ of Summons may be renewed. 19 V. c. 43, s. 43.

Form of Writ.

Duration of Writ.

Renewal.

2. Upon affidavit made by any Plaintiff, his servant or agent, that any such person so departing is indebted to such Plaintiff in a sum exceeding twenty-five pounds, and stating the causes of action, and that the Deponent hath good reason to believe and doth verily believe that such person hath departed from Upper Canada and hath gone to (stating some place to which the absconding Debtor is believed to have fled or that the Deponent is unable to obtain any information as to what place he hath fled,) with intent to defraud the Plaintiff of his just dues, or to avoid being arrested or served with process, and upon the further affidavit of two other credible persons, that they are well acquainted with the Debtor mentioned in the first named affidavit, and have good reason to believe and do believe that such Debtor hath departed from Upper Canada with intent to defraud the said Plaintiff, or to avoid being arrested or served with process, either of the Superior Courts of Common Law or any Judge thereof, or the Judge of any County Court may by rule or order, direct a Writ of Attachment to issue from either of such Superior Courts (and in cases within the Jurisdiction of a County Court, the Judge of any County Court may in manner aforesaid direct a Writ of Attachment to issue from either of such Superior Courts to be marked in the Inferior Jurisdiction,) and may in such rule or order appoint the time for the Defendants putting in Special Bail, which time shall be regulated by the distance from Upper Canada of the place to which the absconding Debtor is supposed to have fled, having due regard to the means of and necessary time for postal or other communication. 19 V. c. 43, s. 44.

Proceedings upon affidavit that the defendant hath absconded, &c.

Further affidavit.

Writ of Attachment to issue. _____

Writ of Attachment to issue in duplicate.

3. Such Writ of Attachment shall issue in duplicate, and shall be so marked by the officer issuing the same (the costs of suing out the same being allowed only as if a single Writ issued,) and one Writ shall be delivered to the Sheriff to whom the same is directed, and the other shall be used for the purpose of effecting service on the Defendant. 19 V. c. 43, s. 44. 5

Further proceedings after service, &c.

4. In case it is shewn by affidavit to the Court or a Judge, that a copy of the Writ was personally served on the Defendant, or that reasonable efforts were made to effect such service, and that such Writ came to his knowledge, or that the Defendant hath absconded in such a manner that after diligent inquiry no information can be obtained as to the place he hath fled to, such Court or Judge, if the Defendant has not put in Special Bail may, either require some further attempt to effect service or may appoint some act to be done which shall be deemed good service, and thereupon, (or on the first application, if the Court or a Judge thinks fit) may authorize the Plaintiff to proceed in the action in such manner and subject to such conditions as the Court or Judge may direct or impose. 19 V. c. 43, s. 45. 10 15 20

Plaintiff must prove his claim, &c.

5. Before the Plaintiff obtains Judgment he shall prove the amount of the debt or damages claimed by him in such action either before a Jury on an assessment or by reference to compute as provided in the Common Law Procedure Act according to the nature of the case, and no execution shall issue until the Plaintiff, his Attorney or Agent has made and filed an affidavit of the sum justly due to the Plaintiff by the absconding Debtor, after giving him credit for all payments and claims which might be set off or lawfully claimed by the Debtor at the time of making such last mentioned affidavit, and the execution shall be indorsed to levy the sum so sworn to with the taxed costs of suit, or the amount of the Judgment including the costs, which ever is the smaller sum of the two. 19 V. c. 43, s. 45. 25 30

Plaintiff may obtain concurrent Writs to other Sheriffs.

6. The Plaintiff may at any time within six months from the date of the original Writ of Attachment, without further order from the Court or a Judge, issue from the office whence the original Writ issued, one or more Concurrent Writ or Writs of Attachment, to bear teste on the same day as the original Writ, and to be marked by the Officer issuing the same with the word "Concurrent" in the margin, which Concurrent Writ or Writs of Attachment may be directed to any Sheriff other than the Sheriff to whom the original Writ was issued, and need not be sued out in duplicate or be served on the Defendant, but shall operate merely for the attachment of his real or personal property, credits or effects in aid of the original Writ. 19 V. c. 43, s. 46. 35 40 45

For attaching property.

7. The Court or a Judge at any time before or after final Judgment, but before execution executed, upon an application supported by satisfactory affidavits, accounting for the Defendant's delay and default and disclosing a good defence on the 5 merits, may, having regard to the time of the application and other circumstances, let in the Defendant to put in Special Bail and to defend the action, or may reject the application. 19 V. c. 43, s. 47.

Court may allow defendant to put in special bail.

8. The special Bail (whether put in within the time limited by 10 the Writ or within such time as the Court or a Judge directs,) shall be put in and perfected in like manner as if the Defendant had been arrested on a Writ of Capias for the amount sworn to on obtaining the attachment; and after being so put in and perfected the Defendant shall be let in to plead, and the action shall proceed as in ordinary cases begun by Writ of Capias. 19 V. 15 c. 43, s. 48.

Defendant's property to be restored on his putting in special bail.

9. Upon the Defendant so putting in and perfecting Special Bail, all his property, credits and effects which have been 20 attached in that suit, excepting any which may have been disposed of as perishable, and then the net proceeds of the goods so disposed of, shall be restored and paid to him unless there be some other lawful ground for the Sheriff to withhold or detain the same. 19 V. c. 43, s. 48.

Or proceeds if sold.

10. All the property, credits and effects, including all rights 25 and shares in any Association or Corporation, of an absconding Debtor, may be attached in the same manner as they might be seized in execution; and the Sheriff to whom any Writ of Attachment is directed shall forthwith take into his charge or keeping all such property, and effects according to the exigency of the Writ, 30 and shall be allowed all necessary disbursements for keeping the same, and he shall immediately call to his assistance two substantial freeholders of his County, and with their aid he shall make a just and true inventory of all the personal property, credits and effects, evidence of title or debt, books of account, 35 vouchers and papers that he has attached, and shall return such inventory signed by himself and the said freeholders, together with the Writ of Attachment. 19 V. c. 43, s. 49.

Sheriff to attach all the property and credits of defendant.

Inventory to be made.

11. In case any horses, cattle, sheep, pigs or any perishable 40 goods or chattels, or such as from their nature (as timber or staves) cannot be safely kept or conveniently taken care of, are taken under any Writ of Attachment, the Sheriff who has attached the same shall have them appraised and valued, on oath, by two competent persons; and in case the Plaintiff desires it and deposits with the Sheriff a Bond to the Defendant executed 45 by two freeholders (whose sufficiency shall be approved by the Sheriff) in double the amount of the appraised value of such articles, conditioned for the payment of such appraised value to the Defendant, his executors or administrators, together with

How perishable goods shall be dealt with.

with all costs and damages that may be incurred by the seizure and sale thereof, in case Judgment shall not be obtained by the Plaintiff against the Defendant, then the Sheriff shall proceed to sell all or any of such enumerated articles at public auction, to the highest bidder, giving not less than six days' notice of such sale, unless any of the articles are of such a nature as not to allow of that delay, in which case the Sheriff may sell such articles last mentioned forthwith ; and the Sheriff shall hold the proceeds of such sale for the same purposes as he would hold any property seized under the attachment. 19 V. c. 43, s. 50.

Sheriff to hold proceeds.

12. If the Plaintiff after notice to himself or his Attorney of the seizure of any articles enumerated in the last preceding section, neglects or refuses to deposit any such Bond, or only offers a Bond with sureties insufficient in the judgment of the Sheriff, then, after the lapse of four days next after such notice, the Sheriff shall be relieved from all liability to such Plaintiff in respect to the articles so seized, and the said Sheriff shall forthwith restore the same, to the person from whose possession he took such articles. 19 V. c. 43, s. 50.

Such goods to be restored if plaintiff fail to give sufficient security.

13. If any Sheriff to whom a Writ of Attachment is delivered for execution, finds any property or effects, or the proceeds of any property or effects which have been sold as perishable, belonging to the absconding Debtor named in such Writ of Attachment, in the hands, custody and keeping of any Constable or of any Bailiff or Clerk of a Division Court by virtue of any Warrant of Attachment issued under the Division Court Act, such Sheriff shall demand and take from such Constable, Bailiff or Clerk, all such property or effects, or the proceeds of any part thereof as aforesaid, and such Constable, Bailiff or Clerk, on demand by such Sheriff and notice of the Writ of Attachment, shall forthwith deliver all such property, effects and proceeds as aforesaid to the Sheriff, upon penalty of forfeiting double the value of the amount thereof, to be recovered by such Sheriff, with costs of suit and to be by him accounted for exclusive of costs, as part of the property and effects of the absconding Debtor ; but the Creditor who has sued out such Warrant of Attachment may proceed to Judgment against the absconding Debtor in the Division Court, and on obtaining Judgment, and serving a memorandum of the amount thereof, and of his costs to be certified under the hand of the Clerk of the Division Court, he shall be entitled to satisfaction in like manner as, and in rateable proportion with, the other Creditors of the absconding Debtor who obtain Judgment as hereinafter mentioned. (19 V. c. 43, s. 56.)

Proceeding if the Sheriff find property in the hands of a Bailiff or Clerk of a Division Court.

Creditor in Division Court may proceed to judgment.

14. The costs of the Sheriff for seizing and taking charge of property, credits and effects under a Writ of Attachment, including the sums paid to any persons for assisting in taking an inventory, and for appraising (which shall be paid for at the rate

Sheriff's costs and how paid.

rate of *five shillings* for each day actually required for and occupied in making such inventory or appraisalment) shall be paid in the first instance by the Plaintiff in the Writ of Attachment, and may after having been taxed, be recovered by the Sheriff by action in any Court in Upper Canada, having jurisdiction for the amount, and such costs shall be taxed to the party who pays the same as part of the disbursements in the suit against the absconding Debtor and be so recovered from him. (19 V. c. 43, s. 54.)

10 **15.** The Sheriff having made an inventory and appraisalment on the first Writ of Attachment against any absconding Debtor, shall not be required to make a new inventory and appraisalment on a subsequent Writ of Attachment coming into his hands, nor shall he be allowed any charge for an inventory or
15 appraisalment except upon the first Writ. (19 V. c. 43, s. 54.)

New Writ not to make new inventory requisite.

16. If at any time before execution issues, it appears to the Court upon motion and upon hearing the parties by affidavit, that the Defendant was not an absconding Debtor within the true meaning of this Act, at the time of the suing out of the
20 Writ of Attachment against him, such Defendant shall recover his costs of defence, and the Plaintiff shall, by rule of Court, be disabled from taking out any Writ of Execution for the amount of the verdict rendered or ascertained upon reference to compute, or otherwise recovered in such action, unless the
25 same exceeds, and then for such sum only as the same exceeds, the amount of the taxed costs of the Defendant, and in case the sum so recovered is less than the taxed costs of the Defendant, then the Defendant shall be entitled, after deducting the amount of the sum recovered from the amount of such taxed
30 costs, to take out execution for the balance in like manner as a Defendant may now by law have execution for costs in ordinary cases. (19 V. c. 43, s. 48.)

Defendant to recover costs of defence if he proves; &c.

17. After obtaining Judgment, it shall not be necessary for the Plaintiff to make or file any other or further affidavit
35 than that on which the Writ of Attachment was ordered, in order to sue out a Writ of *capias ad satisfaciendum*. (19 V. c. 43, s. 48.)

Plaintiff need not file further affidavit.

18. Any person who has commenced a suit in any Court of Record of Upper Canada, the process wherein has been
40 served or executed before the suing out of a Writ of Attachment against the same defendant as an absconding Debtor, may, notwithstanding the suing out of the Writ of Attachment, proceed to Judgment and execution in his suit in the usual manner; and if he obtains execution before the Plaintiff in any
45 such Writ of Attachment, he shall have the full advantage of his priority of execution, in the same manner as if the property and effects of such absconding Debtor still remained in his own hands and possession, subject to the prior satisfaction

Persons having previously commenced suits against the same defendant may proceed to judgment, &c.

tion of all costs of suing out and executing the Attachment if the Court or a Judge so orders. (19 V. c. 43, s. 55.)

If such suit be fraudulent or collusive.

19. In case it appears to the Court in which any such prior action has been brought or to a Judge thereof, that such judgment is fraudulent or that such action has been brought in collusion with the absconding debtor or for the fraudulent purpose of defeating the just claims of his other creditors, such Court or Judge may on the application of the plaintiff on any Writ of Attachment set aside such judgment and any execution issued thereon or stay proceedings therein. (19 V. c. 43, s. 55.)

Proceedings after notice of the seizure.

20. In case notice in writing of the Writ of Attachment has by the Sheriff, or by or on behalf of the plaintiff in such Writ been duly served upon any person owing any debt or demand to, or who has the custody or possession of any property or effects of, an absconding debtor, and in case such person after such notice pays any such debt or demand or delivers any such property or effects to such absconding debtor, or to any person for the individual use and benefit of such absconding Debtor, he shall be deemed to have done so fraudulently, and if the Plaintiff recovers Judgment against the absconding Debtor, and the property and effects seized by the Sheriff are insufficient to satisfy such Judgment, such person shall be liable for the amount of such debt or demand, and for such property and effects or the value thereof. (19 V. c. 43, s. 52.)

Defendants' debtor sued by him after the seizure may obtain stay of proceedings.

21. If any person indebted to any absconding Debtor or having custody of his property as aforesaid, is, after notice as aforesaid of the Writ of Attachment, sued for such debt, demand or property by the absconding debtor or by any person to whom the absconding Debtor has assigned such debt or property since the date of the Writ of Attachment, he may, on affidavit, apply to the Court or a Judge, to stay proceedings in the action against himself, until it is known whether the property and effects so seized by the Sheriff, are sufficient to discharge the sum or sums recovered against the absconding Debtor, and the Court or Judge may make such rule or order in the matter as the the Court or Judge thinks fit, and if necessary may direct an issue to try any disputed question of fact. (19 V. c. 43, s. 52.)

Debtor of defendant may be sued if defendant's property seized be not sufficient to satisfy plaintiff.

22. If the real and personal property, credits and effects of any absconding Debtor attached by any Writ of Attachment as aforesaid, prove insufficient to satisfy the executions obtained in the suit thereon against such absconding Debtor, the Sheriff having the execution thereof may, by rule or order of the Court or a Judge to be granted on the application of the Plaintiff, in any such case, sue for and recover from any person indebted to such absconding Debtor, the debt, claim, property or right of action attachable under this Act and owing to or recoverable by such absconding Debtor, with costs of suit, in which

which suit the Defendant shall be allowed to set up any defence which would have availed him against the absconding Debtor at the date of the Writ of attachment, and a recovery in such suit by the Sheriff shall operate as a discharge as against such absconding Debtor; and such Sheriff shall hold the moneys recovered by him as part of the assets of such absconding Debtor, and shall apply them accordingly. (19 V. c. 43, s. 53.)

23. The declaration in any such action by the Sheriff shall contain an introductory averment to the effect following :

“ A. B., Sheriff of, (&c.) who sues under the provisions of the law respecting absconding Debtors, in order to recover from C. D., Debtor to E. F., an absconding Debtor, the debt due (or other claim according to the facts) by the said C. D., to the said E. F., complains, &c.” (19 V. c. 43, s. 53.)

Averment to be inserted in Sheriff's declaration.

24. The Sheriff shall not be bound to sue any party as aforesaid until the attaching creditor gives his bond with two sufficient sureties payable to such Sheriff by his name of office in double the amount or value of the debt or property sued for, conditioned to indemnify him from all costs, losses and expenses to be incurred in the prosecution of such action or to which he may become liable in consequence thereof. (19 V. c. 43, s. 53.)

Sheriff not bound to sue until creditor give bond to indemnify him.

25. In the event of the death, resignation or removal from office of any Sheriff after such action brought on any such bond the action shall not abate, but may be continued in the name of his successor to whom the benefit of the bond so given shall enure as if he had been named therein, and a suggestion of the necessary facts as to the change of the Sheriff as Plaintiff shall be entered of record. (19 V. c. 43, s. 53.)

Sheriff's successor may continue the action.

26. When several persons sue out Writs of Attachment against an absconding Debtor, the proceeds of the property and effects attached and in the Sheriff's hands, shall be ratably distributed among such of the Plaintiffs in such Writs as obtain Judgments and sue out execution, in proportion to the sums actually due upon such Judgments, and the Court or a Judge may, delay the distribution, in order to give reasonable time for the obtaining of Judgment against such absconding Debtor. 19 V. c. 43, s. 57.

Proceedings if several persons take out Writs against the same absconding debtor.

27. Every Creditor who produces a certified memorandum from the Clerk of any Division Court, of his Judgment as aforesaid, shall be considered a Plaintiff in a Writ of Attachment who has obtained Judgment and sued out execution, and shall be entitled to share accordingly. (19 V. c. 43, s. 57.)

Creditors, under Division Court Judgments, to share *pari passu*.

Who to be entitled to Share if the property proves insufficient to pay all.

28. In case the property and effects of the absconding Debtor are insufficient to satisfy the sums due to such Plaintiffs, none shall be allowed to share, unless their Writs of Attachment were issued and placed in the hands of the Sheriff for execution within six months from the date of the first Writ of Attachment, or in case of a Warrant of Attachment, unless the same was placed in the hands of the Constable or Bailiff before or within six months after the date of the first Writ of Attachment. (19 V. c. 43, s. 57.)

When all the seizing creditors are satisfied the remaining property to be delivered up.

29. If after the period of one month next following the return of any execution against the property and effects of any absconding Debtor, or after a period of one month from a distribution under the order of the Court or a Judge, whichever last happened, and after satisfying the several Plaintiffs entitled, there is no other Writ of Attachment or execution against the same property and effects in the hands of the Sheriff, then, all the property and effects of the absconding Debtor, or unappropriated moneys the proceeds of any part of such property and effects, remaining in the hands of the Sheriff, together with all books of account, evidences of title or of debt, vouchers and papers whatsoever belonging thereto, shall be delivered to the absconding Debtor or to the person or persons in whose custody the same were found, or to the authorized Agent of the absconding Debtor, and thereupon the responsibility of the Sheriff in respect thereto shall determine. (19 V. c. 43, s. 58.)

WRIT OF ATTACHMENT.

Upper Canada, } VICTORIA, &c.
County of } To the Sheriff of, &c.

(SEAL.)

We command you, that you attach, seize and safely keep all the real and personal property, credits and effects, together with all evidences of title or debts, books of account, vouchers and papers belonging thereto, of C. D., to secure and satisfy A. B., a certain debt (or demand) of £ (the sum sworn to) with his costs of suit, and to satisfy the debt and demand of such other creditors of the said C. D., as shall duly place their Writs of Attachment in your hands or otherwise lawfully notify you of their claim, and duly prosecute the same. And we also command the said C. D., that within (the time named in the Judge's order or rule of Court,) days after the service of this Writ on him, inclusive of the day of such service, he do cause special bail to be entered for him in our Court of , in an action to recover £ (the sum sworn to) at the suit of the said A. B. And we require the said C. D. to take notice, that his real and personal property, credits and effects in Upper Canada have been attached at the suit of the said

said A. B., and that in default of his putting in special bail as aforesaid, the said A. B. may, by leave of the Court or a Judge, proceed therein to judgment and execution, and may sell the property so attached : And we command you, the said Sheriff, 5 that as soon as you have executed this Writ you return the same with the inventory and appraisement of what you have attached thereunder.

Witness, &c.

In the margin.

10 Issued from the Office of, &c., (as in foregoing cases.)

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within six calendar months from the date thereof, or if renewed, then from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the Writ before service thereof.

This Writ may be served out of Upper Canada, and was 15 issued by E. F., of _____, Attorney, &c., (as on a Writ of Summons.)

CAP. XL.

An Act respecting Insolvent Debtors in custody on Mesne Process or in Execution.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Weekly allowance to Debtors in close custody.

In what cases debtors in close custody to be entitled to weekly allowance.

1. If a debtor in close custody ;

1. Upon mesne process ; or

5

2. In execution ; or

3. Upon an attachment or other process, for non-payment of costs, or for non-payment of any sum of money awarded, or for the non-payment of any claim in the nature of a debt or demand due, being a sum certain or capable of being ascertained by computation and not in the nature of a penalty to enforce the doing of some act other than the payment of a sum of money, (in which several cases the debtor shall be deemed to be a prisoner in execution,) makes oath ;

1. That he is a prisoner in close custody, setting forth on which of the causes of detention above specified ; and

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2. That he is unable to find security for the limits ; and

3. Is not worth the sum of five pounds ; and

4. In case he is in custody on mesne process that he is unable to procure bail to the action and that he does not believe the demand of the Plaintiff to be just, and for that cause and no other resists payment of the same and refuses to confess judgment for the sum sworn to,—the Court from which the process issued, or any Judge having authority to dispose of matters arising in suits in such Court, shall make a rule or order on the Plaintiff at whose suit the debtor is detained, to pay to such debtor on the third Monday after the service of such rule or order, and upon each Monday thereafter, so long as such debtor is detained in prison at the suit of such Plaintiff for such cause, the sum of ten shillings, and such payment shall be made to the debtor or to the Gaoler in whose custody he is, for the use of such debtor. (19 V. c. 43, s. 295.)

The allowance when payable.

When debtor entitled to be discharged, if not paid.

2. In default of such payment, the debtor, after service of a rule nisi or Judge's Summons, to be obtained on oath of the default, shall, unless sufficient cause to the contrary is shewn, be discharged from custody by rule or order ; but such discharge shall not in case the debtor was confined on Mesne Process, prevent the Plaintiff from proceeding to judgment and execution

execution

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execution against the body, lands or goods according to the practice of the Court, and in case the debtor was a prisoner in execution, such discharge shall not be a release or satisfaction of the Judgment or demand, or deprive the Plaintiff of any remedy against the lands or goods of such debtor. (19 V. c. 43, s. 295.)

3. When a debtor applies for the weekly allowance, or to be discharged from custody for the non-payment thereof, the Plaintiff may file interrogatories for the purpose of discovering any property or effects he may be possessed of or entitled to, or which may be in the possession or under the control of some other person for his use or benefit, or which he may have fraudulently disposed of to injure his creditor, and may serve a copy of such interrogatories on such debtor, and thereupon and until he has fully answered the same upon oath to the satisfaction of the Court or Judge, and filed his answers and given sufficient notice of such filing to the Plaintiff or his Attorney, no rule or order for the payment of such weekly allowance shall be made, or if previously made no order for his discharge for non-payment thereof shall be made. (19 V. c. 43, s. 296.)

Debtor not entitled to allowance or to his discharge in default of payment until he has answered interrogatories touching his property.

4. If such debtor has obtained an order for payment of the weekly allowance, the Plaintiff may at any time file and serve such interrogatories, and the Court from which the process issued or a Judge, on application of the Plaintiff, may stay further payment until the debtor has sworn to and filed his answers, and has given to the Plaintiff or his Attorney four clear days' notice thereof. (19 V. c. 43, s. 297.)

Filing interrogatories to debtor.

5. Whenever such debtor is a prisoner in close custody in several suits or matters, he must make all the Plaintiffs in such suits or matters parties to his application for the weekly allowance, and he shall only be entitled to one weekly sum of ten shillings, although he is in custody in several suits and matters; and in any such case if the weekly allowance be unpaid, the debtor shall have the same right as when he is in custody in one suit only, to be discharged from custody in all the suits or matters named in the order for payment, and the plaintiffs named in such order must all be made parties on any application for the debtor's discharge on account of non-payment, and all such plaintiffs must join in administering interrogatories to the Defendant, as if they were Plaintiffs in one suit, and such Plaintiffs shall regulate among themselves the apportionment of the weekly allowance and the arrangement for payment thereof. (19 V. c. 43, s. 298.)

Defendant in custody on several Writs only entitled to one allowance, &c.

6. The Plaintiff shall be entitled to recover from his debtor all sums paid to him for weekly allowance while a prisoner on *mesne* process, and upon proof of the amount of such payment before the proper taxing Officer such sums shall be allowed as disbursements in the suit and be taxed as part of the costs thereof. (19 V. c. 43, s. 299.)

Allowance may be recovered from debtor as costs.

Discharge

DISCHARGE OF DEBTORS AFTER THREE MONTHS IN CUSTODY.

Debtor in prison over three months may obtain his discharge on certain conditions.

7. In case any debtor within the intent and meaning of this Act, after having been confined in close custody in execution for three successive calendar months, gives to the party at whose suit he is a prisoner or to his Attorney, fifteen days notice of his intention to apply to be discharged from custody and proves such notice, and makes oath that he is not worth five pounds exclusive of his necessary wearing apparel and that of his family and their beds and bedding and their ordinary household utensils not exceeding in the whole the value of ten pounds, and that he hath answered all interrogatories which have been filed by the Plaintiff, and hath given due notice of such answers (or if no interrogatories have been served, that he hath not been served with any interrogatories), such debtor may apply to the Court from which the process on which he is confined issued, or to a Judge as aforesaid, for a rule or summons upon his creditor to shew cause why he should not be discharged from custody, and upon the return of such rule or summons, and where there are interrogatories if the answers thereto are deemed sufficient by such Court or Judge, such debtor shall be by rule or order discharged from custody, and such discharge shall have the same and no other effect as a discharge for non-payment of the weekly allowance. (19 V. c. 43, s. 300.)

For the interrogatories.

8. The Court or Judge may on the return of the rule or summons, if the Plaintiff has already filed interrogatories (which he is hereby authorized to do in like manner as on an application for the weekly allowance), and if further inquiry appears requisite for the ends of Justice, allow the Plaintiff a reasonable time to file further interrogatories, and for the debtor to answer them before the rule or summons is finally disposed of. (19 V. c. 43, s. 300.)

Assignment by debtor may be required.

9. The Court or Judge may make it a condition of the debtor's discharge, that he shall first assign and convey to the party at whose suit he is in custody any right or interest which he has or is presumed to have in and to any property, credits or effects other than the wearing apparel, beds, bedding and household utensils before mentioned, such assignment or conveyance to be approved by the Court or Judge. (19 V. c. 43, s. 300.)

If debt arose from fraud, breach of trust, &c.

10. If it appears that the debt for which such debtor is confined was contracted by any manner of fraud or breach of trust or that he is confined by reason of any Judgment in an action for breach of promise of marriage, seduction, criminal conversation, libel or slander, the Court or Judge may order the Applicant to be recommitted to close custody for any period not exceeding twelve calendar months and to be then discharged. (19 V. c. 43, s. 300.)

Gaol

Gaol Limits.

11. The limits of each County for judicial purposes, shall be the limits of the Gaols of such County. (19 V. c. 43, s. 301.)

12. The Sheriff of any County may take from any debtor confined in the Gaol thereof in execution or upon mesne process, a
 5 bond with not less than two or more than four sufficient sureties, to be jointly and severally bound in a penalty of double the amount for which such debtor is so confined, conditioned that such debtor shall remain and abide within the limits of such Gaol and shall not depart therefrom, unless discharged from custody
 10 in the suit or matter upon which he is so confined by due course of law, and also that such debtor will during all the time that he is upon the limits subject to such custody, observe and obey all notices, orders or rules of Court touching or concerning such debtor, or his answering interrogatories, or his returning and
 15 being remanded into close custody, and that they will produce such debtor to the Sheriff when they or either of them are required, upon reasonable notice, and also that the said debtor shall, within thirty days cause the said bond, or that to be substituted for the same according to the provisions herein-
 20 after contained, to be allowed by the Judge of the County Court of the County wherein the debtor is confined, and such allowance to be endorsed thereon by the said Judge; and for this purpose the Sheriff shall, upon reasonable notice by the debtor given, cause such first mentioned bond to be produced
 25 before the Judge, and upon such allowance being so endorsed, the Sheriff shall be discharged from all responsibility respecting such debtor, unless such debtor be again committed to the close custody of such Sheriff in due form of law. (19 V. c. 43, s. 302—20 V. c. 57, s. 25.)

Sheriff may take security from any debtor to keep the limits.

30 13. The Sheriff may also require each surety when there are only two, to make oath in writing, to be annexed to the bond, that he is a freeholder or householder in some part of Upper Canada, stating where, and is worth the sum for which the debtor is in custody, (naming it) and fifty pounds more
 35 over and above what will pay all his debts; or where there are more than two sureties, then that each surety shall make oath as aforesaid, that he is a freeholder or householder as aforesaid; and is worth one half the sum for which the debtor is in custody (naming it), and fifty pounds, more, over and above what will
 40 pay all his debts. (19 V. c. 43, s. 302.)

Surety to make affidavit &c.

14. The allowance aforesaid shall be made upon motion by the debtor, and four clear days' notice thereof shall be given in writing to the plaintiff or his attorney, who may object thereon to the sufficiency of the sureties; and if the Judge
 45 refuses his allowance of such bond, then the debtor may cause another bond made to the Sheriff in the same terms and under the same conditions, to be executed without any further application

Allowance to be made on motion, &c.

cation to the Sheriff, and may move in like manner and upon the like notice for the allowance thereof; and such bond, if allowed and endorsed as aforesaid, shall be substituted for and take place of and have the like effect in all respects, and the like remedies shall be had thereon, as the bond so first given to the Sheriff as aforesaid would have had upon the allowance thereof, and such first given bond shall thereupon become void. (20 V. c. 57, s. 26.) 5

On receipt of such bond Sheriff may allow the debtor the limits, without being liable for an escape. 15

15. Upon receipt of such bond, accompanied by an affidavit of a subscribing witness of the due execution thereof, and by the sureties' affidavits of solvency if required by the Sheriff, the Sheriff may permit and allow the debtor to go out of close custody in Gaol, into and upon the Gaol limits, and so long as such debtor remains within the said limits without departing therefrom, and in all other respects observes, fulfils and keeps on his part the condition of the said bond, the Sheriff shall not be liable to the party at whose suit such debtor was confined, in any action, for the escape of such debtor from Gaol. (19 V. c. 43, s. 303.) 15

If the sureties become insolvent, &c., Sheriff may re-take the debtor. 20

16. In case the Sheriff has good reason to apprehend that such sureties or either of them, have, after entering into such bond, become insufficient to pay the amount severally sworn to by them, he may again arrest the debtor, and detain him in close custody, and the sureties of such debtor may plead such arrest and detention in bar of any action to be brought against them upon the bond so entered into by them, and such plea, if sustained in proof, shall wholly discharge them from such action; such debtor may again obtain the benefit of the Gaol limits, on giving a new bond with sureties as aforesaid, to the Sheriff. (19 V. c. 43, s. 304.) 25 30

In case of breach, Sheriff may be required to assign the bond, and on doing so, shall be discharged from liability. 35

17. Upon any breach of the condition of such bond, the party at whose suit the debtor is confined, may require the Sheriff to assign the same to him, which assignment shall be made in writing, under the seal of the Sheriff, and attested by at least one witness, and the assignee of the Sheriff or the executors or administrators of such assignee, may maintain an action in his or their own names upon such bond, which action the Sheriff shall have no power to release; but upon executing such assignment at such request, the Sheriff shall be thenceforth discharged from all liability on account of the debtor or his safe custody. (19 V. c. 43, s. 305.) 40

Sureties may make or tender a surrender of the debtor. 45

18. The sureties of any such debtor may surrender him into the custody of the Sheriff at the Gaol, and the Sheriff, his Deputy or Gaoler shall there receive such debtor into custody, and the sureties may plead such surrender or an offer to surrender and the refusal of the Sheriff his Deputy or Gaoler to receive such debtor into custody at the Gaol, in bar of any action brought on the bond for a breach of the condition happening 45

pening after such surrender or tender and refusal, and such plea, if sustained in proof, shall discharge them from any such action; but such debtor may again obtain the benefit of the limits on giving a new bond with sureties as aforesaid, to the Sheriff. (19 V. c. 43, s. 306.)

19. The party at whose suit any debtor is confined, may at any time, while the debtor enjoys the benefits of the limits, file and serve such interrogatories, to be answered by such debtor in manner aforesaid; and in case such debtor neglects or omits for the space of fifteen days next after service thereof, to answer and file the answers thereto, and to give immediate notice of such filing to the party at whose suit he is in custody, or to the Attorney of that party, the Court or a Judge as aforesaid, may make a rule or order for such debtor being committed to close custody, and the Sheriff on due notice of such rule or order, shall forthwith take such debtor and re-commit him to close custody until he obtains a rule of Court or Judge's order for again admitting him to the limits, on giving the necessary bond as aforesaid, or until he is otherwise discharged by due course of law. 19 V. c. 43, s. 307.

Debtor on limits, bound to answer interrogatories.

Penalty for refusal.

20. A new rule or order may be granted on the debtor shewing that he has filed his answers to such interrogatories, and has given to the Plaintiff or his Attorney ten days' notice thereof, and of his intention to apply. (19 V. c. 43, s. 307.)

On answering, may be re-admitted to the limits.

21. The party at whose suit any debtor is confined in execution, may, whenever such debtor has taken the benefit of the limits, sue out any execution against his lands or goods, notwithstanding such debtors having been charged in execution, and such execution shall not be stayed, but shall be proceeded with until executed, although such debtor has been re-committed to close custody; but the wearing apparel of such debtor and that of his family, and their beds and bedding, and household utensils, not exceeding together the value of ten pounds, and the tools and implements of the trade of such debtor, not exceeding in value ten pounds, shall be protected from such subsequent execution. (19 V. c. 43, s. 308.)

Plaintiff may have execution against property of debtor on the limits.

12.—PERSONS ON THE GAOL LIMITS.

22. In case a debtor or other person has been (in manner prescribed by law) admitted to the Gaol limits of a Union of Counties, and such Union is afterwards dissolved, or one or more Counties are separated from such Union, such debtor or person may notwithstanding, travel and reside in any portion of the said Counties as if no dissolution or separation had taken place, without committing a breach of any Bond or the condition thereof, or a forfeiture of any security given for the purpose of obtaining the benefit of such limits; and in case any such person after the dissolution of the Union is surrendered or ordered

Privileges of persons admitted to Gaol limits, saved on dissolution.

ordered to be committed to close custody, he shall be surrendered or committed to the Sheriff of the County in which he was arrested and be imprisoned in the Gaol thereof. (18 V. c. 69, s. 5.)

Provisions of this Act not to extend to persons in custody on criminal charges. **23.** None of the foregoing provisions relative to the weekly allowance, discharge from custody on account of insolvency or Gaol limits, shall extend or be applicable to debtors who are, at the same time, in custody upon any criminal charge. (19 V. c. 43, s. 309.) 5

C.A.P. XLI.

An Act for the relief of Insolvent Debtors in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. In case any person indebted gives notice according to the form in the Schedule to this Act (A No. 1) to one fourth in number and value of his creditors, and causes such notice to be inserted twice in the Canada Gazette and twice in some newspapers circulating within the County wherein he resides and had resided for the last preceding twelve months, and in case such person presents to the Senior or Officiating Judge of the County Court of such County, a Petition for protection from process in the form specified in the Schedule hereto (A No. 2), and setting forth therein any proposal he has to make for the payment of his debts in whole or in part, and in case he annexes to such petition a full and true Schedule of his debts, with the names of his creditors and the dates of contracting the debts, and the security (if any) given for the same, and also the nature and amount of his property, with the debts owing to him, their dates, the names of his debtors, and the nature of the securities (if any) which he has received for such debts, and in case such petition and schedule are verified by an affidavit of the petitioner in the form specified in the Schedule hereto (A No. 3) sworn before a Judge of any County Court or before a Commissioner for taking affidavits in the Superior Courts of Common Law, and in case such affidavit is annexed to such petition and schedule at the time of filing the same, such Senior or Officiating Judge may thereupon, upon the filing of such petition, give a protection to the petitioner from all process whatever, either against his person or his property of any description, which protection shall continue in force, and all process be stayed accordingly until the appearance of the petitioner as hereinafter provided. (8 V. c. 48, s. 1.)

Insolvent debtors may apply for relief through the Judges of the County Courts.

Form of.

2. If the petition and affidavit are not in the form prescribed, the petition shall be dismissed. (8 V. c. 48, s. 2.)

If not in due form to be dismissed.

3. In case a debt of, or claim upon, or balance due from a petitioner has been specified in his Schedule so sworn to as aforesaid, at an amount which is not exactly the actual amount thereof, without any culpable negligence or fraud or evil intention on the part of the petitioner, the Judge shall allow the Schedule to be amended in that behalf; and in every case in which an amendment of the Schedule is allowed, the petitioner shall be entitled to every benefit and protection of this Act; and the creditor in that behalf shall be entitled to all the benefit of all the provisions made for creditors by this Act, in respect of the actual

When the Judges may allow Schedules to be amended.

actual amount of such debt, claim or balance, and neither more nor less than the same. (8 V. c. 48, s. 36.)

If a petitioner dies, the proceedings to continue as if living. 4. If any such petitioner dies after filing his Petition, the Judge may proceed in the matter of such petition for the discovery and distribution of his property as if the petitioner were living. (8 V. c. 48, s. 13.) 5

Any prisoner in execution may petition under this Act, subject to certain exceptions. 5. Any prisoner in execution upon a judgment obtained for the recovery of a debt, may be a petitioner for protection from process under this Act, and every such petitioner, to whom an *interim* order for protection has been given, shall not only be protected from process as provided by this Act, but also from being detained in prison in execution upon any judgment obtained in any action for the recovery of any debt mentioned in his Schedule; and if any such petitioner, being a prisoner in execution, is detained in prison in execution upon such a judgment, the Judge may order any Officer who has such petitioner in custody by virtue of such execution, to discharge him out of custody as to such execution, without exacting any fee, and such Officer is hereby indemnified for so doing, and no Sheriff, Gaoler, or other person whatsoever shall be liable to any action as for the escape of any such prisoner by reason of such his discharge; and such petitioner so discharged shall, until the making of the final order, be protected by such *interim* order from all process for such time as the said Judge, by such *interim* order or any renewal thereof, thinks fit to appoint in the same manner as if such petitioner had not been a prisoner in execution; but after the time allowed by any such *interim* order or any renewal thereof, (as the case may be,) has elapsed, such petitioner shall not, by such discharge, be protected from being again taken in execution upon such judgment, but such judgment shall remain in full force and effect, notwithstanding such discharge. (8 V. c. 48, s. 11.) 10 15 20 25 30

The protection not to prevent the petitioner from being held to bail by Judge's order. 6. Notwithstanding any protection granted under this Act, the petitioner may be arrested or held to bail under the authority of a Judge's order in the special instance including a debt certain, in like manner as may now be done in a case in which the cause of action is other than a debt certain. (8 V. c. 48, s. 3.) 35

When protection granted, the Judge shall appoint official assignee. 7. Upon the presentation of any such petition and upon granting a protection thereupon, the Judge shall appoint an Official Assignee in whom all the estate and effects of the petitioner shall forthwith become vested, and such Official Assignee shall forthwith take possession of so much thereof as can be reasonably obtained and possessed without suit; and the said Official Assignee shall hold and stand possessed of the same in the manner and for the purposes hereinafter mentioned. (8 V. c. 48, s. 1.) 40 45

8. If at the time of filing his petition, any petitioner has by the consent and permission of the true owner thereof, in his possession, order, or disposition, any goods or chattels whereof the petitioner was reputed owner, or whereof he has taken upon him the sale or disposition as owner, the same shall be deemed the property of the petitioner, so as to become vested in the Assignee or Assignees for the time being of his estate and effects. (8 V. c. 48, s. 22.)

Property in possession of the petitioner to vest in assignee.

9. If any petitioner at the time of filing his petition, or at any time before he becomes entitled to his final Order, has any Government stocks, funds, or annuities, or any of the stock or shares of, or in any public company in Upper Canada, standing in his own name, and in his own right, the Judge may order all persons whose act or conduct is thereto necessary, to transfer the same into the name of such Assignee or Assignees as aforesaid; and all such persons whose act or consent is so necessary, are hereby indemnified for all things done or permitted, pursuant to such order. (8 V. c. 48, s. 20.)

The Judge may order any stock held by petitioner to be transferred to assignee.

10. The petitioner's wearing apparel, bedding, and other necessaries of himself and his family, and his working tools and implements, not exceeding in the whole the value of twenty pounds, may be excepted in his petition from the operation of this Act, and in such case shall be excluded from its operation; but such excepted articles with the values thereof respectively, to be appraised if the Judge thinks fit and ascertained in such manner as he directs, must be fully and truly described by the petitioner in his Schedule, otherwise the exception thereof shall be of no force. (8 V. c. 48, s. 14.)

Wearing apparel, &c., to a certain amount, exempted from this Act.

11. No distress for rent made and levied after the filing of any petition upon the goods or effects of the petitioner, shall be available for more than one year's rent accrued prior to the filing thereof, but the landlord, or party to whom the rent is due, may be a creditor for the overplus of the rent due, and for which the distress is not available, and shall be entitled to all the provisions made for creditors by this Act. (8 V. c. 48, s. 23.)

No distress for rent after petition filed to avail for more than one year's rent previously accrued.

12. Except as herein otherwise directed, in all cases in which it is made to appear to the satisfaction of the Judge that there is reason to suspect and believe that property of the petitioner is concealed in any house or other place not belonging to such petitioner, such Judge shall grant a Search Warrant to the Sheriff of the County, and such Sheriff, or his Deputy or other officer employed by him, shall execute such warrant, according to the tenor thereof, and the Sheriff, Deputy or other officer executing the same shall be entitled to the protection allowed by law in the execution of a Search Warrant for property reputed to be stolen and concealed. (7 V. c. 10, s. 49, and 8 V. c. 48, s. 10.)

Power to search for concealed property of petitioners.

A Judge may
compel at-
tendance of
petitioner.

13. The Judge may compel the attendance of and examine the petitioner and his wife, and every person known or suspected to have any of the property of the petitioner in his possession, or who is supposed to be indebted to the petitioner, and any person whom the said Judge believes capable of giving any information concerning the person, trade, business or calling, dealings or property of the petitioner, or any information material to the full disclosure of his dealings, and may enforce both obedience to such examination, and the production of books, deeds, papers, writings, and other documents, in like manner as might be done in a Superior Court of Law or Equity. (8 V. c. 48, s. 10.)

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The Judge to
make order
respecting
notice of meet-
ing to cre-
ditors, &c.

14. The Judge to whom any such petition is presented shall, from time to time, make such orders as he deems right, touching the notice to be given to creditors, of meetings and examination and the publication of the notice. (8 V. c. 48, s. 4.)

15

A majority of
creditors may
choose a cre-
ditor's as-
signee.

15. A majority in number and value of the creditors who by themselves or their Attorneys duly authorized by Letters of Attorney in that behalf, attend at such meeting or any adjournment thereof, shall choose a creditor's Assignee; but if the Judge deems the person so chosen unfit to be such Assignee, he may reject him and he may remove any Assignee, and upon such rejection or removal another Assignee shall be appointed by him or be chosen by the creditors (as the case may require) in the manner in this Act provided. (12 V. c. 48, s. 4.)

25

Creditors en-
titled to vote
only upon the
amount ap-
pearing due to
him.

16. In all matters wherein creditors vote, or wherein the assent or dissent of creditors is exercised in pursuance of, or in carrying into effect this Act, every creditor shall be accounted a creditor in respect of such amount only as upon an account fairly stated between the parties, after allowing the value of mortgaged property, and other such available securities and liens, appears to be the balance due; and all disputes concerning any such matters or amount, shall upon application made, be examined into by the said Judge, who shall determine the same; but the amount, in respect of which, any such creditor votes in any such matter shall not be conclusive of the amount of his debt for any ulterior purposes of this Act. (12 V. c. 48, s. 19.)

35

Sums payable
on annuities
to be debts
within this
Act.

17. All sums of money payable by way of annuity or otherwise at any future time, by virtue of any bond, covenant, or other securities of any nature shall be deemed debts within the meaning of this Act; And every person who would be a creditor of any petitioner for protection from Process for such sums of money, if the same were presently due, shall be admissible as a creditor of the petitioner for the value and no more of such sums of money so payable as aforesaid, which value the Judge shall, upon application at any time made in that behalf, ascertain; re-
gard

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gard being had to the original price given for such sums of money, deducting therefrom such diminution in the value thereof as has been caused by the lapse of time between the grant thereof to the time of filing the petition; and such creditor shall be entitled in respect of such value to the benefit of all the provisions made for creditors by this Act, without prejudice nevertheless, to the respective securities of such creditor, excepting as respects the effect of the final Order which may be obtained by the petitioner under the provisions of this Act. (12 V. c. 48, s. 32.)

18. If any assignee so chosen (or appointed) does not within six days after notice thereof signify his acceptance (in writing) and deliver the same to such Judge, his election (or appointment) shall be void, and the Judge shall from time to time proceed to appoint until the acceptance is duly signified. (12 V. c. 48, s. 4.)

If an assignee does not accept within six days another shall be appointed.

19. As soon as such acceptance is signified to the Judge as aforesaid, he shall, by an instrument under his hand and seal, declare the choice or appointment of such Assignees and their acceptance; and the said instrument shall be executed in duplicate, one of which shall be lodged in the office wherein the other papers in the case are hereinafter required to be finally deposited, and the other shall be delivered to the Assignees; and either of such duplicates, purporting to be under such hand and seal, shall be received in all Courts in this Province as *prima facie* evidence that the same was executed on the day on which it purports to bear date, that the assignees named therein were duly chosen and appointed, and accepted the office, and that they are authorized to bring and defend actions and suits in that character. (7 V. c. 10, s. 30.)

Assignees accepting to be appointed by an Instrument

Copies admissible in evidence.

20. Until an Assignee is chosen by the creditors of any petitioner, the Official Assignee nominated by the Judge may act, and shall be the sole Assignee of the petitioner's property, and, if the Judge so orders, may sell or otherwise dispose of such property or any part thereof, and make such allowance out of the property for the support of the petitioner and his family, as the Judge directs. (8 V. c. 48, s. 15.)

Until assignee chosen by creditors, the official assignee to be the sole assignee.

21. The property vested in any Official Assignee alone or jointly with any Assignee chosen by the Creditors, shall not, if such Official Assignee resigns or is removed from his office, remain in such Official Assignee alone or jointly with the Assignee so chosen, nor in the heirs, executors, or administrators of such Official Assignee, nor in the surviving Assignee alone, in case of the death of such Official Assignee, but all such property shall in every such case go to and be vested in the successor in office of such Official Assignee alone, or jointly with the Assignee chosen by the creditors (if any), as the case may be. (8 V. c. 48, s. 15.)

If official assignee resign, property vested in successor, &c.

If petition dismissed, sales by assignees to be nevertheless valid, &c. **22.** Whenever any petition is dismissed, all sales and dispositions of property and payments duly made, and all other acts theretofore done by any Assignee or any person acting under his authority, or by any messenger or other person under the authority of the Judge, according to the provisions of this Act, shall be good and valid, but the property of the petitioner shall otherwise in such case revert to such petitioner: And no suit shall be commenced or prosecuted against such Assignee, messenger, or other person acting as aforesaid, except to recover any property of the petitioner detained after an Order made by the Judge for the delivery thereof and a demand made thereupon. (S V. c. 48, s. 15.) 5

Remuneration of official assignee. **23.** The Judge authorized to act in the matter of any petition may direct remuneration to the Official Assignee for his services in the matter of such petition, but such remuneration shall in no case exceed the rate of ten pounds per centum on the sum received as the proceeds of the property of the petitioner. (S V. c. 48, s. 42.) 15

The Judge to examine the petitioner or creditors upon oath, &c. **24.** A Judge shall, on the day appointed for that purpose, examine upon oath the petitioner and any creditor who attends the examination or any witness whom the petitioner or any creditor calls, and such Judge may summon to be examined before him any debtor or creditor of such petitioner or any other person whose evidence appears necessary for the foregoing enquiry. (S V. c. 48, s. 4.) 25

When the petitioner a prisoner, the Judge may direct him to be brought up. **25.** Whenever any such petitioner is a prisoner under any Process, Attachment, Execution, Commitment or Sentence, and is not entitled to his discharge in manner aforesaid, the Judge may, by Warrant under his hand, directed to the person in whose custody he is confined, cause such petitioner to be brought before him for examination, at any sitting of the Court, either public or private, and the expense of bringing him shall be paid out of his estate, and such person shall be indemnified by the Warrant of the Judge for bringing him up. (S V. c. 48 s. 12.) 35

The Judge may commit a petitioner for prevarication. **26.** The Judge may, by Warrant under his hand and seal commit to prison, for such time as he thinks fit, not exceeding one month, any petitioner who prevaricates or makes any false statement before him. (S V. c. 48, s. 7.)

The Judge may summon witnesses, &c. **27.** The Judge may, by writing under his hand, summons any witness or person other than the petitioner to be examined on oath or affirmation to be taken before him, respecting the several matters that may arise under any such petition, and may enforce the attendance of and compel such witness or person to answer by the like means and to the same extent as may be done in the case of a contumacious witness in the Superior Courts of Common Law. (S V. c. 48, s. 4.) 45

28. The Judge may, at the first examination of the petitioner, and afterwards from time to time, renew the order for protection, until the final order for protection and distribution. (8 V. c. 48, s. 6.)

The Judge may renew order for protection.

5 **29.** In case on the day for the first examination of the petitioner, or at any adjournment thereof, it appears to the Judge that the debts of the petitioner, or any of them, were contracted by any manner of fraud or breach of trust, or by any prosecution whereby he had been convicted of any offence, or without
10 having at the time a reasonable or probable expectation of being able to pay such debt or debts, or that such debts, or any of them, were contracted by reason of any judgment in any proceeding for breach of the revenue laws, or in any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault, battery, malicious arrest, malicious
15 suing out a *fiat* of Bankruptcy, or malicious trespass, or that the petitioner has parted with any of his property since the presenting of his petition, the Judge shall not in any such case name any day for making such final Order, or renew such *interim*
20 Order. 8 V. c. 48, s. 31.

The petitioner's debts appear to have been contracted by fraud. the Judge shall not make final order.

30. In every such case wherein the petitioner has been a prisoner in execution and discharged out of custody by order of the Judge under the provision herein in that behalf contained, such petitioner shall be remanded by an Order from
25 the Judge to his former custody.

And if petitioner was a prisoner, he shall be remanded.

31. If none of the matters aforesaid so appear, and the Judge is satisfied that the petitioner has made a full discovery of his estate, effects, debts and credits, the Judge may cause notice to be given that on a certain day to be therein named, he will proceed to make a final Order, unless cause be shewn to the contrary. (8 V. c. 48, s. 31.)

If all appears clear the Judge may give notice that on a day named he will make a Final Order, Nisi.

32. The Judge may, at the time appointed for making the final Order or at any adjournment thereof, adjourn the consideration of such final Order *sine die*. (8 V. c. 48, s. 33.)

Final order may be adjourned *sine die*.

35 **33.** If for any of the causes aforesaid, no day is named for making the final Order, or if the consideration of such final Order has been adjourned *sine die*, or such final Order has been refused, the Judge, after the expiration of such time subsequent to the filing of the petition, as, having regard to all the
40 circumstances of the insolvency and the conduct of the petitioner as an insolvent debtor before and after his insolvency, the Judge thinks just, and after hearing the petitioner or any of his creditors, or his or their Counsel or Attorneys, may make an Order to protect the petitioner from being taken or detained under any
45 Process whatever for or in respect of the several debts and sums of money at the time of filing his petition due, or claimed to be due, from the said petitioner to the several persons named
in

If no day named for final order Judge may make order for the protection of the petitioner, &c.

in his Schedule as creditors, or as claiming to be creditors, for the same respectively, or for which such persons should have given credit to the petitioner before the time of filing his petition and which were not then payable, and as to the claims of all other persons not known to the petitioner at the time of making such Order, who may be endorsers or holders of any negotiable security set forth in the said Schedule. (8 V. c. 48, s. 34.) 5

On being satisfied that the petitioner's debts were contracted without fraud, the Judge may grant a final order of protection.

34. If it appears to the Judge that the allegations in the petition and the matters in the Schedules are true, and that the debts of the petitioner were not contracted by any manner of fraud or breach of trust, and that he has not been convicted of any offence, and that such debts were not contracted without his having at the time reasonable assurance of being able to pay his debts, and that such debts were not incurred by reason of any judgment or proceeding for breach of the Revenue Laws, or of any action for breach of promise of marriage, seduction, criminal conversation, libel, slander, assault and battery, malicious arrest, malicious suing out a *fiat* in Bankruptcy, or malicious trespass, and if it also appears that the petitioner has made a full discovery of his estate, effects, debts and credits, and has not parted with any of his property since the presenting of his petition, the Judge may cause notice to be given, that, on a certain day to be named therein, he will, unless cause be shewn to the contrary, proceed to make an order in the form specified in Schedule A No. 4, which order shall be called a final order, and shall be for the protection of the person of the petitioner from all Process, and for the vesting of his estate and effects in the Official Assignee named by such Judge, together with an Assignee chosen by the majority in number and value of the creditors who attended before the Judge on the day appointed by him for that purpose, or for the carrying into effect such proposal as the petitioner may have set forth in his petition as hereinbefore provided. (8 V. c. 48, s. 4.) 10 15 20 25 30

And may, from time to time adjourn the same.

35. The Judge without further notice may from time to time adjourn the consideration of such final Order, and he may in such final Order direct some allowance to be made for the support of the petitioner out of his estate and effects. (8 V. c. 48, s. 4.) 35

Effect of final order.

36. The final Order under the provisions of this Act, shall protect the person of the petitioner from being taken or detained under any Process whatever in respect of the several debts and sums of money due or claimed to be due from such petitioner at the time of filing his petition to the several persons named in the Schedule as creditors or as claiming to be creditors for the same respectively, or for which such persons gave credit to the petitioner before the time of filing such petition and which were not then payable, or in respect of the claims of any other persons not known to the petitioner at the time of making 40 45

making the final Order who may be endorsees or holders of any negotiable securities set forth in such Schedule; and every such final Order may be made without specifying therein any such debts or sums of money, or claims as aforesaid. (8 V. c. 48, s. 29.)

Form and contents of final order.

37. If any such petitioner, being a prisoner in execution at the time of filing his petition, is detained in prison for any debt or claim in respect of which he is protected from process by his final Order, the Judge may order any Officer who has such petitioner in custody by virtue of such execution, to discharge such petitioner without exacting any fee, and such Officer is hereby indemnified for so doing. (8 V. c. 48, s. 30.)

If petitioner in prison in execution, the Judge may order his discharge.

38. If such petitioner has been taken or detained under any process whatever, for any debt or claim in respect of which he is protected from process by such Order as last aforesaid, the Judge may order any Officer who has such petitioner in custody to discharge such petitioner therefrom without exacting any fee, and such Officer is hereby indemnified for obeying such order. (8 V. c. 48, s. 35.)

If petitioner arrested for debt, the Judge may order his discharge.

39. If any suit or action is brought against any petitioner for or in respect of any debt contracted before the date of filing his petition, it shall be a sufficient plea in bar of the said suit or action, that such petition was duly presented and a final Order for protection and distribution made by a Judge duly authorized, whereof the production of the Order signed by the Judge, with proof of his handwriting, shall be sufficient evidence. (8 V. c. 48, s. 24.)

Final order may be pleaded in Bar.

40. In case at any time after the final order has been made, a Creditor or the Official or other Assignee gives one month's notice to the petitioner either by personal service, or if he cannot be found by service at the place of his residence mentioned in his notice of petition, that such Creditor intends to apply by motion to the Judge, or in case of his death, resignation or removal to the Judge appointed to succeed him, that the final order be rescinded as far as relates to the protection of the petitioner's person from process, and as far as relates to the effect of such order in bar of actions; and in case such notice is published twice in the Canada Gazette and twice in the same paper in which the notice of the petition was given, or in some other paper circulating in the same County, and in the event of a Creditor being the applicant if he has served the Official and other Assignee with one month's notice to attend the said Judge, and in case the said Judge, (upon hearing the matter of such motion and any evidence in support of it, and what the petitioner has to allege against it, and any evidence against it, and upon examining the petitioner if he desires to be examined, or if the Judge thinks fit,) sees reason to believe that the petitioner had not before the making of such final order made a full disclosure

After final order the Judge may, under certain circumstances and after due notice, &c., rescind the same.

closure of his estate, effects, and debts, or had since the making of such order not given notice to the Assignees of any property after acquired by him, then such Judge shall make such rescinding order as is hereinbefore mentioned; and the said Judge, in case he refuses to make a rescinding order, may order the petitioner's costs of the application to be paid by the creditor who made the motion, or by the assignee chosen by the creditors in case he made the motion, but not out of the Petitioner's estate and effects. (S V. c. 48, s. 26.) 5

Property and credits of petitioner to vest in assignees.

41. After the issue of the final order, the whole estate present, and until the final order is made, the future estate as well real as personal, and all the effects, and all the credits of the Petitioner, shall without any deed or conveyance, become absolutely vested in the Official Assignee and the Assignee chosen by the creditors, which Assignees shall hold the same for the purposes of this Act, and may sue and be sued respecting the same. (S V. c. 48, s. 8.) 10 15

Power of assignees over the same.

42. In case any such Assignee dies or is lawfully removed and a new Assignee is duly appointed, all estate, real and personal, and such effects and credits as were or remained vested in such deceased or removed Assignee shall, without any deed or conveyance, vest in the new Assignee, either alone or jointly with the existing Assignees, as the case may require, and every such Assignee shall be deemed an Officer of the Court in which the petition is filed, and shall be liable as such to the control thereof; but the property of the Petitioner shall in every case be possessed and received by the Official Assignee alone, unless otherwise ordered by the Judge. (S V. c. 48, s. 8.) 20 25

The Court of Chancery may make orders for securing the property of petitioners.

43. The Chancellor and Vice-Chancellors of Upper Canada, may, from time to time, make such orders, rules and regulations for the security of the property of the Petitioner, as they may judge reasonable and proper. (S V. c. 48, s. 8.) 30

Powers of petitioner over his estate to vest in the assignees

44. All powers vested in any Petitioner whose estate has, under the provisions of this Act, been vested in an Assignee or Assignees, which such Petitioner might legally execute for his own benefit, are hereby vested in such Assignee or Assignees, to be by such Assignee or Assignees executed for the benefit of the creditors of such Petitioner under this Act, in such manner as such Petitioner might have executed the same. (S V. c. 48, s. 16.) 35

The assignees may sue in their own or in the petitioner's name, &c.

And may make composition with debtors.

45. The Assignee or Assignees of the Petitioner may, from time to time, as there may be occasion, sue in his or their own name or names, for the recovery and enforcing of any property or rights of such Petitioner, but in trust for the creditors of the Petitioner under this Act, and may give such discharge as may be requisite to any person indebted to such Petitioner, and may make compositions with any debtors or accountants to the Petitioner where the same appears 40 45

appears necessary, and may take such reasonable part of any such debts as can upon such composition be gotten, in full discharge of such debts and accounts, and may submit to arbitration any difference or dispute between such Assignee or Assignees and any person or persons for or on account or by reason of any matter or thing relating to the property of the Petitioner. (8 V. c. 48, s. 18.)

46. No such composition or submission or arbitration shall be made nor shall any suit in equity be commenced by any such Assignee or Assignees, without the approbation of the Judge nor without the consent in writing of the major part in value of the creditors of the Petitioner, who shall meet together pursuant to a notice of such meeting to be published in the *Canada Gazette*, at least fourteen days before such meeting and also in some newspaper usually circulated in the neighbourhood of the place where the Petitioner had his last usual residence before the filing of his petition. (8 V. c. 48, s. 18.)

Circumstances necessary to justify a composition or arbitration.

47. Whenever any Assignee dies, resigns or is removed, or a new Assignee is duly appointed, no action at law or suit in equity shall be thereby abated, but the Court in which any action or suit is depending may, upon the suggestion of such death, resignation or removal and new appointment (if any,) allow the name or names of the surviving or new Assignee to be substituted in the place of the former, and such action or suit shall be prosecuted in the name or names of the said surviving or new Assignee in the same manner as if he had originally commenced the same. (8 V. c. 48, s. 21.)

Death of assignee not to interfere with suits pending.

48. If at the expiration of twelve calendar months from the filing of any petition, there remains any outstanding debts or other property, due or belonging to the estate of the petitioner which cannot, in the opinion of the Judge, be collected and received without unreasonable or inconvenient delay, the Assignees, under the direction of the Judge, may sell and assign such debts and other property in such manner as may be ordered by the Judge. (8 V. c. 48, s. 38.)

Debts due to petitioners may be sold after expiration of 12 months.

49. In case the petitioner is entitled to any lease or agreement for a lease, and his Assignee or Assignees accept the same and the benefit thereof as part of the petitioner's property, the petitioner shall not be liable to pay any rent accruing after the filing of his petition nor be in any manner sued after such acceptance in respect of any subsequent non-observance or non-performance of the conditions, covenants or agreements therein contained. (8 V. c. 48, s. 17.)

If assignees accept leases of petitioners, the petitioners not to remain liable.

50. In case the said Assignee or Assignees, upon being required so to do, decline to determine whether he or they will or will not accept such lease or agreement for a lease, the lessor or person agreeing to make the lease, his heirs, executors,

If assignees decline accepting a lease,

what course
the Lessor or
Contractor
may adopt.

tors, administrators or assigns, may apply to the Judge praying that such Assignee or Assignees may either accept the same or deliver up such lease or agreement for a lease and the possession of the premises demised or intended to be demised; and the Judge shall thereupon make such order as under all the circumstances of the case seems meet and just, and such order shall be binding on all parties. (S V. c. 48, s. 17.) 5

When registra-
tion necessary
upon the
transfer of
property real
or personal,
the instru-
ment men-
tioned in sec-
tion 19 to be
registered in
lieu of a con-
veyance.

51. Where according to any law now in force, any conveyance or assignment of any real or personal property of a petitioner would require to be registered, enrolled, or recorded in any Registry office of Upper Canada, then in any such case the certificate of the appointment of an Assignee or Assignees as is provided by the nineteenth Section of this Act shall be registered in the Registry Office or place wherein such conveyance or assignment would require to be registered, enrolled, or recorded. (S V. c. 48, s. 8.) 10 15

Effect of such
registration
and conse-
quences of
neglect.

52. The Registry hereby directed shall have the like effect to all intents and purposes as the Registry, enrollment or recording of such conveyance or assignment as last aforesaid would have had; and unless the certificate of such appointment is registered as aforesaid within two months from the date of such appointment, the title of any purchaser of any such property as last aforesaid for valuable consideration, who has duly registered, enrolled, or recorded his purchase deed previous to the Registry hereby directed, shall not be invalidated by reason of the appointment of an Assignee or Assignees as aforesaid, or of the vesting of such property in him or them consequent thereupon. (S V. c. 48, s. 8.) 20 25

Any transfer
by petitioner
in contempla-
tion of insol-
vency or after
filing petition,
to be void.

53. If the petitioner, before or after the filing of his petition, in contemplation of his becoming insolvent, or being in insolvent circumstances, voluntarily conveys, assigns, transfers charges, delivers, or makes over any estate, real or personal, or any security for money, bond, bill, note, money, goods or effects whatsoever, to any creditor or to any person in trust for or to, or for the use, benefit or advantage of any creditor, or to any person who is or may be liable as surety for the petitioner, every such conveyance, assignment, transfer, charge, delivery and making over, shall be deemed fraudulent and void, as against any Assignee or Assignees of the estate and effects of the petitioner, appointed under the provisions of this Act: But no such conveyance, assignment, transfer, charge, delivery or making over, shall be deemed fraudulent and void, if made by the petitioner more than three Calendar months before the filing of the petition and not with the view and intention of petitioning the Court for protection from Process. (S V. c. 48, s. 27.) 30 35 40 45

Effect of a con-
fession of
judgment by

54. In all cases where any petitioner, whose estate has been vested in an Assignee or Assignees, under the provisions of this Act, has given any Warrant of Attorney 5

ney to confess judgment, or any *Cognovit actionem*, or a petitioner, Bill of Sale, whether for a valuable consideration or otherwise, &c. no person shall, after the filing of the petition of such petitioner, avail himself of any execution, issued upon any judgment obtained upon such Warrant of Attorney or *Cognovit actionem*, either by seizing or selling the property of the petitioner, or any part thereof, or by selling any of such property theretofore seized, or any part thereof, or avail himself of such Bill of Sale; but any person to whom any sum of money is due in respect of any such Warrant of Attorney, *Cognovit actionem*, or Bill of Sale, may be a creditor for the amount under this Act. (S V. c. 48, s. 28.)

55. No other estate, real or personal, effects or credits of any such petitioner other than those of which he was possessed or entitled to at the date of the final order, shall, unless otherwise ordered as hereinafter provided, be liable to or applicable in satisfaction of the debts hereinbefore mentioned. (S V. c. 48, s. 8.)

Effects of petitioner at the time of filing petition to be alone liable for his debts, unless otherwise ordered.

56. The Assignees may at any time after the final order claim and demand from the petitioner, any estate and effects acquired by him at any time after such order has been made, and all such estate and effects, of what kind soever and wheresoever situate, shall be absolutely vested in such Assignees upon their filing a copy of their claim served upon the petitioner personally, or by leaving it at the place of residence mentioned in his notice of petition, and they shall hold the same in like manner as they held the estate and effects of the petitioner transferred by force of the final order, as hereinbefore provided. (S V. c. 48, s. 9.)

Property acquired by petitioner after final order, to vest in assignees.

57. No Assignee shall take possession of any estate or effects which the Insolvent acquired or became possessed of after the final order herein mentioned was made, except by an order of the Judge for that purpose, and then only to the extent and at the time and in the manner directed by such order, and after giving such notices and doing such acts, as by the orders and regulations, made under the authority of this Act, are required and directed in that behalf. (S V. c. 48, s. 9.)

If so ordered by a Judge.

58. Whenever, after an Audit, there appears to the Judge to be in the hands of the Official Assignee any balance wherewith a dividend may be made, proceedings shall be had forthwith, under the direction of the Judge, for making such dividend, and also, when it appears necessary, for correcting and ascertaining the list of creditors entitled to receive the same. (S V. c. 48, s. 37.)

When dividends shall be declared and made.

59. Notice of any sitting of the Court ordered to be held for such ascertaining of debts, or for an Audit, or for declaring a dividend thereupon, or for all such purposes, shall be given for such

Notice to be given of sittings for declaring dividends, audit, &c.

such time and in such manner as the Judge from time to time directs. (8 V. c. 48, s. 37.)

To be entitled
to share in
dividends.

60. Such dividend shall be made amongst the creditors of the petitioner, whose debts are admitted in his Schedule, sworn to by the petitioner, and amongst such other creditors (if any) who prove their debts in pursuance of any Order of the Judge made in that behalf, in proportion to the amount of the debts so admitted or so admitted and proved, as the case may be. (8 V. c. 48, s. 37.)

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If disputed
the Judge to
decide.

61. If the petitioner, or any creditor or assignee, objects in whole or in part to any debt tendered to be so proved as aforesaid, or to any debt mentioned in the Schedule of the petitioner, or if any person whose demand is stated in such Schedule but is not admitted therein to the extent of such demand, claims to be admitted as a creditor to the extent of such demand or for more thereof than is so admitted, the said objections and claims shall, upon application duly made, be examined into by the Judge, and the decision of the Judge thereupon shall be conclusive with respect to the title of such creditor or creditors to his or their share of such dividend. (8 V. c. 48, s. 37.)

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The Judge
may require
creditors to
prove their
debts.

62. If in any case it appears expedient, the Judge may, at any time, by such notice as he directs in that behalf, cause all or any of the creditors to prove their debts in such manner as the Judge may require, and may decide upon such debts and the right to receive dividends thereupon, and do all things requisite thereto, as aforesaid. (8 V. c. 48, s. 37.)

25

County Court
Judges may
make rules
and orders for
effecting the
objects of this
Act.

63. The Judge of every County Court may from time to time make such orders, rules and regulations as he thinks fit, for the better carrying this Act into execution, and particularly for regulating and appointing the duties of the Official Assignees and of the other Assignees, the auditing of their accounts, the collecting of the debts, and the realizing of the estate and effects of the petitioner, and the notification of the time of hearing petitions or motions in the Gazette or otherwise. (8 V. c. 48, s. 39.)

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And may en-
force rules and
orders and, if
need be, fine
and imprison,
&c.

64. The Judge may enforce the performance of any order, rule or regulation made in conformity to the next preceding clause, and in his discretion, may fine or imprison, or both fine and imprison for any wilful non-observance of the same, and may compel the payment of any costs which he is authorized to order, by Attachment, in the same manner, and as fully as he could do acting as a Judge in the County Court. (8 V. c. 48, s. 40.)

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The Superior
Courts may
make table of
costs.

65. Her Majesty's Superior Courts of Common Law, may regulate and establish a Table of Costs for any matter to be done under this Act. (8 V. c. 48, s. 41.)

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66. Any petition and any proceeding in the matter of such petition purporting to be signed by any such Judge, or a copy of such petition or other proceeding purporting to be so signed, shall, in all cases, be receivable in evidence of such proceedings 5 having respectively taken place. (8 V. c. 48, s. 43.)

Petitions or copies receivable in evidence being first certified by the Judge.

67. All Traders within the meaning of the Bankrupt Act, passed in the seventh year of Her Majesty's Reign, intituled, *An Act to repeal an Ordinance of Lower Canada, intituled, an Ordinance concerning Bankrupts and the administration and distribution of their estate and effects, and to make provision for the same object throughtout the province of Canada*, who, while such Act was in full force in Upper Canada, did, at the request of some of their creditors testified by their being parties thereto, execute *bonâ fide* and without fraud, assignments 10 of all their property for the benefit of their creditors or such of them as might choose to come into such assignments, may avail themselves of the benefit of this Act on their taking the steps and proceedings herein set forth for obtaining their discharge. (14 15, V. c. 116, s. 1.)

Certain Traders within the meaning of the former Bankrupt Act, entitled to the benefit of this Act.

68. As to such persons, the order called the final order, shall, in addition to its effect as mentioned in the thirty-third section of this Act, operate as a discharge of all debts due up to the date of the assignment in each case respectively as fully and completely and to the same extent as if such Traders 25 respectively had obtained a certificate under the Bankrupt Act hereinbefore mentioned. (14 15, V. c. 116, s. 2.)

Effect of final order in such cases.

SCHEDULES.

(A No. 1.)

FORM OF NOTE.

I, A. B., at present, and for _____ months past, residing at _____, in the Township of _____, in the County of _____, and being (*here setforth the description of the Debtor and his profession or calling, if any*) do hereby give notice that I intend to present a Petition to _____, Judge of the County Court, for the County of _____, praying to be examined touching my debts, estate and effects, and to be protected from all Process, upon making a full disclosure and surrender of such estate and effects or payment of my just and lawful debts; and I hereby further give notice, that the time when the matter of the said Petition will be heard is to be advertised in the Canada Gazette, and in the newspaper, one month at the least after the date hereof.

As Witness, my hand, this _____ day of _____ in the _____ year

(A

(A No. 2.)

FORM OF PETITION FOR PROTECTION FROM PROCESS.

To the Judge of the County Court of the County of

The humble Petition of *(insert at full length the name, address and quality of the Petitioner, and also the trade or business, (or if more than one the trades or busines) which he carries, or has carried on, during his twelve months' residence within the County of the Court).*

SHEWETH :

1. That your Petitioner has resided twelve calendar months within the County of this Honorable Court, that is to say, *(insert the places and periods of residence.)*

2. That your Petitioner has become indebted to divers creditors, whose names are inserted in the Schedule A, *(or as the case may be)* to this Petition annexed, and that he is unable to pay his debts in full.

3. That your Petitioner has examined the said Schedule, and that such Schedule contains a full and true account of your Petitioner's debts and the claims against him, with the names of his creditors and claimants, and the dates of contracting the debts and claims severally, as nearly as such dates can be stated, the nature of the debts claims and securities *(if any)* given for the same, and that there is reasonable ground in his belief for disputing so much of the debts as are thereby mentioned as disputed ; and also a true account of the nature and amount of his property, and an inventory of the same, and of the debts owing to him with their dates as nearly as such dates can be stated, and the names of his debtors, and the nature of the security *(if any)* which he has for such debts ; and that the said Schedule also contains a balance-sheet of so much of his receipts and expenditure as is required by this Honorable Court in that behalf, and doth fully and truly describe the wearing apparel, bedding and other necessaries of your Petitioner and his family, and his working tools and implements.

4. That your Petitioner has not parted with or changed any of his property (except for the necessary support of himself and his family, and the necessary expenses (not exceeding pounds) of this his Petition, or in the ordinary course of trade) at any time within three months of the date of filing this his Petition, or at any time with a view to this Petition.

5. That your Petitioner is desirous that his estate should be administered under the protection and direction of this Honorable

able Court, and that he verily believes such estate is of the value of _____ pounds at the least, unencumbered, and beyond the value of his wearing apparel and other matter, which your Petitioner is authorized to except by law, and that the same is available for the benefit of his creditors.

6. That your Petitioner submits to this Honorable Court the proposal for the payment of his debts contained in the said Schedule. (*Omit this paragraph if no special proposal.*)

7. That your Petitioner is ready and willing to be examined from time to time touching his estate and effects, and to make a full and true disclosure and discovery of the same.

8. Your Petitioner, therefore, prays such relief in the premises as, by the Statute for the relief of Insolvent Debtors, may be adjudged by this Honorable Court.

And your Petitioner shall ever pray, &c., &c.

Signed by the said Petitioner, on the _____ day
of _____, 18____, in the presence of

Attorney or Agent in the matter of the said Petition.

(A No. 3.)

AFFIDAVIT VERIFYING PETITION AND SCHEDULE.

A. B., of _____, the Petitioner named in the Petition hereunto annexed (*if the Petitioner affirm, alter accordingly,*) maketh oath and saith—That the several allegations in the said Petition, and the several matters contained in the Schedule hereunto annexed, are true.

Sworn, &c.

(A No. 4.)

FINAL ORDER FOR PROTECTION FROM PROCESS.

In the Insolvent Court for the County of _____

In the matter of the Petition of _____ of _____
in the _____ of _____ an Insolvent Debtor;
Be it remembered that the said _____ having presented his Petition for protection from process to this Honorable Court,

CAP. XLII.

An Act respecting Bills of Exchange and Promissory Notes.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Act of the Parliament of Great Britain, passed in the Statutes 15 & 17 Geo. 3, respecting small notes not in force here.
- 5 of Great Britain called *England*, and the Act of the Parliament of Great Britain, passed in the seventeenth year of His said Majesty's reign, intituled, *An Act for further restraining the negotiation of Promissory Notes and inland Bills of Exchange, under a limited sum, within that part of Great Britain called*
- 10 *England*, being inapplicable to Upper Canada, shall not extend to or be in force therein, nor shall the said Acts make void any Bills, Notes, Drafts or Orders, which have been or may be made or uttered therein. 2 G. 4, c. 12, s. 1.
- 15 2. No person, or body corporate, shall make or issue any note or undertaking printed, stamped or impressed in the whole or in part from a plate or engraving for the payment of money for an amount less than five shillings. 3 V. c. 4, s. 1. No notes to be issued for less than five shillings.
- 20 3. In case any person since the tenth day of February, one thousand eight hundred and forty, has made or issued, or after this Act takes effect makes or issues any such note or undertaking for the payment of money for an amount less than five shillings, the person who has so made or issued or who makes or issues any such note or undertaking, shall be liable to pay to the holder of such note or undertaking treble the amount for which the same has been or may be hereafter made, to be recovered by action in any Division Court in Upper Canada. 3 V. c. 4, s. 2. Treble the amount of such notes receivable, when.
- 30 4. Nothing contained in this Act shall authorize any person or body corporate, to issue any note or undertaking for the payment of money, who by law are prohibited from issuing the same. 3 V. c. 4, s. 3. This Act not to authorize the issue of notes otherwise prohibited.
- 35 5. The holder of any Bill of Exchange or Promissory Note, may, instead of bringing separate suits against the drawers, makers, endorsers and acceptors of such Bill or Note, include all or any of the parties thereto in one action, and proceed to judgment and execution in the same manner as though all the defendants were joint contractors. 5 W. 4, c. 1, s. 2 ;—13, 14 V. c. 59. All the parties to bills or notes may be sued jointly.

Defendants may plead separately.

6. In any such action, any joint drawer, maker, endorser or acceptor, may plead in abatement the non-joinder of any other joint drawer, maker, endorser or acceptor, in the same manner as though this Act had not been passed; but no judgment to be rendered in pursuance of this Act shall be of any effect against a party not served with process. 5 W. 4, c. 1, s. 3. 5

Judgment may be rendered against one or more.

7. In any such action, judgment may be rendered for the plaintiff against some one or more of the defendants, and also in favour of some one or more of the defendants against the plaintiff, according as the rights and liabilities of the respective parties may appear, either upon confession, default, by pleading, or on trial; and when judgment is rendered in favour of any defendant, he shall recover costs against the plaintiff in the same manner as though judgment had been rendered for all the defendants. 5 W. 4, c. 1, s. 5. 15

Rights of parties between themselves not to be affected.

8. The rights and responsibilities of the several parties to any such Bill or Note, as between each other, shall remain the same as though this Act had not been passed, saving only the rights of the plaintiff, so far as they may have been determined by the judgment. 5 W. 4, c. 1, s. 8. 20

When defendants in such suits may be witnesses.

9. In every such suit any defendant shall be entitled to the testimony of any co-defendant as a witness, in case the defendant or defendants calling the witness would have been entitled to his testimony had the suit been brought in the form used, before the sixteenth day of April one thousand eight hundred and thirty five and in no other case. 5 W. 4, c. 1, s. 9. 25

When executions of deceased defendants may be sued.

10. In case an action is brought against more than one defendant under this Act, who must otherwise have been sued separately, and it happens that any of them die pending the suit, an action may nevertheless be brought against the executors or administrators of such deceased defendant. 5 W. 4, c. 1, s. 11. 30

Act not to apply when separate actions brought in different County Courts.

11. This Act shall not apply to any case where separate actions are brought in the County Court, against persons residing in different Counties. 5 W. 4, c. 1, s. 12.

If one or more of several defendants absent.

12. When several defendants are included in one process, under this Act, and any of them cannot be served therewith by reason of absence from Upper Canada; or concealment within the same, then the action may proceed as against the other defendant or defendants without prejudice; and the plaintiff may afterwards sue the defendant separately who has not been served with process, and may recover costs as if this Act had not been passed. 5 W. 4, c. 1, s. 13. 35 40

Parties signing their initials when may be pro-

13. In case any of the parties to any Bill of Exchange, Promissory Note or other written Instrument, are designated therein by the initial letter or letters, or some contraction of the Christian 45

Christian or first name or names, they may be designated in the same manner in any affidavit to hold to bail, and in any process or declaration, made, sued out, or filed against them upon or in respect of any such Bill, Note or Instrument. 7 W. 5 4, c. 3, s. 9. ceded against by such initials.

14. The plaintiff in any joint action against the drawers, makers, endorsers and acceptors, or any of them, of any Bill of Exchange or Promissory Note, may declare, in the forms contained in the Schedules hereto annexed, numbered one and two upon such Bill or Note, varying the same according to the circumstances of the case. 3 V. c. 8, s. 2. Forms of declaring.

15. In such action, any person sued may set-off against the said plaintiff any payment, claim or demand, whether joint or several, which in its nature and circumstances arises out of or is connected with the Bill or Promissory Note, which is the subject of such joint action, or the consideration thereof, in the same manner and to the same extent as though such defendant had been separately sued; and if the jury, after allowing any demand as a set-off, still find a balance in favour of the plaintiff, they shall state in the verdict the amount which they allow to each defendant as a set-off against the plaintiff's demand. 3 V. c. 8, s. 3. Defendants may plead set-off respectively.

16. From and after the first day of July, in the year of our Lord one thousand eight hundred and fifty-eight, all actions upon Bills of Exchange or Promissory Notes, commenced in either of the Superior Courts of Common Law, within six months after the same are payable, may be by writ of summons in the special form contained in the Schedule to this Act annexed, numbered three, and endorsed as is therein mentioned. 20 V. c. 57, s. 4. Summary proceedings for receiving of Bills and Notes.

17. Upon the plaintiff filing an affidavit of personal service of such writ, such service being within the jurisdiction of the Court, or filing an order for leave to proceed as provided by the Common Law Procedure Act, and also filing a copy of the writ of summons and the indorsements thereon, and in case the defendant not having obtained leave to appear, has appeared to such writ according to the exigency thereof, such plaintiff may at once sign final judgment in the form contained in the Schedule numbered four to this Act annexed, for any sum not exceeding the sum endorsed on the writ, together with interest to the date of judgment, and a sum for costs to be fixed by rule of Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be taxed in the ordinary way. 20 V. c. 57, s. 4. How plaintiffs to proceed.

18. No proceeding in error shall lie upon such judgment, and the plaintiff may issue execution thereon, at the expiration of fifteen days after the same has been signed. 20 V. c. 57, s. 4. Error not to lie.

How defendants may obtain leave to appear.

19. A Judge of either of the said Courts, or a Judge of a County Court, shall, upon application within the period of sixteen days from such service, give leave to appear to such writ and defend the action on the defendant; paying into Court the sum endorsed on the writ, or upon affidavits satisfactory to the Judge, disclosing a legal or equitable defence, or such facts as would make it incumbent on the holder to prove, consideration, or such other facts as the Judge may deem sufficient to support the application, and on such terms as to security or otherwise as to the Judge may seem fit. 20 V. c. 57, s. 5. 10

When and how judgments may be set aside.

20. After judgment, the Court or a Judge may, under special circumstances, set aside the judgment and, if necessary, stay or set aside execution, and may give leave to appear to the writ, and to defend the action, if it appears to be reasonable to the Court or Judge so to do, and on such terms as to the Court or Judge may seem just. 20 V. c. 57, s. 6. 15

Deposit of bills, &c., and security for costs may be ordered.

21. In any proceedings under this Act, the Court or Judge may order the Bill or Note sought to be proceeded upon to be forthwith deposited with an officer of the Court, and that all proceedings shall be stayed until the plaintiff gives security for the costs of such proceedings. 20 V. c. 57, s. 7. 20

Holders to have the same remedies for damages, &c.

22. The holder of every dishonored Bill of Exchange or Promissory Note shall have the same remedies for the recovery of the expences incurred in noting or protesting the same for non-acceptance or non-payment, or otherwise, or of damages where damages for non-payment are by law recoverable, by reason of such dishonor, as he has under this Act for the recovery of the amount of such Bill or Note. 20 V. c. 57, s. 8. 25

All parties to a bill or note may be sued together.

23. The holder of any such Bill of Exchange or Promissory Note may proceed thereon against all the parties to such Bill or Note in one action as hereinbefore provided for enabling a joint action to be brought against all the parties to any Bill of Exchange or Promissory Note. 20 V. c. 57, s. 9. 30

When a loss of a bill or note may be refused as a defence.

24. In case any action is brought upon a lost Bill of Exchange, or other negotiable Instrument, and in case an indemnity to the satisfaction of the Court or Judge, or of any officer of the Court to whom such indemnity is referred, is given to the defendant against the claims of any other person upon him in respect of such Instrument, the Court or a Judge may order that such loss shall not be set up as a defence in such action. 19 V. c. 43, s. 292. 35 40

If several suits are brought against separate parties, costs of disbursements only recover-

25. In case several suits are brought on one Bond, Recognizance or other instrument against the different parties to the same, or on one Promissory Note or Bill of Exchange, or against the maker, drawer, acceptor or indorser of such Note or Bill respectively, there shall be collected or received from the defendant

defendant the costs taxed in one suit only, at the election of the Plaintiff, and in the other suits the actual disbursements only shall be collected or received from the defendant; but this provision shall not extend to any interlocutory costs in the cause. 5 W. 4, c. 1, s. 1.

26. In case any person accepts a bill of exchange or in case any person makes a promissory note payable at a Bank, or at any other particular place, without further expression in that respect, such acceptance and such promise shall be deemed and taken to be a general acceptance and a general promise respectively. 7 W. 4, c. 5, s. 1.

When acceptances, &c., not expressed to be payable at a particular place only, to be considered general.

27. But if the acceptor expresses in his acceptance that he accepts the bill payable at a Bank, or at any other particular place only and not otherwise or elsewhere; or if the maker of a promissory note expresses in the body of the note that he promises to pay at a Bank, or at any other particular place only and not otherwise or elsewhere, then such acceptance or promise shall be deemed and taken to be, respectively, a qualified acceptance or promise; and the acceptor or maker shall not be liable to pay the bill or note, except in default of payment when such payment has been first duly demanded at such Bank or other place. 7 W. 4, c. 5, s. 1.

28. No acceptance of any inland bill of exchange shall be sufficient to charge any person, unless such acceptance is in writing on the bill, or if there be more than one part to such bill, then on one of the said parts. 7 W. 4, c. 5, s. 2,—12 V. c. 22, s. 4.

Acceptances of inland bills must be in writing.

29. No bill of exchange or promissory note shall, although it may have been given for a usurious consideration, or upon a usurious contract, be void in the hands of an endorsee, or in the case of a note transferable by delivery, in the hands of a person who acquired the same as bearer for valuable consideration, unless such endorsee or bearer had, at the time of discounting or paying such consideration for the same actual knowledge that such bill of exchange or promissory note was originally given for a usurious consideration or upon a usurious contract. 7 W. 4, c. 5, s. 3,—12 V. c. 22, s. 23,—16 V. c. 180.

Bills and notes not affected by usury, in the hands of bona fide holder for value and without notice.

SCHEDULES:

1.—On a Promissory Note.

For that whereas the said _____, (the maker of the Note.) on the _____ day of _____, at _____, made his Promissory Note in writing, and thereby promised _____, (setting forth the Note in the usual manner) and the said _____, (the first second or other endorsers,) duly endorsed the same, and the said _____, (the last endorser) delivered the said Note, so endorsed, to the plaintiff, (aver presentment, notice

notice, &c., (where by law necessary in particular case.) By reason whereof the said _____, (all the defendants) became jointly and severally liable to pay to the plaintiff the said sum of money in the said Note specified. (Add the usual breach.)

2.—On a Bill of Exchange.

For that whereas the said _____, (the drawer,) on the _____ day of _____, at _____, drew his certain Bill of Exchange in writing directed to _____, (setting forth the Bill according to its tenor and effect,) and the said _____, (the drawee) duly accepted the same, and the said _____, (the first and other endorsers,) afterwards duly endorsed the said Bill of exchange, and the said _____, (the last endorser,) delivered the said Bill, so endorsed, to the said plaintiff, (aver presentment, protest, notice, &c., where by law necessary in the particular case.) By reason whereof the said _____, (all the defendants) became jointly and severally liable to pay to the said plaintiff the said sum of money in the said Bill specified. (Add the usual breach.)

No. 3.

VICTORIA, by the Grace of God, &c.

To C. D. of _____, in the County of _____
(PROCESS SEAL.)

We warn you that unless within sixteen days after the service of this Writ on you, inclusive of the day of such service, you obtain leave from one of the Judges of our Court of Queen's Bench, or of Common Pleas (or as the case may be), at _____ to appear, and do within that time appear in our Court of _____ in an action at the suit of A. B., the said A. B. may proceed to judgment and execution.

Witness, &c.

Memorandum to be subscribed on the Writ.

N. B.—This Writ is to be served within six calendar months from the date hereof, or if renewed, from the date of such renewal, including the day of such date, and not afterwards.

Indorsement to be made on the Writ before service thereof.

This Writ was issued by E. F., of _____, Attorney for the Plaintiff, or this Writ was issued in person by A. B., who resides at (mention the City, Town incorporated, or other Village or Township within which such Plaintiff resides).

Indorsement.

Indorsement.

The Plaintiff claims £ , principal and interest, (or £ balance of principal and interest) due to him as the payee (or "endorsee," &c., of a Bill of Exchange, (or "Promissory Note," of which the following is a copy (here copy *Bill of Exchange or Promissory Note, and all endorsements upon it*), and also shillings for noting (or "protesting," as the case may be,) and £ for damages (if damages be recoverable on the Bill under 12 Vict. chap. 76.) and £ for costs, and if the amount thereof be paid to the Plaintiff, or his Attorney, within eight days from the service hereof, further proceedings will be stayed.

Notice.

Take notice, that if the Defendant do not obtain leave from one of the Judges of the Queen's Bench or Common Pleas, within sixteen days after having been served with this writ, inclusive of the day of such service, to appear thereto, and do within such time, cause an appearance to be entered for him in the Court out of which this Writ issues, the Plaintiff will be at liberty at any time after the expiration of such sixteen days to sign final judgment, for any sum not exceeding the sums above claimed, and the sum of £ for costs, and issue execution for the same.

Leave to appear may be obtained, on an application at the Judge's Chambers, Osgoode Hall, Toronto, supported by affidavit, shewing that there is a defence to the action on the merits, or that it is reasonable that the Defendant should be allowed to appear in the action.

Indorsement to be made on the Writ after service thereof.

This Writ was served by X. Y. on C. D., (the Defendant or one of the Defendants,) on day, the day of , 18 .

(Signed,) X. Y.

No. 4.

In the (Q. B., or C. P.)
On the day of , in the year of Our
Lord, 18 .

Upper Canada, } A. B., in his own person (or by his
to wit : } Attorney) sued out a Writ against C. D., in-
dorsed as follows :

(Here copy Indorsement of Plaintiff's claim.)

And the said C. D., has not appeared, therefore it is considered that the said A. B. recover against the said C. D., £ together with £ for costs of suit.

CAP. XLIII.

An Act respecting Damages on Protested Bills of Exchange and Promissory Notes.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- 1.** The Rate of Damages to be allowed and paid upon the usual protest for non-payment of Bills of Exchange drawn, sold or negotiated within Upper Canada, and although the same may not have been drawn on or by any person residing therein, shall, in the following cases, be as follows: (12 V. c. 76, s. 1.) 5
- Rate of damages in dishonored foreign bills.**
- 1.** If the Bill has been drawn upon any person at any place in Europe or in the West Indies, or in any part of America not within this Province, or any other British North American Colony, and not within the Territory of the United States, ten per cent. upon the principal sum specified in the Bill. (12 V. c. 76, s. 1.) 10
- If drawn in Europe or West Indies.**
- 2.** If the Bill has been drawn upon any person in any of the other British North American Colonies, or in the United States, four per cent. upon the principal sum specified in the Bill. (12 V. c. 76, s. 1.) 15
- On other B. N. A colonies.**
- 2.** In each of such last mentioned cases, the Bill shall also be subject to six per centum per annum of interest on the amount for which the Bill was drawn, to be reckoned from the day of the date of the protest to the time of repayment, and such aggregate amount, together with the expenses of noting, and protesting and the postages, shall be paid to the holder at the current rate of Exchange of the day when the protest for non-payment is produced and repayment demanded, that is to say: the holder of any such Bill returned under protest for non-payment, may demand and recover from the drawer or endorsers, so much current money of this Province as shall then be equal to the purchase of another Bill of the like amount, drawn on the same place, at the same date or sight, together with the damages and interest above mentioned, as also the expenses of noting and protesting the Bill, and all other charges and postages incurred thereon. (12 V. c. 76, s. 1.) 20
- Interest to be allowed.**
- 3.** In case any promissory note made or negotiated within Upper Canada, and payable only at some place in the United States of America, or in any of the British North American Colonies except Canada, and not otherwise or elsewhere, is protested for non-payment, the holder shall, in addition to the principal sum mentioned in the note, recover damages at the rate of four per cent. upon such principal sum, and also interest thereon at the rate of six per centum per annum, to be reckoned from 25
- By whom payable, and rate of exchange.**
- 3.** In case any promissory note made or negotiated within Upper Canada, and payable only at some place in the United States of America, or in any of the British North American Colonies except Canada, and not otherwise or elsewhere, is protested for non-payment, the holder shall, in addition to the principal sum mentioned in the note, recover damages at the rate of four per cent. upon such principal sum, and also interest thereon at the rate of six per centum per annum, to be reckoned from 30
- Damages and interest allowed in certain cases upon dishonored notes.**

from the day of the date of the protest, and such aggregate amount together with the expenses of protesting the note and all charges and postages incurred thereon shall be paid to the holder at the current rate of exchange of the day 5 when the protest is produced and repayment demanded, that is to say : the holder of any such note returned under protest may demand and recover from the maker or endorser thereof so much current money of this Province as shall then be equal to the purchase of a Bill of Exchange of the 10 like amount drawn on the same place at the same date or sight, together with the damages and interest above mentioned, and also the expense of protesting the note, and all charges and postages incurred thereon. (12 V. c. 76, s. 2.)

4. When the holder of a protested bill or note returned for 15 non-payment notifies the drawer, maker or endorser in person, or delivers such notice in writing to a grown up person at his or their counting house or dwelling house, and they disagree about the then rate of Exchange for Commercial Bills, the holder and the drawer, maker or endorser so notified, or 20 any of them, may apply to the President or in his absence to the Secretary of any Board of Trade or Chamber of Commerce in the City or Town, in which the holder of such protested bill or note, or his Agent, resides, or in the City or Town nearest to the residence of such Holder or Agent, and obtain from such 25 President or Secretary a certificate in writing under his hand, stating the said rate of exchange, and the rate stated in such certificate shall be final and conclusive as to the then rate of exchange, and shall regulate the sum to be paid accordingly. (12 V. c. 76, s. 3.)

30 5. All Bills, Drafts or Orders drawn by persons in Upper Canada, on persons in this Province, or Promissory Notes made or negotiated in Upper Canada, if protested for non-payment, shall be subject to six per centum per annum of interest from 35 the date of the protest, or if interest be therein expressed as payable from a particular period, then from such period to the time of payment ; and in case of protest the expense of noting and protesting, and the postages thereby incurred, shall be allowed and paid to the holder, over and above the said interest. (12 V. c. 76, s. 4.)

40 6. In any action brought to recover the amount of any Bill, Draft, Order or Promissory Note, and the damages herein allowed, and the interest, expenses of noting and protesting, and all other charges and postages incurred thereon, specified and mentioned in the preceding sections of this Act, it shall not be 45 necessary to declare specially for such damages, expenses, charges and interest, but the same shall be allowed to the plaintiff at any trial, assessment or computation, as if the same had been specially declared for. (12 V. c. 76, s. 5.)

12. All Bills of Exchange and Promissory Notes, whereof the third day of grace falls upon any non-juridical day, shall become due and payable, and be presented for payment upon the juridical day next after such third day of grace. 14, 15 V. c. 94, s. 3,—18 V. c. 10 s. 1.

Please substitute the above in lieu of clause 12, page 404, of Revised Statutes of Upper Canada.

by Royal Authority duly appointed, did exhibit the said Bill unto _____, at _____, being the place where the same is payable, and speaking to *him*, did demand payment of the said Bill ; to which demand *he* answered _____

Wherefore I, the said Notary, at the request aforesaid, have protested, and do hereby solemnly protest, as well against all the parties to the said Bill, as against all other persons whom it may concern, for all interest, damages, costs, charges, expenses and other losses suffered or to be suffered for want of payment of the said Bill. And afterwards, on the day and year mentioned in the margin, I, the said Notary Public, did serve due Notice, according to law, of the said Presentment, Non-payment and Protest of the said Bill, upon the several parties thereto, by depositing, in Her Majesty's Post Office at _____, being the nearest Post Office to the place of the said Presentment, Letters containing such Notices, one of which Letters was addressed to each of the said parties, severally ; the superscription and address of which Letters are respectively copied below, as follows, that is to say :

(Here insert the directions of the letters.)

In testimony whereof, I have hereunto set my Hand and affixed my Seal of Office, the day and year first above written. Notice mailed
the _____ day of
A. D. 185 .

(Signature) _____ L. S. _____

FORM OF NOTICE TO PARTIES.

To Mr. _____ (date.)

SIR,

Take notice that a Bill of Exchange dated on the _____, for the sum of £ _____ drawn by _____, on and accepted by _____, payable (*three months*) after the date thereof, at the Bank of _____ in Toronto, and endorsed by A. B. C. D. E. F., &c., was this day presented by me for payment at the said Bank, and that payment thereof was refused, and that _____ the holder of the said Bill looks to you for payment thereof. Also, take notice that the same Bill was this day protested by me for non-payment.

Your obedient servant,

A. H.,
Notary Public.

The above forms may be changed to suit Protests for non-acceptance or non-payment of Bills; or non-payment of Notes.

SCHEDULE B.

FEEs.

	£.	s.	d.
For the Protest of any Bill or Note.....	0	2	6
For every Notice.....	0	1	3

C A P .

CAP. XLIV.

An Act respecting written promises and acknowledgments of liability.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Act to apply on and from the 1st January, 1852.

1. This Act shall operate and apply retrospectively to the first day of January one thousand eight hundred and fifty-two, as well as prospectively, and shall be construed as if it had been passed on the said first day January one thousand eight hundred and fifty-two. 13, 14 V. c. 61, s. 8. 5

Written memorandum required to take the case out of statute.

2. In all actions of account and upon the case other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, in all actions of debt grounded upon any lending or contract without specialty and in all actions of debt for arrearages of rent, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the Act, passed in England in the twenty-first year of the Reign of King James the First, respecting such actions as aforesaid, or to deprive any party of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing to be signed by the party chargeable thereby. 13, 14 V. c. 61, s. 8. 10 15

Case of two or more joint contractors.

3. Where there are two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the said Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them, or by reason of any payment of any principal or interest made by any other or others of them. 13, 25 14 V. c. 61, s. 1. 20

Where plaintiff may be barred as to one or more defendants but not as to all.

4. In actions commenced against two or more such joint contractors, executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by the said recited Act or this Act, as to one or more of such joint contractors, or executors or administrators, is nevertheless entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment, promise or payment as aforesaid, judgment shall be given and costs allowed for the plaintiff as to such defendant or defendants against whom he may recover, and for the other defendant or defendants against the plaintiff. 13, 35 14 V. c. 61, s. 1.

5. If upon any plea in abatement in any such action for the non-joinder of any person or persons, who, it is alleged, ought to be sued jointly, it appears at the trial or otherwise, that the action could not, by reason of the said Act of King James or this Act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the finding and judgment on such plea, shall be against the party pleading the same. 13 & 14 V. c. 61, s. 2.

As to non-joinder of defendants who have good defence under the said Act and this Act

6. If after the pleading of such plea, the plaintiff, instead of proceeding in the said action, abandons or discontinues the same, and commences a new action against the defendant or defendants pleading such plea and the person or persons named therein as jointly liable with such defendant or defendants, and if it appears upon the trial or pleadings in such new action that such action could not, by reason of the said Act of King James or this Act, be maintained against the person or persons named in the said plea in abatement and joined in the said new action, but against the original defendant or defendants alone, the plaintiff shall thereupon be entitled to recover against the original defendant or defendants in the said new action, as well the costs of the original action so abandoned or discontinued on such plea in abatement, as the costs awarded to such other defendant or defendants so joined in the said action by reason of the pleading of such plea, in addition to the debt or damages and costs recoverable against the said original defendant or defendants, and the said other defendant or defendants so joined in the said new action, and not liable therein, shall recover his or their costs against the plaintiff. 13, 14 V. c. 61, s. 2.

As to costs in new action.

7. No indorsement or memorandum of any payment written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment is made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of the said Statute of King James. 13, 14 V. c. 61, s. 3.

Indorsement, &c., made by the payee not to take a note, &c., out of the statute.

8. The said Act of King James and this Act, shall apply to the case of any debt on simple contract, or of the nature herebefore mentioned, alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise. 13, 14 V. c. 61, s. 4.

Statute to apply to set-off.

9. No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age, of any promise or simple contract made during infancy, unless such promise or ratification is made by some writing signed by the party to be charged therewith. 13, 14 V. c. 61, s. 5.

As to ratification of promise made during non-age.

As to representation regarding the character, credit, &c., of a third party. **10.** No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain money, goods or credit thereupon, unless such representation or assurance is made in writing signed by the party to be charged therewith. 13, 14 V. c. 61, s. 6. 5

Statute of frauds extended to contracts for goods to be delivered at a future time. **11.** The seventeenth section of an Act passed in England, in the twenty-ninth year of the Reign of King Charles the Second, intituled, *An Act for the prevention of Frauds and Perjuries*, shall extend to all contracts for the sale of goods of the value of Ten Pounds currency and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery. 13, 14 V. c. 61, s. 7. 10 15

C A P . X L V .

An Act respecting Interest.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: 20

Interest may be allowed where it has been usual. **1.** Interest shall be payable in all cases in which it is now payable by law, or in which it has been usual for a Jury to allow it. (7 W. 4, c. 3, s. 20.)

When allowed on debts certain and over due. **2.** On the trial of any issue, or on any assessment of damages the Jury may allow interest to the plaintiff upon any debt or sum certain, payable by virtue of a written instrument at a certain time, from the time when such debt or sum became payable or if payable otherwise, then from the time when a demand of payment has been made in writing, informing the debtor that interest would be claimed from the date of such demand. 7 W. 4, c. 5, s. 20. 25 30

When by way of damages in actions of tort. **3.** The Jury in actions of Trover or Tresspass *de bonis asportatis*, may give interest in the nature of damages over and above the value of the goods at the time of the conversion or seizure, and in actions on Policies of Insurance over and above the money recoverable thereon. 7 W. 4, c. 5, s. 21. 35

C A P .

BILL. *Now before the Legislature
Not yet a Law - but when
it becomes a Law, it
will, as finally passed
become the Consolidated
Municipal
Act - It is in
- sorted here
in its proper place
- for term only*

An Act respecting the Municipal Institutions of Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. This Act shall come into force on the 5 one thousand eight hundred and fifty- day of

Commencement of Act.

EXISTING INSTITUTIONS.

CONTINUED.

2. The Inhabitants of every County, City, Town, Village, Township, Union of Counties and Union of Townships incorporated, at the time this Act takes effect, shall continue to be a body Corporate, and every Police Village then existing, shall continue to be a Police Village, with the Municipal boundaries of each such Corporation and Police Village respectively then established, of which Bodies Corporate and a Police Villages a Schedule is hereto annexed.

Municipal Incorporations and Police Villages.

Municipalities

3. The Trustees of every Police Village existing when this Act takes effect, shall be deemed the Trustees respectively of every such Village as continued under this Act.

NAMES AND GOVERNING BODY.

1.—CORPORATIONS.

4. The name of every Body Corporate continued, or erected under this Act, shall be *The Corporation of the County, City, Town, Village, Township, or United Counties, or United Townships* (as the case may be) of (naming the same.)

Names of Corporations.

5. The Inhabitants of every Junior County upon a Provisional Municipal Council being or having been appointed for the County, shall be a Body Corporate under the name of *The Provisional Corporation of the County of* (naming it.)

Name of Provisional Corporations.

6. The powers of every Body Corporate under this Act, shall be exercised by the Council thereof.

The Councils to govern.

2.—POLICE VILLAGES.

7. The Police regulations of every Police Village, shall be enforced through Police Trustees.

Trustees in Police Villages to govern.

the

Note - This is a Bill to Consolidate, alter, and amend the present Municipal Acts. For a Schedule of the Acts and the sections thereof which the several Sections of this Bill apply see the Bill as separately printed and made up. The Statutes are not referred to at the foot of each section - but in the

NEW MUNICIPALITIES.

COUNTIES AND TOWNSHIPS.

Extension of
Corporate
Municipali-
ties.

8. The Inhabitants of every County or Union of Counties erected by Proclamation into an independent County or Union of Counties, and of every Township or Union of Townships erected into an independent Township or Union of Townships, and of every locality erected into a City, Town or Incorporated Village, and of every County or Township separated from any Incorporated Union of Counties or Townships, and of every County or Township or of the Counties or Townships if more than one, remaining of the Union after such separation, being so erected or separated after this Act takes effect, shall be a body Corporate under the provisions of this Act. 5 10

NEW POLICE VILLAGES.

New Police
Villages.

9. On the Petition of any of the Inhabitants of an unincorporated Village, the Council or Councils of the County or Counties within which such village is situate, may, by By-law, erect the same into a Police Village, and assign thereto such limits as may seem expedient. 15

NEW INCORPORATED VILLAGES.

When popula-
tion 750,
County Coun-
cil may by
By-law incor-
porate new
Villages and
name place
for 1st elec-
tion and re-
turning
officer.

10. When the census returns of an unincorporated Village or place with its immediate neighbourhood, taken under the direction of the Council or Councils of the Township or Townships in which such Village and neighbourhood are situate, shew that the same contains over seven hundred and fifty inhabitants, and when the residences of such inhabitants are sufficiently near to form an incorporated Village, then, on petition, in case of a Police Village by the Trustees thereof, and in case of any other Village or place, by not less than one hundred resident freeholders and householders thereof, the Council or Councils of the County or Counties in which such Village or place and neighbourhood are situate shall, by By-law, erect such Village or place and neighbourhood into an incorporated Village, apart from the Township or Townships in which the same are situate, by a name and with boundaries to be respectively declared in the By-law, and shall name in such By-law the place for holding the first Election, and the Returning Officer who is to hold the same. 20 25 30

When the
Village lies
within two
counties, how
to be annexed
to one of them
by the Coun-
cils or Gover-
nor.

11. When the newly incorporated Village lies within two or more Counties, the Councils of such Counties shall, by By-law, annex such Village to one of the Counties; and if within six calendar months after the petitions for the incorporation of the Village are presented, the Councils do not agree to which County the Village shall be annexed, the Wardens of the Counties shall memorialize the Governor in Council, setting 35 40

forth the grounds of difference between the Councils ; and thereupon the Governor may, by Proclamation, annex the Village to one of such Counties.

12. In case the Wardens do not within three months next
 15 after the expiration of the six months memorialize the Governor
 as aforesaid, then one hundred of the freeholders and house-
 holders on the census list may petition the Governor to
 settle the matter, and thereupon the Governor may, by Procla-
 mation, annex such incorporated Village to one of the said
 10 Counties.

When by the Governor.

13. In case the Council of any Incorporated Village petitions
 the Governor to add to the boundaries thereof, the Governor may,
 by Proclamation, add to the Village any part of the localities
 adjacent, which from the proximity of streets or buildings
 15 therein or the probable future exigencies of the Village, it may
 seem desirable to add thereto.

Additions to Villages by Governor.

ERECTION OF VILLAGES INTO TOWNS, AND TOWNS INTO CITIES.

14. A Census of any Town or incorporated Village, may at
 any time be taken under the authority of a By-law of the
 Council.

Towns and Cities how formed.

20 15. When it appears by any Census return taken under any
 Act of Parliament, or any such By-law, that a Town contains
 over ten thousand Inhabitants, such Town may be erected into
 a City ; And when it appears by any such return, that an In-
 corporated Village contains over three thousand inhabitants,
 25 such Village may be erected into a Town : But such change
 shall be made under and subject to the following proceedings
 and conditions :

Firstly—In case the Council of such Town or Village, for three
 months after such Census return, inserts a notice in some news-
 30 paper published in the Town or Village, or, if no newspaper is
 published therein, then in case such Council has for three
 months posted up a notice in four of the most public places in
 the Town or Village, and inserted the same in a newspaper pub-
 lished in the County in which the Town or Village is situate,
 35 setting forth in such notice the intention of the Council to
 apply for the erection of the Town into a City, or of the Village
 into a Town, and stating the limits intended to be included
 therein ;

1st notice to be given.

Secondly—And in case the Council applying, proves such
 40 publication to the Governor in Council ; And procures such
 census returns to be certified to him under the signature of the
 Head of the Corporation and under the Corporate Seal ;

2nd existing debts to be adjusted.

3rd proof of publication of notice. Thirdly—Then—in the case of a Village, the Governor may, by Proclamation, erect such Village into a Town by a name to be given thereto in the Proclamation ;

4th census returns certified. Fourthly—And in case the application is for the erection of a Town into a City,—if the Town has moreover paid to the County or Union of which it formed part, such portion, if any, of the debts of the County as may be just, or if the Council of the Town has agreed with the Council of the County as to the amount to be so paid, and the periods of payment with interest from the time of the erection of the new City, or in case of disagreement if the same has been determined (as it shall be) by arbitration under the 332 to the 335 sections and subsections of this Act ; and proves to the Governor in Council such payment, agreement or arbitration ; 5 10

5th Governor may proclaim such City or Town. Fifthly—Then the Governor may by a Proclamation erect such Town into a City, by a name to be given thereto in the Proclamation. 15

16. The Governor may include in the new Town or City such portions of any Township or Townships, and unincorporated Village or Villages adjacent thereto and within the limits mentioned in the aforesaid notice as, from proximity of streets or buildings, or the probable future exigencies of the new Town or City, the Governor in Council may consider it desirable to attach thereto. 20

Wards. 17. The Governor may divide such new Town or City into Wards with appropriate names and boundaries, but no Town shall have less than three Wards, and no Ward less than five hundred inhabitants. 25

Lands detached from Counties. 18. In case any tract of land so attached to the Town or City belonged to another County, the same shall thenceforward for all purposes cease to belong to such other County, and shall belong to the same County as the rest of the Town or City. 30

NEW DIVISION OF WARDS IN CITIES AND TOWNS.

New division of Wards in Cities and Towns. 19. In case two thirds of the Members of the Municipal Council of any City or Town, do in Council before the Fifteenth day of July in any year, pass a resolution affirming the expediency of a new division into Wards being made of the City or Town, or of a part of the same, either within the existing limits or with the addition of any part of the localities adjacent, which form the proximity of streets or buildings therein, or the probable future exigencies of such City or Town it may seem desirable to add thereto respectively, the Governor may by proclamation divide the City or Town, or such part thereof into Wards, as may seem expedient, and may add to the City or Town any part of the adjacent Township or Townships, Village or Villages which 35 40

the Governor in Council on the grounds aforesaid, considers it desirable to attach thereto.

LIBERTIES IN CITIES ABOLISHED.

20. There shall be no liberties or outer Wards in Cities.

EXISTING BY-LAWS—Continued.

21. When a Village or place is incorporated, or an incorporated Village or Town is, with or without additional area, erected into a Town or City, the By-laws in force therein respectively shall continue in force until repealed or altered by the Council of the new Corporation. But no such By-laws shall be repealed or altered unless they could have been or can be legally repealed or altered by the Council which passed the same.

By-laws to continue in Cities, Towns and Villages.
When not repealed.

22. When an addition is made to the limits of a Municipality, the By-laws of the Municipality shall extend to such additional limits, and the By-laws of the Municipality from which the same was detached shall cease to apply to such addition.

LIABILITY TO DEBTS TO CONTINUE.

23. In case of the formation of an incorporated Village, or of the erection of a Town into a City, the Village and City respectively shall remain liable to all the debts and liabilities to which such Village or Town was previously liable, in like manner as if the same had been contracted or incurred by the new Municipality.

Liability to debts to continue.

COUNCILS AND OFFICERS TO CONTINUE.

24. When any place is erected into an incorporated Village, or an incorporated Village into a Town or a Town into a City, the Council and the members thereof having authority in the place or Municipality immediately before such erection, shall, until the Council for the newly erected Corporation is organized, continue to have the same powers as before; and all other Officers and Servants of such place or Municipality shall, until dismissed or until successors are appointed, continue in their respective offices, with the same powers, duties and liabilities as before.

Former councils and officers to exercise jurisdiction over new Municipalities, &c., until new councils, &c., organized.

TOWNSHIPS.

1.—ERECTION OF NEW TOWNSHIPS.

25. In case a Township is laid out by the Crown in territory forming no part of an Incorporated County or Union of Counties, the Governor may by Proclamation erect such

New Townships beyond the limits of

Incorporated Counties may be attached thereto.

Township, or two or more of such Townships lying adjacent to one another, into an Incorporated Township or Union of Townships, and annex the same to any adjacent Incorporated County; and such proclamation shall appoint the Returning Officer who is to hold, and the place for holding, the first Election in such Township or Union of Townships. 5

2.—SEPARATION OF UNITED TOWNSHIPS.

Junior Township containing 100 freeholders, &c., to become a separate Municipality.

26. When a Junior Township of an incorporated Union of Townships has one hundred resident freeholders and householders on the assessment-roll as last finally revised and passed, such Township shall, upon the first day of January in the year 10 next but one thereafter, become separated from the Union.

When Junior Township containing less than 100, but exceeding 50, may be separated and how

27. In case a Junior Township, had at least fifty but less than one hundred resident freeholders and householders on the last revised assessment-roll, and two-thirds of the resident freeholders and householders of such Junior Township, petition the Council of the County to separate such Township from the Union to which it belongs; and in case the Council considers the Township to be so situated, with reference to streams or other natural obstructions, that its inhabitants cannot conveniently be united with the inhabitants of an adjoining Township for Municipal purposes,—the Council may, by By-law, separate the same from the Union; and the By-law shall name the Returning Officer who is to hold, and the place for holding, the first Election under the same 15 20

3.—ANNEXATION OF GORES.

The Governor may annex Gores to adjacent Townships.

28. The Governor may, by Proclamation, annex to any Township, or partly to each of more Townships than one, any Gore or small tract of land lying adjacent thereto and not forming part of any Township, and such Gore or tract shall thenceforward for all purposes form part of the Township to which it is annexed. 25 30

4.—ANNEXATION OF NEW TOWNSHIPS.

New Townships, &c., within the limits of Incorporated Counties, to be annexed to adjacent Townships and how.

29. In case a Township is laid out by the Crown in an incorporated County or Union of Counties; or in case there is any Township therein not incorporated and not belonging to an incorporated Union of Townships,—the Council of the County or United Counties shall, by By-law unite such Township for Municipal purposes, to some adjacent incorporated Township or Union of Townships in the same County, but not in any other County of the Union; and if such adjacent Township or adjacent Union is divided into Wards, then also to one Ward or partly to each of two or more Wards thereof. 35 40

30. In case of there being at any time in an incorporated County or Union of Counties two or more adjacent Townships not incorporated and not belonging to an incorporated Union of Townships; and in case such adjacent Townships have together not less than one hundred resident freeholders and 5 householders within the same,—the Council of the County or Union of Counties may, by By-law, form such Townships into an independent Union of Townships.

Townships not incorporated or united may be formed into unions, and how.

SENIORITY OF TOWNSHIPS.

31. Every Proclamation and By-law forming Unions of Townships shall designate the order of seniority of the Townships so united, and the Townships of such Union shall be 10 classed in such By-law according to the relative number of freeholders and householders on the last revised assessment-roll.

Seniority of Townships how regulated.

COUNTIES.

1.—NEW COUNTIES.

32. The Governor may, by Proclamation, form into a new 15 County, any new Townships not within the limits of any Incorporated County, and may include in the new County one or more unincorporated Townships or other adjacent unorganized Territory, (defining the limits thereof) not 20 being within an Incorporated County or Union of Counties, and may annex such new County to any adjacent Incorporated County or Union of Counties; or in case there is no adjacent Incorporated County, or in case the Governor in Council considers the new County, or any number of such new Counties lying adjacent to one another and not belonging to 25 any Incorporated Union, so situated that the Inhabitants cannot conveniently be united with the inhabitants of any adjoining Incorporated County for Municipal purposes, the Governor may, by such Proclamation, erect the new County, or new adjacent Counties into an independent County or Union of 30 Counties for the said purposes, and the Proclamation shall name the new County or Counties.

New Counties how formed by proclamation and annexed or united.

UNITED COUNTIES.

1. SENIORITY OF.

33. In every Union of Counties, the County in which the County Court House and Gaol are situate, shall be the Senior 35 the Junior County or Counties thereof.

Seniority of United Counties how regulated.

2.—LAWS APPLICABLE TO.

34. During the Union of Counties, all Laws applicable to Counties (except as to representation in Parliament and Regis- 40

Laws applicable to

unions of Counties. tration of Titles) shall apply to such Union as if the same formed but one County.

3.—VENUE IN.

Venue how laid in unions of Counties. **35.** In the case of United Counties, the Venue in any Judicial proceedings shall be laid in the proper County of the Union (naming it) and describing it as one of the United Counties of , and in such case the Jury for the trial of any issue, Civil or Criminal, or the assessment of any damages, shall be summoned from the body of the United Counties. 5

ERECTION OF PROVISIONAL MUNICIPAL CORPORATIONS AND SEPARATION OF JUNIOR COUNTIES.

1.—PRESIDING MEMBER—FIRST MEETING—COUNTY TOWN.

Separation of United Counties by Proclamation appointing place of meeting and presiding officer. **36.** When the Census Returns taken under any Act of Parliament or under the authority of a By-law of the Council of 10 any United Counties, show that the Junior County of the Union contains not less than fifteen thousand inhabitants, then, if a majority of the Town Reeves and Deputy Town Reeves of such County do, in the month of February in two successive years, pass a resolution affirming the expediency of the County being separated from the Union ; and if in the month of February in the following or third year, two-thirds of the Reeves transmit to the Governor in Council a petition for such separation, the Governor may, by Proclamation setting forth those facts, constitute the Reeves and Deputy Reeves for such County a Provisional Municipal Council, and in such Proclamation appoint a time and place for the first meeting of the Council, and therein name one of its Members to preside at such meeting, and also, therein determine the place for and the name of the County Town. 15 20 25

Who to preside till Warden chosen. **37.** The Member so appointed shall preside in the Council until a Provisional Warden is by the Council elected from among the members thereof.

2.—PROVISIONAL OFFICERS.

Appointment of Provisional Warden, &c. **38.** 1. Every such Council shall from time to time appoint a Provisional Warden, a Provisional Treasurer, and such other Provisional Officers for the County, as the Council deems necessary ; 30

2. The Provisional Warden, shall hold office until his term of Office as such Warden expires ;

3. The Treasurer and other Officers so appointed shall hold Office until removed by the Council. 35

3.—PURCHASE OF PROPERTY.

39. Every Provisional Municipal Council may acquire the necessary property at the County Town of the Junior County on which to erect a Court House and Gaol, and may erect a Court House and Gaol thereon, adapted to the wants of the County and in conformity with any statutory or other rules and regulations respecting such buildings, and may pass By-laws for such purposes.

Provisional Councils may acquire lands for Gaols and Court Houses.

4.—POWERS OF THE UNION NOT TO BE INTERFERED WITH.

40. The powers of a Provisional Council shall not interfere with the powers of the Council of the Union, and any money raised by the Provisional Council in the Junior County shall be independent of the money raised therein by the Council of the Union.

Powers of Provisional Council not to interfere with powers of union.

5.—DEBTS OF THE UNION.

41. After a Provisional Council has procured the necessary property and erected thereon the proper buildings for a Court House and Gaol, such Council may enter into an agreement with the Senior or remaining County or Counties for payment to such County or Counties of any part of the debts of the Union as may be just, and for determining the amount to be so paid and the times of payment.

Agreement as to debts upon dissolution.

42. No Member of the Provisional Council shall vote or take any part in the Council of the Union on any question affecting such agreement or the negotiation therefor.

When Provisional Councilors prohibited voting.

43. In case such Councils do not then agree as to the amount or periods of payment, the matter shall be settled between them by Arbitration under this Act; And the Junior County shall pay to the Senior or remaining County or Counties of the Union the amount so agreed upon or settled, and such amount shall bear interest from the day on which the Union is dissolved, and shall be provided for, like other debts, by the Council of the Junior County after being separated.

Arbitrament.

Payment of debts upon dissolution. Debt to bear interest.

6.—GOVERNOR TO APPOINT JUDGES, &C.

44. After the sum to be paid by the Junior County to the Senior or remaining County or Counties has been paid or ascertained by agreement or arbitration, the Governor in Council shall appoint for the Junior County, a Judge, a Surrogate, a Sheriff, one or more Coroners, a Clerk of the Peace, a Registrar, and at least twelve Justices of the Peace, and shall provide, in the Commission or Commissions, that the appointments are to take effect on the day the Counties become disunited.

Terms and time of separation.

Judge, &c

Sheriff. 45. The Sheriff so appointed shall, within six Calendar months after the dissolution of the Union, make the affidavit of qualification and give the securities required by law: and if he makes default therein, his office shall at the expiration of such six months become vacant. 5

Registrar. 46. The Office for the Registry of Deeds shall be kept in the County Town in like manner as in other Counties.

WHEN A JUNIOR COUNTY MAY BE SEPARATED.

United Counties, when and how to be separated by Proclamation. 47. After such appointments are made, the Governor may, by proclamation, separate the Junior County from the Senior or remaining County or Counties, and shall declare such separation to take effect on the first day of January next after the end of three calendar months from the date of the Proclamation, and on the aforesaid day the Courts and officers of the Union shall cease to have any Jurisdiction in such Junior County, and the property of the Corporation of the Union situate in the Junior County shall become the property of the Corporation of the Junior County; and the property situate in the remaining County or United Counties shall be the property of the Corporation of such remaining County or United Counties. 10 20

Property how divided.

8.—VENUE.

Trials after dissolution of unions to be as ordered by the Court or a Judge. 48. If upon the dissolution of a Union of Counties, there is pending any action, information, indictment or other Judicial proceeding to be tried by a Jury in which the Venue is laid in a County of the Union, the Court in which the action, information or indictment is pending, or any Judge who has authority to make orders therein may, by consent of parties, or on hearing the parties upon affidavit, order the Venue to be changed to the new County, and all records and papers to be transmitted to the proper officers of such County, and in the case of any such indictment found at any Court of Oyer and Terminer and General Gaol Delivery, any Judge of either of the Superior Courts of Common Law, may make such order. 20 25 30

If no special order made. 49. In case no such change is directed, all such actions, informations, indictments and other judicial proceedings shall be carried on and tried in the Senior County.

9.—COURTS IN

Place for holding Courts after separation. 50. All Courts of the Junior County required to be held at a place certain, shall be held in the County Town of such Junior County. 35

10.—PERSONS IN PRISON.

Indictable offences how 51. Any person charged with an Indictable offence who, at the time of the disuniting of a Junior from a Senior

County, is imprisoned on such charge in the Gaol of the Senior County, or is under Bail or Recognizance to appear for Trial at any Court in the Senior County and against whom no indictment as been found before such disunion takes place, shall be indicted, tried and sentenced in the Senior County, unless a Judge of one of the Superior Courts of Common Law orders the proceedings to be conducted in the Junior County, in which event the prisoner or recognizances (as the case may be) shall be removed to the latter County and the proceedings be had therein; and when in any such case the offence is charged to have been committed in a County other than that in which such proceedings are had the venue may be laid in the proper County describing it as formerly "one of the United Counties of, &c."

11.—PERSONS ON BAIL.

52. Any person arrested or held to Bail, under Civil Proceedings in Civil cases under Bailable process. Process before the separation of a Junior from a Senior County and liable to be imprisoned, shall be so imprisoned in the Gaol of the County in which he was arrested, and all proceedings in any Suit or Action in which any person was so arrested or held to Bail and all proceedings after judgment founded upon such Arrest or holding to Bail shall be carried on as if the Arrest or holding to Bail, had taken place in such County as a separate County, and in case the proceedings are to be had in the Junior County, all the records and papers relative to the case shall be transmitted to the proper Officer of the Junior County.

12.—PERSONS ON THE GAOL LIMITS.

53. In case a debtor or other person has been (in manner prescribed by law) admitted to the Gaol limits of a Union of Counties, and such Union is afterwards dissolved, or one or more Counties are separated from such Union, such debtor or person may notwithstanding, travel and reside in any portion of the said Counties as if no dissolution or separation had taken place, without committing a breach of any Bond or the condition thereof, or a forfeiture of any security given for the purpose of obtaining the benefit of such limits; and in case any such person after the dissolution of the Union is surrendered or ordered to be committed to close custody, he shall be surrendered or committed to the Sheriff of the County in which he was arrested and be imprisoned in the Gaol thereof. Privileges of persons admitted to gaol limits saved on dissolution.

13.—WHEN PROVISIONAL COUNCILS, OFFICERS, &c., TO BECOME ABSOLUTE.

54. When a junior County is separated from a Union of Counties, the Head and members of the Provisional Council of such junior County, and the officers, by-laws, contracts, property, assets and liabilities of the Provisional Corporation, shall be the Head and members of the Council, and the officers Officers and property, &c., continued.

by-laws, contracts, property, assets and liabilities of the new Corporation.

BY-LAWS, DEBTS AND RATES OF FORMER UNIONS OF COUNTIES OR TOWNSHIPS AFTER BEING DISSOLVED.

By-laws to continue in Counties and Townships.

55. When a junior County or Township is separated from a senior County or Township, the By-laws of the Union shall continue in force in the several Counties or Townships which composed the Union until altered or repealed by the Council or Councils of the same respectively. 5

Upon dissolution of Township unions, the Junior to pay a just portion of the debts of the Union.

56. After the dissolution of any Union of Townships, the junior Township shall pay to the senior or remaining Township or Townships, such part (if any) of the debts of the Union as may be just; and in case the Councils of such Townships do not within three months after the first meeting of the Council of the junior Township, agree as to the sum to be paid, or as to the times of payment thereof, the matter shall be settled by Arbitration under this Act. 10 15

How to be determined.

To bear Interest.

57. The amount so agreed upon or settled shall bear interest from the day on which the Union was dissolved; and shall be provided for by the Council of the junior Township like other debts.

Liability of Unions for debts at the time of dissolution.

58. In case of the separation of a County or Township from a Union of Counties or Townships, each County or Township which formed the Union shall remain liable to the debts and liabilities of the Union as if such debts had been contracted or incurred after the dissolution by the respective Counties or Townships which constituted such Union. 20 25

Debentures to issue for such debts and to bind the old and new Municipalities.

59. After such dissolution, the Council of the senior or remaining County or Township shall issue its debentures or other obligations for any part of any debt contracted by the Union for which such debentures or other obligations might have been but had not been issued before the dissolution; and such debentures or obligations shall recite or state the liability of the junior County or Township therefor under this Act; and such Junior County or Township shall be liable thereon as if the same had been issued by the Junior County or Township. 30

Assessments for year preceding dissolution who to belong to.

60. All assessments imposed by the Council of the Union for the calendar year next before the year in which the dissolution takes effect, shall belong to the Union and shall be collected and paid over accordingly, and after such dissolution, all special rates for the payment of debts theretofore imposed by any By-law of the Union shall continue to be levied in the junior County or Township; and the Treasurer of such junior County or Township shall pay over the amount as received, to the Treasurer of the senior County or Township, and the latter shall apply the money 35 40

Special rates for debts continued to be paid over

And

so received in the same manner as the money raised under the same By-law in the senior County or Township.

by Treasurer
of the Junior
County.

61. In case the amount so paid over to the Senior County or Township or to any creditor of the Senior County or Township in respect of a liability of the Union, exceeds the sum which, by the agreement or award between the Councils the junior County or Township ought to pay, the excess may be recovered against the senior or remaining County or Township as for money paid or as for money had and received, as the case may be.

If the sum
paid over
exceeds the
just amount,
the excess to
be refunded.

MUNICIPAL COUNCILS, &c., OF WHOM COMPOSED.

1.—THE HEADS.

62. The Head of every County and Provisional Corporation shall be designated the Warden thereof, and of every City and Town the Mayor thereof, and of every Township and Incorporated Village the Town Reeve thereof.

Heads of
Counties, &c.

2.—THE MEMBERS.

1.—IN CITIES.

63. 1. The Council of every City shall consist of the Mayor who shall be the Head thereof, and of two Aldermen and two Councilmen for every Ward ;

2.—IN TOWNS.

And the Council of every Town, shall consist of the Mayor who shall be Head thereof, and of three Councillors for every Ward, one of whom shall be Reeve, and if the Town had the names of five hundred electors on the last revised assessment roll, then one other of such Councillors shall be Deputy Reeve ;

*Note. All Towns
have more than
500 Inhabitants*

3.—IN INCORPORATED VILLAGES.

And the Council of every Incorporated Village shall consist of five Councillors, one of whom shall be Reeve, and if the Village had the names of five hundred electors on the last revised assessment-roll, then one other of such Councillors shall be Deputy Reeve ;

4.—IN TOWNSHIPS.

And the Council of every Township shall consist of five Councillors ; but when such Township is divided into Wards, then, of one Councillor for each Ward, one of which Councillors shall be Reeve, and if the Township had the names of five hundred electors on the last revised assessment-roll, then one other of such Councillors shall be Deputy Reeve ;

Townships,
and Wards.

5.—IN COUNTIES.

Counties. The Council of every County shall consist of the Town Reeves and Deputy Town Reeves of the Townships, Towns and Villages within the County, one of whom shall be the Warden.

County Councils. **64.** No Town or Deputy Town Reeve shall take his seat in the County Council until he has filed with the Clerk of the County Council a Certificate under the hand and seal of the Township, Village or Town Clerk, (*as the case may be*) that such Reeve was duly elected and had taken the Oath of Office and the Oath of qualification, (unless exempted therefrom,) as such Reeve or Deputy Reeve; nor in the case of a Deputy Town Reeve until he has also filed with the Clerk of the County an affidavit or affirmation of the Clerk, or other person having the legal custody of the last revised Assessment-Rolls for the Municipality which he represents, that there appear upon such Rolls the names of at least five hundred resident Freeholders and Householders in such Municipality [*as the case may be.*]

Trustees of Police Villages. **65.** The Trustees of every Police Village shall be three in number, one of whom shall be the Inspecting Trustee.

PROVISIONAL COUNCILS,

WHO TO COMPOSE.

Provisional Council Reeves and Deputy Reeves to be. **66.** The Town Reeves and Deputy Town Reeves of the Municipalities within a Junior County for which a Provisional Municipal Council is established shall, *ex officio*, be the members of such Provisional Council.

QUALIFICATION OF MUNICIPAL COUNCILLORS AND POLICE TRUSTEES.

Qualification of Councillors, &c. **67.** The persons qualified to be elected Mayors, members of a Council or Police Trustees, are such of the Electors of the Municipality or Police Village as are not disqualified under the Seventy-first section of this Act, and have, at the time of the election, in their own right or in the right of their wives as proprietors or tenants, freehold or leasehold property rated in their own names on the last revised Assessment-Roll to at least the value following :

In Townships. In Townships—Freehold to one hundred pounds, or Leasehold to Two hundred pounds ;

In Police Villages. In Police Villages—Freehold or Leasehold to One hundred pounds ;

In Incorporated Villages. In Incorporated Villages—Freehold to Ten pounds per annum, or Leasehold to Twenty pounds per annum ;

In Towns—Freehold to Twenty pounds per annum, or Leasehold to Forty pounds per annum; In Towns.

And in Cities,—for Aldermen—Freehold to Forty pounds per annum, or Leasehold to Eighty pounds per annum: and for In Cities.
 5 Councilmen—Freehold to Twenty pounds per annum or Leasehold to Forty pounds per annum.

The term "Leasehold" in this Section shall not include a term less than a Tenancy for a year, or from year to year. "Leasehold" defined.

68. In case of a new Township erected by Proclamation for which there has been no Assessment-Roll, every person who In new Township not having assessment-roll.
 10 at the time of the first election has such an interest in real property and to such an amount as herein before mentioned, shall be deemed to be possessed of a sufficient property qualification.

69. In case in a Municipality not divided into Wards, there are not at least two persons qualified to be elected for Want of a double number of qualified persons to fill the office of Councillor provided for
 15 each seat in the Council, no qualification beyond the qualification of an elector shall be necessary in the persons to be elected.

70. In case, in a Municipality divided into Wards, there are not at least two persons in the Municipality qualified to be Ward elections in like cases provided for.
 20 elected for each seat in the Council, no qualification beyond that of an Elector, shall be necessary in the Candidates for any Ward, for which Ward there are not two Candidates for the office to be filled by one Member—as ~~Aldermen~~—Councillor, &c.,
 properly so qualified af a

DISQUALIFICATIONS.

71. No Judge of any Court of Civil Jurisdiction; no Disqualifications.
 25 Naval or Military Officer on full pay; no person receiving any allowance from the Corporation (except as Mayor, Warden, Town Reeve, Deputy Town Reeve, or Township Councillor or in some capacity incident thereto); and no person having by
 30 himself or his partner an interest in any contract with or on behalf of the Corporation, shall be qualified to be a Member of the Council of such Corporation.

EXEMPTIONS.

72. All persons over sixty years of age; all Members of Exemptions.
 the Legislative Council and of the Legislative Assembly; all persons in the Civil Service of the Crown; all Judges, Sheriffs,
 35 Coroners, Gaolers and Keepers of Houses of Correction; all persons in Priests' Orders, Clergymen and Ministers of the Gospel of every denomination; all Members of the Law Society of
 40 Upper Canada, whether Barristers or Students; all Attorneys and Solicitors in actual practice; all Officers of Courts of Justice; all Members of the Medical Profession, whether Physi-

cians or Surgeons ; all Professors, Masters, Teachers and other Members of any University, College or School in Upper Canada, and all officers and Servants thereof ; all Millers ; and all Firemen belonging to an authorized Fire Company—are exempt from being elected or appointed Councillors or to any other Corporate Office. 5

ELECTORS.

Electors,
qualificatio-
of.

73. The Electors of every Municipality for which there is an assessment-roll, and the Electors of every Police village, shall be such of the male freeholders and householders thereof, as are resident therein, and are natural-born or naturalized 10 subjects of Her Majesty, and of the full age of twenty-one years, and were severally rated, on the last revised assessment-rolls, for real property in the Municipality or Police village, held in their own right or that of their wives as proprietors or tenants.

74. In Cities, Towns and Incorporated Villages, such real 15 property, whether freehold or leasehold, or partly each, must have been so rated as of at least the annual value following :

In Incorporated Villages, Three Pounds ;

In Towns, Five Pounds ; and

In Cities, Seven Pounds Ten Shillings. 20

In newly
erected Town-
ships not
having any
assessment-
rolls.

75. At the first election for a New Township or Union of Townships for which there is no assessment-roll, every resident male inhabitant though not previously assessed shall be entitled to vote if he possesses the other qualifications above mentioned, and has at the time of the election sufficient property to have 25 entitled him to vote if he had been rated for such property ; and every person claiming to vote shall name the property on which he votes, and the Returning Officer, at the request of any Candidate or voter, shall note such property in his poll book opposite the voter's name. 30

Wards where
electors to
vote in.

76. When a Municipality is divided into Wards, no elector shall vote in more than one Ward ; and if entitled to vote in the Ward in which he resides, he shall not be entitled to vote in any other Ward.

When land-
lord and
tenant both
rated.

77. In case both the owner and occupant of any real pro- 35 perty are rated therefor, both shall be deemed rated within this Act.

When joint
owners rated
together.

78. When any real property is owned or occupied jointly by two or more persons, and is rated at an amount sufficient, if 40 equally divided between them, to give a qualification to each, then each shall be deemed rated within this Act, otherwise none of them shall be deemed so rated.

ELECTIONS

1.—THE HOLDING OF, IN CERTAIN PLACES PROHIBITED.

79. No part of any City, Town or Incorporated Village, shall for the purposes of this Act form part of any Township, and no Election of Township Councillors shall be held within any such City, Town or Village, nor shall any Election for a Municipality or any Ward thereof be held in a tavern or house of public entertainment licensed to sell spirituous liquors.

Cities, Towns and Incorporated Villages not to form parts of Townships. Elections not to be held in Taverns.

2.—FIRST ELECTIONS IN NEW OR EXTENDED MUNICIPALITIES.

80. 1. In case of the Incorporation of a new Township or Union of Townships by Proclamation, and

First elections where Corporations are newly erected or extended.

2. In case of the separation of a junior Township from a Union of Townships, and

3. In case of the erection of a Police into an Incorporated Village or of the erection of a Village into a Town or of a Town into a City, and

4. In case of an additional tract of land being added to an Incorporated Village, Town or City, or in case of a new division into Wards of a Town or City.

5. In each of the foregoing cases, the first election under the Proclamation or By-law by which the change was effected, shall take place on the first Monday in January next after the end of three calendar months from the date of the Proclamation or from the passing of the By-law, (*as the case may be*), and until such day the change shall not go into effect.

Time of Elections.

3.—SUBSEQUENT ELECTIONS.

81. Every Election, whether annual or other, shall be held in the Municipality or Police Village to which the same relates, and when the Municipality has been divided into Wards the election shall be by Wards, and each Ward election shall be held within the Ward.

Places of Elections.

82. The Council of every Municipality (including a Village newly erected into a Town, and a Town newly erected into a City) shall from time to time by By-law, appoint the place or places for holding the next ensuing Municipal Election, otherwise the Election shall be held at the place or places at which the last Election for the Municipality or Wards was held.

To be fixed by By-law for Municipalities.

83. The Council by which a Police Village is established shall, by the By-law establishing the same, name the place in the Village for holding the Election of Police Trustees.

Also for Police Villages.

Yearly elections of Councillors and Police Trustees.

84. The Electors of every Municipality (except a County) shall elect annually on the first Monday in January, the Members of the Council of the Municipality, and, on the second Monday in January, the Electors of every Police Village shall annually elect the Police Trustees of the Village, and the persons so elected shall hold office until their successors are elected or appointed and sworn into office and the new Council or Board of Police Trustees is organized. 5

First Election in junior Township after separation.

85. When a junior Township of a Union has one hundred resident freeholders and householders on the last revised assessment-roll, the Council of the County shall, by a by-law to be passed within the first nine months of the following year, fix the place for holding the first annual election of Councillors in such Township, and appoint a Returning Officer for holding the same and otherwise provide for the due holding of such election according to law. 15

Ward Elections to continue in Senior Township if there remain after the separation five wards and portions of Wards, &c.

86. In case after the separation of a Union of Townships there are left five Wards or portions of Wards in the remaining Township or Townships composed of former Wards or portions of former Wards of the Union, such Wards and portions of Wards respectively shall continue to be the Wards of such Township or Townships until otherwise remodelled under this Act, and the elections of Councillors shall be by such Wards and portions of Wards in like manner as if all continued full Wards as before the separation. But in case there are not left to the remaining Township or Townships, five Wards composed as aforesaid, then upon such separation, the existing division into Wards shall cease as if the same had been duly abolished by by-law, and the elections of Councillors shall be by general vote until such Township or Townships are again divided into Wards under the provisions of this Act. 20 25 30

Where elections to be held in Townships not divided into Wards.

87. When there is no existing division of a Township into Wards, the election of Councillors shall be by general vote, and if no other place has been appointed for holding such Election the same shall be held at the place where the last election was held in the Township, or in the senior Township of the Union, (*as the case may be,*) and such place shall continue to be the place for holding such Election until altered by by-law. 35

RETURNING OFFICERS.

Returning Officers to be appointed by the Municipal Council.

88. The Council of every Municipality in which the election is to be by Wards (including a Village erected into a Town and a Town erected into a City,) shall from time to time by By-law appoint Returning Officers to hold the next ensuing elections. 40

1.—WHEN CLERKS TO BE [EX-OFFICIO] RETURNING OFFICERS.

89. In the case of a Municipality in which the election is not to be by Wards, the Clerk shall be the Returning Officer at all elections after the first.

When Clerk to be ex officio Returning Officer.

2.—RETURNING OFFICERS FOR THE FIRST ELECTION IN VILLAGES.

90. In Every By-Law establishing a Police or Incorporated Village a Returning Officer shall be appointed who is to hold the first election for such Village.

For first election in Villages.

91. In Police Villages, after the first election, the Trustees thereof, or any two of them, shall, from time to time, by writing under their hands, appoint the Returning Officer.

After 1st Election Police Trustees to appoint.

3.—IF RETURNING OFFICER ABSENT.

92. In case at the time appointed for holding any election the person appointed to be Returning Officer has died, or does not attend to hold the election within an hour after the time appointed, or in case no Returning Officer has been appointed, the electors present at the place for holding the election may choose from amongst themselves a Returning Officer, and such Returning Officer shall have all the powers and shall forthwith proceed to hold the election and perform all the other duties of a Returning Officer.

The absence of the Returning Officer provided for.

4.—THE RETURNING OFFICER TO BE A CONSERVATOR OF THE PEACE.

93. The Returning Officer shall, during the election, act as a Conservator of the Peace for the City or County in which the election is held; and he, or any Justice of the Peace having jurisdiction in the Municipality in which the election is held, may cause to be arrested, and may summarily try and punish by fine or imprisonment, or both, or may imprison or bind over to keep the peace, or for trial, any riotous or disorderly person who assaults, beats, molests or threatens any voter coming to, remaining at, or going from such election; and, when thereto required, all constables and persons present at the election, shall assist such Returning Officer or Justice of the Peace, on pain of being guilty of a misdemeanor.

Returning Officers to be conservators of the peace.

5.—MAY SWEAR IN SPECIAL CONSTABLES.

94. The Returning Officer or Justice of the Peace may appoint and swear in any number of Special Constables to assist in the preservation of the peace and of order at the election; and any person liable to serve as Constable and required to be sworn in as a Special Constable by the Returning Officer or Justice shall, if he refuses to be sworn in or to serve, be liable to a penalty of

Special Constables may be sworn in.

five pounds, to be recovered to the use of any one who will sue therefor.

PROCEEDINGS AT ELECTIONS.

95. The proceedings at Elections shall be as follow :

Elections how conducted.

1. Every Returning Officer shall, unless otherwise provided by law, give at least ten days previous notice of the election to be held by him, by posting such notice in at least four public places in the Municipality, Ward or Police Village, (*as the case may be*) ;

5

The clerk to deliver copies of the Assessment Rolls to the Returning Officer.

2. The Clerk of the Municipality shall deliver to the Returning Officer who is to preside at the Election for the same, or for every or any Ward thereof, (*as the case may be*) a correct copy of so much of the last revised Assessment Roll for such Municipality or Ward as contains the names of all male Freeholders and Householders rated upon such Roll in respect of real property lying in such Municipality or Ward, with the assessed value of the real property for which every such person is so rated ;

10

15

With his affidavit verifying the same.

3. The Clerk shall deliver with such copy his affidavit or affirmation, to the effect that such copy is a true copy of so much of the said Roll as relates to such Municipality or Ward, and contains the names of all Male Freeholders and Householders rated upon such Roll in respect of real property lying in such Municipality or Ward, with the assessed value of the real property, for which they are so rated respectively ;

20

Township Clerk to deliver assessment roll to Returning Officer for Police Villages.

4. The Township Clerk shall also deliver to the Returning Officer who is to preside at the Election for any Police Village in the Township, a correct copy of so much of the said assessment-roll as contains the names of all the resident male freeholders and householders in the Village, and the amount for which they are respectively assessed, together with a like affidavit or affirmation, verifying the same, as in the case of Municipal Elections ;

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30

Poll book to be provided. Its contents.

5. The Returning Officer shall provide a poll-book ; and at every Election at which a poll is demanded, he, or his sworn poll-clerk, shall enter in such book, in separate columns, the names of the candidates proposed and seconded by any electors present at the Election, and shall, opposite to such columns, write the names of the electors offering to vote at such election, and shall, in each column in which is entered the name of a candidate voted for by any voter, set the figure " 1 " opposite the voter's name ;

35

40

Hour for commencing Elections.

6. The Returning Officer shall commence every Election at eleven of the clock in the forenoon ;

7. The Returning Officer may close the Election in one hour after commencing the same, if within that time no more candidates are proposed than by his writ he is to return ; but in case there are more Candidates and a poll is demanded he shall keep open the Election until four of the clock in the afternoon of the first day and then adjourn, the same until ten of the clock in the forenoon of the next day, not being a Sunday, or a legal Holy-day, and continue the same till four of the clock in the afternoon thereof, and no longer ; but if in the meantime he sees that all the electors intending to vote have had a fair opportunity of being polled, and if one full hour at one time has elapsed without any qualified elector during that time giving or tendering his vote, free access having been allowed to electors for the purpose, such Returning Officer may close the Election at four o'clock of the first day, or at any earlier hour of the second day ;

Hours for closing.

WHAT OATHS HE MAY ADMINISTER.

8. The Returning Officer may administer all oaths or affirmations necessary at the election.

Returning Officer may administer oaths.

OATHS AND QUESTIONS THAT MAY BE PUT TO ELECTORS.

9. At any election or at any public vote in respect of a By-law which requires the assent of the electors, the only oaths or affirmations to be required of any person claiming to vote, and appearing by the last revised assessment-roll (if any), to have the necessary property qualification, are, that he is, of the full age of twenty-one years—and is a natural-born or naturalized subject of Her Majesty—that he is a resident within the Township, Village or Ward (*as the case may be*) for which the election is held, or vote taken, and that he has not before voted at the election or on such By-law (*as the case may be*) ; and that he is the person named in the last revised assessment-roll : (*or, in case of a new Township in which there has not yet been any assessment-roll*) that he is a freeholder or householder, (*as the case may be,*) in (*naming the property*) entitling him to vote at the election. And no inquiries shall be made of any such person except with respect to the facts specified in such oaths or affirmations.

The only oaths to be required of voters.

10. The Returning Officer shall, at the close of the poll, add up the number of votes set down for each candidate, except for the office of Mayor in Cities and Towns, and shall publicly declare the same, beginning with the candidate having the greatest number, and so on with the others, and shall thereupon publicly declare elected the candidate or candidates respectively standing highest on the Poll ;

Returning Officer to declare result of the Election.

11. In case two or more candidates have an equal number of votes, the Returning Officer, whether otherwise qualified or not, shall cast the deciding vote.

When to have casting vote.

shall give a vote for one or more of such candidates, so as to decide the Election ; and, except in such case, no Returning Officer shall vote at any Election held by him.

Poll books to be returned to the clerk.

96. The Returning Officer shall, after the close of the Election, return the poll-book to the Clerk of the Municipality from whom he received the copy of the assessment roll, and also his affidavit or affirmation thereto annexed, that such poll-book contains a true statement of the poll, and his certificate of of the persons, naming them, who have been duly elected. 5

If Election riotously broken up, to be resumed.

97. In case through a Riot or other emergency an Election is not commenced on the proper day or is interrupted after being commenced and before the lawful closing thereof, the Returning Officer shall resume the Election on the following day at the hour of ten o'clock in the forenoon, and continue the same from day to day if necessary, until the poll has been open without interruption and with free access to voters, for twelve hours in all, or thereabouts, in order that all the Electors so intending may have had a fair opportunity to vote. 10

If Election is prevented for four days, Poll book to be returned and a new Election to be ordered.

98. But in case the Election has not, by the end of the fourth day from the day the same commenced or should have commenced, been kept open for the necessary time, the Returning Officer shall not return any person as elected, but shall return his poll book on the following day to the Clerk of the Municipality, certifying the cause of there not having been an Election, and a new Election shall take place. 20 25

ELECTION OF MAYORS OF CITIES AND TOWNS.

Election of Mayors.

99. Mayors of Cities and Towns shall be chosen by the electors of such Cities and Towns at the Annual Election to be held on the first Monday in January.

Qualification of

100. The qualification of a Mayor shall be the same as that of an Alderman in Cities, and of a Councillor in Towns. 30

Time and place for nominating.

101. A meeting shall take place for the nomination of candidates for the Mayoralty, at the City or Town Hall, on the last Monday but one in the month of December before the Annual Election, at ten of the clock in the forenoon.

The Clerk to preside.

102. The City, or Town Clerk respectively shall preside at such meeting, or, in case of his absence, the Council shall appoint a person to preside in his place. If the Clerk or the person so appointed does not attend, the electors present shall choose a Chairman or person to officiate from among themselves. 40

With powers of a Returning Officer.

103. Such Clerk or Chairman shall have all the powers of a Returning Officer.

104. If only one qualified candidate is proposed by any elector present at such meeting, the Clerk or Chairman shall declare such Candidate duly elected Mayor. If only one candidate proposed.

105. If more candidates than one are proposed, and if a poll is demanded, the Clerk or Chairman shall on the following day post up in the Office of the Clerk the names of the persons proposed, and give notice thereof to the Returning Officer for every Ward. If a Poll is demanded the election to be by Wards.

106. In case of a contest in an Election for the office of Mayor, the Returning Officer for every Ward shall keep the poll open for the full time required by law for taking the votes, though there may be no contest for the other offices for which he holds the Election. Duration of Poll.

107. Every Returning Officer shall enter in his poll-book, in separate columns, the names of the candidates for the office of Mayor, as well as the names of the candidates for the offices of Aldermen and Councilmen, in Cities, or of Councillors, in Towns, (*as the case may be,*) and shall, in the column in which is entered the name of a candidate for Mayor voted for by any voter, set the number 1 opposite the voter's name. Poll books to be kept.

108. Each Returning Officer shall, on the day after the close of the poll, return the poll-book to the City or Town Clerk, verified as to the election of Mayor as well as in the other particulars required by this Act. And returned to the clerk.

109. The City or Town Clerk, shall add up the number of votes set down for each candidate for Mayor in the respective poll books so returned and ascertain the aggregate number of such votes, and in case a poll has been taken and the poll books have been returned for every Ward, the Clerk shall, at the City or Town-Hall at noon of the day following the return of the poll books, declare elected the candidate having the majority of votes so ascertained. Returning Officer to add up Poll and declare the result.

110. In case there is no majority for any one candidate, the Clerk shall declare that two or more candidates, naming them, have an equal number of votes, or in case no return has been made for one or more Wards in consequence of no election having been held therein, or of the election having been interrupted through riot or other cause, he shall declare the want of returns for such Ward or Wards and the cause thereof. If no majority for either candidate.

111. The Mayor elect shall take the necessary oaths on the day appointed for the first meeting of the Council, and shall afterwards administer the necessary oaths to the other members of the Council. Mayor to take oath of office on the 1st day of meeting.

All the Mem
bers to be
sworn, &c.

112. No other business shall be proceeded with at the said meeting until the oaths have been administered to all the members who present themselves to take the same.

If votes for
Mayor equal.

113. In case two or more candidates for Mayor have an equal number of votes, the members of the Council shall take the necessary oaths before the Clerk, and shall after doing so organize themselves as a Council by electing as Mayor one of such candidates ; the Clerk presiding at such Election.

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If no return
for one or
more Wards a
temporary
Head to be
elected by the
Council.

114 In case no return is made for one or more Wards in consequence of non-election, owing to interruption by riot or other cause, the members of Council elect being at least a majority of the whole members of the Council when full, shall elect one of the Aldermen elect in Cities, or one of the Councillors elect in Towns, to be the Presiding Officer, at which election the clerk shall preside, and such Officer shall take the necessary oaths and possess all the powers of Mayor, until a poll for such Ward or Wards has been held under a warrant in the manner provided for in the 119th section of this Act.

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When Poll
completed
clerk to add
up votes and
declare result,
when and
where.

115. When a Poll has been duly held in each of such Ward or Wards, and the poll books returned to the clerk, such clerk shall add up the number of votes for Mayor therein set down for the respective candidates and ascertain the aggregate number of votes for Mayor contained in such last mentioned poll books together with the votes contained in the poll books previously returned for the other Wards, and shall at noon on the next day, at the City or Town Hall, (*as the case may be.*) declare elected Mayor, the candidate having the majority of votes so ascertained, or declare that there is an equality of votes for two or more candidates, (*as the case may be.*)

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In case of
equality, the
Council to
decide which
Mayor.

116. In case of such equality of votes, the Council shall appoint as Mayor one of the candidates between whom such equality exists.

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117. The person so elected or appointed, shall forthwith take the oaths in manner provided for Mayors, and assume the office of Mayor accordingly.

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ELECTION WHEN SEATS VACATED &c.

Seats vacated
by Insolvency,
absence, &c.

118. In case a Member of Council is declared a Bankrupt, or is charged in execution for debt and remains in close-custody, or upon the Gaol Limits for one calendar month, or applies for Relief as an Insolvent Debtor, or compounds with his creditors, or absents himself from the meetings of the Council for three months without being authorized by a resolution of the Council entered on its minutes, his seat in the Council shall thereby become vacant.

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119. In the cases provided for by the one hundred and fourteenth and one hundred and eighteenth sections, or in case a person elected to a Council neglects or refuses to accept office or to be sworn or affirmed into office within the time required, 5 or in case a vacancy occurs in the Council caused by death, judicial decision or otherwise, the Head of the Council for the time being, or in case of his absence or of his office being vacant, the Clerk, or in case of the like absence or vacancy in the office of the Clerk, one of the Members of the Council shall 10 ~~the Clerk, or Member, and under the Corporate Seal, require~~ *forthwith* *the Clerk, or Member, and under the Corporate Seal, require* *forthwith* by warrant under the signature of such Head *the Clerk, or Member, and under the Corporate Seal, require* the Returning Officer appointed to hold the last Election for the Municipality or Ward, or any other person duly appointed to that office, to hold a new Election to fill the place of such per- 15 son neglecting or refusing as aforesaid, or to fill the vacancy.

120. The person thereupon elected shall hold his seat for the residue of the term for which his predecessor was elected or for which the office is to be filled.

121. In case such non-election, neglect or refusal as aforesaid, occurs previous to the organization of the Council for the year, the warrant for the new Election shall be issued by the Head or a Member of the Council for the previous year, or by the Clerk in like manner as provided for by the last preceding section, but such neglect or refusal, shall not 25 interfere with the immediate organization of the new Council, provided a majority are present of the full number of the Council.

122. The Returning Officer shall hold the new election at furthest within eight days after receiving the warrant, and 30 shall, at least four days before the Election, post up a public notice thereof under his hand in at least four of the most public places in the Municipality or Ward, *(as the case may be.)*

APPOINTMENTS IF ELECTION NEGLECTED.

123. In case at any annual or other Election the Electors from any cause not provided for by the 97th and 98th sections, 35 neglect or decline to elect the Members of Council for a Municipality on the day appointed, or to elect the requisite number of members, the other members of the Council, or if there are none, then the members for the preceding year or the majority of them respectively, shall appoint as many qualified persons as 40 will constitute or complete the number of members requisite ; and the persons so appointed shall accept office and be sworn in under the same penalty in case of refusal or neglect, as if elected

CONTESTED ELECTIONS OR APPOINTMENTS.

45 124. In case the validity of the election or appointment of a Mayor, Warden, Reeve, Alderman, Councilman, Councillor or

New Elections provided for.

Non-election of Members not to prevent organization of Council.

Time for holding and notice of new Election.

Appointment if election neglected or declined.

Trial of contested Elections.

Police Trustee, is contested: A Judge of either of the Superior Courts of Common Law may in Term time, or in Vacation, or the Senior or officiating Judge of the County Court of the County in which the election took place, may in vacation, try the validity thereof; and any candidate at the election, or any elector who gave or tendered his vote thereat, may be the Relator for the purpose. 5

1.—PROCEEDINGS FOR THE TRIAL THEREOF—

WHO TO BE RELATORS—WRIT OF QUO WARRANTO.

Time for limited and security and proof required

1. If within six weeks after the election, or one calendar month after acceptance of office by the person elected, the Relator shews by affidavit to either of the said Superior Courts in Term time or to any such Judge as aforesaid, reasonable grounds for supposing that the election was not conducted according to law, or that the person declared elected thereat was not duly elected, and if the Relator enters into a recognizance before such Court or Judge, or before a Commissioner for taking bail in such Court in the sum of fifty pounds, with two sureties, (to be allowed as sufficient by such Court or Judge upon affidavit of justification,) in the sum of twenty-five pounds each, conditioned to prosecute the Writ with effect or to pay the party against whom the same is brought any costs which may be adjudged to him against the Relator, such Court or Judge shall direct a Writ of Summons in the nature of a *quo warranto* to be issued to try the validity of such election. 10 15 20

For Writs of *quo warranto*.

When the Relator claims to be elected.

2. In case the Relator alleges that he himself or some other person has been duly elected, the Writ shall be to try the validity of both the election complained of and the alleged election of the Relator or other person; 25

When several complained of.

3. In case the grounds of objection apply equally to two or more persons elected, the Relator may proceed by one Writ against such person. 30

All to be tried by the same Judge.

4. Where more Writs than one are brought to try the validity of an election, all such Writs shall be made returnable before the Judge who is to try the first, and such Judge may give one judgment upon all or a separate judgment upon each one or more of them, as he thinks fit; 35

2.—ISSUE OF WRIT AND PROCEEDINGS THEREON.

Writ, who to issue and return day thereof.

5. The Writ shall be issued by the Clerk of the process of the said Superior Courts, or by the deputy Clerk of the Crown in the County in which the election took place, and shall be returnable before the Judge in Chambers of the Superior Courts at Toronto, or before the Judge of the County Court at a place named in the Writ, upon the eighth day after service computed 40

exclusively of the day of service, or upon any later day named in the Writ ;

6. The Judge, before whom the Writ is made returnable or is returned may if he thinks proper, order the issue of a Writ of Summons at any stage of the proceedings to make the Returning Officer a party thereto ;

Returning Officer may be made a party.

7. Every Writ under this Act shall be served personally, unless the party to be served keeps out of the way to avoid personal service, in which case the Judge upon being satisfied thereof by affidavit or otherwise, may make an order for such substitutional service as he thinks fit ;

Service to be personal unless excused by Judge.

8. The Judge before whom the Writ is returned, may allow the Council of the Municipality, or any person who was entitled to vote at the election, to intervene and defend the election, and may grant a reasonable time for the purpose. And any intervening party shall be liable or entitled to costs like any other party to the proceedings ;

The Council or an Elector may intervene

9. The Judge shall, in a summary manner upon statement and answer without formal pleadings, hear and determine the validity of the election, and may by order cause the assessment rolls, poll-books, and any other records of the election, to be brought before him, and may inquire into the facts on affidavit or affirmation, or by oral testimony, or by issues framed by him and sent to be tried by Jury by Writ of Trial directed to any Court named by the Judge, or by one or more of these means, as he deems expedient ;

A Judge shall try summarily.

10. In case the Election complained of is adjudged invalid, the Judge shall, by Writ, cause the person found not to have been duly elected to be removed ; and in case the Judge determines that any other person was duly elected, the Judge shall order a Writ to issue causing such other person to be admitted ; and in case the Judge determines that no other person was duly elected instead of the person removed, the Judge shall by such Writ cause a new Election to be held ;

And remove, admit or confirm.

11. In case the Election of all the Members of a Council is adjudged invalid, the Writ for their removal and the Election of new Members in their place, or for the admission of others adjudged legally elected, and an Election to fill up the remaining seats in the Council, shall be directed to the Sheriff of the County in which the Election took place ; and the Sheriff shall have all the powers for causing the Election to be held which a Municipal Council has in order to supply vacancies therein.

If all the Members ousted, &c., writ for new Election to go to the Sheriff.

12. Any person whose Election is complained of may, within one week after service on him of the Writ, transmit post

Defendant may disclaim.

How to proceed.

paid, through the Post Office directed "To the Clerk of Judge's Chambers, at Osgoode Hall, Toronto," or to "The Judge of the County Court," of the County of (as the case may be,) a disclaimer signed by him to the effect following:

"I, A. B., upon whom a Writ of Summons in the nature of a *Quo Warranto* has been served for the purpose of contesting my right to the office of Township Councillor, (or as the case may be) for the Township of _____ in the County of _____ (or as the case may be), do hereby disclaim the said office, and all defence of any right I may have to the same."

Dated the _____ day of _____ 185 .

Signed, A. B.

13. Such disclaimer or the envelope containing the same shall moreover be endorsed on the outside thereof with the word "Disclaimer," and be registered as such, at the Post Office where mailed ;

Disclaimer to be delivered to Clerk.

14. Every person so disclaiming shall deliver a duplicate of his Disclaimer to the Clerk of the Council, and such Clerk shall forthwith communicate the same to the Council ;

Costs provided for.

15. No costs shall be awarded against any person disclaiming as aforesaid unless the Judge is satisfied that such party consented to his nomination as a candidate or accepted the office in which cases the costs shall be in the discretion of the Judge ;

When discretionary.

16. In all cases, not otherwise provided for, costs shall be in the discretion of the Judge or Court ;

Judge to return his Judgment to the Court in Term.

17. The Judge shall, on the first day of the term next after his Judgment, return the Writ and Judgment with all things had before him touching the same into the Court from which the Writ issued, there to remain of record as a judgment of the said Court ; and the Court as occasion requires shall enforce such judgment by peremptory *Mandamus*, and by Writs of Execution for the costs awarded ;

18. No *Mandamus* or Writ of Execution shall issue upon such judgment until the judgment has been in possession of the Court for four days in Term including the day on which the same was delivered in, nor during the pendency of any rule for the reversal or alteration of the judgment ;

The Judgment may be moved against in full

19. In case the person against whom the judgment was given, or in case any Voter or Candidate at the Election moves against the judgment within such four days, the Court

may examine the judgment, and affirm modify or reverse the same ;

Court, and may be reviewed.

20. The Judges of the Superior Courts of Common Law, or a majority of them may by rules made in Term time settle the forms of the Writs of Summons, *Certiorari*, *Mandamus* and execution, and may regulate the practice respecting the suing out, service, and execution of such Writs, and the punishment for disobeying the same or any other writ or order of the Court or Judge, and respecting the practice generally, as well at Chambers as in Banc, in hearing and determining the validity of such Elections or appointments, and respecting the costs thereon ; and may from time to time rescind, alter or add to such rules : But all existing Rules shall remain in force until rescinded or altered as aforesaid.

The Judges to make rules, &c.

15 **125.** The appointment of members of Municipal Councils when required to be made under this Act shall be deemed elections within the preceding section, and in such cases the relator may be any Member of the Council or any Elector of the Municipality or Ward (*as the case may be*) for which such appointment was made.

Appointments equivalent to Elections.

MEETINGS OF COUNCIL, &c.

1.—FIRST MEETING OF MEMBERS ELECT.

126. The Members of every Municipal Council, (except County Councils,) and the Trustees of every Police Village, shall hold their first meeting at noon on the third Monday of the same January in which they are elected ; and the Members of every County Council shall hold their first meeting at noon on the fourth Monday of the same month, or on some day thereafter.

First meetings of Councils.

127. The members of every County Council shall hold their first meeting at the County Hall, if there is one, or otherwise at the County Court House.

Place in Counties.

2.—ELECTION OF HEADS OF COUNCIL OTHER THAN OF CITIES AND TOWNS.

128. The members elect of every Council, except City and Town Councils, being at least a majority of the whole number of the Council when full, shall, at their first meeting after the yearly elections, and after taking the oaths of office and qualification when required to be taken, organize themselves as a Council by electing one of themselves to be the Warden or Reeve of the Corporation, (*as the case may be,*) and such person shall be the Head of the Council.

Elections of heads of other councils than Cities and Towns.

129. At every such election the Clerk of the Council shall preside, and if there is no Clerk, the members present shall select

Who to preside at.

one of themselves to preside, and the person selected shall vote with the other members..

Who to have the casting vote in the event of an equality of Votes.

130. In case of an equality of votes on the election of the Head of any County Council or Provisional County Council, then, of those present, the Reeve of the Municipality which has the largest number of names on its last revised assessment roll shall have a second and casting vote, and in case of the like occurrence in any other Council then, of those present, the member who has been assessed for the highest amount on such roll shall have the like vote. 5 10

Election of Reeves and Deputy Reeves.

131. The members of every Town and Incorporated Village Council shall at its first meeting elect from among its members a Town Reeve, and in case any Town, Incorporated Village or Township had the names of five hundred Electors on the last revised Assessment-Roll, the members of the Council of every such Town, Village and Township, shall also at its first meeting elect from among its members a Deputy Town Reeve. 15

3.—SUBSEQUENT MEETINGS.

Place of meeting of Council in Municipalities.

132. The subsequent meetings of the County Council, and all the meetings of every other Council shall be held at such place in the Municipality as the Council from time to time by Resolution on adjourning to be entered on the minutes, or by By-law appoints. 20

Place of in Cities.

133. The Council of the County in which any City lies, may hold its sittings, keep its public offices, and transact all the business of such Council and of its officers and servants within such City, and may purchase and hold such Real property therein as may be convenient for such purposes. 25

Meetings to be open.

134. Every Council shall hold its ordinary meetings openly, and no person shall be excluded except for improper conduct. 30

Special may be close.

135. In case there is no By-law of Council fixing the place of meeting, any Special Meetings of Council shall be held at the place where the then last Meeting of such Council was held, and such special Meeting may be open or closed as in the opinion of the Council expressed by Resolution in writing the public interest requires. 35

Quorum.

136. A majority of the whole number of members required by law to constitute the Council shall form a quorum.

In Councils of 5, 3 must concur.

137. When a Council consists of only five Members, the concurrent votes of at least three shall be necessary to carry any resolution or other measure. 40

138. Every Council may adjourn its Meetings from time to time. Adjournments.

4.—WHO TO PRESIDE IN COUNCIL.

139. The Head of every Council shall preside at the meetings of Council, and may at any time summon a special meeting thereof. The Heads to preside in Council.

140. In case of the death or absence of the Head of a Town Council, the Reeve, and in case of the absence or death of both of them, the Deputy Reeve, and in case of the death or absence of the Head of a Village or Township Council, the Deputy Reeve, shall preside at the meetings of Council, and may at any time summon a special meeting thereof. When Reeve or Deputy Reeve to preside.

141. In the absence of the Head of the Council, and in the case of a Town in the absence, also of the Reeve and Deputy Reeve, (and in the case of a Village or Township in the absence also of the Deputy Reeve, if there be one,) by leave of such Council or from, illness, the Council may, from among the members thereof eligible to be elected Head, appoint a presiding officer who during such absence shall have all the powers of the Head of the Council. Absence of Head provided for.

142. If the person who ought to preside at any Meeting, does not attend within a reasonable time after the hour appointed, the members present may appoint a Chairman from amongst themselves, and such Chairman shall have the same authority in presiding at the meeting as such absent person would have had if present. Casual absence provided for.

143. The Head of the Council, or the Presiding Officer or Chairman of any meeting of any Council may vote with the other Members on all questions, and any question on which there is an equality of votes shall be deemed to be negatived.

5.—RESIGNATIONS OF HEADS OF COUNCIL.

144. The Head of a Council or the Town Reeve of a Town or the Deputy Town Reeve of a Town, Village or Township may, at any time resign his office, and in such case, or in the case of a vacancy in any such office by death or otherwise, the Council, or its remaining members, (*as the case may be*) shall, at a special meeting for the purpose or at the first regular meeting after the vacancy occurs elect from among themselves a qualified person to fill such office. Resignation of Heads provided for. Vacancies how filled.

6.—OF COUNCILLORS.

145. Any Member of a Council may, with the consent of the majority of the members thereof to be entered on the minutes. Members may resign.

of the Council, resign his seat in the Council, and the vacancy shall be supplied as in the case of a natural death.

OFFICERS OF CORPORATIONS.

1.—THE CLERK AND DUTIES OF.

The Clerk
and his
duties.

146. Every Council shall appoint a Clerk ; and the Clerk shall truly record in a book without note or comment, all resolutions, decisions and other proceedings of the Council, and, if required by any member present, shall record the name and vote of every member voting on any matter submitted, and shall keep the books, records and accounts of the Council ; and shall preserve and file all accounts acted upon by the Council, and also the originals or certified copies of all By-laws, and all minutes of the proceedings of the Council, all which he shall so keep in his office, or in the place appointed by By-law of the Council. 5 10

Minutes, &c.,
to be open to
inspection.

147. Any person may inspect any of the particulars aforesaid at all seasonable times ; and the Clerk shall within a reasonable time furnish copies thereof to any applicant at the rate of six pence per hundred words, or at such lower rate as the Council appoints, and shall, on payment of his fee therefor, furnish within a reasonable time to any elector of the Municipality, or to any other person interested in any By-law, Order or Resolution, or to his Attorney, a copy of such By-law, Order or Resolution, certified under his hand and under the Corporate Seal. 15 20

Copies to be
furnished and
charges
therefor, &c.

To transmit a
yearly return
of rate-payers
to the Receiver
General.

148. The Clerk of every City, Town, Incorporated Village and Township, shall on or before the first day of December in each year, transmit to the Receiver General a true Return of the number of resident rate-payers appearing on the revised assessment-roll of his Municipality for the year, and shall accompany such return with an affidavit made before a Justice of the Peace verifying the same, in the following form : 25 30

“ I, A. B., Clerk of the Municipality of the City, (Town, Township or Village, *as the case may be,*) make oath and say that the above or the within written, or the annexed (*as the case may be,*) return contains a true statement of the number of resident rate-payers appearing on the Assessment-roll of the said City, (Town, Township or Village, *as the case may be,*) for the year one thousand eight hundred and fifty- 35

(Signed) A. B.”

“ Sworn before me, &c.

149. And in case of default in any year, so to transmit, the Clerk shall be liable to a penalty of five pounds to be paid to the Receiver General for the use of the Province to be recovered 40

by summary proceedings in the manner provided for the recovery of penalties for infringing By-laws under this Act.

150. The Clerk of every Township, Village and Town shall in each year within one week after the first day of January, make a return to the Clerk of the County in which the Municipality is situate of the following particulars respecting his Municipality for the year then last past, namely :

To make a yearly return to the County Clerk.

Heads of columns in Assessment Rolls, to be varied according to the Assessor's statement rolls required by law.

1. Number of persons assessed.
2. Number of acres assessed.
3. Total of rentals of real property.
4. Total of yearly value other than rentals of real property.
5. Total actual value of real property.
6. Total of taxable incomes.
7. Total value of personal property.
8. Total yearly value of personal property.
9. Total amount of assessed value of real and personal property.
10. Total amount of taxes imposed by By-laws of the Municipality.
11. Total amount of taxes imposed by By-laws of the County Council.
12. Total amount of taxes imposed by By-laws of any Provisional County Council.
13. Total amount of Lunatic Asylum or other Provincial tax.
14. Total amount of all taxes as aforesaid.
15. Total amount of income collected or to be collected from assessed taxes for the use of the Municipality.
16. Total amount of income from licenses.
17. Total amount of income from public works.
18. Total amount of income from shares in incorporated Companies.
19. Total amount of income from all other sources.
20. Total amount of income from all sources.
21. Total expenditure on account of roads and bridges.
22. Total expenditure on account of other public works and property.
23. Total expenditure on account of stock held in any incorporated Company.
24. Total expenditure on account of schools and education, exclusive of School Trustees rates.
25. Total expenditure on account of the support of the poor or charitable purposes.
26. Total expenditure on account of Debentures and interest thereon.
27. Total gross expenditure on account of Administration of Justice in all its branches.
28. Amount received from Government on account of Administration of Justice.
29. Total net expenditure on account of administration of Justice.

30. Total expenditure on account of salaries, and the expenses of Municipal Government.
31. Total expenditure on all other accounts.
32. Total expenditure of all kinds.
33. Total amount of liabilities secured by Debentures.
34. Total amount of liabilities unsecured.
35. Total liabilities of all kinds.
36. Total value of real property belonging to Municipality.
37. Total value of stock in incorporated Companies owned by Municipality.
38. Total amount of debts due to Municipality.
39. Total amount of arrears of taxes.
40. Balance in hands of Treasurer.
41. All other property owned by Municipality.
42. Total assets.

County Clerk to make a return to the Provincial Secretary.

151. The Clerk of every County shall, before the first day of February, in each year prepare and transmit to the Provincial Secretary a Statement of the aforesaid particulars respecting all the Municipalities within his County, entering each Municipality in a separate line, and the particulars required opposite to it, each in a separate column, together with the sum total of all the columns for the whole County, and shall also make at the same time a Return of the same particulars respecting his County, as a separate Municipality. 5

152. The Clerk of every City, shall, before the first day of 10 February in each year make a return to the Provincial Secretary of the same particulars respecting his City.

Moneys to be retained if returns not made.

153. The Treasurer of the County shall retain in his hands any moneys payable to any Municipality, if it is certified to him by the Clerk of the County that the Clerk of such Municipality has not made the Returns hereinbefore required; and the Receiver-General shall retain in his hands any moneys payable to any Municipality if it is certified to him by the Provincial-Secretary that the Clerk of such Municipality has not made the Returns hereinbefore required; and any person so required to make any Return by a particular day who fails so to do, shall be liable to a penalty of not more than Five Pounds, to be paid to the Receiver-General for the use of the Province, to be recovered as last aforesaid. 15 30

Provincial Secretary to lay the returns before Parliament.

154. The Provincial-Secretary shall within ten days after the commencement of every Session, lay before both Houses of the Legislature a copy of all Returns hereinbefore required to be made. 25

2.—CHAMBERLAIN AND TREASURER.

Treasurer to be appointed.

155. Every City Council shall appoint a Chamberlain, and every other Council shall appoint a Treasurer; and each 30

Chamberlain and Treasurer before entering upon the duties of his office shall give such security as the Council directs for the faithful performance of his duties, and especially for duly accounting for and paying over all monies which may come into his hands.

To give security.

156. Every Treasurer and Chamberlain respectively shall receive and safely-keep all moneys belonging to the Corporation, and shall pay out the same to such persons and in such manner as the Laws of the Province and the lawful By-laws of the Council direct.

To receive and take care of and disburse moneys, &c.

157. The Treasurer or Chamberlain of every Municipality for which any sum of money has been raised on the credit of the Consolidated Municipal Loan Fund, shall, so long as any part of such sum, or of the interest thereon, remains unpaid by such Municipality, transmit to the Board of Audit, on or before the Fifteenth day of January in every year, a Return, certified on the oath of such Treasurer or Chamberlain before some Justice of the Peace, containing the amount of taxable property in such Municipality according to the then last Assessment Roll or Rolls,—a true Account of all the Debts and Liabilities of such Municipality for every purpose, for the then last year,—and such further information and particulars with regard to the liabilities and resources of such Municipality, as the Governor in Council may from time to time require, under penalty in case of neglect or refusal to transmit such Return, account, information or particulars, of twenty-five pounds to be recovered with costs as a debt due to the Crown, according to the fifteenth Section of the Statute, eighteenth Victoria chaptered seventy-eight, to secure the more efficient Auditing of the Public accounts.

To make a return yearly to the Provincial Board of Audit.

3.—ASSESSORS AND COLLECTORS.

158. The Council of every Municipality except Counties shall, as soon as may be convenient after the annual election, appoint as many Assessors and Collectors for the Municipality as the Assessment Laws from time to time authorize or require, and shall fill up any vacancy that occurs in the said offices as soon as may be convenient after the same occurs; but the Council shall not appoint as Assessor or Collector a member of the Council, or a person who has not the same property qualification as that required for a Councillor or Councilman of the Municipality. The same person may in a City or Town be appointed Assessor or Collector for more than one Ward.

Assessors and Collectors qualification of.

159. The Assessors shall state in their Assessment Rolls whether the persons named therein are Freeholders or Householders or both, and shall in separate columns for this purpose use the initial letters F and H to signify the same respectively.

Assessors to designate freeholders and householders in their assessment rolls.

Householder defined. **160.** Every occupant of a separate portion of a house, such portion having a distinct communication with a Public road or street by an outer door, shall be deemed a Householder within this Act.

Collector of Provisional County. **161.** The Collector for a Union of Counties shall *ex officio* be the Collector for the Provisional County; and such Collector shall pay over to the Provisional Treasurer the money he collects under any By-law of the Provisional Council, deducting for his own use two and a half per cent on the amount paid over, in consideration of his trouble and responsibility in collecting. 5

Moneys how to be disposed of. **162.** The money so collected shall be deemed the money of the Union, so far as necessary to make the Collectors and their sureties responsible to the Union therefor. And in case the Corporation of the Union receives the same, such Corporation shall immediately pay the same to the Provisional Treasurer, retaining the expenses of collection. 15

4.—AUDITORS.

Auditors. **163.** Every Council shall, at the first meeting thereof in each year after being duly organized, appoint two Auditors, one of whom shall be such person as the Head of the Council nominates; but no one who, at such time or during the preceding year, is or was a Member, or is or was Clerk or Treasurer of the Council, or who has or during such preceding year had, directly or in directly, alone or in conjunction with any other person, a share or interest in any contract or employment with or on behalf of the Corporation, shall be appointed an Auditor. 20

Disqualification for office of.

Duties of. **164.** The Auditors shall examine and report upon all accounts affecting the Corporation, or relating to any matter under its control or within its jurisdiction, for the year ending on the thirty-first day of December preceding their appointment. 25

To prepare abstract and detailed statement of receipts and expenditures, &c. **165.** The Auditors shall prepare an abstract of the receipts, expenditures, and liabilities of the Corporation; and also a detailed statement of the said particulars in such form as the Council directs, and report in duplicate on all the accounts audited by them; and shall file the same in the office of the Clerk of the Council within one month after their appointment, and thereafter any inhabitant of the Municipality may inspect one of such duplicate reports, at all reasonable hours; and may by himself or his agent, at his own expense take a copy thereof or extracts therefrom. 35

The Council to finally audit, &c. **166.** The Council shall, upon the report of the Auditors, finally audit and allow the accounts of the Treasurer or Chamberlain and Collectors and all accounts chargeable 40

against the Corporation ; and in case of charges not regulated by law the Council shall allow what is reasonable.

167. The Clerk shall publish the Auditors' abstract in some newspaper published in the Municipality, or if there be no such paper then in a newspaper published in the place nearest thereto, and shall also publish the detailed statement in such form as the Council directs. How Clerk to publish abstracts and detailed statements.

168. Every County Council shall have the regulation and auditing of all moneys to be paid out of funds in the hands of the County Treasurer.

5.—SALARIES AND CONTINUANCE IN OFFICE.

169. In case the remuneration of any of the officers of the Municipality has not been settled by Act of the Legislature, the Council shall settle the same, and the Council shall provide for the payment of all municipal officers, whether the remuneration is settled by Statute or by By-law of the Council. Salaries of officers.

170. The Chamberlain or Treasurer may be paid a salary or per centage, and all officers appointed by a Council shall hold office until removed by the Council, and shall, in addition to the duties assigned to them in this Act, perform all other duties required of them by any other Statute, or by the By-laws of the Council having jurisdiction over such officers. Of Chamberlain or Treasurer.

6.—OFFICIAL OATHS.

171. Every person elected or appointed under this Act to any office requiring a qualification of property in the incumbent shall, before he takes the oath of office, or enters on his duties, take and subscribe an oath or affirmation to the effect following: Oath of Qualification.

"I, A. B., do swear, (or affirm, where the party is entitled to affirm,) that I am a natural-born (or naturalized) subject of Her Majesty ; that I am truly and *bonâ fide* seized or possessed to my own use and benefit, of such an estate, (specifying the nature of such estate, and if land, designating the same by its local description, rents or otherwise,) as doth qualify me to act in the office of (naming the office) for (naming the place for which such person has been elected or appointed) according to the true intent and meaning of a certain Act of the Parliament of this Province passed in the _____ year of Her Majesty's Reign, intituled, (insert title of this Act). So help me God." Form of

172. Every Returning Officer and Returning Officer's Clerk, every Township, Village, Town and City Councillor, every Alderman, every Justice of the Peace for a Town, and every Clerk, Assessor, Collector, Constable and other officer Oath of office.

appointed by a Council, shall, before entering on the duties of his office, take and subscribe an oath or affirmation to the effect following :

Form of Oath of office. " I, A. B., do solemnly swear, (or affirm *where the party is entitled to affirm,*) that I will truly, faithfully and im- 5
 " partially to the best of my knowledge and ability, ex-
 " ecute the office of (*inserting the name of the office*) to which I
 " have been elected (or appointed) in this Township, (or as the
 " case may be,) and that I have not received and will not receive 10
 " any payment or reward, or promise of such, for the exercise
 " of any partiality or malversation or other undue execution of
 " the said office. So help me God."

Denial of dis-qualifying interest, who to take. **173.** The oath or affirmation to be taken by every Mayor and Alderman, and by every Township, Village, Town and City Councillor, shall also state that he has not by himself or his 15
 partner an interest in any contract with or on behalf of the Corporation.

Auditor's oath. **174.** The oath or affirmation to be taken by every Auditor shall be as follows :

Form of oath. " I, A. B., having been appointed to the office of Auditor for 20
 " the Municipal Corporation of , do hereby promise and
 " swear that I will faithfully perform the duties of such office
 " according to the best of my judgment and ability : and I do
 " swear and declare, that I had not directly or indirectly any
 " share or interest whatever in any contract or employment 25
 " with, by or on behalf of such Municipal Corporation during
 " the year preceding my appointment, and that I have not any
 " contract or employment for the present year. So help me
 " God."

Heads and other members of the Council before whom to be sworn. **175.** The Head of every Council shall on the certificate 30
 of his election as such under the hand of the Clerk, or in case
 of his absence under the hand of the Chamberlain or Treasurer
 of the Corporation, be sworn or affirmed into office and as to his
 qualification ;

1. By the highest Court of Law or Equity which is at 35
 the time sitting within the Municipality ;

2. Or if no Court is sitting then by the Chief or one of the
 other Justices of either of the Superior Courts of Common Law
 or by the Chancellor or either of the Vice-Chancellors of the
 Court of Chancery at his Chambers ; 40

3. Or if at the time there is no such Court, or Judge within
 the limits of the Municipality, or at the place of meeting of the
 Council, then before the Mayor of the City or Town, (in case he
 is not the person to be sworn in) or before the Recorder or Police

Magistrate of the City or Town, or before a Justice of the Peace of the County or Town in or over which such Council has jurisdiction ;

4. Or, in the case of Townships and Villages, by a Justice of the Peace for the County in which the Township or Village is situate ;

5. Or, in case there is no such Court, Judge or Justice of the Peace within such Municipality or place of meeting at the time, then before the Clerk of the Council in the presence of the members of the Council.

176. The other members of the Council and the subordinate officers of every Municipality may be sworn or affirmed into office, and as to their qualification when necessary, by the Head of the Council, or any Recorder, Police Magistrate or other Justice of the Peace having jurisdiction in the Municipality for which such members or officers have been elected or appointed.

Who may administer oaths to Councillors, &c.

177. The Court, Judge or other person administering such oaths or affirmations respectively, shall give the necessary Certificate of the same having been duly taken and subscribed.

Certificate of.

178. The Head of any Council, any Alderman, Reeve or Deputy Reeve, any Justice of the Peace of a Town, and the Clerk of a Municipality, may within the Municipality administer any oath or affirmation under this Act, relating to the business of the place in which he holds office, except where otherwise especially provided, and except where he is the party required to take the oath or affirmation.

Head of Council and Reeves may administer oaths.

179. The deponent or affirmant shall subscribe every such oath or affirmation, and the person administering it shall duly certify and preserve the same, and within eight days deposit the same in the office of the Clerk of the Municipality to the affairs of which it relates, on pain of being deemed guilty of a misdemeanor.

Oath to be subscribed.

180. The oaths of office to be taken by the subordinate officers of a Town or City, may be taken either before any of the persons hereinbefore authorized to administer an oath or before the Police Magistrate.

Oath of office, before whom sworn.

*D - Includet
in S. 175 supra*

181. Every qualified person duly elected or appointed to be a Mayor, Alderman, Councilman, Town Reeve, or Deputy Town Reeve, Councillor, Police Trustee, Assessor or Collector of or in any Municipality, who refuses such office, or does not take the oath or affirmation of office and of qualification within twenty days after knowing of his election or appointment, and every person authorized to administer any such

Penalty for refusing to accept office or take the oaths.

oath or affirmation, who upon reasonable demand, refuses to administer the same shall, on conviction thereof before two or more Justices of the Peace under and subject to the summary convictions Act, of 16. Vic. Cap. 178 forfeit not more than twenty pounds, nor less than two pounds, at the discretion of such Justices to the use of the Municipality, together with the costs of prosecution. 5

7.—EMBEZZLEMENT OF BOOKS, MONIES.

Embezzlements by Municipal Officers.

182. All books, papers, accounts, documents, monies and valuable securities respectively, kept or received by any person or officer appointed or employed by or on behalf of any Council, by virtue of his office or employment, shall be the property of the Corporation; and in case any such person or officer refuses or fails to deliver up or pay over the same respectively to the Corporation, or to any person authorized by such Council to demand them, he shall be deemed guilty of a fraudulent embezzlement thereof, and may be prosecuted and punished in the same manner as a servant fraudulently embezzling any chattel, money or valuable security of his master; but nothing herein shall affect any remedy of the Corporation or of any other person against the offender or his sureties, or any other party; nor shall the conviction of such offender be receivable in evidence in any suit, at law or in equity, against him. 15 20

1.—PROVISIONS APPLICABLE TO ALL COUNCILS.

183. The following sections and sub-sections numbered from 184 to 237 both inclusive, relate to all Municipalities and Municipal Councils, namely,

- | | | |
|------------------------------|---------------------------|----|
| 1. Townships, | 4. Cities, | 25 |
| 2. Counties, | 5. Towns, and | |
| 3. Provisional Corporations, | 6. Incorporated Villages. | |

1.—JURISDICTION OF COUNCILS.

Local Jurisdiction of Councils.

184. The Jurisdiction of every Council shall be confined to the Municipality such Council represents, except where authority beyond the same is expressly given, and the powers of the Council shall be exercised by By-law when not otherwise authorized or provided for. 30

General power to make local regulations. To regulate meetings and proceedings. May repeal or alter By-laws.

185. Every Council may make Regulations not specifically provided for by this Act, and not contrary to Law, for governing the proceedings of the Council,—the conduct of its Members,—and the appointing or calling of special meetings of the Council; and generally such other regulations as the good of the Inhabitants of the Municipality requires; and may repeal, alter and amend its By-laws, save as by this Act restricted. 35

2. BY-LAWS OF COUNCILS.

1. HOW AUTHENTICATED.

186. Every By-law shall be under the Seal of the Corporation, and shall be signed by the Head of the Corporation, or by the person presiding at the Meeting at which the By-law has been passed, and by the Clerk of the Corporation. How By-laws to be authenticated.

5 187. A copy of any By-law written without erasure or interlineation, and under the Seal of the Corporation, and certified to be a true copy by the Clerk and by any Member of the Council, shall be deemed authentic, and be received in evidence in any Court of Justice without proof of such Seal or Signatures, unless it is specially pleaded or alleged that the Seal or one or both of the Signatures have been forged. Certified copies to be evidence.

2. OPPOSITION TO WHEN APPLIED FOR BY RATE PAYERS.

188. In case any person rated on the Assessment Roll of any Municipality, or of any locality therein, objects to the passing of a By-law the passing of which is to be preceded by the application of a certain number of the rateable inhabitants of such Municipality or place, he shall, on petitioning the Council, be at liberty to attend, in person or by Counsel or Attorney, before the Council at the time at which the By-law is intended to be considered, or before a Committee of the Council appointed to hear evidence thereon, and may produce evidence that the necessary notice of the application for the By-law was not given, or that any of the signatures to the application are not genuine, or were obtained upon incorrect statements and that the proposed By-law is contrary to the wishes of the persons whose signatures were so obtained, and that the remaining signatures do not amount to the number nor represent the amount of property necessary to the passing of the By-law. Opposition to By-laws applied for by ratepayers: provision for.

See S. 313. A. 4.

189. If the Council is satisfied upon the evidence that the application for the By-law did not contain the names of a sufficient number of persons whose names were obtained without fraud and in good faith, and who represent the requisite amount of property, and are desirous of having such By-law passed, or if the Council is satisfied that the notice required by law was not duly given, the Council shall not pass the By-law. When By-laws shall pass.

3. PROCEEDINGS WHEN THE ASSENT OF ELECTORS IS REQUIRED.

35 190. In case a By-law requires the assent of the Electors of a Municipality before the final passing thereof, the following proceedings shall be taken for ascertaining such assent, except in cases otherwise provided for: If a By-law requires the assent of the electors.

40 1. The Council shall by By-law fix a day, hour and place, Time and place of meeting for a general meeting of the Electors, for the purpose of con-

ing shall be fixed by By-law. sidering and approving or disapproving of the By-law; and such day shall not be less than three, nor more than four weeks after the first publication of the proposed By-law as herein provided for:

Proposed By-law to be published. 2. The Council shall for at least one month before the final passing of the proposed By-law, publish a copy thereof in some newspaper published weekly or oftener in the Municipality, or if there is no such newspaper, in some newspaper in the nearest place in which a newspaper is published, and also put up a copy of the By-law at four or more of the most public places in the Municipality;

Notice to be given. 3. Appended to each Copy so published and posted, shall be a notice signed by the Clerk of the Council, stating that such copy is a true copy of a proposed By-law which will be taken into consideration by the Council after one month from the first publication in such newspaper, stating the date of such first publication, and naming the hour, day and place, fixed for the general meeting of Electors for the purpose aforesaid;

Who to preside and who to be Secretary at meeting. 4. At such meeting the Head of the Corporation, or in his absence any Elector chosen by the Electors present, shall preside as Chairman, and the Clerk shall attend the meeting with the last revised assessment Rolls or certified Copies, and shall act as Secretary;

Question to be put and show of hands declared. 5. The Chairman shall put to the Electors present the question "shall this By-law be approved," and shall thereupon declare whether, in his opinion, the majority is for approving or for disapproving thereof; and his decision if not forthwith appealed from, shall be final;

If Poll demanded chairman to take same. Poll Clerk, who. How long Poll to be open. When to be closed. 6. In case six Electors present appeal from the decision and demand a Poll, the Chairman shall immediately take such Poll, and act as Returning Officer in taking the same, and the Clerk shall act as Poll Clerk; and such Poll and all proceedings thereat shall be conducted in the same manner, as nearly as may be, as at a Municipal Election; but the Chairman shall keep open the Poll till five of the clock in the afternoon, and 30 may then adjourn the same till ten of the clock in the forenoon of the first day thereafter which is not a Sunday or Statutory holiday, and shall continue the Poll till five of the clock in the afternoon of the second day, and no longer; or if in the meantime he sees that all the Electors intending to vote have had a fair opportunity of being polled, and if half an hour at one time has elapsed without any Elector during that time giving or tendering his vote, free access having been allowed to Electors for the purpose, the Chairman may close the Poll at any time on either day; 45

Presiding officer to certify. 7. The Chairman shall at the close of the meeting or of the Poll, as the case may be, certify to the Council whether the

majority approved or disapproved of the By-law : and the Clerk shall countersign the certificate, and keep the same with the Poll Book (if there was a Poll) among the Records of his office. ify the result, &c.

4.—WHEN REQUIRING THE ASSENT OF THE GOVERNOR IN COUNCIL.

191. The facts required by this Act to be recited in any By-law which requires the approval of the Governor in Council, shall, before receiving such approval, be verified, on oath or affirmation, by the Head of the Council, and by the Chamberlain or Treasurer and Clerk thereof, and by such other persons and on such other evidence as to the Governor in Council satisfactorily proves the facts so recited; or in case of the death or absence of any such Municipal officer, upon the oath or affirmation of any other Member of the Council, whose oath or affirmation the Governor in Council will accept. When the assent of the Governor is required to By-laws.

5.—WHEN AND HOW QUASHED.

192. In case a resident of a Municipality, or any other person interested in a By-law, Order or Resolution of the Council thereof, applies to either of the Superior Courts of Common Law, and produces to the Court a copy of such By-law, Order or Resolution, certified under the hand of the Clerk and under the Corporate Seal, and shews, by affidavit, that the same was received from the Clerk, and that the applicant is resident or interested as aforesaid, the Court, after at least eight days' service on the Corporation of a Rule to shew cause in this behalf, may quash such By-law, Order or Resolution in whole or in part for illegality, and according to the result of the application, award costs for or against the Corporation. By-laws, how to proceed in order to quash.

6.—WHEN CONFIRMED BY PROMULGATION.

193. In case a By-law by which a rate is imposed has been ~~enacted~~ specially promulgated in the manner herein-after specified, no application to quash such By-law shall be entertained after six calendar months have elapsed since such promulgation. When By-law imposing rates cannot be impeached or quashed if proper proceedings be taken to confirm such By-law.

194. Every special promulgation of a By-law within the meaning of this Act shall consist in the publication through the Public Press of a true copy of such By-law, and of the signature attesting its authenticity, with a notice appended thereto of the time limited by Law for applications to the Courts to quash the same or any part thereof.

195. In the case of By-laws by which any Rate is imposed for any purpose whatsoever, then the promulgation shall be either by such publication of a copy of the By-law with such notice as aforesaid, or in lieu thereof by such publication of a notice

setting forth the amount of such rate and giving the substance only of the other parts of the By-law with a similar notice of the time so limited for such applications to quash as aforesaid, which publication shall for the purpose aforesaid be in each public newspaper published weekly or oftener within the territorial jurisdiction of such Municipal Corporation; or if there be no such public newspaper within such jurisdiction, then in at least two public newspapers published weekly or oftener nearest to such jurisdiction, every which publication shall for the purpose aforesaid be continued in at least three consecutive numbers of such paper.

196. The notice to be appended to every such copy for the purpose aforesaid shall be to the effect following:

"NOTICE.—The above is a true copy of a By-law passed by the Municipality of the Township of A, in the County of B, one of the United Counties of B, C and D, (or as the case may be) on the _____ day of _____, 185____, and (where the approval of the Governor in Council is by law required to give effect to such By-law) approved by His Excellency the Governor General in Council, on the _____ day of _____, 185____, and all persons are hereby required to take notice, that any one desirous of applying to have such By-law or any part thereof quashed, must make his application for that purpose to one of Her Majesty's Superior Courts of Common Law at Toronto, within six Calendar Months at the farthest after the special promulgation thereof by the publication of this notice in three consecutive numbers of the following newspapers, viz: (here name the newspapers in which the publication is to be made) or he will be too late to be heard in that behalf.

G. H.
Township Clerk."

197. The notice setting forth the amount of such rate, and giving the substance only of the other parts of such By-law, for the purpose aforesaid, shall be to the effect following, that is to say:

"Township A, in the County of B, one of the United Counties of B, C and D, in Upper Canada, to wit:
Notice is hereby given, that a By-law intitled (*set out the title*) and numbered (*give the number by which the By-law is designated*), was on the _____ day of _____, 185____, passed by the Municipal Corporation of the Township of A, in the County of B, one of the United Counties of B, C and D, in Upper Canada, for the purpose of [*here set out in substance the object of the By-law*, as "for the purpose of raising the necessary funds to meet the general public expenses of the Township of _____ for the year 185____," or "for the purpose of raising and contracting for a loan of _____ Pounds, for making and

macadamizing a Road from _____ to _____ or otherwise,
 as the case may be), and, (where the approval of the Governor in
 Council is by law required to give effect to such By-law,) approved by His Excellency the Governor General in Council,
 5 on the _____ day of _____ 185 ;] and all persons
 are hereby required to take notice, that any one desirous of
 applying to have such By-law or any part thereof quashed, must
 make his application for that purpose to one of Her Majesty's
 Superior Courts of Common Law at Toronto, within six Calen-
 10 dar Months, at the farthest, after the special promulgation
 thereof by the publication of this notice in three consecutive
 numbers of the following newspapers, viz: (here name the
 newspapers in which the publication is to be made), or he will be
 too late to be heard in that behalf.

G. H.
 Township Clerk."

15 **198.** In case no application to quash any such By-law
 so specially promulgated is made within the time so li-
 mited for that purpose, such By-law, or so much thereof as is
 not the subject of any such application, or not quashed upon
 such application, so far as the same ordains, prescribes
 20 or directs any thing within the proper competence of such
 Municipal Council to ordain, prescribe or direct, shall, not-
 withstanding any want of substance or form, either in the
 By-law itself, or in the time or manner of passing the same, be
 a valid By-law.

If not moved against, within the time limited, to be valid.

7.—IF QUASHED THE CORPORATION ONLY TO BE LIABLE.

25 **199.** In case a By-law, Order or Resolution is illegal in
 whole or in part, and in case any thing is done under it which,
 by reason of such illegality, gives any person a right of action; no
 such action shall be brought until one calendar month has elapsed
 after the By-law, Order or Resolution has been quashed or re-
 30 pealed, nor until one calendar month's notice in writing of the
 intention to bring such action has been given to the Corporation;
 and every such action shall be brought against the Corporation
 alone, and not against any person acting under the By-law,
 Order or Resolution.

Liability of Municipality for acts done under a By-law afterwards quashed.

8.—TENDER OF AMENDS BY.

35 **200.** In case the Corporation tenders amends to the
 Plaintiff or his Attorney, if such tender be pleaded and (if tra-
 versed) proved, and if no more than the amount tendered is
 recovered, the plaintiff shall have no costs, but costs shall be
 taxed to the defendant, and set off against the verdict, and the
 40 balance due to either party shall be recovered as in ordinary
 cases.

Tender of amends.

6.—OFFENCES AGAINST BY-LAWS.

Offences
against By-
laws.

201. In case any Officer of a Municipal Corporation neglects or refuses to carry into effect a By-law for paying a debt, and so neglects or refuses under colour of a By-law illegally attempting to repeal such first mentioned By-law, or to alter the same so as to diminish the amount to be levied under it, such Officer shall be guilty of a misdemeanor, and be punished by fine or imprisonment, or both, at the discretion of the Court whose duty it may be to pass sentence upon him. 5

Jurisdiction
to try.

202. In case an offence is committed against a By-law of a Council, for the prosecution of which offence no other provision is made, any Justice of the Peace, having jurisdiction in the locality where the offender resides, or where the offence was committed, whether such Justice is a member of the Council or not, may try and determine any prosecution for such offence. 10

Summary
proceedings.

Evidence.

203. The Justice or other authority before whom a prosecution is had for an offence against a Municipal By-law, may convict the offender on the oath or affirmation of any competent witness other than the prosecutor or informer, and shall award the penalty or punishment imposed by the By-law with the costs of prosecution, and may ~~for that purpose~~ by warrant under the hand and seal of such Justice or other authority, or in case one or more Justices act together therein, then under the hand and seal of one of them, cause any pecuniary penalty and costs or costs only, *as the case may be*, if not forthwith paid, 25 to be levied by distress and sale of the goods and chattels of the offender.

Penalty and
costs.

How levied.

Commitment
in default of
distress.

204. In case of there being no distress found, out of which such penalty can be levied, such Justice may commit the offender to the Common Gaol, House of Correction or nearest Lock-up House, for the term specified in the By-law. 30

Fines how ap-
plied.

205. When the pecuniary penalty is levied, one moiety thereof shall go to the informer or prosecutor, and the other moiety to the Corporation, unless the prosecution is brought in the name of the Corporation; and in that case the whole of the pecuniary penalty shall be paid to the Corporation. 35

Jurisdiction
of Mayors and
Police Magis-
trates over
penal offences.

206. The Police Magistrate, or when there is none, the Mayor of a Town or City, shall have jurisdiction in addition to his other powers, to try and determine all prosecutions for offences against the By-laws of the Town or City, and for penalties for refusing to accept or to be sworn into office therein. 40

3. DEBENTURES, &c.

1.—HOW TO BE MADE.

Debentures,
Bonds &c.

207. All Debentures and other specialties duly authorized to be executed on behalf of a Municipal Corporation shall be

X see p. 336

sealed with the Seal of the Corporation and be signed by the Head thereof, or by some other person authorized by By-law to sign the same, otherwise the same shall not be valid.

2.—TRANSFERABLE BY DELIVERY, &c.

208. Any Debenture heretofore issued, or issued after this Act takes effect, under the formalities required by law, by any Municipal Corporation, payable to bearer or to any person named therein or bearer, may be transferred by delivery, and such transfer shall vest the property of such debenture in the holder, and enable him to maintain an action thereupon in his own name.

Debentures transferable by delivery if payable to bearer.

209. Any Debenture issued as aforesaid, and made payable to any person, or to any person or order, shall, (after the endorsement thereof in blank, by such person or persons,) be transferable by delivery from the time of such endorsement, and such transfer shall vest the property thereof in the holder, and enable him to maintain an action thereupon in his own name.

Or, if endorsed in blank, when payable to order.

210. In a suit or action upon any such Debenture, it shall not be necessary for the Plaintiff to set forth in the declaration or other pleading, or to prove, the mode by which he became the holder of such Debenture, or to set forth or to prove the notices, by-laws or other proceedings under and by virtue of which the Debenture was issued, but it shall be sufficient in such pleading to describe the Plaintiff as the holder of the Debenture, (alleging the indorsation in blank, if any,) and shortly to state its legal effect and purport, and to make proof accordingly.

In pleading sufficient to describe Plaintiff as the holder.

211. Any such Debenture issued as aforesaid, shall be valid and recoverable to the full amount notwithstanding its negotiation by such Corporation at a rate less than par, or at a rate of interest greater than six per centum per annum, and shall not be impeachable on that ground in the hands of a *bona fide* holder for value, without notice.

Full amount recoverable by holder without notice though negotiated at interest exceeding 6 per cent. or below par.

4. RESTRICTIONS UPON COUNCILS.

212. No Council shall act as bankers; or issue any Bond, Bill, Note, Debenture or other undertaking, of any kind or in any form, in the nature of a Bank Bill or Note, or intended to form a circulating medium, or to supply the place of specie, or to pass as money; nor shall any such Council make or give any Bond, Bill, Note, Debenture or other undertaking, for the payment of a less amount than twenty-five pounds; and any Bond, Bill, Note, Debenture or other undertaking issued in contravention of this Section, shall be void.

Restrictions upon Councils in Banking issuing bills, bonds, &c.

X See Part I. 335 No 3

To issue Bank notes &c., contrary to this Act declared a misdemeanor **§13.** In case any person issues or makes, or assists in issuing or making, or knowingly utters or tenders in payment or exchange, any Bond, Bill, Note, Debenture or undertaking, of any kind or in any form, in the Nature of a Bank Bill or Note, intended to form a circulating medium, or to supply the place of specie, or to pass as money, contrary to this Act, such person shall be guilty of a misdemeanor. 5

Municipalities prohibited. **§14.** No Council shall have power to give any person an exclusive right of exercising within the Municipality any trade or calling, or to impose a special tax on any person exercising the same, or to require a license to be taken for exercising the same unless authorized or required by statute so to do. But the Council may direct a fee, not exceeding five shillings, to be paid to the proper Officer for a certificate of compliance with any regulations in regard to such trade or calling. 15

§15. But Nothing in this Act contained shall prevent a Council from granting exclusive privileges in any ferry which may be vested in the Corporation represented by such Council.

COSTS OF MANDAMUS.

Costs of Mandamus. **§16.** Upon any application for a Writ of Mandamus for or against a Municipal Corporation, the Courts may, in their discretion, grant or refuse costs. 20

5.—EXECUTIONS AGAINST CORPORATIONS.

Writs of execution against Municipalities. **§17.** Any Writ of Execution against a Municipal Corporation, may be endorsed with a direction to the Sheriff to levy the amount thereof by rate, and the proceedings thereon shall then be the following: 25

Sheriff to deliver statement to Treasurer. 1. The Sheriff shall deliver a copy of the Writ and indorsement to the Chamberlain or Treasurer, or leave such copy at the office or dwelling house of that officer, with a statement in writing of the Sheriff's fees, and of the amount required to satisfy such execution, including in such amount the interest calculated to some day as near as is convenient to the day of the service; 30

If not paid, a rate to be struck: 2. In case the amount with interest thereon from the day mentioned in the statement, be not paid to the Sheriff within one calendar month after the service, the Sheriff shall examine the Assessment Rolls of the Corporation, and shall, in like manner as rates are struck for general Municipal purposes, strike a rate sufficient in the pound to cover the amount due on the execution, with such addition to the same as the Sheriff deems sufficient to cover the interest, his own fees and the Collector's percentage, up to the time when such rate will probably be available; 35 40

3. The Sheriff shall thereupon, issue a precept or precepts, ^{Precept to} under his hand and seal of office, directed to the Collector or ^{levy.} respective Collectors of the Corporation, and shall annex to every precept the roll of such rate, and shall by such precept after
 5 reciting the Writ, and that the Corporation had neglected to satisfy the same, and referring to the roll annexed to the precept, command the Collector, or Collectors within their respective jurisdictions, to levy such rate at the time and in the manner by law required in respect of the general annual rates ;

10 4. In case at the time for levying the annual rates next after the receipt of such precept the Collectors have a general rate ^{Who to col-} roll delivered to them for such year, they shall add a column ^{lect.} thereto, headed, " Execution rate in A. B., vs. The Township, (or as the case may be, adding a similar column for each execu-
 15 tion if more than one,) and shall insert therein the amount by such precept required to be levied upon each person respectively, and shall levy the amount of such execution rate as aforesaid, and shall, within the time they are by law required to make the returns of the general annual rate return to the Sheriff the
 20 precept with the amount levied thereon, after deducting their per centage ;

5. The Sheriff shall after satisfying the Execution and all ^{Surplus.} fees thereon, pay any surplus, within ten days after receiving the same, to the Chamberlain or Treasurer, for the general pur-
 25 poses of the Corporation ;

6. The Clerk, Assessors and Collectors of the Corporation ^{Clerk Asses-} shall, for all purposes connected with carrying into effect, or ^{sors and Col-} permitting or assisting the Sheriff to carry into effect, the pro- ^{lectors to be} visions of this Act, with respect to such executions, be deemed ^{officers of the} to be Officers of the Court out of which the Writ issued, and as ^{Court from} such shall be amenable to the Court, and may be proceeded ^{which Writ} against by attachment or otherwise, to compel them to perform ^{issued.} the duties hereby imposed upon them.

6.—DEBTS AND RATES.

1.—YEARLY RATES FOR DEBTS.

35 218. The Council of every Township and the Council of ^{Yearly rates} every County and of every provisional Corporation, and of ^{to be levied.} every City, and of every Town, and of every Incorporated Village respectively shall assess and levy on the whole rateable property within its jurisdiction a sufficient sum in each year
 40 to pay all valid debts of the Corporation, whether of principal or interest, falling due within the year.

2.—BY-LAWS TO CREATE DEBTS, &c.

219. Every such Council may under the formalities required ^{By-laws for} by law, pass By-laws for contracting debts by borrowing ^{creating} debts.

money or otherwise, and for levying rates on the rateable property of the Municipality, for any purpose within the jurisdiction of the Council; But no such By-Law shall be valid which is not in accordance with the following restrictions and provisions:

5

Terms of, when to take effect.

1. The By-law if not for creating a debt for the purchase of Public Works, shall name a day in the financial year in which the same is passed, when the By-law shall take effect;

When to be redeemed.

2. If not contracted for gas works, or for the purchase of public works, according to the Statutes relating thereto, the whole of the debt and the obligations to be issued therefor shall be made payable in twenty years at furthest from the day on which such By-Law takes effect;

To provide a yearly rate.

3. The By-law shall settle an equal special rate per annum, in addition to all other rates, to be levied in each year for paying the debt and interest—

Sufficient in amount.

4. Such special rate shall be sufficient, according to the amount of rateable property appearing by the last revised assessment Rolls, to discharge the debt and interest when 20 respectively payable;

Irrespective of future increase of rateable property.

5. The amount of rateable property shall be ascertained irrespective of any future increase of the rateable property of the Municipality, and of any income in the nature of tolls, interest or dividends, from the work, or from any stock, shares 25 or interest in the work, upon which the money to be so raised or any part thereof is intended to be invested, and also irrespective of any income from the temporary investment of the sinking fund or of any part thereof—

Recitals in, amount and object of debt.

The yearly rate for the debt.

The value of the rateable property.

The yearly rate for interest.

To be assented to by the rate-payers.

6. The By-law shall recite: (1.) The amount of the debt 30 which such new By-law is intended to create, and, in some brief and general terms, the object for which it is to be created; (2.) The total amount required by this Act to be raised annually by special rate for paying the new debt and interest; (3.) The amount of the whole rateable property of the Municipality 35 according to the last revised assessment Rolls; and, (4.) The annual special rate in the pound for paying the interest and creating an equal yearly sinking fund for paying the principal, of the new debt, according to this Act;

220. Except in Counties every By-law for raising upon the 40 credit of the Municipality any money not required for its ordinary expenditure shall before the final passing thereof, receive the assent of the Electors of the Municipality in the manner provided for in the 190th section and sub-sections of this Act.

221. And in Counties no By-law of a County Council for creating any debt or contracting any loan shall be valid, unless the same is passed at a meeting of the Council especially called for the purpose of considering the same and held not less than three calendar months after a copy of such By-law at length as the same is ultimately passed together with a notice of the day appointed for considering the same, has been published in some newspaper issued weekly or oftener within the County, or if there be no such public newspaper, then in a public newspaper published nearest to County; which said notice may be to the effect following:

Course of proceeding by County Councils.

FORM OF NOTICE.

The above is a true copy of a proposed By-law to be taken into consideration by the Municipality of the County (or United Counties) of at , in the said County (or United Counties) on the day of , 18 , at the hour of o'clock in the noon, at which time and place the members of the Council are hereby required to attend for the purpose aforesaid.

G. H. Clerk.

20

PURCHASE OF PUBLIC WORKS.

222. 1. The Council of any Municipal Corporation in Upper Canada may contract a Debt or Debts to Her Majesty, in the purchase of any of the Public Roads, Harbors, Bridges, Buildings or other Public Works in Upper Canada; and may enter into, make and execute such Bonds, Deeds, Covenants, other Securities to Her Majesty, as the Council may deem fit, for the payment of the price of any such Public Work already sold or transferred, or which may be sold or transferred, or agreed to be sold or transferred to such Municipal Corporation, and for securing the performance and observance of all or any of the conditions of sale or transfer; and may also pass and enact all necessary By-laws for any of the purposes aforesaid. And all such By-laws, Debts, Bonds, Deeds, Covenants and other Securities shall be valid and effectual in law, and binding upon such Municipal Corporation, although no Special or other Rate per annum be settled or imposed to be levied in each year, as provided by the three last preceding sections of this Act.

Municipal Councils may purchase Public Works and contract debts without imposing a yearly rates as provided in the three last sections.

and

No. 12 V C 5 P 1

has been

2. Any such Municipal Council may nevertheless in any By-law to be passed for the creation of any such Debts, or for the making or executing any such Bonds, Deeds, Covenants or other Securities as aforesaid, to Her Majesty, or in any other By-law to be passed by such Council, settle and impose a Special Rate per annum, of such amount as such Council may deem expedient, over and above and in addition to all

Rates may be imposed for the payment of debts contracted with the Crown for such Works.

other rates whatsoever, to be levied in each year upon the assessed rateable property within the limits of such Municipality, for the payment and discharge of such Debts, Bonds, Deeds, Covenants or other Securities, or some part thereof; and every such By-law shall be valid and effectual and binding upon such Municipal Corporation, although the Rate settled or imposed thereby be less than is required by the said sections last mentioned; and all and every the provisions of the said sections, shall, so far as applicable, apply and extend to every such By-law, and the moneys raised or to be raised thereby, as fully in every respect as such provisions would extend or apply to any By-law enacted by any such Municipal Council for the creation of any Debt, as provided in the said sections, or to the moneys raised or to be raised thereby. 5
10

S.—HOW ACCOUNTS OF DEBTS AND RATES TO BE KEPT.

Two special accounts to be kept. 1, of the Special rates. 2, of the Sinking Fund.

223. The Council of every County, Provisional Corporation, Township, City, Town and incorporated Village, shall keep in its books two separate Accounts, one for the Special Rate, and one for the Sinking Fund, of every debt, to be both distinguished from all other accounts in the books by some prefix designating the purpose for which the debt was contracted; and shall keep the said Accounts, with any others that are necessary, so as to exhibit at all times the state of every debt, and the amount of monies raised, obtained and appropriated for payment thereof; 15
20

When surplus to be carried to the sinking fund account.

224. If, after paying the interest of a debt and appropriating the necessary sum to the sinking fund of such debt for any financial year, there is a surplus at the credit of the Special Rate Account of such debt, such surplus shall so remain, and may be applied, if necessary, towards the next year's interest; but if such surplus exceeds the amount of the next year's interest, the excess shall be carried to the credit of the Sinking Fund Account of such debt; 25
30

4.—HOW SURPLUS TO BE INVESTED.

How surplus to be disposed of.

225. Every such Council shall, from time to time, invest in Government securities or otherwise, as the Governor in Council directs, such part of the produce of the special rate levied in respect of any debt and at the credit of the Sinking Fund Account, or of the Special Rate Account thereof as cannot be immediately applied towards paying the debt by reason of no part thereof being yet payable; and the Council shall apply all interest or dividends received upon such investments to the same purpose as this Act directs the amount levied by the Special Rate to be applied; 35
40

Investment how to be made.

5.—APPROPRIATION OF SURPLUS.

226. Every such Council may appropriate to the payment of any debt the surplus income derived from any public or corporation work, or from any share or interest therein, after paying the annual expenses thereof, or any unappropriated money in the Treasury or any money raised by additional rate; and any money so appropriated shall be carried to the credit of the Sinking Fund of such debt.

Council may apply other funds towards such debts.

6.—WHEN BY-LAWS CREATING DEBTS REPEALABLE.

227. When part only of a sum of money provided for by a By-law has been raised, the Council may repeal the By-law as to any part of the residue and as to a proportionate part of the Special Rate imposed therefor, provided such repealing By-law recites the facts on which it is founded, and is appointed to take effect on the thirty-first day of December in the year of its passing, and does not affect any rates due, or penalties incurred before that day, and provided the By-law is first approved by the Governor in Council;

When part only of a debt has been incurred, the By-law provisions may be repealed.

228. After a debt has been contracted, the Council shall not, until the debt and interest have been paid, repeal the By-law under which the debt was contracted or any By-law for paying the debt or the interest thereon or for providing therefor a rate or additional rate, or appropriating thereto the surplus income of any work or of any stock or interest therein, or money from any other source; and the Council shall not alter a By-law providing any such rate so as to diminish the amount to be levied under the By-law, except in the cases herein authorized, and shall not apply to any other purpose any money in the Corporation Treasury which, not having been previously otherwise appropriated by any By-law or Resolution, has been directed to be applied to such payment;

By-laws not repealable and appropriations not revocable till debt paid.

7.—WHEN SPECIAL RATE MAY BE REDUCED.

229. In case the special rate imposed for the payment of a debt, and collected for any particular year, or on hand from previous years, with such sums as are derived for such particular year from the surplus income of any work, or of any share or interest therein applicable to the Sinking Fund of the debt, or from the temporary investment of the Sinking Fund of the debt, or any part of it, and respectively carried to the credit of the Sinking Fund for such particular year, amount together, or in case any of them amount together, to more than the annual sum required to be raised as a special rate to pay the debt and interest, and therefore leave a surplus after paying the interest and making the necessary appropriation to the Sinking Fund of the debt, for such year—the Council may pass a By-law

When the rate imposed by By-law may be reduced by By-law.

reducing the total amount to be levied under the original By-law for the following year to a sum not less than the difference between such last mentioned surplus and the annual sum which the original By-law named and required to be raised as a special rate.

5

Recitals in such By-law.

230. But such By-law shall not be valid—unless it recites:

1. The amount of the special rate imposed by the original By-law ;

2. The balance of such rate for the particular year or on hand from former years ;

10

3. The surplus income of the work, share or interest therein received for such year ; and,

4. The amount derived for such year from any temporary investment of the Sinking Fund—

Nor unless such By-law names the reduced amount in the pound to be levied under the original By-law—

15

To be approved of by the Governor.

Nor unless such By-law is afterwards approved by the Governor in Council.

8.—ANTICIPATORY APPROPRIATIONS.

Anticipatory appropriations may be made.

231. In case any such Council desires to make an Anticipatory appropriation for the next ensuing or some other future year in lieu of the special rate for such year, in respect of any debt, such Council may do so, by By-law, in the manner and subject to the provisions and restrictions following :

20

What Fund may be so appropriated.

1. The Council may carry to the credit of the Sinking Fund account of the debt, as much as necessary for the purpose aforesaid ;

25

The sources to be distinguished.

1. Of any money at the credit of the Special Rate Account of the debt beyond the interest on such debt for the year following that in which the Anticipatory Appropriation is made ;

30

2. And of any money raised for the purpose aforesaid by additional rate or otherwise ;

3. And of any money derived from any temporary investment of the Sinking Fund ;

4. And of any surplus money derived from any corporation or work or any share or interest therein ;

35

5 And of any unappropriated money in the Treasury ;

Such moneys respectively not being otherwise appropriated ;

2. The By-law making such appropriations shall distinguish the several sources of the amount and the portions thereof to be respectively applied for the interest and for the Sinking Fund Appropriation of the debt for such next ensuing or other future year ;

3. In case the money so retained at the credit of the Special Rate Account and so appropriated to the Sinking Fund account, from all or any of the sources above mentioned are sufficient to meet the Sinking Fund Appropriation and interest for the next ensuing year if that year be intended or for such other future year as may be intended, the Council may then pass a By-Law directing that the original rate for such next ensuing or other future year be not levied ;

When sufficient, the yearly rate may be suspended for the future year.

15 ~~232~~. Such By-law shall not be valid unless it recites.

1. The original amount of the debt, and in brief and general terms, the object for which the debt was created ;

The By-law to recite the original debt.

2. The amount, if any, already paid of the debt ;

The amount paid.

3. The annual amount of the Sinking Fund Appropriation required in respect of such debt :

The amount of Sinking Fund yearly.

4. The total amount, then on hand, of the Sinking Fund Appropriations, in respect of the debt, distinguishing the amount thereof in cash in the treasury from the amount temporarily invested ;

The amount in hand.

25 5. The amount required to meet the interest of the debt, for the year next after the making of such Anticipatory Appropriation ; and

The amount required for the next year's interest.

6. That the Council has retained at the credit of the Special Rate Account of the debt, a sum sufficient to meet the next 30 years' interest (naming the amount of it) and that the Council has carried to the credit of the Sinking Fund Account a sum sufficient to meet the Sinking Fund Appropriation (naming the amount of it) for such year ; and

And of its being reserved.

35 7. No such By-law shall be valid unless approved by the Governor in Council.

By-law to be approved by Governor.

40 ~~233~~. After the dissolution of any Municipal Union the Senior Municipality may make an anticipatory appropriation for the relief of the Junior Municipality, in respect of any debt secured by By-law in the same manner as the Senior Municipality might do on its own behalf.

After the dissolution of a

9.—REPORT OF DEBTS TO BE MADE YEARLY.

Union the Senior Municipality may relieve the Junior by an anticipatory appropriation. **234.** Every such Council shall, on or before the thirty-first day of January in each year, transmit to the Governor General, through the Provincial Secretary, an account of the several debts of the Corporation, as they stood on the thirty-first day of December preceding, specifying in regard to every debt of 5 which a balance remained due at that day ;

The Council to make a yearly report of the state of the debts to the Governor, &c.

1. The original amount of the debt ;
2. The date when it was contracted ;
3. The days fixed for its payment ;
4. The interest to be paid therefor ; 10
5. The rate provided for the redemption of the debt and interest ;
6. The proceeds of such rate for the year ending on such thirty-first day of December ;
7. The portion (if any) redeemed of the debt during such 15 year ;
8. The amount of interest (if any) unpaid on such last mentioned day, and
9. The balance still due of the principal of the debt.

The Governor may prescribe a form of account.

235. The form of such account may from time to time be 20 prescribed by the Governor in Council.

10.—COMMISSIONS OF INQUIRY RESPECTING MUNICIPAL FINANCES.

When a commission of inquiry may issue.

236. In case one third of the members of any such Council petition for a Commission or Commissions to issue under the Great Seal, to inquire into the financial affairs of the Corporation and things connected therewith, and if sufficient cause be shewn, 25 the Governor in Council may issue a Commission or Commissions accordingly, and the Commissioner or the Commissioners, or such one or more of them as the Commission empowers to act, shall have the same power to summon witnesses, enforce their attendance, and compel them to produce do- 30 cuments and to give evidence, as any Court has in civil cases.

Expenses of such Commissions provided for.

237. The expense to be allowed for executing such Commission shall be determined and certified by the Inspector General or his Deputy, and shall become thenceforth a debt due to the Commissioner or Commissioners by the Corporation, and shall 35

be payable within three calendar months after demand thereof made by the Commissioner, or by any one of the Commissioners, at the office of the Treasurer of the Corporation.

2.—PROVISIONS APPLICABLE TO ALL MUNICIPALITIES EXCEPT PROVISIONAL CORPORATIONS.

238. The following Section numbered 239 and Subsections 5 apply to the following Municipalities and Municipal Councils, namely :

Sections applicable to all except Provisional Councils.

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> 1. Counties, 2. Townships, 3. Cities, | | <ul style="list-style-type: none"> 4. Towns, and 5. Incorporated Villages, |
|---|--|--|

239. The Council of every County, Township, City, Town and Incorporated Village may respectively pass By-laws.

Township Council may make By-laws.

OBTAINING PROPERTY.

1. For obtaining such real and personal property as may be required for the use of the Corporation, and for erecting, improving and maintaining a Hall and any other houses and buildings required by and being upon the land of the Corporation, and for disposing of such property when no longer required ;

For obtaining property real and personal, &c.

APPOINTING CERTAIN OFFICERS.

2. For appointing under the corporate Seal such,—

To appoint officers.

- | | | |
|--|--|---|
| <ul style="list-style-type: none"> 1. Pound-keepers ; 2. Fence-Viewers ; | | <ul style="list-style-type: none"> 3. Overseers of Highways ; 4. Road Surveyors ; |
|--|--|---|

5. And other officers as are necessary in the affairs of the Corporation, or for carrying into effect the provisions of any Act of the Legislature for the removal of such officers ; and For regulating the remuneration, fees, charges and duties of such officers, and the securities to be given for the performance of such duties ;

To fix fees and securities.

AIDING AGRICULTURAL SOCIETIES.

3. For granting money or land in aid of the Agricultural Association of Upper Canada or of any duly organized Agricultural or Horticultural Society in Upper Canada, or of any incorporated Mechanics' Institute within the limits of the Municipality ;

For aiding agricultural societies.

CENSUS.

4. For taking a Census of the inhabitants, or of the resident Male freeholders and householders of the Municipality ;

Local census.

FINES AND PENALTIES.

Fines and penalties for neglect of duty.

5. For inflicting reasonable fines and penalties not exceeding Five Pounds exclusive of costs,—

1. Upon any person for the non-performance of his duties who has been elected or appointed to any Office in the Corporation, and who has accepted such Office and taken the oaths, and afterwards neglects the duties thereof; and 5

2. For breach of any of the By-laws of the Corporation; and

3. For collecting such penalties by distress and sale of the goods and chattels of the offender;

Imprisonment when allowed and time of.

6. For inflicting reasonable punishment, by imprisonment with or without hard labour either in a Lock-up house in some Town or Village in the Township, or in the County Gaol or House of Correction for any period not exceeding Twenty-one days, for breach of any of the By-laws of the Council in case of non-payment of the Fine inflicted for any such breach, and there being no distress found out of which such fine can be levied. 15

For refusing office.

7. For inflicting reasonable fines and penalties not less than Two nor more than Twenty pounds upon any person elected or appointed to any Municipal Council, or other Corporate Office, who being duly qualified refuses to accept the same or to take the oaths of qualification and of office. 20

3.—PROVISIONS APPLICABLE TO TOWNSHIPS, CITIES, TOWNS, AND INCORPORATED VILLAGES.

240. The following Sections and subsections numbered from 241 to 252 shall apply to the following Municipalities and Municipal Councils, namely :

- | | | | |
|---------------|--|---------------------------|----|
| 1. Townships, | | 3. Towns, and | 25 |
| 2. Cities, | | 4. Incorporated Villages. | |

PUBLIC HEALTH.

Members of Council to be health officers.

241. The Members of every Township, City, Town and Incorporated Village Council shall be Health Officers within their respective Municipalities, under the Statute of Upper Canada, passed in the fifth year of the reign of His late Majesty, King William the Fourth, intituled, *An Act to promote the Public Health and to guard against infectious diseases in this Province*, and under any Act hereafter passed for the like purpose; but any such Council may by By-law delegate the powers of its members as such Health Officers to a committee of their own number, or to such persons, either including or not including ~~some of themselves~~, any of themselves as the Council thinks best. 30 40

SHOPS AND TAVERNS.

242. The Council of every such Municipality may respectively pass By-laws.

SALE OF SPIRITUOUS LIQUORS.

1. For prohibiting the sale by retail of spirituous, fermented or other manufactured liquors in any Inn or other House of public entertainment; and for prohibiting the sale thereof in Shops and places other than houses of public entertainment; Provided, such By-law, before the final passing thereof, has been duly approved by the Electors of the Municipality in the manner provided by this Act;

Sale of Liquors in shops or taverns may be prohibited.

WHAT ACCOMODATION TO BE PROVIDED.

- 10 2. For declaring the terms and conditions required to be complied with, and the security to be given by any applicant for a Tavern license for the orderly keeping and the description of his house and the accommodation he is to have and keep therein;
- 15 3. For declaring the security to be given by any applicant for a Shop or Tavern License, for observing the By-laws of the Municipality;
- 20 4. For limiting the number of Tavern and Shop licenses respectively, that may be issued by the Shop and Tavern License Board hereinafter mentioned;
5. For regulating the houses or places licensed, the time the licenses are to be in force not exceeding one year, and the sums to be paid therefor respectively;

Terms on which license may be granted.

Security to be given.

Number of licenses may be limited.

Regulation of Public Houses.

243. The sum to be paid for a Tavern license shall exceed and include the duty payable under the Imperial Statute passed in the fourteenth year of the Reign of King George the Third, intituled, *An Act to establish a fund towards defraying the charges of the administration of Justice and the support of the Civil Government within the Province of Quebec*, and every license so granted as aforesaid shall be held a license for the purpose of the said Imperial Act, and the sum paid for such License shall be applied to the use of the Corporation; But no By-law by which a greater sum than Ten Pounds per annum is intended to be exacted for any Shop or Tavern License, or for leave to exercise any other calling, or to do any other thing for which a License may be required, shall have force or effect, unless such By-law before the final passing thereof has been duly approved by the electors of the Municipality in the manner provided by this Act.

The sums imposed for.

Licenses to include the Imperial duty.

Licenses not to exceed £10 unless approved by public vote, &c.

See 16. U.C. 184 J.4
1874 U.C. 15
✓

INSPECTORS OF LICENSES.

244. The Council of every such Municipality may respectively pass By-laws ;

Appointment of Inspectors of Shop and Tavern Licenses.
Time of and qualification for office.

1. For appointing annually one or more fit and proper persons, possessing the same property qualification as that required for the Councillors of the Municipality, to be Inspectors of Shop and Tavern Licenses, who shall hold office during the current year, and any vacancy occurring during the year shall be filled by the Council, for the remainder of such year. 5

Duties and remuneration of.
Security to be given by.

2. For fixing and defining the duties, powers and privileges of the Inspectors so appointed ; the remuneration they shall receive ; and the security to be given by them for the efficient discharge of the duties of their office ; such By-laws not being contrary to law and 10

EXPENSES,

License Board expenses and Inspectors, salaries.

3. For providing for the expenses of the Shop and Tavern License Board. 15

245. The Council of every such Municipality, respectively shall provide for and pay all reasonable expenses of such License Board and the salaries or other compensation of Inspectors appointed for the Municipality.

246. Every such Council respectively may also pass By-20 laws :

1.—BILLIARD TABLES.

Billiard Tables to be licensed.

1. For licensing, regulating and governing all persons who, for hire or gain directly or indirectly, keep, or have in their possession, or on their premises, any Billiard Table, or who keep or have a Billiard Table in a house or place of public entertainment or resort whether such Billiard Table is used or not, and for fixing the sum to be paid for a License so to have or keep such Billiard Table, and the time such License shall be in force ; 25

2.—VICTUALLING HOUSES, &c.

Victualling houses, number and regulations of.

2. For regulating, and limiting the number of Victualling Houses, ordinaries, and houses where fruit, oysters, clams, or victuals are sold to be eaten therein, and all other places for the reception, refreshment or entertainment of the public ; and 30

License and fee for same.

3. For Licensing the same when no other provision exists therefor, and for fixing the rates of such Licenses not exceeding Five Pounds.

3.—LICENSES HOW LONG TO CONTINUE.

247. In case any By-law respecting Licenses is repealed, altered or amended, no person shall be required to take out a new license or to pay any additional sum upon his license during the time for which the same has been granted to him ; and

Licenses when not required to be renewed.

4.—LICENSE FEES.

248. All sums of money levied for licenses shall belong to the Corporation of the Municipality in which they are levied.

License fees to belong to Municipality.

5.—DISORDERLY INNS.

249. The Mayor or Police Magistrate of a Town or City, with any two Justices of the Peace having Jurisdiction therein, or the Town Reeve of a Township or Village with any two Justices of the Peace having Jurisdiction in such Township or Village, upon complaint made on oath to them or one of them respectively, of riotous or disorderly conduct in any Inn, Tavern, Ale or Beer house situate within their Jurisdiction, may summon the keeper of such Inn, Tavern, Ale or Beer House, to answer the complaint, and may investigate the same summarily, and either dismiss the complaint with costs to be paid by the complainant, or convict the keeper of having a riotous or disorderly house, and annul his license, or suspend the same for not more than sixty days with or without costs, as in their discretion may seem just.

How keepers of disorderly Inns to be proceeded against.

LAND MARKS AND BOUNDARIES.

250. In case the Council of any such Municipality adopts a resolution on the application of one half of the resident land holders to be affected thereby, that it is expedient to place durable monuments at the front or rear of any concession or range or part thereof in the municipality, or at the front and rear angles of the lots therein, such Council may apply to the Governor in the manner provided for in thirty-first section of the Act passed in the twelfth year of Her Majesty's Reign chapter thirty-five, praying him to cause a survey of such concession or range, or such part thereof, to be made and such monuments to be placed under the authority of the commissioner of Crown Lands, and the person or persons making such survey shall accordingly plant stone or other durable monuments at the front or at the rear of such concession or range, or such part thereof as aforesaid, or at the front or rear angles of each and every lot therein, (as the case may be,) and the limits of each lot so ascertained and marked, shall be the true limits thereof; and the costs of the said survey shall be defrayed in the manner prescribed by the said thirty-first section of the aforesaid Statute of twelfth Victoria, Chapter thirty-five.

Land marks and monuments to mark boundaries.

251. The Council of every such Municipality respectively may also pass By-laws

PROVISION FOR ESTABLISHING BOUNDARIES.

Ascertaining
and marking
boundaries of
Townships.

1 For procuring the necessary estimates, and making the proper application for ascertaining and establishing the boundary lines of the Municipality, according to law, in case the same has not been done; and for erecting and providing for the preservation of the durable monuments, required to be erected for evidencing the same. 5

2.—SCHOOLS.

Acquiring
land for
schools.

2. For obtaining such real property as may be required for the erection of Common School Houses thereon and for other Common School purposes, and for the disposal thereof when no longer required; and for providing for the establishment and support of Common Schools according to law; 10

3.—CRUELTY TO ANIMALS.

Preventing
cruelty to
animals.

3. For preventing Cruelty to animals; not being inconsistent with the Statute in that behalf; 15

4.—TAX ON DOGS.

Tax on dogs.

4. For imposing a tax on the owners, possessors or harbourers of dogs; and for killing dogs running at large contrary to the By-laws;

5.—FENCES.

Height of
Fences.

5. For settling the height and description of lawful fences.

6.—DIVISION FENCES.

Of division
fences.

6. For regulating the height, extent and description of lawful division fences; and for determining how the cost thereof shall be apportioned; and for directing that any amount so apportioned shall be recovered in the same manner as penalties not otherwise provided for may be recovered under this Act; Provided that until such By-laws are made, the Statute eighth Victoria chapter twenty shall continue applicable to every such Municipality; 20 25

7.—WEEDS.

Destruction of
weeds.

7. For preventing the growth of weeds detrimental to good husbandry;

8.—EXHIBITIONS, SHOWS, &c.

Licensing
Public Shows.

8. For preventing or regulating and licencing exhibitions of Wax, Work, Menageries, Circus riding and other such like

shows usually exhibited by showmen, and for requiring the payment of License fees for authorizing the same not exceeding Five Pounds for every such License, and for imposing fines upon persons infringing such By-Laws and for levying the same by distress and sale of the goods and chattels of such showman or belonging to or used in such Exhibition whether owned by such showman or not, or for the imprisonment of such offenders for any term not exceeding one calendar month;

9.—GRAVES.

9. For preventing the violation of graves, tombs, tombstones or vaults where the dead are interred. Protecting graves.

10.—GAS AND WATER.

10. For authorizing any Corporate Gas or Water Company to lay down pipes or conduits for the conveyance of water or gas under streets or public squares, subject to such regulations as the Council sees fit ; Authorising Gas and Water Companies to lay down pipes, &c.

STOCK IN.

13. For acquiring stock in, or lending money to, any such Company ; and for guaranteeing the payment of money borrowed by, or of debentures issued for money so borrowed by, the Company ; Provided the By-law is consented to by the Electors, as hereinbefore provided. Taking Stock in Gas and Water Companies.

252. The Head of any Corporation holding Stock in any such Company to the amount of two thousand five hundred pounds shall be *ex officio* a Director of the Company in addition to the other Directors thereof, and shall also be entitled to vote on such Stock at any Election of Directors. Head of Corporation to be a Director.

4.—PROVISIONS APPLICABLE TO TOWNSHIPS AND COUNTIES.

25 The following Section No. 253 applies to Townships and Counties :

253. The Council of every Township and County may pass By-laws for paying the Members of the Council for their attendance in Council. Remunerating Councilors.

5.—PROVISIONS APPLICABLE TO TOWNSHIPS ONLY.

254. The following Sections numbered 255 and 256 and subsections apply to Townships only.

1. TOWNSHIP WARDS.

25. In case a majority of the qualified Electors of a Township on the last revised assessment Roll do, by Petition in Wards how to be formed

- upon Petitions of a majority of the Electors. writing signed by them, apply to the Council of the Township to divide the Township into Wards, if not already so divided, or to abolish or alter, in manner specified in the Petition, any existing division into Wards, the following proceedings thereon shall be taken : 5
- Duty of Council in the formation of Wards. To consist of five. 1. In case the Petition is for a division into wards for the first time, the Council shall so arrange the Wards that they may be as compact, and contain as nearly an equal number of Electors, as may consist with the convenience of the inhabitants, the number of Wards being five in all cases ; 10
- To pass a by-law. 2. The Council shall pass a By-law to give effect to the Petition ;
- What same to recite. 3. The By-law shall recite the Petition and that the By-law is passed in compliance with the prayer of the Petition, and shall also recite the present section of this Act, and shall limit the By-law to take effect on the first day of December after the next annual Municipal Election in case the same be assented to at the election by a majority of the voters thereupon ; 15
- Copy of By-law to be delivered to Returning Officer. 4. The Reeve of the Township shall cause a certified copy of the By-law, to be delivered to the Returning Officer of the Township, or of each Ward thereof, *as the case may be*, before the Annual Election next after the passing of the By-law ; 20
- Who is to put up copies in public places. 5. When the By-law is for a division into Wards, or for the alteration of an existing division, the Returning Officer shall, during the election, cause fair Copies of the By-law to be put up for public inspection, in at least four conspicuous places about the place where the Poll is held. 25
- Form of Poll Books. 6. The Returning Officer shall insert appropriate Columns in the Poll Books, headed : 30
- “ For the division into Wards,” and
- “ Against the division into Wards ;” or
- “ For the alteration of the division into Wards,” and
- “ Against the alteration of the division into Wards ;” or
- “ For the abolishing of Wards,” and
- “ Against the abolishing of Wards ;” 35
- And shall, in such columns, while the Poll for the Election of Councillors is open, receive and record the Votes of Electors tendered for and against the By-law ;
- The Reeve to give notice of the result. 7. The Reeve shall, in one month after such Election, examine the Returns of the votes for and against such By-law, and give Public notice of the result. 40

8. Such By-law shall not be repealed or altered except by a By-law how By-law petitioned for, and assented to, as required for the repealable original By-law;

SPECIAL POWERS APPLICABLE TO THE TOWNSHIP OF STAMFORD ONLY.

256. The Council of the Township of Stamford may, in addition to its other powers, from time to time, pass By-laws, to have effect only within such limits in the vicinity of the Falls of Niagara as may be prescribed therein for the following purposes. The Council may pass By-law.

1. To prohibit any person from soliciting passengers, visitors, or others to resort or go to any inn, tavern, or boarding house, museum or other place of resort, or from acting as guides within the limits aforesaid, unless licensed by such Council; To require runners to be licensed.

2. To Regulate and license the owners of livery stables, horses, cabs, carriages and other vehicles used for hire within such limits, and to compel in a summary way the prompt payment of the lawful price or hire to the owner or driver thereof, by the parties hiring or using the same, according to such tariff as may from time to time be established by the By-laws of the Council; to prevent runners, stage drivers and others in the streets or public places, soliciting and importuning passengers and others to go or travel in any boat, vessel, carriage or other vehicle; and also, to require any person licensed by the Council to exhibit, when called upon, a certified copy of the tariff of charges for his remuneration as prescribed by the Council; To license and regulate the owners of Horses, Cabs, Carriages, &c., in the vicinity of the Falls of Niagara.

3. To make all such other rules and regulations, not repugnant to law, for the welfare and good government of the Municipality, within the limits prescribed as aforesaid, as the Council from time to time deems expedient; For the general good government of that part of the Municipality.

4. To Grant all such licenses and make all such rules and regulations as may be necessary and proper for carrying into execution the powers vested in the Council: But no person shall be subject to be fined more than Five Pounds, exclusive of costs, or to be imprisoned more than twenty days, for the breach of any By-law or regulation of the Council made in pursuance of the foregoing Section and Sub-Sections of this Act; To grant Licenses, &c., accordingly. No fine to exceed £5 and imprisonment not to exceed 20 days.

5. The moneys raised from the licenses aforesaid shall be expended under the direction of the Council within the limits so prescribed as aforesaid, in repairing the roads and making such other improvements as the Council may consider advisable. Fines how to be expended.

2. POOR.

By-laws for the relief of the poor when and how they may be passed.

257. Every Township Council may also make By-laws for raising money by a rate to be assessed equally on the whole rateable property of the Township, for the support of the poor resident in the Township. But no By-law for such purpose shall be passed unless upon a written request to that effect signed by a majority of the Freeholders and Household- 5
ers on the assessment roll of the Township for the year in which the request is made, nor unless for at least one month previous to the passing of the By-law a printed copy of the request and signatures thereto has been put up in at least four public places within the Township and also at the usual place for holding the meeting of the Township Council, nor unless the said request has also been inserted in a news paper published in the County for at least four weeks before the passing of the By-law. 15

6.—PROVISIONS APPLICABLE TO COUNTIES, CITIES, TOWNS AND INCORPORATED VILLAGES.

258. The following Section numbered 259 and subsections apply to the following Municipalities and Municipal Councils.

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|--------------|--|---------------------------|
| 1. Counties, | | 3. Towns, |
| 2. Cities, | | 4. Incorporated Villages. |

INSPECTORS OF WEIGHTS AND MEASURES.

259. The Council of every County, City, Town and incorporated Village may pass By-laws :

May appoint Inspectors of weights and measures.

1. For appointing Inspectors to regulate weights and measures, according to the lawful standard ;
2. And for visiting all places wherein weights and measures, steelyards, or weighing machines of any description, are used ; 25
2. And for seizing and destroying such as are not according to such standard ; and
4. For imposing and collecting penalties upon persons who are found in possession of unstamped or unjust weights, measures, steel-yards, or other weighing machines. 30

7.—PROVISIONS APPLICABLE TO COUNTIES, CITIES AND TOWNS.

260. The following Section numbered 261 and subsections apply to the following Municipalities and Municipal Councils.

1. Counties,
2. Cities, and
3. Towns. 35

1.—GAS AND WATER.

261. The Council of every County, City and Town, may respectively pass By-laws :

1. For lighting the Municipality, and for this purpose performing any work, and placing any fixtures, that are necessary, on private property ; Lighting with Gas.

2. For constructing Gas and Water Works, on the credit of the Consolidated Municipal Loan Fund and for levying an annual special rate to defray the yearly interest of the expenditure, and, form an equal yearly sinking fund for the payment of the principal within such time as shall not exceed thirty years, nor be less than five years ; Gas and Water Works.

But no such By-law shall be passed, Firstly, until estimates of the intended expenditure are published for one month, and notice of the time appointed for taking a Poll of the Electors on the proposed By-law has been published for two months, and a copy of the proposed By-law at length as the same may be ultimately passed, and a notice of the day appointed for finally considering the same in Council, are published for three months, in some newspaper in the Municipality ; or, if no newspaper is published therein, then in some newspaper in the County in which the Municipality is situate ; Estimate to be published and a Poll held on the By-law. Proceedings in taking public vote.

Nor, Secondly, until at a Poll, held in the same manner and continued for the same time as at elections for Councillors, at least two thirds of the Electors, voting at such Poll, vote in favor of the By-law ; Poll to be held.

Nor, Thirdly, unless the By-law is thereafter passed at the special meeting mentioned in the published notice. By-law to be passed only at a special meeting &c.

262. If the proposed By-law is rejected at such Poll, no other By-law for the same purpose shall be submitted to the electors during the current year. Coroners to be appointed.

8.—PROVISIONS APPLICABLE TO COUNTIES AND CITIES.

263. The following Section numbered 264 and subsections apply to the following Municipalities :

1. Counties, and

2. Cities.

264. The Council of every County and City may respectively pass By-laws for the following purposes :

1.—ENGINEERS—INSPECTORS.

Engineers and 1. For appointing under the corporate seal in addition to other officers, one or more Engineers, and also one or more Inspectors of the House of Industry, and for the removal of such officers ;

2.—AUCTIONEERS.

Auctioneers. 2. For licencing, regulating and governing Auctioneers and other persons selling or putting up for sale goods, wares, merchandize or effects by public auction ; and for fixing the sum to be paid for every such License, and the time it shall be in force ;

3.—HAWKERS AND PEDLARS.

Hawkers and pedlars. 3. For licencing, regulating and governing hawkers or petty chapmen, and other persons carrying on petty trades, who have not become householders by permanent residents in the County or City, or who go from place to place or to other men's houses, on foot, or with any animal bearing or drawing any goods, wares or merchandize for sale, or in or with any boat, vessel, or other craft or otherwise, carrying goods, wares or merchandize for sale, and for fixing the sum to be paid for a license for exercising such calling within the County or City, and the time the license shall be in force ; but no duty shall be imposed for hawking or pedling any goods, wares or merchandize, the growth, produce or manufacture of this Province, not being liquors mentioned in the 242 Section of this Act ;

4.—FERRIES.

Ferries. 4. For regulating Ferries between any two places in the Municipality ; and establishing the rates of ferrriage to be taken thereon ; but no such By-law as to Ferries shall have effect until assented to by the Governor in Council.

265. Until the Council of the County or City passes a By-law regulating such Ferries, and in the cases of ferries not between two places in the same Municipality, the Governor by Order in Council may from time to time regulate such ferries respectively and establish the rates to be taken thereon, in accordance with the Statutes in force relating to Ferries.

9.—PROVISIONS APPLICABLE TO COUNTIES ONLY.

266. The following sections numbered from 267 to 272 and subsections apply to Counties only :

267. The Council of every County may pass By-laws for the following purposes :

1.—LANDS FOR GRAMMAR SCHOOLS.

Purchase of lands for 1. For obtaining in such part of the County, or of any City within such County, as the wants of the people may most

require, the real property requisite for erecting County Grammar School Houses thereon, and for other Grammar School purposes, and for preserving, improving and repairing such School Houses, and for disposing of such property when no longer required ;

2.—AIDING GRAMMAR SCHOOLS.

2. For making provision in aid of such Grammar Schools as may be deemed expedient ;

Aiding such school.

3.—PUPILS COMPETING FOR UNIVERSITY PRIZES.

3. For making a permanent provision for defraying the expense of the attendance at the University of Toronto, and at the Upper Canada College and Royal Grammar School there, of such of the Pupils of the Public Grammar Schools of the County as are unable to incur the expense but are desirous of, and, in the opinion of the respective Masters of such Grammar Schools, possess competent attainments for, competing for any Scholarship, Exhibition or other similar Prize, offered by such University or College ;

Grammar school pupils competing for University prizes.

4. For making similar provision for the attendance at any County Grammar School, for like purposes, of Pupils of the Common Schools of the County ;

Attendance of common school pupils at grammar schools.

4.—ENDOWING FELLOWSHIPS.

5. For endowing such Fellowships, Scholarships or Exhibitions, and other similar Prizes, in the University of Toronto, and in the Upper Canada College and Royal Grammar School there, for competition among the Pupils of the Public Grammar Schools of the County, as the Council deems expedient for the encouragement of learning amongst the youth thereof.

Endowing Fellowships.

SEPARATE IMPROVEMENTS BY UNITED COUNTIES.

268. The Councils of United Counties may make appropriations and raise funds, to enable either County separately to carry on such improvements as may be required by the inhabitants thereof.

One of several United Counties may separately make improvements with Union Funds.

269. Whenever any such measure is brought under the notice of the Council of any United Counties, none but the Reeves and Deputy Reeves of the County to be affected by the measure shall vote ; except in case of an equality of votes for or against the measure, when the Warden, whether a Reeve or Deputy Reeve of any portion of the County to be affected by the measure or not, shall have the casting vote.

Reeves of the County interested only to vote for.

270. In all other respects, all the provisions of this Act giving such privileges and making provision for the payment

Provisions of this Act

for repay- of the amounts appropriated, whether to be borrowed upon a
ment to ap- loan or to be raised by direct taxation, shall be adhered to.
ply.

Treasurer to pay over moneys, without deduction. **271.** The Treasurer of the United Counties shall pay over all sums so raised and paid into his hands by the several Col-
lectors without any deduction for per centage. 5

In such cases the property of the County interested is alone to be assessed. **272.** The property to be assessed for the purposes contemplated in the four last preceding sections of this Act, shall be the same as the property assessed for any other County purpose, except that any sum to be raised for the purposes of one County only, or for the payment of any debt contracted for the purposes of one County only, shall be assessed and levied solely upon property assessed in that County, and not upon property in any other County united with it. 10

10.—PROVISIONS APPLICABLE TO CITIES TOWNS AND INCORPORATED VILLAGES.

273. The following section numbered 274 and subsections apply to the following Municipalities and Municipal Councils: 15

1. Cities,
2. Towns and
3. Incorporated Villages.

274. The Council of every City, Town and Incorporated Village may respectively pass By-laws for the following purposes: 20

1.—DRAINS, HARBOURS, DOCKS, &c.

May pass By-laws. Taxing realty for repair of drains, &c. 1. For assessing and collecting from the proprietors of real property, immediately benefited by making or repairing any Drain or Posts or pavement in any public way or place near to such property, such sums as may be necessary for so making or repairing the same. 25

For levying an annual rate for Sewers. 2. For levying an annual rate on the property benefited by any Common Sewer for the construction and maintenance thereof, or for the payment of interest upon the money expended thereon. 30

For the cleanliness of streets, &c. 3. For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any public wharf, dock, slip, drain, sewer, shore, bay, harbour, river or water;

For removal of door steps, &c. 4. For directing the removal of door steps, porches, railings or other erections, or obstructions projecting into or over any wharf, dock, slip, drain, sewer, bay, harbour, river or water or the banks or shores thereof, at the expense of the proprietor or 35

occupant of the property connected with which such projections are found ;

5. For making, opening, preserving, altering, improving and maintaining public wharves, docks, slips, shores, bays, harbours, rivers or waters and the banks thereof ;

6. For regulating Harbours, for preventing the filling up or encumbering thereof ; for erecting and maintaining the necessary beacons, and for erecting and renting wharves, piers and docks therein ; for regulating the vessels, crafts, and rafts, arriving in any Harbour ; and for imposing and collecting such reasonable Harbour dues thereon as may serve to keep the Harbour in good order, and to pay a Harbour Master ;

2.—WATER.

7. For establishing, protecting and regulating public wells, reservoirs and other conveniences for the supply of water ; and for making reasonable charges for the use thereof ; and for preventing the wasting and fouling of public water ;

3.—CEMETERIES.

8. For accepting and purchasing land for public cemeteries, as well within as without the Municipality ; and for laying out, improving and managing the same ; but no land shall be accepted or purchased for such purpose except by a By-law declaring in express terms that the land is appropriated for a public cemetery and for no other purpose ; and thereupon such land, although without the Municipality, shall become part thereof, and shall cease to be part of the Township to which it formerly belonged ; and such By-law shall not be repealed ;

9. For selling or leasing portions of such land for the purpose of interment, in family vaults or graves, and for declaring in the conveyance the terms on which such portions shall be held.

4.—MARKETS.

10. For establishing markets ;

Markets.

11. For regulating all markets established and to be established ; The places however already established as markets, in such Villages, shall continue to be markets, and shall retain all the privileges thereof until otherwise directed by competent authority ; and all market reservations or appropriations heretofore made in any Village shall continue to be vested in the Corporation thereof.

For regulating markets.
Old markets continued.

12. For preventing the sale by retail in the public streets, of any meat, vegetables, fruit or beverages ;

Regulating vending in streets.

- Vending in open air. 13. For restraining and regulating the buying and selling of articles or animals exposed for sale or marketed in the open air;
- Sale of Butcher's meat. 14. For regulating the place and manner of selling and weighing butcher's meat, fish, hay, straw, fodder, wood, and lumber;
- Preventing forestalling. 15. For preventing the forestalling, regrating or monopoly of market grains, meats, fish, fruits, roots and vegetables; 5
- Regulating Hucksters. 16. For restraining and regulating the purchase of such things by hucksters or runners living within the Municipality, or within one mile from the outer limits thereof;
- Weighing, &c. 17. For regulating the mode of measuring or weighing, (as the case may be) of lime, shingles, laths, cordwood, and coal and other fuel;
- Penalties for light weight. 18. For imposing penalties for light weight or short count or short measurement in any thing marketed;
- Regulating vehicles used in market vending. 19. For regulating all vehicles, vessels and other things in which any thing is exposed for sale or marketed in any street or public place, and for imposing a reasonable duty thereon and establishing the mode in which it shall be paid;
- Assize of Bread. 20. For regulating the assize of bread, and preventing the use of deleterious materials in making bread; and for providing for the seizure and forfeiture of bread made contrary to such By-law; 20
- Tainted provisions. 21. For seizing and destroying all tainted and unwholesome meat, poultry, fish, or other articles of food;
- Rent of market stalls. 22. For selling, after six hours' notice, butchers' meat dis- 25
trained for rent of market-stalls;

5.—FISHING.

- Fishing. 23. For preventing or regulating the fishing with nets or seines, the use of fishing-lights, or the erection or use of weirs for eels or other fish, in any public water; *Repealed by 12 V.C. 21 S. 60.*

6.—PUBLIC MORALS. *and 20 V.C. 21 S. 1 & 36*

- Observance of Sabbath. 24. For enforcing the due observance of the Sabbath; 30
- Preventing sale of Liquors to children, &c. 25. For preventing the sale of intoxicating drink to children, apprentices or servants, without the consent of their legal protectors;
- Posting placards, &c. 26. For preventing the posting of indecent placards, writings or pictures or the writing, of indecent words, or the making of indecent pictures or drawings on walls or fences in streets or public places; 35

27. For preventing vice, drunkenness, profane swearing, Disorderly obscene, blasphemous or grossly insulting language, and other conduct. immorality and indecency in streets or public places ;
28. For suppressing tippling houses and houses of ill fame ; Tippling Houses.
- 5 29. For preventing or regulating horseracing, for preventing Gaming. or regulating and licensing exhibitions held or kept for hire or profit, bowling alleys, and other places of amusement ;
- 10 30. For suppressing gambling houses, and for seizing and Gambling. destroying faro-banks, rouge et noir, roulette tables, and other devices for gambling found therein ;
31. For restraining and punishing vagrants, mendicants, and Vagrants. persons found drunk or disorderly in any street or public place ;
32. For preventing indecent public exposure of the person Indecent exposure. and other indecent exhibition ;
- 15 33. For preventing or regulating the washing or bathing in Bathing. any public water in or near the Municipality.

7.—NUISANCES.

34. For abating public nuisances ; Abatement of nuisances.
35. For regulating the construction of privy vaults ; Privy vaults.
- 20 36. For causing vacant lots in populous situations where they may become nuisances, to be properly enclosed ; The enclosing vacant ground.
37. For preventing or regulating the erection or continuance Slaughter of slaughter houses, gas works, tanneries, distilleries or other Houses. manufactories or trades which may prove to be nuisances ;
- 25 38. For preventing the ringing of bells, blowing of horns, Tumultuous shouting and other unusual noises, in streets and public places ; noises.
39. For preventing or regulating the firing of guns or other Firing guns. fire arms ; and the firing or setting off of fire balls, squibs, &c. crackers or fire works, and for preventing charivaries and other like disturbances of the peace ;
- 30 40. For preventing immoderate riding or driving in highways Furious driv- or streets ; for preventing the leading, riding or driving of ing. horses or cattle upon side-walks or other improper places ;
41. For preventing persons in streets or public places from Importuning importuning others to travel in or employ any vessel or vehicle ; travellers.

8.—PUBLIC HEALTH.

Public health. 42. For providing for the health of the Municipality and against the spreading of contagious or infectious diseases ; .

9.—INTERMENTS.

Interments. 43. For regulating the interment of the dead ;

Bills of mortality. 44. For directing the keeping and returning of bills of mortality ; and for imposing penalties on physicians, sextons 5 and others for default in doing so ;

10.—INJURIES TO PRIVATE PROPERTY.

Malicious trespasses. 45. For preventing the injuring or destroying of trees planted or preserved for shade or ornament ; and

Defacing Sign Boards. 46. For preventing the pulling down or defacing of sign-boards. 10

11.—LICENSES.

Licensing cabs, &c. 47. For regulating and licensing the owners of livery stables and of horses, cabs, carriages, Omnibuses and other vehicles used for hire ; for establishing the rates of fare to be taken by the owners or drivers ; and for enforcing payment thereof ;

12.—GUNPOWDER.

Gunpowder, care of. 48. For regulating the keeping and transporting of gun- 15 powder and other combustible or dangerous materials ; for regulating, and providing for the support by fees, of magazines for storing gunpowder belonging to private parties ; for compelling persons to store therein ; for acquiring land, as well within as without the Municipality, for the purpose of erecting 20 powder magazines and for selling and conveying such land when no longer required therefor ;

13.—FIRES.

Fire companies, &c. 49. For appointing Fire Wardens, Fire Engineers and Firemen, and promoting, establishing and regulating fire-companies, hook-and-ladder companies, and property-saving compa- 25 nies ;

Medals and rewards to, &c. 50. For providing medals or rewards for persons who distinguish themselves at fires ; and for granting pecuniary aid or otherwise assisting the widows and orphans of persons who are killed by accidents at such fires ; 30

Fires in stables, &c. 51. For preventing or regulating the use of fire or lights in stables, cabinet makers' shops, carpenters' shops, and combustible places ;

52. For preventing or regulating the carrying on of manuf-
factories or trades dangerous in causing or promoting fire ; Dangerous
manufac-
tories.
53. For preventing, and for removing, or regulating the con-
struction of any chimney, flue, fire place, stove, oven, boiler or
5 other apparatus or thing which may be dangerous in causing
or promoting fire ; Stoves, chim-
nies, &c.
54. For regulating the construction of chimnies as to dimen-
sions and otherwise ; and for enforcing the proper cleaning of
the same, by licensed or other chimney sweepers ; Size and
cleaning
chimnies, &c.
- 10 55. For regulating the mode of removal and safe keeping of Ashes.
ashes ;
56. For regulating and enforcing the erection of party walls ; Party walls.
57. For compelling the owners and occupants of houses to
have scuttles in the roofs thereof, and stairs or ladders leading
15 to the same ; Ladders to
houses.
58. For causing buildings and yards, to be put in other res-
pects into a safe condition to guard against fire or other danger-
ous risk or accident ; Buildings and
yards, condi-
tion of .
59. For requiring the inhabitants to ~~provide so many fire~~
20 buckets in such manner and time as may be prescribed ; and
for regulating the examination of them ; and the use of them at
fires ; Fire buckets.
60. For authorizing appointed officers to enter at all rea-
sonable times upon any property subject to the regulatious of
25 the Council in order to ascertain whether such regulations
are obeyed, or to enforce or carry into effect the same ; Inspection of
premises.
61. For making regulations for suppressing fires, and for
pulling down or demolishing adjacent houses or other erections,
when necessary to prevent the spreading of fire. Suppression
of fires.
- 30 62. For regulating the conduct, and enforcing the assistance,
of the inhabitants present at fires ; and for the preservation of
35 property at fires. Enforcing
assistance at
fires.

11.—PROVISIONS APPLICABLE TO CITIES AND TOWNS.

275. The following sections numbered 276 & 277 and sub-
sections apply to the following Municipalities and Municipal
35 Councils :

1. Cities.

2. Towns.

1.—CORONERS.

276. One or more Coroners shall be appointed for every incorporated City and Town.

2.—INTELLIGENCE OFFICES.

277. The Council of every City and Town may respectively pass By-laws ;

- | | | |
|---------------------------------|--|---------|
| Licensing Intelligence offices. | 1. For Licensing suitable persons to keep Intelligence Offices for Registering the names and residences and giving information to, or procuring servants for, emp'oyers in want of domestics or labourers, and for registering the names and residences of and giving information to, or procuring employment for, domestic servants and other labourers desiring employment, and for fixing the fees to be received by the keepers of such offices. | 5
10 |
| Regulation of. | 2. For the regulation of such Intelligence Offices ; | |
| Duration of license. | 3. For limiting the duration of <u>or revoking any such license</u> ; | |
| Prohibition of. | 4. For prohibiting the opening or keeping any such Intelligence Office within the Municipality without License or <i>Application</i> revoking such License ; | 15 |
| Fees for. | 5. For fixing the fee to be paid for such License, not exceeding five shillings for one year. | |

3.—WOODEN BUILDINGS.

- | | | |
|-------------------|---|----|
| Wooden buildings. | 6. For regulating the erection of buildings and preventing the erection of wooden buildings and wooden fences in populous parts of the City or Town ; | 20 |
|-------------------|---|----|

4.—POLICE.

- | | | |
|---------------------------------|--|--|
| A police. (See proposed rider.) | 7. For establishing, regulating and maintaining a police ; but subject to the other provisions of this Act on that head. | |
|---------------------------------|--|--|

5.—INDUSTRIAL FARM.

- | | | |
|--------------------|--|----|
| Industrial farm. | 8. For acquiring landed property within or beyond the limits of the City or Town for an industrial farm and for the disposal thereof, when no longer required for such purpose ; | 25 |
| Buildings thereon. | 9. For the erection thereon, of buildings and fences for the purposes of such farm, as the Council deems necessary ; | |
| Managing the same. | 10. For the management of such farm and buildings ; | 30 |

6.—ALMSHOUSES.

11. For establishing and regulating within the City or Town ^{Almshouses.} or on the Industrial farm, one or more Almshouses or houses of refuge for the relief of the destitute;

7.—DRAINAGE RENT.

12. For fixing a yearly rent upon the drainage of any house, ^{Drainage} cellar, yard, or land, into any common sewer, and charging ^{rent.} the property so drained with the payment thereof, so long as the property is drained into the sewer.

12.—PROVISIONS APPLICABLE TO POLICE VILLAGES ONLY.

278. The following sections numbered from 279 to 285 and subsections apply to Police Villages only:

1.—INSPECTING TRUSTEE.

10 279. The Trustees of every Police Village or any two of such Trustees shall, by a writing under their hands to be filed with ^{Appointment of Inspecting Trustee.} the Clerk of the Township or one of the Townships in which the Village is situate, appoint one of their number to be Inspecting Trustee.

15 280. In case of any vacancy in the office of a Police Trustee ^{Vacancies.} by death or otherwise, the remaining Trustee or Trustees shall by writing, to be filed with such Clerk as aforesaid, appoint a Trustee or Trustees to supply the vacancy.

2.—NEGLECT OF DUTY BY TRUSTEES.

20 281. Any Police Trustee who wilfully neglects or omits ^{Penalty for breach of duty.} to prosecute an offender at the request of any resident householder of the village offering to adduce proof of an offence against the regulations of Police herein established, or who wilfully neglects or omits to fulfil any other duty imposed on him by this Act, shall incur a penalty of twenty shillings.

25 282. The penalties prescribed by the preceding section, or by that for the establishment of regulations of Police, shall ^{Limitations of prosecutions for.} be sued for within ten days after the offence was committed or had ceased, and not subsequently.

3.—TRUSTEES TO SUE FOR PENALTIES.

30 283. The inspecting Trustee or, in his absence or when he is the party complained of, one of the other Trustees ^{Who to sue for penalties.} shall sue for all penalties incurred under the Regulations of Police herein established, before a Justice of the Peace having jurisdiction in the village and residing therein or within five

x s. 285

miles thereof; or if there be none such then, before any Justice of the Peace having jurisdiction in the village; and the Justice shall hear and determine such complaint in a summary manner, and may convict the offender, upon the oath or affirmation of a credible witness; and shall cause the penalty 5 to be levied by distress and sale of the goods of the offender; and to be paid over to the path-master or path-masters of the division or divisions to which the village belongs, or to such of the said path-masters as the Trustees may direct, and such path-master or path-masters shall apply the penalty to the repair and improvement of the streets and lanes of the village, 10 under the direction of the Trustees.

4.—PUBLIC HEALTH.

Trustees to be Health officers. **284.** The Trustees of every Police Village, shall be Health Officers within the Police Village, under the Act of the Parliament of Upper Canada, passed in the fifth year of the 15 reign of His late Majesty, King William the Fourth, intituled, *An Act to promote the Public Health and to guard against infectious diseases in this Province*, and under any other Act that may be passed for the like purpose. 5 W. 4, c. 10.

POLICE REGULATIONS.

Regulations. **285.** The Trustees of every Police village shall execute 20 and enforce therein the regulations following:

1.—FIRE.

- Fires, Ladders, &c.** 1. Every proprietor of a house more than one story high shall place and keep a ladder on the roof of such house near to or against the principal chimney thereof, and another ladder reaching from the ground to the roof of such house, under a penalty of 25 five shillings for every omission; and a further penalty of ten shillings for every week such omission continues;
- Fire buckets.** 2. Every householder shall provide himself with two buckets fit for carrying water in case of accident by fire; under a penalty of five shillings for each bucket deficient; 30
- Furnaces, &c.** 3. No person shall build any oven or furnace unless it adjoins and is properly connected with a chimney of stone or brick at least three feet higher than the house or building in which the oven or furnace is built, and three feet higher than any building within one chain of the oven or furnace; under a 35 penalty not exceeding ten shillings for non-compliance;
- Stove pipes, &c.** 4. No person shall pass a stove-pipe through a wooden or lathed partition or floor, unless there is a space of six inches between the pipe and the wood work nearest thereto; and the pipe of every stove shall be inserted into a chimney; and there 40 shall be at least ten inches in the clear between any stove and

any lathed partition or wood work under a penalty, of ten shillings ;

5 5. No person shall enter a mill, barn, outhouse or stable, with a lighted candle or lamp unless well enclosed in a lantern, nor with a lighted pipe or cigar, or with fire not properly secured, under a penalty of five shillings ;

6. No person shall light or have a fire in a wooden house or outhouse unless such fire is in a brick or stone chimney or in a stove of iron or other metal, under a penalty of five shillings ;

10 7. No person shall carry fire or cause fire to be carried into or through any Street, Lane, Yard, Garden or other Place, without having such fire confined in some copper, iron or tin vessel, under a penalty of two shillings and six pence for the first offence, and of five shillings for every subsequent offence ;

15 8. No person shall light a fire in a street, lane or public place, under a penalty of five shillings ;

20 9. No person shall place Hay, Straw or Fodder, or cause the same to be placed, in a dwelling house, under a penalty of five shillings for the first offence, and of ten shillings for every week the Hay, Straw or Fodder is suffered to remain there ;

25 10. No person except a manufacturer of pot or pearl ashes, shall keep or deposit ashes or cinders, in any wooden vessel, box or thing not lined or doubled with sheet iron, tin or copper so as to prevent danger of fire from such ashes or cinders, under a penalty of five shillings ;

30 11. No person shall place or deposit any quick or unslaked lime in contact with any wood of a house, outhouse or other building, under a penalty of five shillings, and a further penalty of ten shillings a day until the lime has been removed, or secured to the satisfaction of the inspecting trustee, so as to prevent any danger of fire ;

12. No person shall erect a furnace for making charcoal of wood, under a penalty of twenty shillings ;

2.—GUNPOWDER.

35 13. No person shall keep or have Gunpowder for sale except in boxes of copper, tin or lead, under a penalty of twenty shillings for the first offence, and forty shillings for every subsequent offence ;

40 14. No person shall sell Gunpowder, or permit Gunpowder to be sold, in his house, storehouse or shop, outhouse or other building, at night, under a penalty of forty shillings for the first offence, and of sixty shillings for every subsequent offence ;

3.—NUISANCES.

Certain nuisances prohibited.

15. No person shall throw or cause to be thrown any filth, rubbish or ordure into a street, lane or public place, under a penalty of two shillings and six pence, and a further penalty of five shillings for every week he neglects to remove the same after being notified to do so by the Inspecting Trustee, or some other person authorized by him. 5

13.—SPECIAL PROVISIONS.

1.—SHOP AND TAVERN LICENSE BOARD.

Shop and Tavern License Board constituted.

286. The power to grant Tavern Licenses (that is licenses for the retail of spirituous, fermented or other manufactured liquors to be drunk in the Inn, Ale-house, Beer-house or other house or place of public entertainment in which the same is sold ;) and to grant Shop Licenses (that is licenses for the 10 retail of such liquors in Shops, Stores or places other than Inns, Ale-houses, Beer-houses or places of public entertainment) shall be vested exclusively in the Board hereby constituted for that purpose ; such Board shall in each County, excluding any City 15 therein, consist of the Warden, the Judge of the County Court, and the Sheriff of the County, and shall, in every City, consist of the Mayor, the Recorder and the Police Magistrate; if there is no Recorder the Judge of the County Court shall be a member of the Board, and if there is no Police Magistrate, or if the 20 offices of Recorder and Police Magistrate are held by the same person, the Council shall appoint a person resident in the City to be a member of the Board.

Empowered to grant Licenses under certain restrictions.

287. The Board shall have no power to grant a license contrary to any By-law of the Municipality in which is situate the 25 house for which application is made, but may grant fewer than the number the By-laws of the Municipality authorize, and may require additional qualifications in applicants for licenses, and may exercise their discretion as to the persons to whom the licenses shall, with ~~the~~ view to the advantage 30 ^{of} the public, be given.

Inspectors to visit, &c.

288. It shall be the duty of the Inspectors of Shop and Tavern Licenses—

To visit.

1. To make such visits and examinations as may be necessary for procuring the requisite information to enable the 35 Board to execute its duties, or as may be directed by the Board, and

To report.

2. To make a report or reports of such information to the Board, and

To enforce regulations.

3. To see that the said By-laws of the Council are complied 40 with, and to perform such other duties as the regulations or di-

reactions of the Board or the By-laws of the Council may from time to time direct with reference to the matters within their jurisdiction respectively.

289. The Board shall meet on some day in each year 5 before the first day of March and may adjourn, their meetings from time to time. The meeting shall be at such place as the Council of the County or City by By-law directs ; or if no By-law names the place, then in such place as the Board determines. A majority shall form a quorum, and the acts of a 10 majority shall be considered the acts of the Board.

Time for meeting of Board.

Majority to decide.

290. The Board shall give a certificate to each person to whom a License is to be given stating that fact, and the sum which under the By-laws of the Municipality is to be paid therefor; and on production of the receipt of the Treasurer or 15 Chamberlain for the amount ~~to be paid~~, the Board shall issue the License which shall be in force until the last day of February in the following year inclusive if not otherwise limited.

License granted on payment of fees.

Such sum,

291. The members of such Board shall within the first week of every month, transmit to the Inspector or Inspectors having 20 supervision in such Municipality, a certified list of all Tavern Shop and other Licenses for which Licenses have been issued for the Municipality or place in which such Inspector or Inspectors has or have supervision, and shall at the same time transmit a duplicate of all such lists to the Treasurer of the County 25 or Chamberlain of the City, *as the case may be*, and such Treasurer and Chamberlain shall forthwith publish such list in at least two newspapers of the Municipality.

Boards to make returns of Licenses to Inspectors.

292. But no Tavern or Shop license shall be necessary for selling any such liquors in the original packages in which 30 the same are received from the importer or manufacturer ; Provided such packages contain respectively not less than five gallons, or one dozen bottles.

No license required to sell in the original packages.

293. Any person having a Tavern license may without any additional license sell liquors by retail to be consumed 35 out of his house, in the same quantities as if to be consumed in the house.

Tavern keepers may sell to be consumed out of the house.

294. Any Inspector of Licenses may, in his discretion (but subject to any By-law of the Municipality,) endorse on any license permission to the person holding such license, to sell the 40 liquors mentioned in his License at any place out of his house, or to remove from the house licensed to another house to be described in such indorsement and situate within the same Municipality, and such permission shall authorize the holder thereof to sell such Liquors in the House mentioned in the endorse- 45 ment: during the unexpired portion of the term for which such License was granted, and upon the same terms and

Inspectors may endorse licenses to authorize sale of liquors elsewhere than in the house.

conditions; And any Bond or security which such holder may have given for any purpose relative to such license, shall apply to the house or place to which such removal is authorized.

Tavern keepers to exhibit notice of being licensed.

295. Every person who keeps a Tavern or other house or place of public entertainment, and has a Tavern License, shall exhibit over the door of such Tavern, House or place, in large letters, the words "Licensed to sell Wine, Beer and other Spirituous or Fermented Liquors," under a penalty in default of so doing of *five shillings*, recoverable with costs before any Justice of the Peace upon the oath of one credible witness; one half of which penalty shall go to the Informer and the other half to the Municipality. 33 Geo 3 C 13. S. 3 5 10

Shop licenses not to authorize sale of liquors to be consumed in the house.

296. No licensed Shop-keeper, or other person having a Shop License shall allow any Liquors sold by him and for the sale of which a license is required, to be consumed within his Shop, or within the building of which such Shop is a part, either by the purchaser thereof or by any other person not usually resident within such building. 15

Penalties recoverable before two justices of the Peace.

297. All prosecutions for penalties incurred by persons vending Wine, Rum, Brandy or other Spirituous Liquors, Beer, Ale, Cider or other fermented or manufactured Liquors without License, shall be recoverable with costs, before any two or more Justices of the Peace having jurisdiction in the Municipality in which the offence is committed upon the oath of one credible witness, one half of which penalty shall go to the informer and the other half to the Municipality. 20 25

2.—ROADS, BRIDGES, DRAINS, WATERCOURSES.

1.—WHAT CONSTITUTE HIGHWAYS.

What shall constitute highways.

298. All allowances for roads made by the Crown Surveyors in any Town, Township or place already laid out, or hereafter laid out in any Town, Township or place within Upper Canada; and also all roads laid out by virtue of any Act of the Parliament of Upper Canada, or any roads whereon the public money hath been expended for opening the same, or whereon the Statute Labour hath been usually performed, or any roads passing through the Indian Lands, shall be deemed common and public highways, unless any such roads have been already altered, or until such road or roads are altered according to Law. 30 35

2.—HIGHWAYS VESTED IN THE CROWN.

Vested in the Crown.

299. Unless otherwise provided for, the soil and freehold of every highway or road altered, amended or laid out, according to Law, shall be vested in Her Majesty, Her Heirs and Successors. 40

3.—JURISDICTION OF MUNICIPALITIES.

300. Subject to the exceptions and provisions hereinafter contained every Municipal Council shall have jurisdiction over the original allowances for Roads, Highways and Bridges within the Limits of the Municipality.

Jurisdiction
Municipal
Council.

3.—JURISDICTION RESTRICTED.

1.—PROVINCIAL ROADS UNDER BOARD OF WORKS.

5 301. No Council shall interfere with any Public Road or Bridge vested as a Provincial Work in Her Majesty or in any Public Department or Board, and the Governor shall by order in Council have the same powers as to such Road and Bridge as are by this Act conferred on Municipal Corporations with respect to
10 other Roads and Bridges; But the Governor may by Proclamation declare any Public Road or Bridge under the control of the Commissioners of Public Works, to be no longer under such control, and after a day named in the Proclamation such Road or Bridge shall cease to be under the control of the Commis-
15 sioners, and no tolls shall thereafter be levied thereon by them, and such Road or Bridge shall thenceforth be controlled and kept in repair by the Council of the Municipality, excepting the Bridge over the river Don on the Kingston Road at the east end of the City of Toronto, and the Kingston Road east of such
20 River, which shall remain under the control of the said Commissioners.

Roads under
Board of
Works.

2.—ROADS ON ORDNANCE LANDS.

302. No Council shall pass any By-law (1) for stopping up or altering the direction or alignment of any street, lane or thoroughfare made or laid out by Her Majesty's Ordnance, or
25 the Principal Secretary of State in whom the Ordnance Estates are vested under the Statute of this Province, passed in the nineteenth year of Her Majesty's Reign chapter forty-five, (2) or for opening any such communication through land held by such Secretary of State for Her Majesty's Ordnance, or (3) interfering
30 with any bridge, wharf, dock, quay or other work constructed by Her Majesty's Ordnance, or such Secretary of State or (4) interfering with any land reserved for Military purposes or with the integrity of the public defences, without a written consent signed by the Principal Officer of Her Majesty's Ord-
35 nance acting in Canada under the authority of such Secretary of State certified under the hand of the Commander of the Forces in Canada to be such Principal Officer and to be acting under such authority, and a By-law for any of the purposes aforesaid shall be void unless it recites such consent, authority
40 and certificate;

Nor with
Ordnance
roads, lands,
&c.

Unless sanc-
tioned by the
Chief En-
gineer officer,
&c.

3.—WHAT ROADS NOT TO BE CLOSED.

Not to close roads required by individuals.

303. No Council shall close up any public road or highway, whether an original allowance, or a road opened by the Quarter Sessions, or any Municipal Council or otherwise legally established, whereby any person will be excluded from ingress and egress to and from his lands or place of residence over such road, but all such roads shall remain open for the use of the person who requires the same. 5

4.—NOT TO ENCROACH UPON HOUSES, &c.

Nor to encroach upon houses, &c.

304. No such Council shall authorize an encroachment on any dwelling house, barn, stable, out-house, orchard, garden, yard or pleasure ground, without the written consent of the owner; 10

5.—WIDTH OF ROADS.

Width of roads.

305. No such Council shall lay out any road or lane more than ninety nor less than thirty feet in width; but any road, when altered may be of the same width as formerly.

4.—JOINT JURISDICTION OVER ROADS.

1.—COUNTIES.

Joint jurisdiction over certain roads.

Countries.

306. The Council of each County shall have Joint jurisdiction over all roads and bridges lying wholly or partly between such County and any Incorporated Village, Town, City or other County, and no By-law of the Council of any one of such Municipalities, with respect to any such last mentioned road, or bridge shall have any force until a By-law has been passed in similar terms as nearly as may be by the other of such Councils, having joint jurisdiction in the premises. 15 20

2.—CITIES.

Cities.

307. The Council of each City shall have joint jurisdiction over all roads and bridges lying wholly or partly between such City and any Incorporated Village, Town or County, and no By-law of the Council of any one of such Municipalities with respect to any such road or bridge, shall have any force until a By-law has been passed in similar terms as nearly as may be by the other of such Councils, having joint jurisdiction in the premises. 25 30

3.—TOWNS.

Towns.

308. The Council of each Town shall have joint jurisdiction over all roads and bridges lying wholly or partly

between such Town and any Incorporated Village or City, or between such Town and the County in which the Town is situate, and no By-law of the Council of any one of such Municipalities with respect to such road or bridge shall have any force until a By-law has been passed in similar terms as nearly as may be by the other of such Councils having joint jurisdiction in the premises.

4.—INCORPORATED VILLAGES.

309. The Council of each incorporated Village shall have joint jurisdiction over all roads and bridges lying wholly or partly between such Village and any Town or City or between any such Village and the County in which such Village is situate, and no By-law of the Council of any one of such Municipalities with respect to any such road or bridge, shall have any force until a By-law has been passed in similar terms, as nearly as may be, by the other of such Councils having joint jurisdiction in the premises.

5.—EXCLUSIVE JURISDICTION OVER ROADS.

1.—COUNTIES.

1.—WHAT ROADS.

310. The County Council shall have exclusive jurisdiction over all Roads and Bridges lying within any Township of such County and which such Council by By-law assumes as a County Road or Bridge, until such By-law is repealed by such Council, and over all Bridges across streams separating two Townships in the County; and over every Road or Bridge dividing different Townships, although such Road may so deviate as in some places to lie wholly or in part, within one Township.

2.—ROADS ASSUMED TO BE MACADAMIZED.

311. When any County Council assumes by By-law any Road or Bridge within a Township as a County Road or Bridge, the Council shall, with as little delay as reasonably may be, and at the expense of the County, cause such Road to be planked, gravelled or Macadamized, or such Bridge to be built in a good and substantial manner.

3.—CERTAIN POWERS OF JUSTICES IN SESSIONS TRANSFERRED.

312. All powers, duties and liabilities which at any time before the first day of January 1850, belonged to the Magistrates in Quarter Sessions, with respect to any particular Road or Bridge in a County, and not conferred or imposed upon any other Municipal Corporation, shall belong to the Council of the County, or, in case the Road or Bridge lies in two or more Counties, to the Councils of such Counties, and the neglect or

Exclusive jurisdiction over certain roads.

Counties.

Roads assumed to be macadamized, &c.

Certain powers of Justices in Sessions transferred.

See S. 313. A. 3.

disobedience of any regulations or directions made by such Council or Councils, shall subject the offenders to the same penalties and other consequences as the neglect or disobedience of the like regulations or directions of the Magistrates would have subjected them to.

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4.—STOPPING UP OR SALE OF ORIGINAL ALLOWANCES.

313. The Council of every County shall have power to pass By-laws for the following purposes.

For sale of original allowance, &c. for roads in certain cases.

1. For stopping up, or stopping up and sale, of any original allowance for road or parts thereof within the County, which is subject to the sole jurisdiction and control of such Council, and not being within the limits of any Village, Town or City within or adjoining such County ;

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Preventing furious driving.

2. For preventing immoderate riding or driving of horses or other cattle on the highways, whether Township or County highways ;

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Roads within or between several municipalities.

3. For opening, making, preserving, improving, repairing, widening, altering, diverting, stopping up and pulling down, drains, sewers, water courses, roads, streets, squares, alleys, lanes, bridges or other public communications, running or being within one or more Townships, or between two or more Townships of such County, or between such County, and any adjoining County or City, or on the bounds of any Town or incorporated Village within the boundaries of such County, as the interests of the inhabitants of such County in the opinion of the Council require to be so opened, made, preserved and improved, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions hereinafter contained.

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5.—LOCAL RATES FOR SPECIAL PURPOSES.

Local rates for special improvements.

See S. 100.

4. For levying by Assessment on all the rateable property within any particular parts of two Townships to be described by metes and bounds in the By-law, in addition to all other Rates, a sum sufficient to defray the expense of making, repairing or improving any Road, Bridge, or other public work, lying between such parts of such two Townships, and by which the inhabitants of such parts will be more especially benefited ;

Proceedings to obtain a By-law for.

5. But no such By-law shall be passed except 1. Upon a petition signed by at least two-thirds of the resident rate-payers representing at least one half in value appearing by the last revised Assessment Roll of the rateable property within those parts of such two Townships which are to be affected by the By-law, 2. Nor unless a printed notice of such petition, with the names of the signers thereto, describing the limits within which such

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By-law is to have force, has been given for at least one month, by putting up the same in four different places within such bounds and at the places for holding the sittings of the Council of each Township whether it be within such bounds or not, and also by inserting the same weekly for at least four weeks in some newspaper if any there be published in the County, or if there is no such newspaper, then in a newspaper published in some adjoining County ;

6.—AIDING TOWNSHIPS, &c., IN MAKING ROADS AND BRIDGES.

6. For granting to any Town, Township, or Incorporated Village in the County aid, by loan or otherwise, towards opening or making any new Road or Bridge in such Town, Township, or Village, in cases where the Council deems the County at large sufficiently interested in the work to justify such assistance, but not sufficiently interested to justify the Council in at once assuming the same as a County work ; See Post Section 329.

For aiding in making roads and bridges.

2.—TOWNSHIPS.

1.—AIDING COUNTIES IN MAKING ROADS.

314. The Council of every Township may pass By-laws.

1. For granting to any adjoining County, aid in making, opening, maintaining, widening raising lowering or otherwise improving any highway, road, street, bridge or communication lying between the Township and any other Municipality, and for granting like aid to the County in which the Township lies in respect of any highway, road, street, bridge or communication within the Township assumed by the County as a County work, or agreed to be so assumed on condition of such grant ; See Post Section 329.

Aiding County in making Roads.

2.—ORIGINAL ROAD ALLOWANCES.

2. For the stopping up and sale of any original allowance for road or any part thereof within the Municipality, and for fixing and declaring therein the terms upon which the same is to be sold and conveyed ; but no such by-law shall have any force until confirmed by a by-law of the Council of the County in which such Township is situated at an Ordinary Session of such County Council, held not sooner than three months, nor later than one year next after the passing thereof ;

Stopping up and sale of original road allowance.

3.—TREES OBSTRUCTING HIGHWAYS.

3. For directing that, on each side of a highway passing through a wood, the trees, (unless they form part of an orchard or a shrubbery, or have been planted expressly for ornament or shelter,) shall, for a space not exceeding twenty-five feet on each

May direct the trees to be cleared on each side of highways.

May grant aid to Counties in making roads, &c.

side of the highway, be cut down and removed by the Proprietor within a time appointed by the By-law, or, on his default, by the Overseer of Highways or other Officer in whose division the land lies ; and, in the latter case, for authorizing the trees to be used by the Overseer or other Officer for any purpose connected with the improvement of the highways and bridges in his division, or to be sold by him to defray the expenses of carrying the By-law into effect ;

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4.—WHEN ROADS IN POLICE VILLAGES, &c., MAY BE SOLD BY TOWNSHIP COUNCILS.

When roads in Police Villages may be sold by Township Councils.

315. In case the Trustees of any Police village, or fifteen of the inhabitant householders of any other unincorporated 10 village or hamlet consisting of not less than twenty dwelling houses standing within an area of two hundred acres, petition the Council of the Township in which such Village or hamlet is situate, and in case the petition of such ~~unincorporated Village or~~ ^{uni} hamlet not being a Police Village, is accompanied by a certifi- 15 cate from the Registrar of the County within which such Township lies that a plan of such Village or Hamlet has been duly deposited in his office according to the Registry laws, such Council may pass a By-law to stop up sell and convey, or otherwise deal with any original allowance for road lying within the 20 limits of such Village or hamlet, as the same shall be laid down on such plan, but subject as to the sale of such original allowance, to the provisions contained in the three hundred and ~~and~~ ^{third} three hundred and thirteenth and three hundred and fourteenth Sections of this Act. 25

When Village is partly in each of two townships.

316. The last section shall apply to a Village or Hamlet situate in two Townships whether such Townships are in the same or different Counties, and in such case the municipality of each of such Townships shall have the powers hereby conferred, as to any original allowance for road 30 lying within that part of such Village or Hamlet which according to the Registered plan is situate within the respective limits of such Townships.

6.—POWERS RESPECTING ROADS, &c., THAT MAY BE EXERCISED BY THE COUNCILS OF EVERY

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|--------------|--|--------------------------|----|
| 1. Township. | | 4. Town and | 35 |
| 2. County. | | 5. Incorporated Village. | |
| 3. City. | | | |

1.—ROADS, BRIDGES AND WORKS.

317. The Councils of every Township, County, City, Town and Incorporated Village, may make By-laws for the following purposes ;

1 For opening, making, preserving, improving, repair- To open roads, ing, widening, altering diverting, stopping up and pulling down, &c. drains, sewers, water courses, roads, streets, squares, alleys, lanes, bridges or other public communications, within the juris- diction of the Council, and for entering upon, breaking up, taking or using any land in any way necessary or convenient for the said purposes, subject to the restrictions in this Act contained ;

2 For preserving or selling timber-trees, and for preserving For preservation of Trees, Stone, Gravel, &c. stone, sand, or gravel, on any allowance or appropriation for a public road ;

3. For selling to the parties next adjoining the lands of whom the same is situated, the original road allowance when a public road has been opened, or when a new road has been opened in lieu of the original road allowance and for the site or line of which compensation has been paid, or of any road legally stopped up or altered by the Council ; and in case such parties respectively refuse to become the purchasers at such price as the Council thinks reasonable, then for the sale thereof to any other person for the same or a greater price.

318. In case any one in possession of any Concession road or side line has laid out and opened any road or street in place thereof without receiving compensation therefor, or in case a new or travelled public road has been laid out and opened in lieu of an original allowance for road, and for which no compensation has been paid to the owner of the land appropriated as a public road in place of such original allowance, the owner shall be entitled to the concession road, side line, or original allowance, (as the case may be,) in lieu of the road so laid out, and the Council of the Municipality upon the report in writing, of its Surveyor, or of a Deputy Provincial Land Surveyor, that such new or travelled road is sufficient for the purposes of a public highway, may convey the said original allowance for road in fee simple to the person or persons upon whose land or lands such new road runs, and when any such original road allowance is, in the opinion of the Council, useless to the public, and lies between lands owned by different parties, the Municipal Council may, subject to the conditions aforesaid, sell and convey a part thereof to each of such parties as may seem just and reasonable ;

When a road is substituted for an original allowance.

See S. 303 & 321

2.—POSSESSION OF ROAD ALLOWANCES.

319. In case a person is in possession of any part of a Government allowance for road laid out in rear of his lot and enclosed by a lawful fence, and which has not been opened for public use by reason of another road being used in lieu thereof, or is in possession of any Government allowance for road parallel or near to which a road has been established by law in

Original allowances for roads when to be deemed legally possessed till a by-law is

passed for opening.

lien thereof, such person shall be deemed legally possessed thereof as against any private person, until a by-law has been passed for opening such allowance for road by the Council having jurisdiction over the same.

3.—NOTICE OF BY-LAWS FOR OPENING SUCH ALLOWANCES.

Nor pass by-law for opening, &c. roads, &c. without notice.

320. But no such By-law shall be passed until notice in writing has been given to the person in possession, at least eight days before the meeting of the Council, that an application will be made for opening such allowance. 5

4.—NOTICE TO BE GIVEN OF BY-LAWS INTENDED TO AFFECT PUBLIC ROADS.

What notice to be given of By-laws intended to affect public roads.

321. No such Council shall pass a By-law, for establishing, opening, stopping up, altering, widening, diverting or selling any original allowance for road or other public highway, road, street or lane. 10

1. Until the Council has caused written or printed notices of the intended By-law to be posted up one calendar Month previously in six of the most public places in the immediate neighbourhood of such original allowance for road or other highway, road, street or lane ; 15

2. And to be published in at least one local newspaper for three successive weeks ; 20

3. Nor until the Council has heard, in person or by Counsel or Attorney, any one whose land might be prejudicially affected thereby, and who petitions to be so heard ;

4. And the Clerk shall give such notice, at the request of the applicant, upon payment of the reasonable expences attendant thereon. 25

5.—IN DISPUTES RESPECTING ROADS—WHO MAY SWEAR WITNESSES, &c.

Power to administer oath in disputes respecting boundaries.

322. In case of disputes in any Municipality concerning roads, allowances for roads, side lines, boundaries or concessions, within the cognizance of and in the course of investigation before a Municipal Council, the Head of the Council may administer an oath or affirmation to any party or witness examined upon the matters in dispute. 30

6.—COMPENSATION FOR LANDS TAKEN.

Owners of lands taken to be compensated.

323. Every such Council shall make to the owners of real property entered upon, taken or used by the Corporation in the exercise of its powers in respect to roads, streets and other public com- 35

munications, or to drains and common sewers, due compensation for any damages necessarily resulting from the exercise of such powers, beyond any advantage which the claimant may derive from the contemplated work; and any claim for such
5 compensation, if not mutually agreed upon, shall be determined by arbitration under this Act.

7.—TITLES TO LAND OF INFANTS, &c., HOW ACQUIRED.

324. In the case of real property which a Council has authority under this Act, to enter upon, take or use without
the owner's consent, Corporations, Tenants in tail or for life,
10 Guardians, Committees and Trustees, shall on behalf of themselves, their Successors and Heirs respectively, and on behalf of those they represent whether infants, issue unborn, lunatic, idiots, married women or others, have power to act, as well in
reference to any arbitration, notice and action under this Act, as in
15 contracting for and conveying to the Council any such real property, or in agreeing as to the amount of damages arising from the exercise by the Council of any power in respect thereof. In
case there is no such person who can so act in respect to such
20 real property, the Judge of the County Court for the County in which such property is situate, may, on the application of the Council, appoint a person to act in respect to the same for all or any of the said purposes.

Title to lands taken.

325. In case any party acting as aforesaid has not the absolute estate in the property, the Council shall pay to him
25 the interest only at six per centum per annum on the amount to be paid in respect of such property and shall retain the principal to be paid to the party entitled to it whenever he claims the same, and executes a valid acquittance therefor, unless the
Court of Chancery, or other Court having equitable jurisdiction
30 in such cases, do in the mean time direct the Council to pay the same to any person or into Court; and the Council shall not be bound to see to the application of any interest so paid or of any sum paid under the direction of such Court.

Where life interests only.

Sum awarded how to be applied.

326. All sums agreed upon or awarded in respect of such
35 real property, shall be subject to the limitations and charges to which the property was subject.

8.—ROAD AND BRIDGE COMPANIES.

327. The Council of every Municipality aforesaid may also pass By-laws.

1.—PERMITTING SUCH ROADS TO PASS, &c.

40 1. For regulating the manner of granting to Road or Bridge Companies permission to commence or proceed with Roads
For granting privileges to

Road or
Bridge Com-
panies.

or Bridges, within its jurisdiction and for regulating the manner of ascertaining and declaring the completion of the work so as to entitle such companies to levy tolls thereon, and for regulating the manner of making the examinations necessary for the proper exercise of these powers by the Council;

5

2.—TAKING STOCK IN.

For taking
stock in, or
making loans
to such Com-
panies.

2. For taking stock in, or lending money to, any such incorporated Road or Bridge Company, under and subject to the respective Statutes in that behalf;

3.—TOLLS ON, MAY BE GRANTED.

For granting
right to take
tolls, when.

3. For granting to any person, in consideration or part consideration of planking, gravelling or macadamizing a road, or of building a bridge, the tolls fixed by By-law to be levied on the work for a period of not more than twenty-one years after the work has been completed and after such completion has been declared by a By-law of the Council authorizing tolls to be collected. And the grantee of such tolls shall, during the period of his right thereto, maintain the road or Bridge in repair;

To exact tolls,
when.

4.—TOLLS ON, MAY BE RAISED.

328. Every such Council may also pass By-laws :

To raise mo-
ney by toll.

1. For raising money by toll, on any bridge, road or other work, to defray the expense of making or repairing the same ;

5.—FAST DRIVING ON BRIDGES.

To regulate
driving on
bridges.

2. For Regulating the Driving and Riding on public Bridges. 20

PITS AND PRECIPICES.

To make regu-
lations.

3. For making regulations as to pits, precipices and deep waters and other places dangerous to travellers.

9. POWERS THAT MAY BE EXERCISED BY THE COUNCILS OF EVERY TOWNSHIP, CITY, TOWN AND INCORPORATED VILLAGE.

1.—AIDING COUNTIES IN MAKING ROADS AND BRIDGES.

329. The Municipal Council of every Township, City, Town and Incorporated Village may pass By-laws ;

Aiding coun-
ties in making
roads and
bridges.

1. For granting to the County or United Counties in which such Municipality lies aid, by loan or otherwise, towards opening or making any new road or bridge on the bounds of such Municipality ;

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2. For entering into and performing any arrangement with any other Council in the same County or United Counties for executing, at their joint expence and for their joint benefit, any work within the jurisdiction of the Council ; See Ante-sect. 313, 5 No. 6, and 314 No. 1.

Joint works with other Municipalities.

2.—STATUTE LABOUR.

330. The Councils of every Township, County, City, Town and Incorporated Village may also pass By-laws ;

By-laws respecting Statute Labour.

1. For empowering any person, (resident or non-resident) liable to statute labour within the Municipality, to compound for such labour for any term, not exceeding five years, at any sum, not exceeding five shillings, for each day's labour ;

For 5 years at 5s per diem ; Application of labour or its equivalent.

2. For providing that a sum of money, not exceeding five shillings for each day's labour, may be paid in commutation of such statute labour ;

Amount of commutation money.

3. For increasing or reducing the number of days labour, to which the persons rated on the assessment-roll or otherwise shall be liable, in proportion to the statute labour to which such persons are, in respect of the amounts at which they are assessed or otherwise, respectively liable ;

Fixing number of days' labour.

4. For enforcing the performance of statute labour, or payment of a commutation-in money in lieu thereof, when not otherwise provided by law ;

Enforcing Statute Labour.

5. For regulating the manner and the divisions in which statute labour or commutation money shall be performed or expended ;

Regulating the application of Labour and commutation money.

But the power by this section conferred shall not extend to the statute labour or the commutation money payable instead thereof, of any person residing upon or whose lands are bounded by a line or road between two or more Municipalities, in the same County, or between such County and any adjoining County or Counties, or between one or more Townships, and any City, Town or Incorporated Village within the limits or boundaries of such first mentioned County.

331. The Council of every County may also pass By-laws ;

3.—COMPOUNDING FOR STATUTE LABOUR.

1. For empowering any landholder, residing upon lands bounded by any such squares, alleys, lanes, bridges, roads, streets or other public communications as are mentioned in the three hundred and ~~thirty~~ Section of this Act Number three, at any time before the labour ought to be performed, to com-

Right to compound for Statute labour.

A thirteenth - Sec 30

pond for the statute labour to which he is liable, for any term not exceeding five years, at any rate not exceeding five shillings for each day's labour, to be levied and collected in the same manner as other local taxes for the use of the Municipality ;

2. For regulating the manner and the divisions in which such statute labour or commutation shall be performed or expended ;

10.—STREETS IN CITIES, TOWNS AND INCORPORATED VILLAGES.

Streets in Cities, Towns and incorporated Villages how far vested in Municipalities.

332. All public roads, streets and highways, in Cities and Towns, shall be vested in the Municipality, subject to any rights in the soil which the individuals who laid out such roads, streets or highways, reserved and except any concession road or side road within such Cities or Towns, taken and held possession of by an individual in lieu of a street laid out by him without compensation therefor ;

To be kept in repair by—

333. All such roads, streets and highways shall be kept in repair by the corporation—and the default of the Corporation so to keep in repair, shall be a misdemeanor punishable by fine in the discretion of the Court, and such Corporation shall be further civilly responsible for all damages sustained by any person by reason of such default, but such action must be brought within three months after the damages have been sustained.

LOCAL IMPROVEMENTS.

334. The Council of every City, Town and Incorporated Village may also pass By-laws for the following purposes ;

Local rates for pavements.

1. For assessing and collecting from the proprietors of real property, immediately benefitted by making or repairing any pavement in any public way or place near to such property, such sums as may be necessary for so making or repairing the same.

Watering and sweeping streets.

For raising upon the petition of at least two thirds of the freeholders and householders resident in any street, square, alley or lane, representing in value one half of the rateable property therein, such sums as may be necessary for Sweeping, Watering, or Lighting such street, square, alley or lane, by means of a special rate on the rateable property therein ; but the Council may charge the general corporate funds with the expenditure incurred in such Making or Repairing or in such Sweeping, Watering or Lighting as aforesaid.

For preventing obstructions in streets.

3. For regulating or preventing the encumbering, injuring or fouling, by animals, vehicles, vessels or other means, of any road, street, square, alley, lane, bridge or other communication.

4. For directing the removal of door steps, porches, railing or other erections, or obstructions projecting into or over any road, or other public communication, at the expense of the proprietor or occupant of the property connected with which such projections are found;

Removal of door steps.

5. For surveying, settling and marking the boundary lines of all Streets, Roads and other public communications, and for giving names thereto and affixing such names at the corners thereof on either public or private property;

For marking the boundaries of and naming streets.

11.—RAILWAYS.

10 **335.** The Council of every Township, County, City, Town and Incorporated Village may pass By-laws.

1.—TAKING STOCK IN OR AIDING RAILWAY COMPANIES.

1. For subscribing for any number of shares in the Capital Stock of or for lending to or guaranteeing the payment of any sum of money borrowed by an incorporated Railway Company to which the eighteenth Section of the Statute fourteenth and fifteenth Victoria, Chapter fifty-one,—(the Railway clauses consolidation Act) has been made applicable by any special Act;

Council may make by-laws.

2. And for endorsing or guaranteeing the payment of any Debenture to be issued by such Company for the money by them borrowed and for assessing and levying from time to time upon the whole rateable property of the Municipality a sufficient sum to discharge the debt or engagement so contracted;

For taking stock in Railways or guaranteeing their debentures.

For guaranteeing the payment of Debentures, &c.

3. And for issuing for the like purpose Debentures payable at such times and for such sums respectively not less than five pounds currency, and bearing or not bearing interest as such Municipal Council may think meet;

For issuing Debentures.

See S. 213

4. And for directing the manner and form of signing or endorsing any Debenture so issued endorsed or guaranteed and countersigning the same, and by what officer or person the same shall be so signed, endorsed or countersigned, respectively; But no Municipal Corporation shall subscribe for stock or incur a debt or liability for the purposes aforesaid unless the By-law before the final passing thereof has received the assent of the Electors of the Municipality in manner provided by this Act;

To be confirmed by Public vote

35 **336.** Any Debenture for any of the purposes in this section mentioned, signed or endorsed and countersigned as directed by the By-law, shall be valid and binding on the Corporation without the corporate Seal thereto or the observance of any other form with regard to such Debenture than such as may be directed in the By-law;

Debentures when valid Such Debentures valid without the corporate seal.

See S. 207

Head when to be a Director. **337.** In case any Municipal Council subscribes for and holds stock in such Company to the amount of five thousand pounds or upward, the Head of such Council shall be *ex officio* one of the Directors of the Company in addition to the number of Directors authorized by the Special Act, and shall have the same rights, powers and duties as the other Directors of the Company ;

The Council of every Township may pass By-laws.

2.—BRANCH RAILWAYS.

May authorize the making branch Railways. **338.** For authorizing any Railway Company, in case such authority is necessary, to make any branch Railway on property of the Corporation, or on highways, under such conditions as the Council sees fit, and subject to the restrictions contained in the Railway Clauses Consolidation Act and any other Acts affecting such Railway ;

3.—ARBITRATIONS.

339. In all cases of arbitration directed by this Act, the proceedings shall be as follows:

Mode of appointing arbitrators and conducting arbitrations. 1. Each party shall appoint one arbitrator and give notice thereof in writing to the other party ; and when such other party is a Corporation, the notice shall be given to the Head of such Corporation ;

2. The two arbitrators appointed by or for the parties shall choose a third arbitrator ;

3. In case of an arbitration between Townships or between Counties, or between a County and a City, or, between a County and Town, if for one calendar month after having received such notice the party notified omits appointing an arbitrator ; and if for ten days after the second arbitrator has been appointed, the two arbitrators omit to appoint a third arbitrator ; then, in case such arbitration is between Townships, the Warden of the County within which the Townships are situate ; or in case the arbitration is between Counties, or, between a County and a City or a Town, the Governor in Council may appoint an arbitrator for the party or arbitrators in default ;

n the 4. In case of an arbitration between a Municipal Corporation and owners of property to be entered upon, taken or used in the exercise of the powers of the Corporation in regard to roads, streets or other communications, or to drains and sewers, if, after the passing of the By-law, any person interested in such property appoints and gives due notice to the Council of his appointment of an arbitrator to determine the compensation to which such person is entitled, the Head of the Council shall, within three days, appoint a second arbitrator and give notice

County Court Judge shall have power to name an arbitrator for them ;

11. In case the award relates to property to be entered upon, taken or used as mentioned in the said fourth subsection, and in case the By-law did not authorize or profess to authorize any entry or use to be made of the property before an award had been made except for the purpose of survey, or in case the By-law did give or profess to give such authority but the arbitrators find that ~~binding on the Corporation unless it is adopted by By-law within~~ such authority had not been acted upon, the award shall not be ~~binding~~ 5
 10 weeks after the making of the award ; and if the same is not so adopted the original By-law shall be deemed to be repealed, and the property shall stand as if no such By-law had been made, and the Corporation shall pay the costs of the arbitration ; 15

12. In the case of any award under this Act which does not require adoption by the Council or in case of any award to which a Municipal Corporation is a party and which is to be made in pursuance of a submission containing an agreement that the present subsection of this Act should apply thereto, the arbitrator or arbitrators shall take and immediately after the making of the award shall file with the Clerk of the Council for the inspection of all parties interested full notes of the oral evidence given on the reference, and also all documentary evidence or a copy thereof, and in case they proceed partly on a view or any knowledge or skill possessed by themselves or by any of them, they shall also put in writing a statement thereof sufficiently full to allow the Court to form a judgment of the weight which should be attached thereto ; 20
 25

13. Every award made under this Act shall be in writing under the hands of all or two of the arbitrators, and shall be subject to the jurisdiction of any of the Superior Courts of Law or Equity as if made on a submission by a Bond containing an agreement for making the submission a rule or order of such Court. And in the cases provided for by the last preceding subsection the Court shall consider not only the legality of the award but the merits as they appear from the proceedings so filed as aforesaid, and may call for additional evidence to be taken in any manner the Court directs and may, either without taking such evidence or after taking such evidence, set aside the award, or remit the matters referred or any of them from time to time to the consideration and determination of the same arbitrators or to any other person or persons whom the Court may appoint as prescribed in the "Common Law Procedure Act, 1856" and fix the time within which such further or new award shall be made or the Court may itself increase or diminish the amount awarded or otherwise modify the award, as the justice of the case may seem to the Court to require. 30
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4.—POUNDS AND POUND-KEEPERS.

340. The Council of every Township, City, Town and Incorporated Village, may respectively pass By-laws not being inconsistent with any Statute relating to Pounds or Cruelty to Animals.

1.—PROVIDING POUNDS.

1. For providing sufficient yards and inclosures for the safe keeping of such animals as it may be the duty of the Pound Keeper to impound; and it shall be the duty of the Council to provide such yards and enclosures.

2.—ANIMALS RUNNING AT LARGE.

2. For restraining or regulating the running at large of any animals; and providing for impounding them; and for causing them to be sold in case they are not claimed within a reasonable time, or in case the damages, fines and expenses (as the case may be) are not paid according to law; such By-laws not being contrary to the Statutes for the regulation of Pounds and Pound Keepers;

3. For appraising the damages to be paid by the owners of animals impounded for trespassing contrary to the laws of Upper Canada or of the Municipality;

3.—GENERAL PROVISIONS.

341. Until varied or other provisions are made by Act of Parliament, or by By-Laws of the Municipality, the following regulations shall be in force;

1. If not previously replevied, the Pound Keeper shall impound any horse, bull, ox, cow, sheep, pig, or other cattle, or any poultry, distrained for unlawfully running at large, or for trespassing and doing damage, delivered to him for that purpose by any person resident within his division who has distrained the same.

2. When the common Pound of the Municipality or place wherein a distress has been made is not secure, the Pound Keeper, or person who impounds any animal in the preceding clause mentioned, may confine the same in any inclosed place within the limits of the Pound Keeper's division within which such distress was made.

3. The person distraining and impounding any such animal shall, at the time or within twenty-four hours thereafter, deliver a statement to the Pound Keeper of his demands against the

Animals running at large.

Appraising damages done by.

Regulations for the government of Pound Keepers.

Statement of demand to be made to Pound

Note - This section is repeated as a separate act Post Cap: 40 Page 575.

Keeper by owner for damages (if any), not exceeding five pounds, done
impounder. by such animal.

Notice of sale 4. The Pound Keeper, or person who impounds any animal, unless redeemed, shall, within forty-eight hours thereafter, cause written or printed notices thereof to be affixed and continued for three clear successive days, in three public places in the Municipality (of which places the door of the nearest school-house, or of the nearest church, chapel, or other public place in the vicinity shall be one), specifying in such notices the time and place at which such animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf paying the penalty imposed by law (if any), the amount of the injury (if any) claimed or decided to have been committed by the animal to the property of the person who distrained and impounded it, together with the lawful fees and charges of the Pound Keeper, and also of the fence-viewers (if any); but no pig or poultry shall be sold till after four clear days, nor any horse or other cattle till after eight clear days from the time of impounding the same respectively.

Keeper to feed 5. Every Pound Keeper, and every person who impounds impounded or confines, or causes to be impounded or confined, any cattle. animal as aforesaid in any common, open, or close Pound, or in any inclosed place, shall daily furnish such animal with good and sufficient food, water, and shelter, during the whole time that such animal continues impounded or confined.

6. Every such person who furnishes such animal with food, water, and shelter, may recover the value thereof from the owner of the animal and also a reasonable allowance for his time, trouble and attendance in the premises.

7. The value or allowance as aforesaid may be recovered, with costs, by summary proceeding before any one Justice of the Peace within whose jurisdiction the animal was impounded in like manner as fines, penalties or forfeitures for the breach of any By-law of the Municipality may by law be recovered and enforced by a single Justice of the Peace; and the Justice shall ascertain and determine the amount of such value and allowance when not otherwise fixed by law, adhering, so far as applicable, to the tariff of Pound Keepers' fees and charges that may be established by the By-laws of the Municipality.

8. The Pound Keeper, or person entitled so to proceed, may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereafter mentioned.

Sale how 9. In case such notices have been given and published three clear days, and in case the party claiming to sell any effected, &c.,

such animal, first makes oath by affidavit in writing, before one of the Justices aforesaid, that such notices were duly affixed and published in the manner above prescribed, and satisfies such Justice thereof, then after the expiration of four clear days 5 in the case of pigs or poultry, and of eight clear days in the case of a horse, or other cattle from the time of impounding the same respectively, if the owner or some one for him does not within the time specified in such notices, or before the sale of the animal, replevy or redeem the same in manner aforesaid, the Pound Keeper shall publicly sell the animal to the highest bidder, at the time and place mentioned in the aforesaid notices, and shall, after deducting the penalty and the damages (if any) and fees and charges aforesaid, apply the produce in discharge of the value of the food and nourishment, loss of time, trouble and attendance so supplied as aforesaid, and the expenses of driving or conveying and impounding or confining the animal, and of the sale and attending the same, or incidental thereto, and the damage, not exceeding five pounds, to be ascertained as aforesaid, done by the animal to the property 10 of the person at whose suit the same was distrained, and return the overplus (if any) to the original owner of the animal, or if not claimed by him within three months after the sale, the Pound Keeper shall pay such overplus to the Treasurer or Chamberlain of and for the use of the Municipality.

10. If the owner within forty-eight hours after the delivery of such statement, as provided in the third section of this act, disputes the amount of the damages so claimed, the amount shall be decided by the majority of three fence-viewers of the Municipality, one to be named by the owner of the animal, 20 one by the person distraining or claiming damages, and the third by the Pound Keeper.

11. Such fence-viewers or any two of them shall, within twenty-four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was found doing damage, and determine whether or not the fence was a lawful one according to the Statutes or By-laws in that behalf at the time of the trespass; and if it was, then they shall appraise the damages committed, and, within twenty-four hours after having made the view, deliver to the Pound Keeper 35 a written statement signed by at least two of them of their appraisement, and of their lawful fees and charges.

12. Any fence-viewer neglecting his duty as arbitrator as aforesaid shall incur a penalty of five shillings, to be recovered for the use of the Municipality, by summary proceeding before a Justice of the Peace upon the complaint of the party aggrieved or the Treasurer or Chamberlain of the Municipality.

13. If the fence viewers decide that the fence was not a lawful fence, they shall certify the same in writing under

purchase money applied.

Disputes regarding such demand, how determined.

Fence-viewers to view and appraise damage.

Penalty for neglect of duty by viewers.

Proceedings where viewers

decide against
the legality of
a fence.

their hands together with a statement of their lawful fees to the Pound Keeper, who shall upon payment of all lawful fees and charges deliver such animal to the owner, if claimed before the sale thereof, but if not claimed or if such fees and charges are not paid, the Pound Keeper, after due notice, as required by this act shall sell the animal in the manner before mentioned at the time and place appointed in the notices. 5

14. In case any Pound Keeper or person who impounds or confines, or causes to be impounded or confined, any animal as aforesaid, refuses or neglects to find, provide and supply such good and sufficient food, water, and shelter to the animal, he shall for every day during which he so refuses or neglects forfeit a sum not less than five nor more than twenty shillings, which shall be recoverable by proceeding before any Justice of the Peace. 15

15. Every fine and penalty, imposed by this Act, may be recovered and enforced, with costs, by summary conviction, under the summary convictions Act, before any Justice of the Peace of the County, or of the Municipality, in which the offence was committed; and, in default of payment, the offender may be committed to the Common Gaol, House of Correction, or Lock up House, of such County or Municipality, there to be imprisoned for any time, in the discretion of the convicting and committing Justice, not exceeding fourteen days unless such fine and penalty, and costs, including the costs of said committal be sooner paid. 25

16. Upon the hearing of any information or complaint exhibited or made under this Act, any person giving or making the information or complaint, and any other person, shall be a competent witness, notwithstanding such person may be entitled to any part of the pecuniary penalty, on the conviction of the offender. 30

17. When not otherwise provided every pecuniary penalty recovered before any Justice of the Peace under this Act shall be paid and distributed in the following manner one moiety to the Treasurer of the City, Town, Village or Township, in which the offence was committed, to be by such Treasurer applied in repairing streets or roads therein, and the other moiety thereof, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the Justice may seem proper. 35 40

5.—ADMINISTRATION OF JUSTICE AND MATTERS OF POLICE.

1.—CITIES TO BE COUNTIES, &c.

In what respects
Cities
to be Coun-
ties.

342. Every City shall for Municipal purposes and such judicial purposes as are herein specially provided for, but no other, be a County of itself.

2.—JUSTICES OF THE PEACE.

343. The Head of every Council, the Aldermen of a City, the Justices of the Peace and the Town Reeve of every Town, and the Deputy Town Reeve of every Township, Town and Incorporated Village, shall *ex officio* be Justices of the Peace for the whole County or union of Counties in which their respective Municipalities lie.

Mayors and Reeves to be Justices of the Peace.

3.—OATHS OF JUSTICES.

344. Justices of the Peace for any town, shall have the same property qualification and take the same oaths as other Justices of the Peace, but no Warden, Mayor, Recorder, Police Magistrate, Alderman, Reeve or Deputy Reeve, after taking the oaths as such, shall require to have any property qualification or to take any further oath to enable him to act as a Justice of the Peace.

Qualification and oaths of Councillors as Justice of the Peace when dispensed with.

345. When a Town is erected into a City and the Council of such City duly organized, every Commission of the Peace theretofore issued for such Town shall cease.

When Towns become Cities former Commissioners of Peace to cease.

346. Justices of the Peace for a County in which a City lies shall as such have no jurisdiction over offences committed in the City, and the warrants of County Justices shall require to be endorsed before being executed in a City in the same manner as required by law when to be executed in a separate County. But the general and adjourned Quarter Sessions of the Peace for such County may be held and the jurisdiction thereof exercised within such City.

County Justices to have no Jurisdiction in Cities, but Quarter Sessions may be held therein.

347. Nothing herein contained shall limit the power of the Governor to appoint under the Great Seal of the Province any number of Justices of the Peace for a Town or shall interfere with the Jurisdiction of Justices of the Peace for the County in which a Town is situate over offences committed in such Town, except only so far as respects offences against the By-laws of the Town and penalties for refusal to accept or be sworn into office in the Town as to which Jurisdiction shall be exercised exclusively by the Police Magistrate or Mayor or Justices of the Peace for the Town.

Governor may appoint Justices of the Peace for Towns.

Jurisdiction of County Justices in Towns.

348. The Mayor of any City or Town may call out the Possé to enforce the law within his Municipality should exigencies require it, but only under the same circumstances in which the Sheriff of a County may now by law do so.

Mayor may call out Possé.

349. The Head of every Council or in his absence the Chairman thereof, may administer an oath or affirmation to any person concerning any account or other matter submitted to the Council.

Powers of Heads of Councils to administer oaths.

4.—POLICE OFFICE.

Police Offices
in Cities and
Towns.

350. The Council of every Town and City shall establish therein a Police Office, and the Police Magistrate, or in his absence or where there is no Police Magistrate, the Mayor of the Town or City, shall attend at such Police Office daily, or at such times and for such period as may be necessary for the disposal of the business brought before him as a Justice of the Peace; and any Justice of the Peace having Jurisdiction in a Town may, at the request of the Mayor thereof, act in his stead at the Police Office; But, except in cases of urgent necessity, no such attendance is required on Sunday, Christmas Day, or Good Friday, or any day appointed by Proclamation for a Public Fast or Thanksgiving. 5

RECORDER'S COURTS AND POLICE MAGISTRATES.

1.—RECORDER'S COURT.

Recorder's
Court in
Cities.

Jurisdiction of

351. There shall be in every City a Court of Record to be called the Recorder's Court of the City; and therein the Recorder, assisted by one or more of the Aldermen, or in the absence of the Recorder or when there is no Recorder, the Mayor, and in his absence one of the Aldermen elected by themselves and assisted by one or more of the other Aldermen, shall preside; and such Court shall, as to crimes and offences committed in the City and as to matters of civil concern therein, have the same Jurisdiction and powers and use the like process and proceedings as Courts of Quarter Sessions of the Peace in Counties. 15

2.—RECORDERS AND POLICE MAGISTRATES.

Recorder
qualification
of.

352. The Recorder shall be a Barrister of Upper Canada, of not less than five years' standing. 25

Salary of Recorder.

353. Every Recorder shall receive a salary of not less than two hundred and fifty pounds and every Police Magistrate not less than one hundred pounds per annum to be fixed by and to be paid quarterly by the Council. 30

When Recorder
or Police
Magistrate to
be appointed.

354. A Recorder or a Police Magistrate shall not in the first instance be appointed for any Municipality, until the Council thereof communicates to the Governor its opinion that such an Officer is required.

To be appointed
by the
Crown.

355. Recorders and Police Magistrates shall be appointed by the Crown, and shall hold office during the pleasure of the Crown; and shall *ex officio* be Justices of the Peace for the Cities or Towns for which they are respectively appointed, and Every Police Magistrate shall be a Justice of the Peace for the County in which the City or Town in which he holds office is situate. 35 40

356. If the Council of a City declares its opinion that the Offices of Recorder and Police Magistrate may be vested in the same person, the same person shall be appointed to both offices; and the offices shall remain united until the Council communicates to the Governor its opinion that such offices should no longer continue united. During the union of the offices the person holding them shall not be entitled to any other than the salary herein provided for the Recorder.

Office of Police Magistrate and Recorder may be vested in the same person.

3.—THE CLERK.

357. The Clerk of the Council of every City or Town or such other person as the Council of such City or Town may appoint for that purpose shall be the Clerk of the Police Office thereof, and perform the same duties and receive the same emoluments as Clerks of Justices of the Peace, and the City Clerk or such other person as the Council of the City may appoint for that purpose shall also be Clerk of the Recorder's Court, and shall perform the same duties and receive the same emoluments as Clerks of the Peace.

Clerk of Recorder's Court and Police Office.

4.—SESSIONS OF RECORDER'S COURT.

358. The Recorder's Court shall hold four Sessions in each year, and such Sessions shall commence on the first Monday in the Months of January, April, July and November.

Sessions of Recorder's Court.

359. The panels of Grand Jurors shall consist of twenty-four persons, and the panels of the Petit Jurors of not less than thirty-six nor more than sixty persons; and all such persons shall be residents of the City, selected to serve as Jurors under "The Upper Canada Jurors Act."

Jurors.

360. The High Bailiff of the City shall ballot for and summon such Jurors under a precept signed by the Recorder, or by the Mayor, or the Alderman elected to act in the Recorder's place, as the case may be, in the manner directed in "The Upper Canada Jurors Act aforesaid."

High Bailiff to summon.

361. On the acquittal of any person tried for misdemeanor in a Recorder's Court, the presiding Officer shall, if the Court is satisfied that there was reasonable and probable cause for the prosecution, order the costs thereof to be taxed by the Clerk and to be paid out of the City Funds.

Costs of acquittals.

5.—EXPENSES OF RECORDER'S COURT.

362. The expenses of the administration of justice in criminal cases in the Recorder's Court, shall be defrayed out of the Consolidated Revenue Fund, in like manner and to the like extent as the expenses attending the administration of justice in criminal cases in the several Courts of Quarter Sessions in Upper Canada.

Expenses of criminal Justice in Recorder's Court how paid.

INVESTIGATIONS BY RECORDER UNDER RESOLUTION OF CITY COUNCIL.

Investigation
by Recorder
of charges of
malfeasance.

363. In case the Council of any City at any time passes a resolution requesting the Recorder of such City to investigate any matter to be mentioned in such resolution and relating to a supposed malfeasance, breach of trust or other misconduct on the part of any member of the Council or Officer of the Corporation, or of any person having a contract therewith, in relation to the duties or obligations of such Member, Officer or other person, to the City, or in case the Council of any City sees fit to cause inquiry to be made into or concerning any matter connected with the good Government of the City, or the conduct of any part of the public business thereof, and if such Council at any time passes a resolution requesting the Recorder of the City to make such inquiry, the said Recorder shall inquire into the same, and shall for that purpose have all the powers of Commissioners under the Act intitled, *Act to empower Commissioners for inquiring into matters connected with the public business to take evidence on oath*; And the Recorder shall with all convenient speed report to the Council the result of such inquiry and the evidence taken thereon.

9 V. c. 38.

CITY DIVISION COURT.

Division
Court to be
held by Re-
corder.

364. The Governor may by Letters Patent, under the Great Seal, appoint the Recorder to preside over and hold the Division Court of that Division of the County which includes such City; and in such case, as long as the Letters Patent remain unrevoked, the Recorder shall have the powers and privileges and perform the duties otherwise belonging to the County Court Judge as Judge of the said Division Court, and during such period the authority and duties of the County Judge as Judge of such Division Court shall cease, except as in this Act provided.

Salary as
Judge of Divi-
sion Court.

365. The Governor in Council shall fix an annual salary to be paid to such Recorder for performing such duties, regard being had in fixing the same to the population resident within the Jurisdiction of such Division Court, the amount accruing from such Court to the fee fund, the amount of the salary of the Recorder as such, and the amount of the salaries of the County Court Judges in Upper Canada, and such salary shall be subject to be altered, in the like way, and shall be paid out of the like Fund and in the like manner as the salary of the County Judge in and for the County or union of Counties in which such City is situated.

Recorder
when not al-
lowed to prac-
tise at the
Bar.

366. While a Recorder is authorized to hold such Division Court, he shall not practise as a Barrister, Advocate, Attorney, Solicitor or Proctor in any Court of Law or Equity.

367. In case of the Recorder's illness or unavoidable absence, or absence by leave of the Governor while such Letters Patent are in force, the Judge of the County Court of the County in which such City lies, may officiate for the Recorder, as Judge of such Division Court and in every other capacity pertaining to the office of the Recorder as Judge of such Division Court; or the Recorder may, by an instrument in writing under his hand and seal, appoint a Barrister of Upper Canada to act for him as Judge of such Division Court with like powers as aforesaid; but no such appointment shall continue in force for more than one calendar month, unless renewed in like form.

Absence of Recorder provided for.

Appointment of Deputy.

368. Every such instrument shall contain a recital of the cause which renders the appointment therein contained necessary; and shall be executed in triplicate; and the Recorder shall file one of the triplicate originals in the Office of the Clerk of such Division Court, and shall deliver or send to the person so named to officiate for him another thereof, and shall transmit the third of the Provincial Secretary for the information of the Governor.

Form of.

369. The Governor may, by an instrument under his Privy Seal, annul any such appointment; and may, if he thinks fit by the same instrument or any other instrument under his Privy Seal, appoint another Barrister of Upper Canada to act for such Recorder in the place of the Barrister appointed by the Recorder.

Governor may supersede and substitute another.

JURORS AND WITNESSES.

1.—COMPETENCY.

370. In any prosecution, suit, action or proceeding to which a Municipal Corporation is a party, no Member, Officer or servant of the Corporation shall, on account of his being such, be an incompetent witness, or be liable to challenge as a Juror.

Competency of Jurors and witnesses.

2.—EXEMPTIONS.

371. The inhabitants of a City, shall be exempt from serving on juries at any other than the City Courts and Courts of Assize and *Nisi Prius*, Oyer and Terminer and General Gaol delivery for the County in which the City is situate, and on trials at Bar before the Superior Courts of Common Law.

Exemptions of Citizens as Jurors.

HIGH BAILIFF AND CONSTABLES.

372. ^{Superseded by} Until the organization of the Board of Police hereinafter mentioned the Council of every City shall appoint annually a High Bailiff, but may provide by By-law that the offices of High Bailiff and Chief Constable shall be held by the same person.

Bailiffs and Constables.

Superseded by

Chief Constable.

373. Until such organization the Council of every City and Town shall appoint one Chief Constable for the Municipality, and one or more Constables for each Ward, and the persons so appointed shall hold office during the pleasure of the Council.

Arrests by bailiffs for alleged breaches of the Peace (not within view) when sanctioned.

374. In case any person complains to a Chief of Police, or to a Constable or Bailiff in a Town or City, of a breach of the Peace having been committed, and in case such officer has reason to believe that a breach of the Peace has been committed, though not in his presence, and that there is good reason to apprehend that the arrest of the person charged with committing the same is necessary to prevent the escape of such person or to prevent a renewal of the breach of the Peace, or to prevent immediate violence to person or property, then if the person complaining gives satisfactory security to the officer that he will without delay appear and prosecute the charge before the Police Magistrate or before the Mayor or Sitting Justice, as the case may be, such officer may, without warrant, arrest the person charged in order to his being conveyed as soon as conveniently may be before such Magistrate, Mayor or Justice, to be dealt with according to Law.

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Unable to organization of a Board of Police as prescribed -

Mayor, Recorder or Police Magistrate may suspend Bailiffs or Constables; when.

375. Every Mayor, Recorder and Police Magistrate may within his jurisdiction suspend from office for any period in his discretion, the Chief Constable, or Constable of the Town or City, and may, if he chooses, appoint some other person to the Office during such period; and in case he considers a suspended officer deserving of dismissal, he shall, immediately after suspending him report the Case to the Council, and the Council may dismiss such Officer, or may direct him to be restored to his Office after the period of his suspension expires; and the Recorder and City Council respectively shall have the like powers as to the High Bailiff of a City.

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Salary to be withheld during suspension.

376. During the suspension of such officer he shall not be capable of acting in his Office except by the written permission of the Mayor, Recorder or Police Magistrate who suspended him, nor during such suspension shall be entitled to any salary or remuneration.

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BOARD OF POLICE.

1.—OF WHOM COMPOSED.

New Board of Police of whom composed.

377. In every City there is hereby constituted a Board of Commissioners of Police, and such Board shall consist of the Mayor, Recorder and Police Magistrate, and if there is no Recorder or Police Magistrate, or if the offices of Recorder and Police Magistrate are filled by the same person, the Council of the City shall appoint a person resident therein to be a member of the Board, or two persons so resident to be members thereof, as the case may require.

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2.—QUORUM.

378. A majority of the Board shall constitute a quorum, and the acts of a majority shall be considered acts of the Board. A majority to constitute a quorum.

3.—NUMBER OF THE POLICE FORCE.

379. The Police Force shall consist of a Chief Constable and as many Constables and other Officers and Assistants as the Council from time to time deems necessary, but not less in number than the Board reports to be absolutely required. Number of to be determined by the Council.

4.—APPOINTMENT OF POLICEMEN.

380. The members of the Police Force shall be appointed by and hold their offices at the pleasure of the said Board. The Policemen to be appointed by the Board.

5.—POLICE REGULATIONS.

381. The Board shall from time to time, as they may deem expedient, make such regulations for the government of the said Force for preventing neglect or abuse, and for rendering such force efficient in the discharge of all its duties. Board to make Police Regulations.

6.—POLICE SUBJECT TO THE BOARD, &c.

382. The said Constables shall obey all the lawful directions and be subject to the government of the said Board, and shall be charged with the special duties of preserving the peace, preventing robberies and other felonies and misdemeanors, and apprehending offenders, and shall have generally all the powers and privileges, and be liable to all the duties and responsibilities which belong by law to Constables duly appointed. The Policemen to be subject to the Board.

REMUNERATION AND CONTINGENT EXPENSES.

383. The Council shall fix and pay a reasonable remuneration for and to the respective members of the said Force, and shall provide and pay for all such offices, watch-houses, watch-boxes, arms, accoutrements, clothing and other necessaries as the Board may from time to time deem requisite and require for the accommodation and use of the said Force. Duties of Remuneration and contingent expenses.

6.—COURT HOUSES AND PRISONS.

1.—GAOLS AND COURT HOUSES.

384. Every County Council may pass By-Laws for erecting, improving and repairing a Court House, Gaol, House of Correction, and House of Industry, upon land being the property of the Municipality, and shall preserve and keep the same in repair.

Gaols and Court Houses to be commuted to Counties and Cities; when.

385. The Gaol, Court House and House of Correction of the County in which a Town or City is situate, shall also be the Gaol, Court House and House of Correction of such Town or City; and shall in the case of Cities continue to be so until the Council of the City otherwise directs; and the Sheriff, Gaoler and Keeper of such Gaol and House of Correction shall receive and safely keep until duly discharged, all persons committed thereto by any competent authority of the Town or City. 5

Compensation how to be regulated and made.

386. While a City or Town uses the Court House, Gaol or House of Correction of the County, the City or Town shall pay to the County such Compensation therefor as may be mutually agreed upon or be settled by arbitration under this Act. 10

When the amount may be revised.

387. In case after the lapse of five years from such compensation being so agreed upon, or awarded, or having been settled by Act of Parliament, and whether before or after the passing of this Act, it appears reasonable to the Governor in Council, upon the application of either party, that the amount of such compensation should be reconsidered. He may by an Order in Council direct that the then-existing arrangement shall cease after a time named in the order, and after such time the Councils shall settle anew, by agreement or by arbitration under this Act, the amount to be paid from the time so named in the Order. 15 20

City Councils may erect Court House, Jail, House of Correction and House of Industry.

388. The Council of every City may erect, preserve, improve and provide for the proper keeping of a Court House, Gaol, House of Correction and House of Industry upon lands being the property of the Municipality, and may pass By-Laws for all or any of such purposes. 25

Upon separation, Gaol and Court House regulations to continue.

389. In case of a separation of a Union of Counties, all rules and regulations and all matters and things in any Act of Parliament for the regulation of or relating to Court Houses or Gaols in force at the time of such separation, shall extend to the Court House and Gaol of the Junior County. 30

2.—LOCK-UP HOUSES.

Lock-up houses established by County Councils.

390. The Council of every County may establish a Lock-up House in any Town or Incorporated or Police Village within the County, and may establish and provide for the salary or fees to be paid to the Constable to be placed in charge of every such Lock-up House, and may direct the payment of any such salary out of the funds of the County. 35

A Constable to be placed in charge of.

391. Every such Lock-up House, shall be placed in the charge of a Constable specially appointed for that purpose, by the Magistrates of the County at any General Quarter Sessions of the Peace therefor, and such Constable shall reside in such Town or Village, and be one of the Constables of the Town or Township in which the Town or Village is situate. 40

392. Any Justice of the Peace residing in the Town or Village in which such Lock-up House is established or nearer thereto than the County Town, may direct by warrant in writing under his hand and seal, the confinement therein not exceeding two days, of any person charged on oath with a criminal offence, whom it may be necessary to detain until examined and either dismissed or fully committed for trial to the Common Gaol, and until such person can be conveyed to such Gaol; also the confinement therein not exceeding twenty-four hours, of any person found in the public streets in a state of intoxication, or any person convicted of desecrating the Sabbath, and generally may commit to such Lock-up House instead of the Common Gaol or other house of Correction, any person convicted on view of such Justice, or summarily convicted, before any such Justice or Justices of the Peace of any offence cognizable by him or them, and liable to imprisonment therefor under any Statute in force in Upper Canada, or under the provisions of any Municipal By-law.

Who liable to confinement in, &c.

393. The expense of conveying any prisoner to and keeping him in any such Lock-up House shall be defrayed in the same manner as the expense of conveying him to and keeping him in the Common Gaol of the County.

Expense of conveying and maintaining prisoners.

394. Nothing herein contained shall affect any Lock-up House heretofore lawfully established, but the same shall continue to be a Lock-up House as if established under this Act.

Previous Lock-up houses to continue.

395. The Council of every City, Town and Incorporated Village may by By-laws establish, maintain and regulate lock-up houses for the detention and imprisonment of persons sentenced to imprisonment for not more than ten days under any By-law of the Council; and of persons detained for examination on a charge of having committed any offence; and of persons detained for transmission to any Common Gaol or house of Correction either for trial or in the execution of any sentence.

S.—HOUSES OF INDUSTRY.

396. The Council of every County may establish a House of Industry, and provide by By-law for the erection and repair thereof; and for the appointment and duties of Inspectors, Keepers, Matrons and other servants for the superintendence, care and management of such House of Industry, and in like manner make such rules and regulations (not repugnant to law) for the government of the same, as such Council may deem expedient.

County Councils may erect and appoint Inspectors of Houses of Industry.

397. Any two of Her Majesty's Justices of the Peace, or of the Inspectors appointed as aforesaid, may by writing under their hands and seals, commit to such House of Industry, to be employed and governed according to the rules, regulations and orders of the said House;

Who liable to be committed thereto.

1. All poor and indigent persons who are incapable of supporting themselves;

2. All persons without means of maintaining themselves and able of body to work and who refuse or neglect so to do;

3. All persons leading a lewd, dissolute, or vagrant life, and exercising no ordinary calling, or lawful business sufficient to gain or procure an honest living; 5

4. And all such as spend their time and property in public houses, to the neglect of any lawful calling.

Punishment
of refractory
inmates.

398. Every person committed to such House of Industry, 10
if fit and able, shall be kept diligently employed at labour during his continuance there; and in case any such person is idle and does not perform such reasonable task or labour as may be assigned, or is stubborn, disobedient or disorderly, such person shall be punished according to the rules and regulations of such House of Industry in that behalf. 15

Inspectors to
keep and
render ac-
counts of Ex-
penses, &c.

399. The Inspectors shall keep an account of the charges of erecting, keeping, upholding and maintaining such House of Industry, and of all materials found and furnished therefor together with the names of the persons received into such House, as well as of those discharged therefrom, and also of the earnings, and such account shall be rendered to the County Council every year, or oftener when required by a By-law of such Council, and a copy thereof shall be presented to each Branch of the Legislature. 20 25

4.--WORKHOUSES.

Workhouses
in Cities and
Towns.

400. The Council of every City and Town may respectively pass By-laws for erecting and establishing within the City or Town or on such Industrial farm as mentioned in the two hundred and seventy-fourth section of this Act, a work house or house of correction and for regulating the government thereof. 30

Who liable to
be committed
thereto.

2. For committing or sending with or without hard labour to such work house or house of correction or to such Industrial farm, by the Mayor, Recorder, Police Magistrate or two Justices of the Peace for the City or Town, respectively, such description of persons as may by the Council be deemed and by By-law be declared expedient; and such farm shall for the purposes in this sub-section mentioned be deemed to be within the City or Town and the jurisdiction thereof; 35

5.—THE CARE OF GAOLS AND COURT HOUSES, &c.

Custody of
Gaols and
Court Houses.

401. The Sheriff shall have the care of the County Gaol and Court House and the appointment of the keepers thereof. 40

402. When the County Court House is a building separate from the Gaol and contains Municipal Offices therein, the Sheriff shall have the care of those portions of the building and appurtenances which are appropriated or necessary for the accommodation and use of the Courts of Justice, the Offices of the Sheriff and of such Courts, and of the resident keepers, and shall have the appointment of such Keepers. The care of the Municipal Offices and other portions of the building (if any) not appropriated nor required for any of the foregoing purposes, shall belong to the County Council and the respective officers of the Municipality to whom offices therein may be assigned.

When the care of Court House to be divided between Sheriff and County Council.

403. In Cities having a Gaol and Court House separate from the County Gaol and Court House, the care thereof shall be regulated by the By-laws of the City Council.

City Gaols to be regulated by By-law.

7.—INTERPRETATION CLAUSE.

404. Unless otherwise declared or indicated by the context, whenever any of the following words occur in this Act, the meanings hereinafter expressed shall attach to the same, namely :

Interpretation of words.

1. The word "Corporation" means the inhabitants of the Municipality in their corporate capacity ;

Corporation.

2. The word "Municipality" means any locality the inhabitants of which are incorporated under this Act, but it does not mean a Police Village ;

Municipality.

3. The word "Council" means the Municipal Council and the Provisional Municipal Council, as the case may be, and the governing body of the Municipal Corporation ;

Council.

4. The word "County" means County, Union of Counties or United Counties, or Provisional County, (as the case may be) ;

County.

5. The word "Township" means Townships, Union of Townships or United Townships, (as the case may be) ;

Township.

6. The words "Land," "Lands," "Real Estate" "Real Property," respectively, include lands, tenements and hereditaments and all rights thereto and interests therein, as the context may indicate or require ;

Land, Real estate.

7. Words in the singular or masculine include the plural or feminine of the same subject matter ;

Singular number.

8. The word "Month" means a calendar month ;

Month.

9. The word "Year" means a calendar year, and "year" alone is equivalent to "year of our Lord" ;

Year.

- Oath.** 10. The word *Oath* includes "Affirmation," where by law an Affirmation may be made instead of an Oath, and in like cases the word "Sworn" includes the word "Affirmed";
- Highway, road, &c.** 11. The words "Highway," "Road" or "Bridge" mean respectively a Public Highway, Road or Bridge;
- Electors.** 12. The word "Electors" means the persons entitled for the time being to vote at Municipal Elections in the Municipality or Ward or Police Village, (*as the case may be*); 5
- Voters.** 13. Electors may mean Voters and vice versa, according to the context;
- Town Reeve.** 14. The term "Town Reeve" includes the Deputy Town Reeve when there is a Deputy Reeve for the Municipality; 10
- Next day.** 15. The words "next day" is not to apply to or include Sunday or Statutory Holydays;
16. When ever the Governor is authorized to do an Act by "Proclamation" it shall mean by a Proclamation issued under the Great Seal by order of the Governor in Council. 15

8.—REPEALING CLAUSE.

- Repeal of—** 405. From the day of one thousand eight hundred and fifty- , the following Acts and part of Acts are hereby repealed, namely:
- 1 V. c. 21, ss. 33, 33, 34. The thirty-second, thirty-third and thirty-fourth sections of the Act of Upper Canada, passed in the first year of Her Majesty's Reign, chapter twenty-one, for regulating the appointment and duties of Township Officers; 20
- 2 V. c. 81. The Upper Canada Municipal Corporations Act of 1849;
- 13, 14 V. c. 64. The Upper Canada Municipal Corporations Law Amendment Act of 1850; 25

Except so much of the Schedules in either of the two last mentioned Acts as define the limits or boundaries of any Cities or Towns, being Schedule B of the Act of 1849, numbers two, three, four, six, seven, eight, nine, ten and eleven, and Schedule C of the same Act numbers one, two and three, and Schedule B of the Act of 1850, numbers one, five, twelve, thirteen, fourteen and fifteen.

And excepting also so much of Schedule A of the Act of 1849, as relates to Amherstburg, and excepting also so much of the two hundred and third section of the last mentioned Act and so much of any other sections of either of the said Acts relating to any of the Schedules thereof as have been acted upon

or as are in force and remain to be acted upon at the time this Act takes effect.

The Upper Canada Municipal Corporations Law Amendment Act of 1851 ; 14 and 15 V. c. 109.

- 5 The Act passed on the thirtieth August, one thousand eight hundred and fifty-one, to enable Municipal Corporations in Upper Canada, to contract Debts to the Crown in the purchase of Public Works without imposing a Special Rate or Tax for the payment of the same ; 14 and 15 V. c. 124.
- 10 The Act passed on the tenth November, one thousand eight hundred and fifty-two, to enable the Township of Stamford, to make By-laws for the better government of that part of the said Township, which lies in the immediate vicinity of the Falls of Niagara ; 16 V. c. 98.
- 15 The Upper Canada Municipal Corporations Law Amendment Act of 1853 ; 16 V. c. 18
- The fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second and twenty-third sections of the Act passed on the thirtieth day of May, one thousand eight hundred and forty-nine, chapter seventy-eight, for abolishing the Territorial Division of Upper Canada into Districts, and for providing for Unions of Counties for judicial and other purposes, and for the dissolution thereof ; 13 V. c. 78
- 25 The Act passed on the thirtieth day of May, one thousand eight hundred and forty-nine, chapter seventy-nine, to supply provisions not included in the Statutes passed in the eleventh year of Her Majesty's Reign, chapter thirty-nine, and in the twelfth year of Her Majesty's Reign, chapter seventy-eight ; 12 V. c. 79. Part of 12 V. c. 78.
- 30 The fifteenth section of the Act passed on the seventeenth day of March one thousand eight hundred and forty-five, chapter twenty, for the regulation of Line Fences and Water Courses in Upper Canada ; 8 V. c. 20, a. 15.
- The Act passed on the eighteenth day of May, one thousand eight hundred and forty-six, chapter eight, to prevent the opening of Government Allowances for Roads, without an order from the District Council ; 9 V. c. 8.
- The Act passed on the tenth day of August, one thousand eight hundred and fifty, chapter sixty-five, to amend the Laws relative to Tavern Licenses in Upper Canada ; 13 and 14 V. c. 65.
- 40 The Act passed on the thirtieth day of August, one thousand eight hundred and fifty-one, chapter one hundred and twenty, to explain and amend the last above mentioned Act ; 14 and 15 V. c. 120.

- 16 V. c. 184. The Act passed on the fourteenth day of June, one thousand eight hundred and fifty-three, chapter one hundred and eighty-four, to repeal certain duties of Excise, and to vest certain powers in the Municipal authorities in Upper Canada ;
- 13 and 14 V. c. 15. The Act passed on the tenth day of August, one thousand eight hundred and fifty, chapter fifteen, providing for the repair of Roads and Bridges within the limits of Incorporated Cities and Towns ;
- 18 V. c. 133. The Act passed on the thirtieth day of May, one thousand eight hundred and fifty-five, chapter one hundred and thirty-three, to require By-laws of City, Town, Village or Township Councils for raising money on the credit thereof to be approved by a majority of the electors before coming into force ;
- 18 V. c. 134. The Act passed on the same day, chapter one hundred and thirty-four, to amend the Act of the previous Session, relative to certain duties of Excise in Upper Canada ;
- 10 and 11 V. c. 41, ss. 3, 5, 6. The third, fifth and sixth sections of the Act passed on the twenty-eighth day of July, one thousand eight hundred and forty-seven, chapter forty-one, to establish Lock-up Houses in the unincorporated Towns and Villages of Canada West ;
- 7 W. 4. c. 24. The Act passed in the seventh year of the reign of King William the Fourth, chapter twenty-four, for the erection and maintenance of Houses of Industry ;
- 14 and 15 V. c. 117. The Act passed on the thirtieth day of August, one thousand eight hundred and fifty-one, chapter one hundred and seven-teen, to authorize the payment of certain expenses of the administration of Justice in the Recorder's Court in Upper Canada, out of the Consolidated Revenue Fund of the Province ;
- 18 V. c. 80. The Act passed on the nineteenth day of May, one thousand eight hundred and fifty-five, chapter eighty, to facilitate the negotiation of Municipal ;
- 20 V. c. 6. The Act passed on the twenty-seventh of May, one thousand eight hundred and fifty-seven, chapter six, to amend the Municipal and Assessment Acts of Upper Canada, in so far as they relate to the commutation of statute labour ;
- 20 V. c. 67. The Act passed on the tenth of June in the same year chapter sixty-seven, to amend the Municipal Law relating to Incorporation of Villages ;
- 20 V. c. 68. The Act passed on the same day, chapter sixty-eight, to enable Counties, united for Municipal purposes, to carry on improvements independently of each other ;

The Act passed on the same day, chapter, sixty-nine, to provide for the disposal of road allowances in the rural Municipalities of Upper Canada are hereby repealed. 20 V. c. 69.

5 Also the Acts of Upper Canada 32 Geo. 3, s. 14, 33 Geo. 3, c. 13, 2 Geo. 4, c. 8, and 4 W. 3, c. 18.

10 **406.** No Acts or parts of any Acts repealed by any of the above repealed Acts shall be revived, but all such Acts shall continue repealed and nothing in this repealing clause contained shall affect any statute not herein mentioned or any proclamation by or under which Cities and other Municipalities have been erected so far as respects the continuing of the same and the boundaries thereof. Acts formerly repealed to continue repealed.

9.—CONFIRMING AND SAVING CLAUSE.

15 **407.** The Head and Members of the Council, and the Officers, By-laws, Contracts, Property, Assets and Liabilities of every Municipal Corporation, and the Trustees of every Police Village existing when this Act takes effect, shall be deemed the Head and Members of the Council, and the Officers, By-laws, Contracts, Property, Assets and Liabilities of such Corporation, as continued under and subject to the provisions of this Act. Heads, officers, by-laws &c. continued.

20 **408.** All proceedings on behalf of or against any existing Municipal Corporation, or Police Trustees pending when this Act takes effect, shall be continued under this Act, in the name in which the same are then pending. Pending proceedings to continue.

30 **409.** All things heretofore done under the enactments hereby repealed, are confirmed, except any matter which has been or within six months after the passing of this Act, may be made the subject of proceedings at law or in equity; Past transactions confirmed.

35 **410.** All offences, neglects, fines, penalties, moneys, debts and other matters and things which immediately before this Act goes into effect might have been prosecuted, punished, enforced or recovered under the Acts or parts of Acts hereby repealed, may be prosecuted, punished, enforced or recovered under this Act, in the same manner, within the same time, and in the same name and by the same process and proceedings, as if the same respectively had been committed or incurred or had accrued or become due or payable after the taking effect of this Act. Previous offences may be prosecuted in the new Corporation name.



SCHEDULE

EXISTING MUNICIPALITIES.

ADDINGTON—COUNTY OF.

See Frontenac—Lennox and Addington.

BRANT—COUNTY OF.

TOWNSHIPS.

- | | |
|--------------------|--------------|
| 1. Brantford, | 4. Onondaga, |
| 2. Burford, | 5. Oakland. |
| 3. South Dumfries, | |

INCORPORATED TOWNS.

- | | |
|---------------|----------|
| 1. Brantford, | 2. Paris |
|---------------|----------|

BRUCE—COUNTY OF.

See Huron and Bruce.

CARLETON—COUNTY OF.

TOWNSHIPS.

- | | |
|----------------|------------------|
| 1. Goulbourn, | 6. March, |
| 2. Fitzroy, | 7. North Gower, |
| 3. Gloucester, | 8. Osgoode, |
| 4. Huntley, | 9. Marlborough, |
| 5. Nepean, | 10. Marlborough. |

CITIES.

1. Ottawa.

INCORPORATED VILLAGES.

1. Richmond.

DUNDAS—COUNTY OF.

See United Counties of Stormont—Dundas and Glengarry.

DURHAM—COUNTY OF.

See Northumberland and Durham.

ELGIN—COUNTY OF.

TOWNSHIPS.

- | | |
|----------------|----------------------|
| 1. Aldborough, | 5. Southwold, |
| 2. Bayham, | 6. South Dorchester, |
| 3. Dunwich, | 7. Yarmouth. |
| 4. Malahide, | |

INCORPORATED VILLAGES.

- | | |
|----------------|------------|
| 1. St. Thomas, | 2. Vienna. |
|----------------|------------|

POLICE VILLAGES.

1. Aylmer.

ESSEX—COUNTY OF.

TOWNSHIPS.

- | | |
|----------------|------------------|
| 1. Anderton, | 6. Mersea, |
| 2. Colchester, | 7. Rochester, |
| 3. Gosfield, | 8. Sandwich, |
| 4. Maidstone, | 9. Tilbury West. |
| 5. Malden. | |

TOWNS.

- | | |
|--------------|-------------|
| 1. Sandwich. | 2. Windsor. |
|--------------|-------------|

INCORPORATED VILLAGES.

1. Amherstburg,

FRONTENAC, LENNOX AND ADDINGTON—UNITED COUNTIES OF:

1. FRONTENAC,

TOWNSHIPS.

- | | |
|----------------|------------------|
| 1. Kingston, | 3. Storrington, |
| 2. Loughboro', | 4. Wolfe Island. |

UNITED TOWNSHIPS.

1. Bedford and Olden, Oso and Palmerston,
2. Pittsburgh, with Howe Island,
3. Portland, Barrie and Clarendon,
4. Hinchinbrooke and Kennebec.

CITIES.

1. Kingston.

2. LENNOX,

TOWNSHIPS.

- | | |
|---------------------|--------------|
| 1. Adolphustown, | 3. Richmond. |
| 2. Fredericksburgh, | |

INCORPORATED VILLAGES.

1. Napanee.

3. ADDINGTON,

TOWNSHIPS.

- | | |
|--------------------|---------------------|
| 1. Amherst Island, | 2. Camden East, |
| 2. Ernest-Town. | 4. <i>Sheffield</i> |

UNITED TOWNSHIPS.

1. ~~Sheffield~~, Anglesea and Kalladar.

GLENGARRY—COUNTY OF.

See United Counties of Stormont, Dundas and Glengarry.

GRENVILLE—COUNTY OF.

See Leeds and Grenville.

GREY—COUNTY OF.

TOWNSHIPS.

- | | |
|--------------------------------------|----------------|
| 1. Artemesia, | 6. Egremont, |
| 2. Bentinck, | 7. Glenelg, |
| 3. Collingwood, | 8. Kallander, |
| 4. Desbry <i>See Part</i> | 9. Melancthon, |
| 5. Euphrasia, | 10. Normandy. |

GREY—COUNTY OF—*Continued.*

TOWNSHIPS.

- | | |
|-------------|------------------|
| 11. Osprey, | 14. Sydenham, |
| 12. Proton, | 15. St. Vincent. |

Washed Township

TOWNS.

1. Owen's Sound.

Orby, Kephel and Sarawack

HALDIMAND—COUNTY OF.

TOWNSHIPS.

- | | |
|-------------------|-------------|
| 1. Cayuga, North, | 5. Oneida, |
| 2. Cayuga, South, | 6. Seneca, |
| 3. Canboro, | 7. Walpole, |
| 4. Dunn, | 8. Rainham. |

UNITED TOWNSHIPS.

1. Monlton and Sherbrooke.

INCORPORATED VILLAGES.

1. Caledonia.

HALTON—COUNTY OF.

TOWNSHIPS.

- | | |
|---------------|-----------------|
| 1. Esquesing, | 3. Nassagaweya, |
| 2. Nelson, | 4. Trafalgar. |

TOWNS.

- | | |
|------------|--------------|
| 1. Milton, | 2. Oakville. |
|------------|--------------|

HASTINGS—COUNTY OF.

TOWNSHIPS.

- | | |
|----------------|-----------------------|
| 1. Hungerford, | 4. Sidney, |
| 2. Huntingdon, | 5. Thorn , |
| 3. Rawdon, | 6. Tyendinaga. |

UNITED TOWNSHIPS.

1. Madoc, ~~Ellice~~ and Tudor,
2. Marmora and Lake.

TOWNS.

1. Belleville.

INCORPORATED VILLAGES.

1. Trenton.

POLICE VILLAGES.

- | | |
|---------------|------------------|
| 1. Stirling, | 3. Shannonville, |
| 2. Frankford, | 4. Hastings. |

HURON AND BRUCE—UNITED COUNTIES OF

1. HURON,

TOWNSHIPS.

- | | |
|------------------|------------------|
| 1. Ashfield, | 10. McKillop, |
| 2. Biddeford, | 11. Morris, |
| 3. Colborne, | 12. Stanley, |
| 4. Godwin, | 13. Stephen, |
| 5. Gray, | 14. Duckworth, |
| 6. Hay, | 15. Turberville, |
| 7. Hallett, | 16. Osborne, |
| 8. Howick, | 17. Wainwright. |
| 9. McGillicuddy, | |

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HURON AND BRUCE—UNITED COUNTIES OF:

1.—HURON,

TOWNS.

1. ~~Godwin~~

INCORPORATED VILLAGES.

1. Clinton,

~~2. Walkerton~~ 2.

2. BRUCE,

TOWNSHIPS.

1. Brant,

6. Greenock,

2. Bruce,

7. Huron,

3. Carrick,

8. Kincardine,

4. Culross,

9. Kinloss,

5. Elmerslie,

10. Saugeen.

UNITED TOWNSHIPS.

1. Airan ~~and~~ Amabel *and* *Albemarle*
* *Incorporated Villages of Kincardine*
PROVISIONAL COUNTY.

1. Bruce.

KENT—COUNTY OF.

TOWNSHIP.

2 1. Camden,

6. Raleigh,

2. Chatham,

7. Romney,

3. Dover, East and West,

8. Tilbury, East,

4. Harwich,

9. Orford,

5. Howard,

10. Zone.

INCORPORATED TOWNS.

1. Chatham.

POLICE VILLAGE.

1. Morpeth.

LAMBTON—COUNTY OF.

TOWNSHIPS.

1. Brooke,

6. Moore,

2. Bosanquet,

7. Plympton,

3. Dawn,

8. Sarnia,

4. Euphemia,

9. Sombra,

5. Enniskillen,

10. Warwick.

TOWNS.

1. Sarnia.

* *Duke Village Moore*

LANARK AND RENFREW—UNITED COUNTIES OF:

1. LANARK,

TOWNSHIPS.

1. Beckwith,

6. Lanark,

2. Burgess, North,

7. Montague,

3. Darling,

8. Ramsey,

4. Drummond,

9. Pakenham.

5. Elmsley, North,

UNITED TOWNSHIPS.

1. Bathurst and South Sherbrooke,

2. Dalhousie, North Sherbrooke and Levant.

LANARK AND RENFREW—UNITED COUNTIES OF:—

Continued.

1.—LANARK,

TOWNS.

1. Perth.

INCORPORATED VILLAGES.

1. Smiths-falls.

POLICE VILLAGES.

1. Pakenham.

2. Almonte.

2. RENFREW,

TOWNSHIPS.

- | | |
|--------------|---------------|
| 1. Admaston, | 5. Westmeath, |
| 2. Bromley, | 6. Ross, |
| 3. Horton, | 7. Pembroke. |
| 4. McNab, | |

UNITED TOWNSHIPS.

1. Bagot, Blythfield and Brougham,
2. Stafford and Allace,
3. Wilberforce and Grattan.

POLICE VILLAGES.

1. Pembroke,

2. Almonte.

LEEDS AND GRENVILLE—UNITED COUNTIES OF

1. LEEDS,

TOWNSHIPS.

- | | |
|-------------------|------------------|
| 1. Elizabethtown, | 4. North Crosby, |
| 2. Elmsley, | 5. South Crosby. |
| 3. Kitley, | |

UNITED TOWNSHIPS.

1. Bastard and Burgess,
2. Front of Leeds and Lansdown,
3. Rear of Leeds and Lansdown,
4. Front of Yonge and Escott,
5. Rear of Yonge and Escott.

INCORPORATED TOWNS.

1. Brockville.

2. GRENVILLE,

TOWNSHIPS.

- | | |
|------------------|-------------|
| 1. Augusta, | 4. Oxford, |
| 2. Edwardsburgh, | 5. Wolford. |
| 3. South Gower, | |

INCORPORATED TOWNS.

1. Prescott.

INCORPORATED VILLAGES.

1. Kemptville.

LENOX—COUNTY OF.

See Frontenac, Lennox and Addington.

LINCOLN—COUNTY OF.—Continued.

TOWNSHIPS.

- | | |
|--------------|----------------|
| 1. Niagara, | 5. Caistor, |
| 2. Grantham, | 6. Grimsby, |
| 3. Louth, | 7. Gainsboro'. |
| 4. Clinton, | |

TOWNS.

- | | |
|-------------|---------------------|
| 1. Niagara, | 2. St. Catherine's. |
|-------------|---------------------|

INCORPORATED VILLAGES.

- Queenston.

MIDDLESEX—COUNTY OF.

TOWNSHIPS.

- | | |
|-----------------------|---------------------|
| 1. Adelaide, | 7. London, |
| 2. Carleton, | 8. Moss, |
| 3. Delaware, | 9. Metcalfe, |
| 4. Dorchester, North, | 10. Nissouri, West, |
| 5. Ekfrid, | 11. Westminster, |
| 6. Lobo, | 12. Williams. |

CITY.

- London.

POLICE VILLAGES.

- | | |
|-------------|----------------------------------|
| 1. Newburg, | 2. Carlisle. 3. <i>Warawille</i> |
|-------------|----------------------------------|

NORFOLK—COUNTY OF.

TOWNSHIPS.

- | | |
|--------------------|----------------|
| 1. Charlotteville, | 5. Walsingham, |
| 2. Houghton, | 6. Windham, |
| 3. Middleton, | 7. Woodhouse. |
| 4. Townsend, | |

TOWNS.

- Simcoe.

NORTHUMBERLAND AND DURHAM—UNITED COUNTIES
OF:

1. NORTHUMBERLAND,

TOWNSHIPS.

- | | |
|---------------|---------------------|
| 1. Alnwick, | 6. Monaghan, South, |
| 2. Brighton, | 7. Murray, |
| 3. Cramahé, | 8. Ferry, |
| 4. Haldimand, | 9. Seymour. |
| 5. Hamilton, | |

TOWNS.

- Cobourg.

INCORPORATED VILLAGES.

- Newcastle.

POLICE VILLAGES.

- Orono.

2. DURHAM,

TOWNSHIPS.

- | | |
|----------------|-------------------------|
| 1. Clarke, | 4. Cartwright, |
| 2. Darlington, | 5. Gowan, |
| 3. Hope, | 6. Manlius . |

NORTHUMBERLAND AND DURHAM—UNITED COUNTIES
OF:—*Continued.*

2. DURHAM,

TOWNS.

1. Port Hope; 2. Bowmanville.

ONTARIO—COUNTY OF.

TOWNSHIPS.

- | | |
|---------------|---------------|
| 1. Brock, | 5. Scogog, |
| 2. Pickering, | 6. Thornhill, |
| 3. Reach, | 7. Uxbridge, |
| 4. Scott, | 8. Whitby. |

UNITED TOWNSHIPS.

1. Mara and Rama.

TOWNS.

1. Whitby.

INCORPORATED VILLAGES.

1. Oshawa.

POLICE VILLAGES.

1. Beaverton.

OXFORD—COUNTY OF.

TOWNSHIPS.

- | | |
|---------------------|--------------------|
| 1. Blandford, | 7. Oxford (East), |
| 2. Blenheim, | 8. Oxford (West), |
| 3. Dereham, | 9. Oxford (North), |
| 4. Nissouri (East), | 10. Zorra (East), |
| 5. Norwich (North), | 11. Zorra (West), |
| 6. Norwich (South), | |

TOWNS.

1. Woodstock.

INCORPORATED VILLAGES.

1. Ingersoll.

POLICE VILLAGES.

1. Embro, 2. Thamesford.

PEEL—COUNTY OF.

See York and Peel.

PERTH—COUNTY OF.

TOWNSHIPS.

- | | |
|--------------------|----------------|
| 1. North Easthope, | 6. Fullarton, |
| 2. South Easthope, | 7. Hibbert, |
| 3. Downie, | 8. Blainhardy, |
| 4. Ellice, | 9. Elma, |
| 5. Mornington, | 10. Logan |
| | 11. Wallace |

UNITED TOWNSHIPS.

1. Logan and Wallace.

INCORPORATED VILLAGES.

1. Stratford, 3. Mitchell.
2. St. Mary's,

PETERBOROUGH AND VICTORIA—UNITED COUNTIES OF

1. PETERBOROUGH,

TOWNSHIPS.

- | | |
|---------------|--------------|
| 1. Asphodel, | 4. Monaghan, |
| 2. Douro, | 5. Otonabee. |
| 3. Ennismore, | |

UNITED TOWNSHIPS.

1. Belmont and Menthuen,
2. Dummer and Burleigh,
3. Smith and Harvey.

TOWNS.

1. Peterborough.

2. VICTORIA,

TOWNSHIPS.

- | | |
|-----------|--------------|
| 1. Eldon, | 3. Mariposa, |
| 2. Emily, | 4. Ops. |

UNITED TOWNSHIPS.

1. Fenelon and Bexley,
2. Verulam and Sommerville.

TOWNS.

1. Lindsay.

PRESCOTT AND RUSSELL—UNITED COUNTIES OF :

1. PRESCOTT,

TOWNSHIPS.

- | | |
|---------------------|-----------------------|
| 1. Alfred, | 5. Longueil, |
| 2. Caledonia, | 6. North Plantagenet, |
| 3. East Hawkesbury, | 7. South Plantagenet. |
| 4. West Hawkesbury, | |

2. RUSSELL,

TOWNSHIPS.

- | | |
|---------------|----------------|
| 1. Cambridge, | 3. Cumberland, |
| 2. Clarence, | 4. Russell. |

PRINCE EDWARD—COUNTY OF.

TOWNSHIPS.

- | | |
|------------------|------------------|
| 1. Hallowell, | 4. Sophiasburgh, |
| 2. Hillier, | 5. Marysburgh, |
| 3. Ameliasburgh, | 6. Athol. |

TOWNS.

1. Picton.

RENFREW—COUNTY OF.

See Lanark and Renfrew.

RUSSELL—COUNTY OF.

See Prescott and Russell.

SIMCOE—COUNTY OF.

TOWNSHIPS.

- | | |
|------------|--------------|
| 1. Adjala, | 3. Flos, |
| 2. Essa, | 4. Innisfil, |

SIMCOE—COUNTY OF—*Continued.*

TOWNSHIPS.

- | | |
|-----------------|-----------------------|
| 5. Nottawasaga, | 9. Oro, |
| 6. Mono, | 10. Tecumseth. |
| 7. Mulmer, | 11. Tossorontio, |
| 8. Medonte, | 12. West Gwillimbury. |

UNITED TOWNSHIPS.

- | | |
|--------------------------|----------------------------|
| 1. Vespra and Sunnidale, | 3. Orillia and Matchedash. |
| 2. Tay and Tiny. | |

TOWNS.

- | | |
|--------------|-----------------|
| 1. Barrie, | 3. Collingwood. |
| 2. Bradford, | |

STORMONT, DUNDAS AND GLENGARRY—UNITED COUNTIES OF :

1. STORMONT,

TOWNSHIPS.

- | | |
|--------------|----------------|
| 1. Cornwall, | 3. Osnabruck, |
| 2. Finch, | 4. Roxborough. |

TOWN.

1. Cornwall.

2. DUNDAS,

TOWNSHIPS.

- | | |
|--------------|------------------|
| 1. Matilda, | 3. Williamsburg, |
| 2. Mountain, | 4. Winchester. |

INCORPORATED VILLAGE.

1. Iroquois.

3. GLENGARRY,

TOWNSHIPS.

- | | |
|---------------------|---------------|
| 1. Charlottenburgh, | 3. Lancaster, |
| 2. Kenyon, | 4. Lochiel. |

VICTORIA—COUNTY OF.

See Peterboro' and Victoria.

WATERLOO—COUNTY OF.

TOWNSHIPS.

- | | |
|--------------------|---------------|
| 1. North Dumfries, | 4. Woolwich, |
| 2. Waterloo, | 5. Wellesley. |
| 3. Wilmot, | |

TOWNS.

1. Galt.

INCORPORATED VILLAGES.

- | | |
|-----------------|--------------|
| 1. Berlin, | 3. Preston, |
| 2. New Hamburg, | 4. Waterloo. |

WELLAND—COUNTY OF.

TOWNSHIPS.

- | | |
|-----------------|----------------|
| 1. Bertie, | 5. Stamford, |
| 2. Crowland, | 6. Thorold, |
| 3. Humberstone, | 7. Wainfleet, |
| 4. Pelham, | 8. Willoughby. |

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WELLAND—COUNTY OF—Continued.

TOWNS.

1. Clifton.

INCORPORATED VILLAGES.

1. Chippewa,
2. Fort Erie,
3. Merrittsville,
4. Thorold.

POLICE VILLAGES.

1. Port Robinson.

WELLINGTON—COUNTY OF.

TOWNSHIPS.

1. Amaranth,
2. Eramosa,
3. Erin,
4. Garafraxa,
5. Guelph,
6. Maryborough,
7. Minto,
8. Nichol,
9. Peel,
10. Pilkington,
11. Puslinch.

UNITED TOWNSHIPS.

1. Arthur and Luther.

TOWNS.

1. Guelph.

INCORPORATED VILLAGES.

1. Fergus,
2. Elora.

WENTWORTH—COUNTY OF.

TOWNSHIPS.

1. Ancaster,
2. Barton,
3. Beverley,
4. Binbrooke,
5. East Flamboro',
6. West Flamboro',
7. Glanford,
8. Saltfleet.

CITIES.

1. Hamilton.

TOWNS.

1. Dundas.

POLICE VILLAGES.

1. Ancaster.

YORK AND PEEL—UNITED COUNTIES OF :

1. YORK,

TOWNSHIPS.

1. Etobicoke,
2. Georgina,
3. Gwillimbury, North,
4. Gwillimbury, East,
5. King,
6. Markham,
7. Scarborough,
8. Vaughan,
9. Whitchurch,
10. York.

CITIES.

1. Toronto.

INCORPORATED VILLAGES.

1. Newmarket,
2. Yorkville.

POLICE VILLAGE.

1. Aurora.

YORK AND PEEL—UNITED COUNTIES OF—*Continued.*

2. PEEL,

TOWNSHIPS.

- | | |
|------------------|---------------------|
| 1. Albion, | 4. Toronto, |
| 2. Caledon, | 5. Gore of Toronto. |
| 3. Chinguacousy, | |

INCORPORATED VILLAGES.

- | | |
|--------------|----------------------|
| 1. Brampton. | 2. <i>Shuteville</i> |
|--------------|----------------------|

PROVISIONAL COUNTY.

1. County of Peel.

*Note For Schedules - showing the
 Statute Consolidated in this Bill
 See separate Copies hereof*

CAP. XLVII.

An Act respecting the Assessment of Property in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- Short Title.** 1. This Act may be cited as "The Consolidated Assessment Act of Upper Canada." 16 V. c. 182, s. 93.
- Interpretation.** 2. In this Act, the word "County," and the word "Township," include a Union of Counties or of Townships, as the case may be, while such Unions continue.—The words "County Council," include "Provisional County Council,"—the word "Ward," does not apply to a Township Ward, —and the words "Municipality", or "Local Municipality," do not include Counties or United Counties, unless there is something in the subject or context requiring such construction. 16 V. c. 182, s. 90. 5 10
- Meaning of words land, &c.** 3. The terms "Land," "Real Property," or "Real Estate," respectively, include all buildings or other things erected upon or affixed to the land, and all machinery or other things so fixed to any building as to form in law part of the realty, and all trees or underwood growing upon the land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to Her Majesty. 16 V. c. 182, s. 3. 15
- Meaning of personal property.** 4. The terms "Personal Estate" and "Personal Property" include all goods, chattels, shares in incorporated companies, money, notes, accounts and debts at their full value, and all other property, except land as above defined, and except property herein expressly exempted. 16 V. c. 182, s. 3. 20
- Meaning of property.** 5. The term "property" includes both real and personal property as above defined. 16 V. c. 182, s. 3. 25
- Unoccupied land how designated.** 6. Unoccupied land owned by a person not resident and having a legal domicile or place of business, in the Township, Village, Town or City where the same is situate, or whose residence or domicile or place of business therein cannot, upon diligent enquiry by the assessor, be found and who has not signified to the Assessor personally or in writing, that he owns such land and desires to be assessed therefor, shall be denominated "Lands of non-residents." 16 V. c. 182, s. 8. 30
- In the case of Railroad Company, &c.** 7. The real estate of a Railroad Company, although it may be in a Municipality other than that where the office of the said Company is held, is not to be considered land of non-residents. 16 V. c. 182, s. 8. 35

8. All municipal or direct taxes, when no other express provision has been made in this respect, shall be levied equally upon the whole rateable property, real and personal, of the Municipality or other locality according to the assessed value of such property. 16 V. c. 182, s. 13.

All taxes to be levied equally upon the rateable property.

PROPERTY LIABLE TO TAXATION.

9. All land and personal property in Upper Canada shall be liable to taxation, subject to the following exemptions, that is to say: 16 V. c. 182, s. 2.

What property liable to taxation are exempted.

1. All property vested in or held by Her Majesty or vested in any public body, or body corporate, officer or person in trust for Her Majesty, or for the public uses of the Province, and either unoccupied or occupied by some person in an official capacity;

All property belonging to Her Majesty.

2. When any property mentioned in the preceding subsection number one is occupied by any person whose occupation is not in an official capacity, the occupant shall be assessed in respect thereof, but the property itself shall not be liable;

Unless occupied.

3. All property vested in or held by Her Majesty or any other person or body corporate in trust for or for the use of any tribe or body of Indians;

Indian lands.

4. Every place of worship, church-yard or burying ground;

Places of worship, &c.

5. The real estate of every University, College, incorporated Grammar School, or other incorporated Seminary of learning, whether vested in a Trustee or otherwise, so long as such real estate is actually used and occupied by such Institution, but not if occupied by others or unoccupied;

School lands.

6. Every Public School House, Town or City Hall, Court House, Gaol, House of Correction, Lock-up House, and public Hospital with the land attached thereto, and the personal property belonging to each of them;

School house, City Hall, &c.

7. Every Public Road and Way or Public Square;

Public Squares.

8. The property belonging to any County, City, Town, Municipal Township or Village, whether occupied for the purposes thereof, or unoccupied;

Municipal property.

9. The Provincial Penitentiary, and the land attached thereto;

Provincial Penitentiary.

10. Every Industrial Farm, Poor House, Alms House, House of Industry, and Lunatic Asylum, and every house belonging to a Company for the reformation of offenders, and the real property used for philanthropic purposes.

Houses, &c., used for philanthropic purposes.

and personal property belonging to or connected with the same ;

- Scientific Institutions.** 11. The property of every Public Library, Mechanics' Institute, and other public, literary or scientific institution, and of every Agricultural Society ; 5
- Personal property of Governor.** 12. The personal property and official income of the Governor of the Province ;
- Imperial salaries, pensions or gratuities, personal property of Officers on full pay.** 13. The full or half pay of any one in any of Her Majesty's Naval or Military services, or any pension, salary or other gratuity or stipend derived by any person from Her Majesty's Imperial Treasury or elsewhere out of this Province, and the personal property of any person in such Naval or Military services on full pay, or otherwise in actual service ; 10
- Pensions under £50.** 14. All pensions under Fifty Pounds a year payable out of the public moneys of this Province ; 15
- Income of Farmers.** 15. The income of a farmer derived from his farm, and the crops the produce thereof for the current year ;
- Personal property secured by mortgage.** 16. So much of the personal property of any person as is secured by a mortgage upon land, or is due to him on account of the sale of land, the fee or freehold of which is vested in him ; 20
- Bank and Railroad Stock.** 17. The stock held by any person in any Chartered Bank so long as there is a special tax upon bank issues, and the stock held by any person in any Railroad Company ;
- Stock owned out of the Province.** 18. All property, stocks and other securities which any party may own out of this Province ; 25
- Personal property to amount of debts due.** 19. So much of the personal property of any person as is equal to the just debts owed by him, except such debts as are secured by mortgage upon his real estate, or may be unpaid on account of the purchase money therefor ;
- Personalty under £25.** 20. The nett personal property of any person, provided the same be under Twenty-five Pounds in value ;
- Ministers' salary under £500.** 21. The stipend or salary of any Minister of Religion from whatever source derived, as long as the same does not exceed Three Hundred Pounds annually ;
- Household effects, books, &c.** 22. Household effects, books and wearing apparel. 16 V. 35 c. 182, s. 6.
- How rates to be estimated.** 10. In Counties and Townships the rates shall be calculated at so much in the pound upon the actual value of all the real and personal property liable to assessment therein, and in Cities,

Cities, Towns and Villages, at so much in the pound upon the yearly value of all real and personal property liable to assessment therein. 16 V. c. 182, s. 12.

11. The Council of every Municipality shall every year make estimates of all sums which may be required for the year, making due allowance for the cost of collection and for the abatements and losses which may occur in the collection of the tax, and for taxes on the lands of non-residents which may not be collected. 16 V. c. 182, s. 31. Estimates to be made.
- 10 12. The Council of every Municipality may pass one By-law or several By-laws authorizing the levying and collection of a rate or rates of so much in the pound upon the assessed value of the property therein, as the Council deem sufficient to raise the sums required. 16 V. c. 182, s. 31. By-laws for raising money by rate.
- 15 13. If the amount collected falls short of the sums required, the Council may direct the deficiency to be made up from any unappropriated fund belonging to the Municipality. 16 V. c. 182, s. 31. If the amount collected falls short.
- 20 14. If there is no unappropriated fund, the deficiency may be equally deducted from the sums estimated as required, or from any one or more of them. 16 V. c. 182, s. 31. Estimates to be reduced proportionably.
- 25 15. If the sums collected exceed the estimates, the balance shall form part of the General Fund of the Municipality, and be at the disposal of the Council, unless otherwise specially appropriated; but if any portion of the amount has been collected on account of a special tax upon any particular locality in the Municipality, no less a sum shall be appropriated to the special local object than has been collected. 16 V. c. 182, s. 31. If sums collected exceed estimate to balance, to be part of the General Fund and to be at the disposal of the Council.
- 30 16. The taxes assessed for any year, shall be considered to have been imposed for the then current year commencing with the first day of January, and ending with the thirty-first day of December, unless otherwise expressly provided for by the enactment or By-law under which the same are directed to be levied. 16 V. c. 182, s. 14. Yearly taxes to be computed from 1st January, unless otherwise ordered.

ASSESSORS AND COLLECTORS.

- 35 17. The Council of every Municipality, except Counties, shall annually appoint for the Municipality such number of Assessors and Collectors as they deem necessary. 16 V. c. 182, s. 15. One or more Assessors may be appointed in any place.
- 40 18. And may appoint and assign to each Assessor and Collector the Assessment District or Districts therein within which he shall act, and may prescribe regulations for governing the Assessors in the performance of their duties. 16 V. c. 182, s. 16. Townships or Cities, Towns, &c., may be divided into Assessment Districts.

HOW

HOW ASSESSMENTS TO BE PROCEEDED WITH.

Assessment
roll to be pre-
pared, its
form, content,
&c

19. The Assessor or Assessors shall prepare an Assessment Roll, in which, after diligent enquiry, he or they shall set down according to the best information to be had: 16 V. c. 182 s. 17.

1. The names and surnames in full if the same can be ascertained, of all taxable persons resident in the Municipality who have taxable property therein, or in the District for which such Assessor or Assessors has or have been respectively appointed; 5

2. And of all non-resident Freeholders who have either in person or in writing, required the Assessor to enter their names and the land owned by them in the Roll; and 10

3. The description and extent or amount of property assessable against each;

4. And such particulars in separate columns as follows;

Column 1,—Name of taxable party; 15

Column 2,—Number of Concession, Street, Square or other designation of the local division in which the real property lies;

Column 3,—Number of Lot, House, &c., in such division

Column 4,—Number of Acres, or other measures, shewing the extent of the property; 20

Column 5,—(applying only to Cities, Towns and Villages)—Rental of each separate parcel of real property;

Column 6,—(applying only to Cities, Towns and Villages)—Yearly value of each separate parcel, when the rental is not assessed; 25

Column 7,—(applying only to Townships)—Actual value of each separate parcel;

Column 8,—Actual value (or yearly value) of all the real property of the party assessed; 30

Column 9,—Amount of taxable income;

Column 10,—Total value of personal property;

Column 11,—(applying only to Cities, Towns and Villages)—Yearly value of the same.

- 20.** Land shall be assessed in the local Municipality or Ward in which the same lies, and this shall be the case with respect to the land of Incorporated Companies as well as other land. (16 V. c. 182, s. 7.) Land to be assessed in the Municipality or Ward.
- 5 **21.** The taxes accrued or to accrue on any land shall be a special lien on such land, having preference over any claim, lien, privilege or incumbrances of any party except the Crown, and shall not require registration to preserve it. (16 V. c. 182, s. 45.) Taxes to be a lien upon land.
- 10 **22.** Land occupied by the owner shall be assessed in his name. (16 V. c. 182, s. 7.) Land to be assessed in owners' name.
- 15 **23.** As to land not occupied by the owner, but of which the owner is known, and who, at the-time of the Assessment being made, resides or has a legal domicile or place of business in the Township, Village, Town or City, or who has signified personally or by writing to the Assessor that he owns the land and desires to be assessed therefor, the same shall be assessed against such owner alone if the land is unoccupied, or against the owner and occupant if the land is occupied by any other person. (16 V. c. 182, s. 7.) If land not occupied by the owner, but owner is known.
- 20 **24.** If the owner of the land is not resident or is unknown, and has not requested to be assessed therefor in the manner in the last section mentioned, then if the land is occupied, it shall be assessed in the name of and against the occupant. (16 V. c. 182, s. 7.) If owner non-resident and
- 25 **25.** When the land is assessed against both, the owner and occupant, the assessor shall on the Roll add to the name of the owner the word "owner" and to the name of the occupant the word "occupant," and the taxes may be recovered from either or from any future owner or occupant, saving his recourse against any other person. (16 V. c. 182, s. 7.) If land assessed against owner and occupant, taxes may be recovered from any future owner or occupant.
- 30 **26.** When land is owned or occupied by more persons than one, all, if their names are known to the assessor, shall be assessed thereon, but if the names of all are not so known, those of them whose names are known shall be assessed for the whole, saving their recourse against the others. (16 V. c. 182, s. 7.) If land occupied by more owners than one.
- 35 **27.** Any occupant may deduct from his rent any taxes he may have paid, if the same could also have been recovered from the owner, unless there be a special agreement between the occupant and the owner to the contrary. (16 V. c. 182, s. 7.) When tenants may deduct taxes from rent.
- 40 **28.** The Assessor shall write opposite the name of any non-resident Freeholder who requires his name to be entered on the Roll, the word "non-resident," and the address of such Freeholder. (16 V. c. 182, s. 17.) Assessor to note non-residents if required.

Real property
to be estimated
at full value.

29. Real property shall be estimated at its full value as it would be appraised in payment of a just debt from a solvent debtor, and the yearly value of real property in Cities, Towns or Villages, shall be the real rack rent for each separate tenement, unless such rent is less than six per cent on the full and real value thereof ; in which case the property shall be assessed at the full yearly value calculated at six per cent. upon the real value. (16 V. c. 182, s. 12.)

What shall be
deemed vacant
land, and how
its value shall
be calculated
in cities, &c.

30. If more than one quarter of an acre of land is attached to any house or building forming a separate tenement, the overplus shall be held to be vacant ground, and six per cent on the full actual value thereof, to be estimated by the Assessors, shall be deemed its yearly value. (16 V. c. 182, s. 12.)

Railway Com-
panies to
transmit an-
nual state-
ments describ-
ing value of
their real pro-
perty to Clerk
of Municipali-
ty ; and shall
be notified of
the amount at
which they
are assessed.

31. Every Railway Company shall annually transmit to the Clerk of every Municipality in which any part of the road or other real property of the Company is situate, a statement describing the value of all the real property of the Company other than the roadway, and also the actual value of the land occupied by the road in the Municipality, according to the average value of land in the locality, and the Clerk shall communicate the same to the Assessor ; and the Assessor shall deliver at or transmit by post to any station or office of the Company, a notice of the total amount at which he has assessed the real property of the Company, distinguishing the value of the land occupied by the road, and the value of the other real property of the Company ; and the statement shall be held to be the statement required by the 45th section, and the notice shall be held to be the notice required by the 49th section of this Act. (16 V. c. 182, s. 21.)

Land of non-
residents how
to be desig-
nated and des-
cribed on the
Assessment
Roll.

32. As regards the lands of non-residents, the Assessor shall proceed as follows :

1. They shall insert the same in the Roll, separated from the other assessments, and shall head the same as "Non-residents' Land Assessments," and in the manner following, that is to say ;

2. If the land is not known to be sub-divided into lots, it shall be designated by its boundaries or other intelligible description ;

3. If it is known to be sub-divided into lots, or is part of a tract known to be so sub-divided, the Assessors shall designate the whole tract in the manner prescribed with regard to undivided tracts, and if they can obtain correct information of the sub-divisions, they shall put down in the Roll, and in a first column, all the unoccupied lots, by their numbers and names alone and without the names of the owners, beginning at the lowest number and proceeding in numerical order to the highest ; in a second column, and opposite to the number of each lot, they shall

shall set down the quantity of land therein liable to taxation ; in a third column, and opposite to the quantity, they shall set down the value of such quantity, and if such quantity be a full lot, it shall be sufficiently designated as such by its name or number, but if it be part of a lot, the part shall be designated by boundaries, or in some other way by which it may be known. (16 V. c. 182, s. 22.)

MANNER OF ASSESSING PERSONAL PROPERTY.

33. The yearly value of personal property in Cities, Towns and Villages shall be taken to be six per cent. on its actual value. (16 V. c. 182, s. 12.)

Yearly value of personal property in Cities.

34. If the nett personal property of any person is equal in value to any of the sums set down in the first column of the following scales, but is not equal to the larger sum set opposite to it in the second column, he shall be assessed for the smaller sum only—

Assessment scale for personal property.

	£25 or more, but under	£50	
	£50	do.	do.
	£100	do.	do.
	£250	do.	do.
20	£500	do.	do.
	£1,000	do.	do.
	£2,500	do.	do.
	£5,000	do.	do.
25	£10,000	do.	do.
	£15,000	do.	do.

and so forward, the sums thenceforth increasing by £5,000. (16 V. c. 182, s. 4.)

35 **35.** No person deriving an income exceeding £50 per annum from any trade, calling, office or profession, is to be assessed for a less sum as the amount of his nett personal property than the amount of such income during the year then last, but such last year's income is to be held to be his nett personal property, unless he has other personal property to a greater amount. (16 V. c. 182, s. 5.)

How persons deriving income from any trade or profession shall be assessed.

35 **36.** The personal property of an Incorporated Company shall not be assessed against the corporation, but each Shareholder shall be assessed for the value of the stock or shares held by him, as part of his personal property, unless such stock is exempted by this Act. (16 V. c. 182, s. 9.)

How the property of Corporations shall be assessed.

40 **37.** The personal property of a partnership shall be assessed against it at the usual place of business of the partnership, a partner in his individual capacity shall not be assessable for his share of any personal property of the partnership which has already been assessed against the firm. (16 V. c. 182, s. 10.)

Personal property of partnerships how and where to be assessed.

- 38.** If a partnership has more than one place of business, each branch, as far as may be, shall be assessed in the locality where it is situate, for that portion of the personal property of the partnership which belongs to that particular branch ; and if this cannot be done, the partnership may elect at which of its places of business it will be assessed for the whole personal property, and shall be required to produce a certificate at each of the other places of business, of the amount of personal property assessed against it elsewhere. (16 V. c. 182, s. 10.) 5
- 39.** Every person having a Farm, Shop, Factory, Office or other place of business, where he carries on a trade, profession or calling, shall be assessed for all personal property owned by him, (wheresoever situate,) in the Township, Village or Ward where he has such place of business when the assessment is made. (16 V. c. 182, s. 11.) 10 15
- 40.** If he has two or more such places of business in different Municipalities or Wards, he shall be assessed at each for that portion of his personal property connected with the business carried on thereat, or if this cannot be done, he shall be assessed for part of his personal property at one and part at another of his places of business, or for all his personal property at one such place at his discretion, but he shall in all such cases produce a certificate at each place of business of the amount of personal property assessed against him elsewhere. (16 V. c. 182, s. 11.) 20 25
- 41.** If any person has no place of business he shall be assessed at his place of residence. (16 V. c. 182, s. 11.)
- 42.** Personal property in the sole possession or under the sole control of any person as trustee, guardian, executor or administrator, shall be assessed against such person alone. (16 V. c. 182, s. 11.) 30
- 43.** In case of personal property owned or possessed by or under the control of more than one person resident in the Municipality, each shall be assessed for his share only, or if they hold in a representative character, then each shall be assessed for an equal portion only. (16 V. c. 182, s. 11.) 35
- 44.** When a person is assessed as Trustee, Guardian, Executor or Administrator, he shall be assessed as such with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment, and he shall be assessed for the value of the real and personal estate held by him, whether in his individual name or in conjunction with others in such representative character, at the full value thereof or for the proper proportion thereof, if others, resident within the same Municipality, be joined 40 45

As to partnerships having more than one business locality.

Where parties carrying on trade or professions shall be assessed for personal property.

If the party has two or more places of business.

If the party has no place of business.

In case of executors, &c.

Separate assessment of joint owners or possessors

Parties assessed as Trustees, &c., to have their representative character attached to their names.

joined with him in such representative character. (16 V. c. 182, s. 20.)

45. It shall be the duty of every person assessable in any local Municipality, to give all necessary information to the Assessors, and if required by the Assessor or by one of the Assessors, if there is more than one, he shall deliver to him a statement in writing, signed by such person (or by his agent, if the person himself is absent), containing all the particulars respecting the property or income assessable against such person which are required in the Assessment Roll; and if any reasonable doubt is entertained by the Assessor of the correctness of any information given by the party applied to, the Assessor shall require from him such written statement. (16 V. c. 182, s. 18.)

Particulars respecting property or income to be delivered to assessors in writing by the parties to be assessed.

46. No such statement shall bind the Assessor, nor excuse him from making due enquiry to ascertain its correctness; and notwithstanding the statement, the Assessor may assess such person for such amount of property or income as he believes to be just and correct, and may omit his name or any property which he claims to own or occupy, if the Assessor has reason to believe him not entitled to be placed on the Roll, or to be assessed for such property. (16 V. c. 182, s. 18.)

Statements given by parties not binding on assessors.

47. In case any person fails to deliver to the Assessor the written statement mentioned in the preceding section when required so to do, such person shall forfeit to the Corporation of the Municipality the sum of Five Pounds, to be recovered as a debt due to such Municipal Corporation. (16 V. c. 182, s. 18.)

Penalty for not giving statement.

48. In case any person knowingly states any thing falsely in the written statement required to be made as aforesaid, he may be summarily convicted thereof before any Magistrate having jurisdiction within the locality, and shall be liable to a fine of not more than Five Pounds. (16 V. c. 182, s. 19.)

Penalty on parties making false statements.

49. Every Assessor, before the completion of his Roll, shall leave for every party named thereon and resident or domiciled or having a place of business within the City, Town, Village or Township, and shall transmit by post to every non-resident named thereon, a notice of the actual or yearly value at which his real property, and of the sum at which his personal property or income, has been assessed. (16 V. c. 182, s. 23.)

Assessors to give notice to parties of the value at which their properties are assessed.

50. The Assessors shall make and complete their Rolls in every year between the first day of February and such day, not later than the first day of May, as the Council of the Municipality appoints, and shall attach thereto a certificate signed by them respectively, and verified upon oath or affirmation, which shall be in the form following:

At what time the assessment roll shall be completed.

Certificate to be attached to roll. " I do certify that I have set down in the above Assessment Roll, all the real property liable to taxation, situate in the Township, Village or Ward of _____, (as the case may be) and the true actual (or yearly) value thereof, in each case, according to the best of my information and judgment ; 5
 " and also that the said Assessment Roll contains a true statement of the aggregate amount of the personal property of every party named in the said Roll ; and that I have estimated the same according to the best of my information and belief ;
 " and I further certify that I have entered therein the names of 10
 " all the resident householders and freeholders, and of all other freeholders who have required their names to be entered thereon, with the true amount of property occupied or owned by each, and that I have not entered the name of any person
 " whom I do not truly believe to be a householder or freeholder, 15
 " or the *bona fide* occupier or owner of the property set down opposite his name for his own use and benefit." (16 V. c. 182, s. 24.)

Assessment roll to be delivered up to Clerk of Municipality. **51.** Every Assessor shall deliver to the Clerk of the Municipality the Assessment Roll completed and added up, with the 20 certificates and affidavits attached ; and the Clerk shall thereupon make a copy of every such Roll, arranged in the alphabetical order of the surnames, and shall cause such copy to be put up in a convenient and public place in the Municipality or Ward, and to be maintained there until after the meeting of 25 the Court of Revision. (16 V. c. 182, s. 25.)

COURT OF REVISION.

Court of Revision, 5 Members. **52.** If the Council of the Municipality consists of not more than five members, such five members shall be the Court of Revision for the Municipality. (16 V. c. 182, s. 26.)

How appointed. **53.** If the Council consists of more than five members, such 30 Council shall appoint five of its members to be the Court of Revision. (16 V. c. 182, s. 26.)

Three to be a quorum. **54.** Three members of the Court of Revision shall be a quorum, and a majority of those present at any meeting may decide all questions. (16 V. c. 182, s. 26.) 35

The Clerk—who to be. **55.** The Clerk of the Municipality shall be Clerk of the Court. (16 V. c. 182, s. 30.)

Court may meet and adjourn from time to time at pleasure. **56.** The Court may meet and adjourn, from time to time, at pleasure, or may be summoned to meet at any time by the Head of the Municipality. (16 V. c. 182, s. 30.) 40

The Court may administer oaths. **57.** The Court or any member thereof may administer an oath to any party or witness, or may issue a Summons to any witness to attend such Court. (16 V. c. 182, s. 30.)

58.

55. If any witness so summoned fails to attend (being tendered compensation for his time at the rate of Two Shillings and Six Pence a day), he shall incur a penalty not exceeding Five Pounds, to be recoverable, with costs, by and to the use of the Municipality, in any way in which penalties incurred under any By-law thereof may be recovered. (16 V. c. 182, s. 30.)

Penalty in witnesses who refuse to attend.

59. The Court shall try all complaints in regard to persons being wrongfully placed upon or omitted from the Roll, or being assessed at too high or too low a sum. (16 V. c. 182, s. 26.)

The Court to try complaint of wrongfulness of assessment, &c.

60. All the duties of the Court of Revision which relate to the matters aforesaid, shall be completed and the Rolls finally revised by the Court before the first day of June in every year. (16 V. c. 182, s. 30.)

The Court to finish its business by the 1st June.

61. The proceedings for the trial of complaints shall be as follows :

Course of proceeding in the trial of complaints.

1. Any person complaining of an error or omission in regard to himself, or of being undercharged or overcharged by the Assessor, shall personally or by his Agent, within fourteen days after the time fixed for the return of the Roll, give notice in writing to the Clerk of the Municipality that he considers himself aggrieved for any or all of the causes aforesaid ; (16 V. c. 182, s. 26.)

2. If a Municipal elector thinks that any person has been assessed too low or too high, or has been wrongfully inserted on or omitted from the Roll, the Clerk shall, on his request in writing, give notice to such person and to the Assessor, of the time when the matter will be tried by the Court, and the matter shall be decided in the same manner as complaints by a person assessed ; (16 V. c. 182, s. 26.)

If an elector thinks a person has been assessed at too low a rate.

3. The Clerk of the Court shall post up in some convenient and public place within the Municipality or Ward, a list of all complainants on their own behalf against the Assessor's return, and of all complainants on account of the assessment of other persons, (stating the names of each) with a concise description of the matter complained against, together with an announcement of the time when the Court will be held to hear the complaints ; (16 V. c. 182, s. 26.)

Clerk to give notice.

4. Such list may be in the form following :

Appeals to be heard at the Court of Revision, to be held at
on the day of 18

APPELLANT.	RESPECTING WHOM.	MATTER COMPLAINED OF.
A. B.	Self.	Overcharged on land.
C. D.	E. F.	Name omitted.
G. H.	I. K.	Not <i>bonâ fide</i> occupant.
L. M.	N. O.	Personal property undercharged.
&c.	&c.	&c.

(16 V. c. 182, s. 26.) Schedule B.

5. The Clerk shall also advertise in some newspaper published in the City, Town, Village or Township, or if there be no such paper then in some newspaper published at the nearest place in the County in which one is published, the time at which the Court will hold its first sitting for the year; (16 V. c. 182, s. 26.) 5

6. The Clerk shall also cause to be left at the residence of each Assessor a list of all the complaints respecting his Roll; (16 V. c. 182, s. 26.) 10

7. The Clerk shall prepare a notice in the form following for each person with respect to whom a complaint has been made. (16 V. c. 182, s. 26. Schedule C.)

Take notice that you are required to attend the Court of Revision at _____ on the _____ day of _____ in the matter of the following appeal : 15

Appellant. (G. H.)

Subject (that you are not a *bonâ fide* occupant.)

To J. K.

(Signed,) X. Y. 20

Township Clerk.

8. If the person resides or has a place of business in the Municipality, the Clerk shall cause the notice to be left at the persons residence or place of business. (16 V. c. 182, s. 26.)

9. Or if the person is not known or not resident in the Municipality, then with some grown person on the premises assessed, or addressed to such person through the Post Office. (16 V. c. 182, s. 26.)

10. Every notice hereby required, whether by publication, advertisement, letter or otherwise, shall be completed at least six days before the sitting of the Court. (16 V. c. 182, s. 26.)

11. If the person complains of an overcharge on his personal property he or any person for whom he is agent, may appear before the Court, and make a declaration in the form following: Appearance and declaration of persons deeming themselves, or any person for whom they act overcharged.

15 " I, A. B., do solemnly declare that the true value of all the
 " personal property (or income) assessable against me, (or
 " against me as Trustee, Guardian, Executor, &c., or against
 " C. D., for whom I am agent, as the case may be,) after de-
 " ducting the just debts due by me (as such Trustee, &c., or
 20 " by C. D.) does not, to the best of my knowledge and belief,
 " exceed the sum of pounds currency, (and if
 " the declaration is made by an agent, add :) And that I have
 " the means of knowing, and do know the extent and value of
 " the personal property assessable against C. D." (16 V.
 25 c. 182, 27.)

And the Court shall thereupon enter the person complaining at such an amount of personal property or income as is specified in the declaration, and no more; and if any party makes a wilfully false statement in any such declaration, he shall be guilty of a misdemeanor, and shall be punished as for perjury.

12. In other cases the Court after hearing upon oath the complainant and the Assessor or Assessors and any witness adduced by or on behalf of either of them, shall determine the matter and confirm or amend the Roll accordingly. (16 V. c. 182, s. 26.)

13. If either party fails to appear either in person or by an agent, the Court may proceed *ex parte*. (16 V. c. 182, s. 26.)

62. The Roll as finally passed by the Court, and certified by the Clerk as so passed, shall bind all parties concerned, notwithstanding any defect or error committed in or with regard to such Roll, except in so far as the same may be further amended on appeal to the Judge of the County Court. (16 V. c. 182, s. 26.) The roll as finally passed to bind all parties.

Further powers granted to Court of Revision.

63. The Court shall also before or after the first day of June and with or without any notice receive and decide upon the Petition from any person assessed for a tenement which has remained vacant during more than three calendar months in the year for which the assessment was made, or from any person who declares himself from sickness or extreme poverty unable to pay the taxes, or who by reason of any gross and manifest error in the Roll as finally passed by the Court, has been overcharged more than twenty-five per cent. on the sum he ought to have been charged, and may remit or reduce the taxes due by any such person, or reject such Petition, subject to the provisions of any By-law in this behalf; And the Municipal Council of any City, Town or Township, may make such By-laws and repeal or amend the same from time to time. (16 V. c. 182, s. 29.)

5
10
15

APPEAL FROM THE COURT OF REVIEW.

Parties dissatisfied with decision of Court of Revision may appeal to Judge of County Court, and in what manner and on what terms.

64. If a person is dissatisfied with the decision of the Court of Revision, he may appeal therefrom, in which case—

1. He shall within three days after the decision serve upon the Clerk a written notice of his intention to appeal to the Judge of the County Court;

20

2. The Clerk shall thereupon give notice to all the parties appealed against in the same manner as is provided for notice of complaints by the 61st section of this Act;

3. The party appealing shall at the same time give a written notice of his appeal to the Clerk of the Division Court for the Division within the limits of which the Municipality is situated, and shall deposit with him the sum of Ten Shillings to cover the costs of the appeal;

25

4. The Judge shall appoint a day for hearing the appeal;

5. The Clerk of the Division Court shall cause a conspicuous notice to be posted up at the place where the Division Court is held, containing the names of all the appellants and the parties appealed against, ranged under the several Municipalities, if there be more than one Municipality in the Division, together with the date at which a Court will be held to hear the appeal.

35

6. At the Court so holden, the Judge shall hear the appeals, and may adjourn the hearing from time to time and defer the judgment thereon at his pleasure, so that a return can be made to the Clerk of the Municipality before the fifteenth day of July;

40

7. The Judge shall transmit his decision to the Clerk of the Division Court, to be by him forthwith transmitted to the Clerk of the Municipality;

8.

8. The Judgment so given shall be final ;

9. The Clerk of the Municipality shall amend the rolls according to the Judge's decision ;

10. The costs of the Court shall in all cases be borne by the Appellants, but each party shall pay his own witnesses, except in the case of wilful fraud or corruption, when the Judge may order all costs to be paid by the party offending ;

11. The costs shall be taxed according to the schedule of fees under the Division Courts Acts as in suits for the recovery of sums exceeding Ten and not exceeding Fifteen Pounds in the said Courts. (16 V. c. 182, s. 28.)

65. When after the appeal provided by the last section of this Act, the Assessment Roll has been finally revised and corrected, the Clerk of the Municipality shall without delay transmit to the County Clerk a certified copy thereof. (16 V. c. 182, s. 25.)

Copy of roll to be transmitted to County Clerk.

66. The Council of every County shall yearly before imposing any County rate and not later than the First day of July, examine the Assessment Rolls of the different Townships, Towns and Villages in the County, for the preceding financial year, for the purpose of ascertaining whether the valuation made by the Assessors in each Township, Town or Village for the current year, bears a just relation to the valuation so made in all such Townships, Towns and Villages, and may, for the purpose of County rates, increase or decrease the aggregate valuations of real property in any Township, Town or Village, adding or deducting so much per cent as may in their opinion be necessary to produce a just relation between all the valuations of real estate in the County, but they shall not reduce the aggregate valuation thereof for the whole County as made by Assessors. (16 V. c. 182, s. 32.)

Assessment rolls to be examined annually by Municipal Council of the County for the purpose of equalizing the valuation in the different Municipalities.

67. If the Clerk of any Municipality has neglected to transmit a certified copy of the Assessment Rolls, such neglect shall not prevent the County Council from equalizing the valuations in the several Municipalities according to the best information obtainable, and any rate imposed according to the equalized Assessment shall be as valid as if all the Assessment Rolls had been transmitted. (16 V. c. 182, s. 32.)

If Clerk of any Municipality shall have omitted to send copy of roll.

68. The Council of a County in apportioning a County rate among the different Townships, Villages and Towns within the County, in order that the same may be assessed equally on the whole rateable property of the County, shall make the amount of property returned on the Assessment Rolls as finally revised and equalized of such Townships, Villages and Towns for the preceding year, the basis upon which the apportionment is made. (16 V. c. 182, s. 33.)

The apportionment of County rates to be based upon the assessment rolls of preceding year.

69.

Apportionment thereof as between township and towns, &c.

69. In making the apportionment between Townships (in which rates are assessable on the actual value of property,) and Villages and Towns (in which rates are assessable on the annual value,) the sum total of the rentals assessed in the Village or Town shall be calculated at ten per cent. upon the capital represented, and the capital so ascertained, together with the total value of other real property, and the total value of personal property, shall be considered the aggregate valuation of the Town or Village, for the purpose of rating it for a County tax. (16 V. c. 182, s. 33.)

As to new Municipalities.

70. If a new Municipality has been erected within a County, so that there are no Assessment Rolls of the new Municipality for the preceding year, the County Council shall, by examining the Rolls of the former Municipality or Municipalities of which the new Municipality then formed part, ascertain to the best of their judgment, what part of the Assessment of the Municipality or Municipalities had relation to the new Municipality, and what part should continue to be accounted as the Assessment of the original Municipality, and their several shares of the County tax shall be apportioned between them accordingly. (16 V. c. 182, s. 33.)

Municipal Council to direct by By-law what part of any sum required for County purposes shall be levied in any Township, Town, &c.

71. When a sum is to be levied for County purposes, or by the County for the purposes of a particular locality, the Council of the County shall ascertain, and by By-law direct, what portion of such sum shall be levied on each Township or incorporated Town or Village in such County or locality. (16 V. c. 182, s. 34.)

Not to affect certain special enactments.

72. The County Clerk shall, before the first day of August in each year, certify to the Clerk of each Township or incorporated Town or Village in the County, the total amount which has been so directed to be levied thereon in the then current year, for County purposes, or for the purposes of any such locality, and the Clerk of the Township, Town or Village shall calculate and insert the same in the Collector's Roll for that year. (16 V. c. 182, s. 34.)

This Act not to affect provisions for rates to raise interest on County Debentures.

73. But nothing in this Act contained is to alter or invalidate any special provisions for the collection of a rate for interest on County Debentures, whether such provisions be contained in the Act for the regulation of Municipal Institutions in Upper Canada or the Act to establish a Consolidated Municipal Loan Fund in Upper Canada, or in any General or Special Act authorizing the issue of Debentures, or in any By-law of the County Council providing for the issuing of the same. (16 V. c. 182, s. 34.)

STATUTE LABOUR.

Statute Labour. Persons in Military Service exempt.

74. No person in Her Majesty's Naval or Military Service on full pay or on actual service shall be liable to perform Statute Labour or to commute therefor. (16 V. c. 182, s. 5.)

75. Every other male inhabitant of a City or incorporated Town or Village, of the age of twenty-one years and upwards, and under sixty years of age (and not otherwise exempted by law from performing statute labour) who has not been assessed upon the Assessment Rolls of the City, Town or Village, or whose taxes do not amount to ten shillings currency, shall instead of such labour be taxed at ten shillings yearly therefor, to be levied and collected in the same manner as other local taxes. (16 V. c. 182, s. 35.)

Who liable and in what ratio in Towns and Villages.

76. No such person shall be exempt from the tax in the last preceding section named by reason of his producing a certificate of his having performed statute labour or paid the said tax elsewhere, unless he was actually domiciled out of the limits of the City, Town or Village at the time he so performed statute labour or paid the tax. (16 V. c. 182, s. 35.)

Where to be performed.

77. Every male inhabitant of a Township, between the ages aforesaid who is not otherwise assessed to any amount and who is not exempt by the Seventy-fourth section of this Act, shall be liable to two days of statute labour on the Roads and highways in the Township. (16 V. c. 182, s. 36.)

Persons not otherwise assessed in Townships.

78. Every person assessed upon the Assessment Roll of a Township, shall, if his property is assessed—

Ratio of service.

At not more than £50, be liable to 2 days of labour;

	At more than £50, but not more than £100, to	3 days' labour;			
25	“ 100,	“ 150,	4	“	
	“ 150,	“ 200,	5	“	
	“ 200,	“ 300,	6	“	
	“ 300,	“ 400,	7	“	
	“ 400,	“ 500,	8	“	
30	“ 500,	“ 600,	9	“	
	“ 600,	“ 800,	10	“	
	“ 800,	“ 1000,	12	“	
	And for every 200, above	1000,	1	“	

But the Council of the Township may, by a By-law, operating generally and rateably, reduce or increase the number of days' labour to which all the parties rated on the Assessment Roll or otherwise, are respectively liable, so that the number of days' labour to which each person is liable may be in proportion to the amount at which he is assessed. (16 V. c. 182, s. 36.)

79. The Council of a Township may, by By-law, direct that a sum not exceeding five shillings a day, shall be paid in commutation of statute labour, in which case the commutation tax shall be added in a separate column in the Collector's Roll, and shall be collected and accounted for like other taxes. (20 V. c. 6, s. 1,—16 V. c. 182, s. 36.)

Commutation may be at 5s. per day.

If no By-law, commutation to be at 2s. 6d.

80. Where no such By-law has been passed, the statute labour in the Townships, against persons in respect of property hereinbefore designated shall be commuted at the rate of two shillings and six pence currency, for each day's labour. (16 V. c. 182, s. 38.)

5

Payment of tax in lieu of Statute Labour may be enforced by distress or committal.

81. If the Collector is not able to collect the sum of ten shillings named in the seventy-fifth section, or the tax in lieu of statute labour named in the seventy-seventh section, and no sufficient distress to satisfy the sum due can be found, then the Head of the Municipality, or a Justice of the Peace having jurisdiction in the locality, upon complaint shewing that the person appears upon the Collectors' Roll to be rated for such sum, that the same has been duly demanded and that the party has neglected to pay the same, and that no sufficient distress can be found, may issue a Warrant under his Hand and Seal, and commit the party to the Common Gaol of the County for any time not exceeding six days, unless such sum and the costs of the Warrant and of the execution thereof be sooner paid. (16 V. c. 182, s. 37.)

Cases of non-residents, &c.

82. But no non-resident who has not required his name to be entered on the Roll, and whose name has not been entered thereon, shall be admitted to perform statute labour in respect of any land owned by him, but shall in lieu be charged with a commutation tax, and the commutation shall be charged against every separate lot or parcel according to its assessed value; in case any non-resident admitted to perform statute labour as a resident, does not perform his statute labour, or pay commutation for the same, the Overseer of Highways, in whose division he is placed, shall return him as a defaulter to the Clerk of the Municipality before the first day of September, and the Clerk shall in that case enter the commutation for statute labour against his name in the Collectors' Roll, and if at any time before the first day of May then next ensuing, the owner of any non-resident's land which has been returned as such to the Treasurer of the County, gives in writing to the Treasurer a list of the lands owned by him in the Municipality, and tenders to him the taxes in full on such land and the just commutation money as herein provided, he shall be liable to the commutation for statute labour only upon the aggregate value of all the lands owned by him in such Municipality, but after the first day of May as aforesaid, no change shall be made in the commutation for statute labour charged against each separate parcel, in consequence of such parcels being owned by the same party. (16 V. c. 182, s. 38.)

COLLECTION OF RATES.

Clerk of the Municipality to make out a

83. The Clerk of every City, Town, Village or Township, shall make out a Collectors' Roll for the Township or Village, or for each ward in the City or Town, as the case may be, on which

which shall be set down the name in full of every person assessed, and the assessed value of his real and personal property as ascertained after the final revision of the assessments, and in one column with the heading "County Rate" the amount for which he is chargeable for any sum ordered to be levied by the Council of the County for County purposes, and in another column, under the head of "Township," "Village," "Town" or "City Rate," the amount with which he is chargeable in respect of sums ordered to be levied by the Council of the Township, Village, Town or City for the purposes thereof respectively or for commutation of statute labour; and in other columns any special rate for collecting the interest upon Debentures issued, or any local rate or school rate or other special rate, the proceeds of which are required by law or by the By-law imposing it to be kept distinct and accounted for separately. (16 V. c. 182, s. 39.)

collector's roll - its form and contents.

84. Every last mentioned rate shall be calculated separately, and the column therefor be headed "Special Rate," "Local Rate," "School Rate," as the case may be. (16 V. c. 182, s. 39.)

How rates to be headed.

85. All moneys assessed, levied and collected under any Act by which the same are made payable to the Receiver General, or to any other Public Officer for the Public uses of the Province, or for any special purpose or use mentioned in the Act, shall be assessed, levied and collected in the same manner as local rates, and shall be similarly calculated upon the assessments as finally revised, and shall be entered in the Collector's Rolls in separate columns in the heading whereof shall be designated the purpose of the rate, and the Clerk shall deliver the Roll certified under his hand, to the Collector on or before the first day of October, or such other day as may be prescribed by a By-law of the Municipality. (16 V. c. 182, s. 39.)

Public taxes to be assessed and collected in the same manner as local rates.

86. The Clerk of every Local Municipality shall also make out a Roll in which he shall enter the lands of non-residents, whose names have not been set down in the Assessor's Roll, together with the value of every parcel as ascertained after the revision of the Rolls, and he shall enter opposite to each parcel all the rates or taxes with which the same is chargeable, in the same manner as is provided for the entry of rates and taxes upon the Collector's Roll; and he shall transmit the Roll so made out, certified under his hand, to the Treasurer of the County in which his Municipality is situate, or to the City Chamberlain, as the case may be, at the same time as is prescribed for the delivery of his Roll to the Collector. (16 V. c. 182, s. 40.)

Clerk to make out another roll of lands of non residents whose names are not in the assessment-roll, and transmit it to County Treasurer or City Chamberlain.

COLLECTORS AND THEIR DUTIES.

87. The Collector, upon receiving his Collection Roll, shall proceed to collect the taxes therein mentioned, and shall not accept

Duties of collectors on receipt

- ceiving col- accept any money on account of any land not set down on the
lection rolls. Roll. (16 V. c. 182, s. 41.)
- Shall demand 88. He shall call at least once on the person taxed, or at
the payment of rates. the place of his usual residence or domicile or place of busi- 5
ness, if within the Local Municipality in and for which such
Collector has been appointed, and shall demand payment of the
taxes payable by such person. (16 V. c. 182, s. 41.)
- By post in 89. If any person whose name appears on the Roll is not resi- 10
cases of non- dent within the Municipality, the Collector shall transmit to
residents. him by post a statement and demand of the taxes charged
against him in the Roll. 16 V. c. 182, s. 41.)
- If payment be 90. In case any person neglects to pay his taxes for fourteen
not made, col- days after such demand, the Collector shall levy the same with 15
lectors to levy costs, by distress of the goods and chattels of the person who
the tax by ought to pay the same, or of any goods or chattels in his pos-
distress and session, wherever the same may be found within the County in
sale. which the Municipality lies. (16 V. c. 182, s. 42.)
- When collec- 91. In case of the land of non-residents, the Collector, after
tors may dis- fourteen days from the time of such demand and after one month 20
train for rates from the date of the delivery of the Roll to him, may make
distress of any goods and chattels which he may find upon the
land; and no claim of property, lien or privilege shall be
available to prevent the sale, or the payment of the taxes and
costs out of the proceeds thereof. (16 V. c. 182, s. 42.) 25
- Public notice 92. The Collector shall, by advertisement posted up in at
of sale to be least three public places in the Township, Village or Ward
given: and in wherein the sale of the goods and chattels distrained is to be
what manner. made, give at least six days' public notice thereof, and of the 30
name of the person whose property is to be sold, or in case of
a non-resident whose name is not known to the Collector, of the
number and description of the lot on account of the taxes on
which the distress has been made; and at the time named in
the notice, the Collector shall sell at public auction the goods 35
and chattels distrained, or so much thereof as may be necessary.
16 V. c. 182, s. 43.
- Surplus, if 93. If the property distrained has been sold for more than
unclaimed, to the amount of the taxes and costs, and if no claim to the sur-
be paid to the plus has been made by any other person on the ground that the
party in whose property sold belonged to him, or that he was entitled by lien 40
possession the or other right to the surplus, such surplus shall be returned to
goods were. the person in whose possession the property was when the
distress was made. 16 V. c. 182, s. 44.
- Or to admitted 94. If any such claim has been made and admitted by the
claimant. person for whose taxes the property was distrained, the surplus 45
shall be paid to the claimant. 16 V. c. 182, s. 44.

95. If the claim is contested, such surplus money shall be paid over by the Collector to the Treasurer or Chamberlain of the Local Municipality, who shall retain the same until the respective rights of the parties are determined by action at law or otherwise. 16 V. c. 182, s. 44.

If the right to such surplus be contested.

96. If the taxes payable by any person cannot be recovered in any special manner provided by this Act, they may be recovered with interest and costs, as a debt due to the Local Municipality; in which case the production of a copy of so much of the Collector's Roll as relates to the taxes payable by such person, purporting to be certified as a true copy by the Clerk of the Local Municipality, shall be *prima facie* evidence of the debt. 16. V. c. 182, s. 45.

Taxes not otherwise recoverable may be recovered by common action.

Copy of collectors' roll to be *prima facie* evidence of amount due.

97. On or before the fourteenth day of December, in every year, or on such day in the next year not later than the first of March as the Council of the County or City may appoint, every Collector shall return his Roll to the Treasurer of the Township, Village or Town, or of the City Chamberlain, and shall pay over the amount payable to such Treasurer or Chamberlain, specifying how much of the whole amount paid over is on account of each rate entered in a separate column on his Roll. 16 V. c. 182, s. 46.

Collector to return his roll and pay over the proceeds on the day to be appointed by Municipal Council.

98. In case the Collector fails or omits to collect the taxes or any portion thereof, by the fourteenth day of December, or the other day appointed by the Council of the County or City, such Council may, by resolution, authorize the Collector or any other person in his stead, to continue the levy and Collection of the unpaid taxes in the manner and with the powers provided by law for the general Levy and Collection of taxes; but no such resolution or authority shall alter or affect the duty of the Collector to return his Roll, or shall invalidate or otherwise affect the liability of the Collector or his sureties in any manner whatsoever. 18 V. c. 21, s. 3.

Another person may be employed to collect taxes which the collector does not collect by a certain day.

99. If any of the taxes mentioned in the Collector's Roll remain unpaid, and the Collector is not able to collect the same, he shall deliver to the Township, Village or Town Treasurer, or City Chamberlain, an account of all the taxes remaining due on the Roll; and in such account the Collector shall shew, opposite to each assessment, the reason why he could not collect the same, by inserting in each case the words "non resident" or "no property to distrain," as the case may be. 16 V. c. 182, s. 47.

Proceedings if any taxes are returned as unpaid.

100. Upon making oath before the Treasurer or Chamberlain that the sums mentioned in such account remain unpaid, and that he has not upon diligent enquiry been able to discover any goods or chattels belonging to or in the possession of the parties charged with or liable to pay such sums whereon he could levy the

When collector to be credited for the amount

the same, the Collector shall be credited with the amount thereof. 16 V. c. 182, s. 47.

LISTS OF LANDS GRANTED BY THE CROWN TO BE RETURNED YEARLY.

Lists of lands granted or leased, &c., to be furnished annually to County Treasurer by Commissioner of Crown Lands.

101. The Commissioner of Crown Lands shall, in the month of January in every year, transmit to the Treasurer of every County, a list of the lands within the County granted or leased or in respect of which a license of occupation issued during the preceding year, and of all ungranted Lands of which no person has received permission to take possession, and also of all lands on which an instalment of purchase money or rent or any other sum of money remains over-due and unpaid. 10

County Treasurer to furnish a copy of the list to the Clerk of every Municipality within his County.

102. The Treasurer shall furnish to the Clerk of every Municipality in the County a copy of the said lists as far as regards lands in such Municipality; and the Clerks shall furnish to the Assessors a statement shewing what Lands are liable to Assessment within their Assessment District, respectively. 16 15 V. c. 182, s. 48.

TREASURERS, THEIR DUTIES.

Treasurer of Municipality to furnish correct copies of collector's roll to County Treasurer as far as regards lands.

103. The Treasurer of every Municipality shall, within fourteen days after the time appointed for the return and final settlement of the Collector's Roll, furnish the Treasurer of the County with a correct copy of the Roll, so far as the same relates to the lands in the Municipality, distinguishing the rates with which they are chargeable and the sums paid, and if any such rates only affect lands in a certain locality, with a description of the locality, and also with an account of all arrears remaining due upon lands on account of any rate imposed by School Trustees, and generally with any other information which the Treasurer of the County may require and demand, in order to enable him to ascertain the just tax chargeable upon any land in the Township for that year. 16 V. c. 182, s. 49. 20 25

After collector's roll has been returned, collection of arrears to belong to Treasurer of County only.

104. After the Collector's Roll has been returned to the Township Treasurer, no more money on account of the arrears then due shall be received by any officer of the Municipality to which the Roll relates. 16 V. c. 182, s. 50. 30

Same subject.

105. The collection of the arrears shall thenceforth belong to the Treasurer of the County alone, and he shall receive payment of such arrears and of all the taxes on lands of non-residents, and he shall give a receipt therefor, specifying the amount paid, the period for which it is paid, the lot or parcel of land and the Concession and Township in which the land lies, upon which it is paid, and the date of payment. 16 V. c. 182, s. 40 50.

- 106.** The Treasurer shall not receive any part of the tax charged against any parcel of land, unless the whole arrears then due are paid, or satisfactory proof is produced of the previous payment, or erroneous charge of any portion thereof; but if satisfactory proof is adduced to him that any parcel of land on which taxes are due, has been sub-divided, he may receive the proportionate amount of the tax chargeable upon any of the sub-divisions and leave the other sub-divisions chargeable with the remainder. 16 V. c. 182, s. 50.
- 107.** The Treasurer shall on demand give to the owner of any land charged with arrears of taxes, a written statement of the arrears at that date, and he may charge One Shilling for the search on each separate lot or parcel, but the Treasurer shall not make any charge for search to any person who forthwith or within one month after being furnished with a statement of the amount thereof, pays the taxes, or who transmits to the Treasurer a schedule of his lands for the purpose of ascertaining the amount of taxes thereon. 16 V. c. 182, s. 50.
- 108.** The Treasurer of every County shall keep books in which he shall enter under the heading of every Local Municipality in his County, all the lands in the Municipality, on which it appears from the returns made to him by the Clerk and from the Collector's Roll returned to him, that there are any taxes unpaid, and the amounts so due, and he shall on the first day of May in every year, complete and balance his books by entering against every parcel of land the arrears, if any, due at the last settlement, and the taxes of the preceding year, which remain unpaid, and he shall ascertain and enter therein the total amount of arrears, if any, chargeable upon the land at that date. 16 V. c. 182, s. 51.
- 109.** If, at the settlement to be made on the first day of May, it appears to the Treasurer that any land liable to assessment has not been assessed, he shall report the same to the Clerk of the Municipality, and the Clerk shall enter such land on the Collector's Roll of the following year, or on the Roll of the non-residents, as the case may be, as well for the arrears omitted as for the tax of that year. 16 V. c. 182, s. 52.
- 110.** If it appears to the Treasurer that any parcel of land assessed has not been included in the Collector's Roll, in the return made to him by the Clerk, or that having been included in the Collector's Roll, the tax thereon has not been paid, he shall insert such parcel of land, and the just tax thereon, in his books. 16 V. c. 182, s. 52.
- 111.** If it appears to the Treasurer that any land has been placed on the return of non-resident lands made to him, which is not liable to assessment, or which has also been placed upon the Collector's Roll and the tax thereon paid, he shall erase such tax from his books. 16 V. c. 182, s. 52.

Treasurer shall not receive part of the taxes due on any land.

If demanded, Treasurer to give a written statement of arrears.

Lands on which taxes remain unpaid to be entered in books kept for the purpose by the County Treasurer, &c.

Books to be made up and balanced yearly.

Proceedings where any land is found not to have been assessed in any year.

And if any lot has not been included in collector's roll.

Or that land has been returned not liable to assessment.

- 112.** The Treasurer shall correct any other palpable error which he discovers or any error which may from time to time be certified to him by the Clerk of any Municipality. 16 V. c. 182, s. 52.
- 113.** If any person produces to the Treasurer in satisfaction of a tax, any paper purporting to be a receipt of a Collector, School Trustee, or other Town, Village or Township Officer, he shall not accept such proof until he has received a report upon the same from the Clerk of the Municipality interested, certifying the correctness thereof. 16 V. c. 182, s. 52.
- 114.** If at the balance to be made on the first day of May in every year, it appears that there is any arrear of tax due upon any parcel of land, the Treasurer shall add to the whole amount then due ten per cent. thereon. (16 V. c. 182, s. 53.)
- 115.** Whenever the County Treasurer is satisfied that there is distress upon any lands of non-residents in arrear for taxes, he shall issue a warrant under his hand and seal to the Sheriff of the County, who shall thereby be authorized to levy the amount due upon any goods and chattels found upon the land, in the same manner and subject to the same provisions as are contained in the sections ninety-first to the ninety-fifth of this Act, with respect to distresses made by Collectors. (16 V. c. 182, s. 54.)
- 116.** No land shall be sold for taxes unless a portion thereof, has been due for five years. (16 V. c. 182, s. 55.)
- 117.** The Council of the County may direct that no sale shall take place until some portion of the arrears have been due for any period longer than five years which the Council may by By-law prescribe, and also may direct such parcels of land only to be included in the warrant as are chargeable with an arrear of tax exceeding a certain sum to be determined by the Council. (16 V. c. 182, s. 55.)
- 118.** Whenever a portion of the tax on any land has been due for five years, or for such longer period and of such amount as a By-Law of the Council prescribes, the Treasurer of the County shall issue a Warrant under his hand and seal directed to the Sheriff of the County, commanding him to levy upon the land for the arrears due thereon with his costs. (16 V. c. 182, s. 55.)
- 119.** After the issuing of the Warrant, the Treasurer shall receive no payment on account of the sums contained in the Warrant.
- 120.** The Treasurer shall, in every Warrant so issued, distinguish lands which have been granted in fee from those which are

Treasurer to correct errors.

As to pretended receipts, &c.

Ten per cent. to be added to arrears yearly.

If there be distress upon lands of non-residents, County Treasurer may authorize Sheriff to levy.

Lands to be sold until rates 5 years in arrear.

County may extend the period

Arrears of taxes on lands remaining due for five years to be levied by warrant of the Treasurer to Sheriff commanding him to levy the same.

Lands granted by the Crown to be distin-

5

10

15

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25

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35

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under

under a lease or license of occupation, and of which the fee still remains in the Crown. (16 V. c. 182, s. 56.)

guished from
lands leased,
&c.

121. Immediately upon receipt of the Warrant, the Sheriff shall prepare a list of all the lands included therein, and the amount of arrears due on each parcel, distinguishing lands granted in fee from those the fee of which is in the Crown, and shall cause such list to be published for three months in the *Official Gazette*, and for the like period in some other newspaper published in the County, or if none be so published, in some other newspaper published in an adjoining County. (16 V. c. 182, s. 57.)

Proceedings
to be taken by
Sheriff on receipt of war-
rant.

122. The advertisement shall contain a notification that unless the arrears are sooner paid, he will proceed to sell the lands for the taxes, on a day named in the advertisement. (16 V. c. 182, s. 57.)

Advertis-
ment.

123. The day of sale shall be more than three months after the first publication of the list. (16 V. c. 182, s. 57.)

124. The Sheriff shall in each case add to the arrears so published a proportionate share of the cost of publication according to their amounts respectively. (16 V. c. 182, s. 57.)

Costs.

125. The Sheriff shall also post a notice similar to the advertisement hereby required, in some convenient and public place at the Court House of the County, at least three weeks before the time of sale. (16 V. c. 182, s. 57.)

Notice to be
posted up.

126. If at the time when this Act comes into force no advertisement or sale of land for arrears of taxes has taken place in any County at the time required by the former Upper Canada Assessment Acts, the sales of such lands thereafter shall not on that account be illegal, but all arrears of taxes and the expenses of advertising (if any) may be collected under this Act, and on non-payment thereof, any parcel of such lands, as soon as any part of the tax thereon has been five years in arrear, may be sold according to the provisions of this Act. (16 V. c. 182, s. 62.)

Taxes not due
may be col-
lected under
this Act not-
withstanding
failure to sell
or advertise as
required by
Assessment
Act of 1850.

127. If at any time after the receipt of the Warrant, there is, to the knowledge of the Sheriff or his Deputy, distress upon any land included therein, he shall levy the arrears of taxes and the costs, by distress and sale of any goods and chattels found on the land, in the same manner and subject to the same provisions as is required by the ninety-first, ninety-second, ninety-third, ninety-fourth and ninety-fifth sections of this Act; but no subsequent sale of the land by the Sheriff shall be invalid by reason of there having been any goods and chattels thereon before or at the time of the sale. (16 V. c. 182, s. 58.)

In case of dis-
tress being
found on the
lands, Sheriff
to levy there-
on.

fee for dis-
tress and sale.

128. Whenever any distress of goods and chattels is made by the Sheriff under such Warrant, he may sell such goods and chattels in the same manner and subject to the same provisions as are contained in the sections ninety-first to the ninety-fifth of this Act, with respect to distresses made by a Collector, and he may charge Ten Shillings for each distress and sale. (16 V. c. 182, s. 63.) 5

If there be no
bidders.

129. If at the time appointed for the sale no bidders appear, the Sheriff may adjourn the sale from time to time. (16 V. c. 182, s. 59.) 10

Mode in which
the lands shall
be sold by the
Sheriff.

130. If the taxes have not been previously collected, or if no person appears to pay the same at the time and place appointed for the sale, the Sheriff shall sell by Public Auction so much of the land as may be sufficient to discharge the taxes and all lawful charges incurred in and about the sale and the collection of the taxes, selling in preference such part as he may consider it most for the advantage of the owner to sell first. (16 V. c. 182, s. 59.) 15

If the Sheriff
sells any land
the fee of
which is
in the Crown,
he shall only
sell the inter-
est of lessee
or locatee.

131. If the Sheriff sells any land of which the fee is in the Crown, he shall only sell the interest therein of the lessee or locatee, and it shall be so distinctly expressed in the conveyance to be made by the Sheriff, and such conveyance shall give the purchaser the same rights in respect of the land as the original lessee or locatee enjoyed, and shall be valid without requiring the assent of the Commissioner of Crown Lands. (16 V. c. 182, s. 56.) 25

If purchaser
fails to pay
purchase mo-
ney, the pro-
perty to be
put up again
for sale.

132. If the purchaser of any parcel of land fails on demand to pay to the Sheriff the amount of the purchase money, the Sheriff may forthwith again put up the property for sale. (16 V. c. 182, s. 59.) 30

Sheriff selling
to give pur-
chaser a cer-
tificate of land
sold.

133. The Sheriff after selling any land for taxes, shall give a certificate under his hand to the purchaser, stating distinctly what part of the land and what interest therein have been sold, or stating that the whole lot or estate has been sold, and describing the same, and also stating the quantity of the land, the sum for which it has been sold and the expenses of sale, and further stating that a Deed conveying the same to the purchaser or his assigns, according to the nature of the estate or interest sold with reference to the one hundred and twentieth, one hundred and twenty-first and one hundred and thirty-first Sections of this Act, will be executed by the Sheriff on his or their demand, at any time after the expiration of one year from the date of the certificate, if the land be not previously redeemed. (16 V. c. 182, s. 60,—c. 20 V. c. 72.) 35 40

Purchaser of
lands sold

134. The purchaser shall, on receipt of the Sheriff's certificate of sale, become the owner of the land so far as to have 45

have all necessary rights of action and powers for protecting the same from spoliation or waste until the expiration of the term during which the land may be redeemed; but he shall not knowingly permit any person to cut timber growing upon the land, or otherwise injure the land, nor shall he do so himself, but he may use the land without deteriorating its value. (16 V. c. 182, s. 61.)

for taxes to be deemed owner thereof, for certain purposes on receipt of Sheriff's certificate.

135. From the time of a tender to the Treasurer of the full amount of redemption money required by this Act, the said purchaser shall cease to have any further right in or to the land in question. (16 V. c. 182, s. 61.)

Effect of tender of arrears, &c.

136. Within one month after the sale, the Sheriff shall make a detailed return to the Treasurer of each separate parcel of land included in the Warrant, and shall pay to him the money levied by virtue thereof. (16 V. c. 182, s. 59.)

Sheriff's return.

137. Every Sheriff shall be entitled to five per cent. commission upon the sums collected by him under such Warrant as aforesaid. (16 V. c. 182, s. 63.)

Sheriff's commission.

138. Whenever land is sold by a Sheriff according to the provisions of the one hundred and thirtieth Section of this Act, he may receive the sum of Five Shillings for the sale of each separate parcel, and the Sheriff may add the commission and fees which he is hereby authorized to charge for the services above mentioned, to the amount of arrears included in the Treasurer's Warrant on those lands in respect of which such services were severally performed. (16 V. c. 182, s. 63.)

Fees for distress and sale.

139. If the Sheriff cannot give a sufficient description of any land sold by him without a search in the Registrar's Office to ascertain the description and boundaries of the whole parcel as returned to him in the Treasurer's Warrant, he shall in addition to the charges hereinbefore authorized, be entitled to charge the fee for the necessary search. (16 V. c. 182, s. 63.)

Expenses of search in Registrar's office.

140. The Sheriff shall be entitled to no other fees or emoluments whatever for any services rendered by him relating to the collection of arrears of taxes on lands. (16 V. c. 182, s. 63.)

Sheriff entitled to no other fees.

141. The owner of any land which may hereafter be sold for non-payment of taxes, or his heirs, executors, administrators or assigns, may at any time within one year from the day of sale, redeem the estate sold by paying or tendering to the County Treasurer, for the use and benefit of the purchaser or his legal representatives, the sum paid by him, together with ten per cent. thereon, and the Treasurer shall give to the party paying such redemption money, a receipt, stating the sum paid and the object of payment, and such receipt shall be evidence of the redemption. (16 V. c. 182, s. 64.)

Owners may within one year redeem estate sold by paying purchase money and 10 per cent. thereon.

- After expiration of year allowed for redemption, Sheriff to deliver a Deed of Sale to purchaser. **142.** If the land has not been redeemed within the period so allowed for its redemption, the Sheriff shall, on the demand of the purchaser, or his assigns or other legal representative, at any time afterwards, and on payment of Five Shillings to the Sheriff, execute and deliver to him or them a Deed of Sale of the land. (16 V. c. 182, s. 65.) 5
- Certificate of registration. **143.** Such Deed shall state the date and cause of the sale and the price, and shall describe the land by its situation, boundaries and quantity, and the estate and interest sold, and shall have the effect of vesting the land in the purchaser, or his assigns or other legal representatives in fee simple, or otherwise, according to the nature of the Estate or Interest sold, and free and clear of all charges and incumbrances thereon, except taxes accrued since those for the non-payment whereof it was sold. (16 V. c. 182, s. 65.) 10 15
- The Sheriff to give certificate of execution of conveyances for registration. **144.** The Sheriff shall also give the purchaser or his assigns, or other legal representatives, a Certificate of the execution of the Deed, containing the same particulars, under his hand and seal, which, for the purpose of registration in the Registry Office of the proper County of any Deed of Lands Sold for Taxes since the first of January, 1851, shall be deemed a Memorial thereof, and the Deed shall be registered, and a Certificate of the Registry thereof granted by the Registrar on production to him of the Deed and Certificate, without further proof; and the Registrar shall, for the Registry and Certificate thereof, be entitled to Three Shillings and Six Pence, and no more. (16 V. c. 182, s. 65.) 20 25
- Registrar of Counties to register Sheriff's deeds of lands sold for taxes before 1851. **145.** On the receipt by the Registrar of the proper County or place of a Certificate of the Sale to the purchaser under the hand and Seal of Office of such Sheriff, stating the name of the purchaser, the sum paid, the number of acres and the estate or interest sold, the lot or tract of which the same forms part, and the date of the Sheriff's conveyance to the purchaser, his heirs, executors, administrators or assigns, as the case may be, and on production of the conveyance from the Sheriff to the purchaser, his heirs, executors, administrators or assigns (as the case may be), such Registrar shall register any Sheriff's Deed of land sold for taxes before the first day of January, one thousand eight hundred and fifty-one, and the mode of such Registry shall be the entering on record a transcript of such Deed of conveyance. (16 V. c. 182, s. 66,—and 6 Geo. 4, c. 7, s. 19.) 30 35 40
- Sheriff to enter in a book description of lands conveyed to purchasers by him. **146.** The Sheriff shall enter in a book, to be furnished by the County, a full description by metes and bounds, of every parcel of land conveyed by him to purchasers for arrears of taxes, with an index thereto, which book shall be returned to the Treasurer after the entries are made, and shall by him be kept, together with all copies of Assessors and Collector's Rolls and other Documents relating to non-resident lands, amongst the records of the County. (16 V. c. 182, s. 67.) 45

147. All the moneys received by the County Treasurer on account of the taxes on non-resident's lands, whether paid to him directly or levied by the Sheriff, shall constitute a fund, to be called the " Non-Resident Land Fund" of such County. (16 V. c. 182, s. 67.)

Non-resident-
Land Fund es-
tablished in
each County,
and of what it
shall consist.

148. The Treasurer shall open an account for each Local Municipality with the said fund. (16 V. c. 182, s. 68.)

Treasurer to
open an ac-
count for.

149. If two or more Local Municipalities having been united for Municipal purposes are afterwards disunited, or if a Municipality or part of a Municipality is afterwards added to or detached from any County or to or from any other Municipality, the Treasurer shall make corresponding alterations in his books, so that arrears due on account of any parcel or lot of land at the date of the alteration, shall be placed to the credit of the Municipality within which the land after such alterations is situate; and if a union of Counties is about to be dissolved, all the taxes on non-resident's land imposed by By-laws of the Provisional Council of the Junior County, shall be returned to and collected by the Treasurer of the United Counties, and not by the Provisional Treasurer, and the Treasurer of the United Counties shall open an account forthwith for the Junior County with the non-resident land fund. (16 V. c. 182, s. 68.)

Counties united
and after-
wards dis-
united.

If any union
be about to be
dissolved.

150. The Treasurer of the County shall not be required to keep a separate account of the several distinct rates which may be charged on lands, but all arrears from whatever rates arising shall be taken together and form one charge on the land (16 V. c. 182, s. 69.)

All arrears to
form one
charge upon
the lands sub-
ject to them,
&c.

151. Every Municipality in paying over any school or local rate, or its share of any County rate, or of any other tax or rate lawfully imposed for Provincial or local purposes, shall supply out of the general funds of the Municipality any deficiency arising from the non-payment of the tax on land, but shall not be held answerable for any deficiency arising from abatements of, or inability to collect the tax on personal property. (16 V. c. 182, s. 69.)

Deficiencies in
certain taxes
to be supplied
by the Muni-
cipality.

152. All sums which may at any time be paid to a Municipality out of the Non-Resident Land Fund of the County, shall form part of the general funds of such Municipality. (16 V. c. 182, s. 69.)

Land Fund
how appropri-
ated.

153. The Council of the County may from time to time by By-law, authorize the Warden to issue under the Corporate Seal upon the credit of the Non-Resident Land Fund, Debentures payable not later than eight years after the date thereof, and for sums not less than Twenty-five Pounds each, and to an amount outstanding and unpaid at one time not exceeding two thirds

Debentures
may be issued
on the credit
of the Non
Resident Land
Fund.

thirds of all the arrears then due and accruing upon the lands in the County, together with such other sums as may be in the Treasurer's hands, or otherwise invested to the credit of the fund. (16 V. c. 182, s. 70.)

By whom to be negotiated. **154.** Such Debentures shall be negotiated by the Warden and Treasurer of the County, and the proceeds shall be paid into the fund, and the interest thereon, and the principal, when due, shall be payable out of the fund. (16 V. c. 182, s. 70.) 5

Payment of interest on such debentures provided for. **155.** If at any time there is not in the Non-Resident Land Fund money sufficient to pay the interest upon a Debenture, or to redeem the same when due, such interest or Debenture shall be payable out of the General County Funds, and the payment thereof may be enforced in the same manner as is by law provided in the case of other County Debentures. (16 V. c. 182, s. 71.) 10 15.

Surplus of the Non Resident Land Fund to be divided among Municipalities. **156.** The Council of the County may, from time to time, pass By-laws apportioning the surplus moneys in the Non-Resident Land Fund amongst the Municipalities, rateably according to the moneys received and arrears due on account of the Non-Resident lands in each Municipality ; but such apportionment shall always be so limited that the Debentures unpaid shall never exceed two thirds of the whole amount to the credit of the fund. (16 V. c. 182, s. 72.) 20

Treasurers per centage or salary how paid. **157.** The Treasurer shall not be entitled to receive from the person paying taxes, any per centage thereon, but may receive from the fund such per centage upon all moneys in his hands, or such fixed salary in lieu thereof, as the County Council by By-law directs. (16 V. c. 182, s. 73.) 25

Annual statement of the said fund, to be submitted to the County Council. **158.** The County Treasurer shall prepare and submit to the County Council at its first Session in January in every year, a Report, certified by the Auditors, of the state of the non-Resident Land Fund. (16 V. c. 182, s. 74.) 30

What it shall shew. **159.** This Report shall contain an account of all the moneys received and expended during the year ending on the thirty-first of December next preceding, distinguishing the sums received on account of and paid to the several Municipalities, and received and paid on account of interest or Debentures negotiated or redeemed, and the sums invested and balance in hand ; a list of all Debentures then unpaid, with the dates at which they will become due ; and a statement of all the arrears then due, (distinguishing those due in every Municipality,) and the amount due on Lands then advertised for sale, or which by law may be advertised during the ensuing year. (16 V. c. 182, s. 74.) 35 40

160. The Warden shall cause a copy of the Report to be transmitted to the Provincial Secretary for the information of the Governor General. (16 V. c. 182, s. 74.)

Copy to be transmitted to Provincial Secretary.

LANDS OF NON-RESIDENT IN CITIES.

161. Arrears of Taxes due to cities on the lands of non-Residents shall be funded, collected and managed in the same way as like arrears due to other Municipalities, and the Chamberlain and High Bailiff shall for these purposes perform in the case of Cities the like duties as are hereinbefore in the case of other Municipalities imposed on the Treasurer and the Sheriff. (16 V. c. 182, s. 75.)

Taxes on lands of Non Residents in Cities provided for.

RESPONSIBILITY OF OFFICERS.

162. Every Treasurer, Chamberlain and Collector, before entering upon the duties of his office, shall enter into a bond to the Corporation of the Municipality for the faithful performance of his duties. (16 V. c. 182, s. 76.)

Treasurers and collectors to give security, and how.

163. Such Bond shall be given by the Officer and two or more sufficient sureties, to the satisfaction of the Council of the Corporation, in such sum as the Council requires by any By-law in that behalf, and shall be in conformity to all the provisions of such By-law. (16 V. c. 182, s. 76.)

Bond with sureties.

164. If any Assessor or Clerk refuses or neglects to perform any duty required of him by this Act, he shall, for every such offence, upon conviction thereof before the Recorder's Court of the City, or before the Court of General Quarter Sessions of the County in which he is Assessor or Clerk, forfeit the sum of Twenty-five Pounds to Her Majesty. (16 V. c. 182, s. 77.)

Penalty on Assessors or Clerks failing to perform their duty: and how such penalty shall be enforced.

165. If an Assessor neglects or omits to perform his duties, the other Assessor or Assessors for the same locality, if there be more than one, or either of them, shall, until a new appointment, perform the duties, and shall certify upon his or their Assessment Roll the name of the delinquent Assessor, and shall also state on the Roll if he or they know it, the cause of the delinquency. (16 V. c. 182, s. 77.)

Other Assessors may act for those in default.

166. If any Clerk, Assessor or Collector, acting under this Act, makes any unjust or fraudulent assessment or collection, or copy of any Assessor's or Collector's Roll, or wilfully and fraudulently inserts therein the name of any person who should not be entered, or omits the name of any person who should be entered, or wilfully omits any duty required of him by this Act, he shall be guilty of a misdemeanor, and upon conviction thereof before a Court of competent jurisdiction, shall be liable to a fine not exceeding Fifty Pounds, and to imprisonment until

Punishment of Clerks, Assessors or Collectors making fraudulent assessment, collection, &c.

until the fine is paid, or to imprisonment in the Common Gaol of the County or City, for a period not exceeding six calendar months, or to both such fine and imprisonment, in the discretion of the Court. (15 V. c. 182, s. 78.)

Evidence of fraud.

167. Proof to the satisfaction of the Jury, that any real property was assessed by the Assessor at an actual or yearly value, greater or less than its true actual or yearly value, by thirty per centum thereof, shall be *prima facie* evidence that the assessment was fraudulent and unjust. (16 V. c. 182, s. 78.)

When Assessors incur the highest punishment.

168. An Assessor convicted of having made any fraudulent and unjust assessment, shall be sentenced to the greatest punishment, both of fine and imprisonment, allowed by this Act. (16 V. c. 182, s. 78.)

Assessors not making and returning assessment roll on proper time, may be fined.

169. If an Assessor of any Township, Village or Ward, neglects or omits to make out and complete his Assessment Roll for such Township, Village or Ward, and to return the same to the office of the Clerk of such Township or Village or of the City or Town in which any such Ward is situated, or other office or place of deposit for such Roll, on or before the first day of September of the year for which he is such Assessor, every such Assessor so offending shall forfeit for every such offence the sum of Fifty pounds, one moiety thereof to the use of Her Majesty, and the other moiety thereof, with full costs; to such person as may sue for the same in any Court of competent jurisdiction by action of debt, bill, plaint or information; but nothing herein contained shall be construed to relieve any such Assessor from the obligation of returning such Assessment Roll at an earlier period of the year, or from the penalty he may incur by not returning the same accordingly. (15, 14 V. c. 55, s. 70.)

Proceedings for compelling Collectors or Treasurers to account for or pay over moneys in their hands by warrant to Sheriff or High Bailiff.

170. If a Collector refuses or neglects to pay to the proper Treasurer or Chamberlain, or other person legally authorized to receive the same, the sums contained on his Roll, or duly to account for the same as uncollected, the Treasurer or Chamberlain shall, within twenty days after the time when the payment ought to have been made, issue a Warrant under his hand and seal, directed to the Sheriff of the County, or to the High Bailiff of the City, (as the case may be) commanding him to levy such sum as remains unpaid and unaccounted for, with costs, of the goods, chattels, lands and tenements of the Collector and his sureties, and to pay to the Treasurer or Chamberlain, the sum so unaccounted for, and to return the Warrant within forty days after the date thereof. 16 V. c. 182, s. 79.

Treasurer to deliver Warrant to Sheriff.

171. The said Treasurer or Chamberlain shall immediately deliver the Warrant to the Sheriff of the County or High Bailiff of the City, as the case may require. 16 V. c. 182, s. 79.

172.

172. The Sheriff or High Bailiff to whom the Warrant is directed, shall, within the forty days, cause the same to be executed, and make return thereof to the Treasurer or Chamberlain, and shall pay to him the money levied by virtue thereof, deducting for his fees the same compensation which the Collector would have been entitled to retain. 16 V. c. 182, s. 80.

Sheriff, &c., to execute such warrant.

173. If a Sheriff or High Bailiff refuses or neglects to levy any money when so commanded or to pay over the same, or makes a false return to the Warrant or neglects or refuses to make any return, or makes an insufficient return, the Treasurer or Chamberlain may apply in a summary manner upon affidavit of the facts, to either of the Superior Courts of Common Law in term time, or to any Judge of either Court in vacation, for a Rule or Summons calling upon the Sheriff or High Bailiff to answer the matter of the affidavit. (16 V. c. 182, s. 81.)

Sheriff or High Bailiff neglecting to levy under such warrant, &c., to be responsible therefor, and mode of enforcing such responsibility.

174. The said Rule or Summons shall be returnable at such time as the Court or Judge directs. (16 V. c. 182, s. 81.)

When rule or summons to be returnable.

175. Upon the return of such Rule or Summons, the Court or a Judge may proceed in a summary manner upon affidavit, and without formal pleadings, to hear and determine the matters of the application. (16 V. c. 182, s. 81.)

Proceedings in return thereon.

176. If the Court or Judge is of opinion that the Sheriff or High Bailiff has been guilty of the dereliction alleged against him, such Court or Judge shall order the proper officer of the Court to issue a Writ of *Fieri Facias* adapted to the case, directed to a Coroner of the County in which the Municipality is situate for which the Collector is in default. (16 V. c. 182, s. 81.)

If Court or Judge deems Sheriff guilty of dereliction, what to be done.

177. Such Writ shall direct the Coroner to levy of the goods and chattels of the Sheriff or High Bailiff, the sum which the Sheriff or High Bailiff was ordered to levy by the Warrant of the Treasurer or Chamberlain, together with the costs of the application and of such Writ and of its execution; and that Writ shall bear date on the day of issuing the same, whether in term or in vacation, and shall be returnable forthwith upon its being executed, and the Coroner upon executing the same shall be entitled to the same fees, as upon a Writ grounded upon a judgment of the Court. (16 V. c. 182, s. 81.)

Fieri Facias to issue to the Coroner, &c.

178. If a Sheriff or High Bailiff wilfully omits to perform any duty required of him by this Act, and no other penalty is hereby imposed for the omission, he shall be liable to a penalty of Fifty Pounds, to be recovered from him in any Court of competent Jurisdiction at the suit of the Treasurer of the County or Chamberlain of the City. (16 V. c. 182 s. 82.)

Penalty on Sheriff or High Bailiff wilfully neglecting his duty under this Act.

179. All money assessed, levied and collected for the purpose of being paid to the Receiver General, or to any other Public

How moneys collected for

Provincial
purposes to
be collected
and paid, &c.

Public Officer, for the public uses of the Province; or for any special purpose or use mentioned in the Act under which the same is raised, shall be assessed, levied and collected by, and accounted for and paid over to, the same persons and in the same manner and at the same time, as taxes, imposed on the same property for County or City purposes, and shall in Law and Equity be deemed and taken to be moneys collected for the County or City so far as to charge every Collector, Chamberlain or Treasurer with the same, and to render him and his sureties responsible therefor, and for every default or neglect in regard to the same, in like manner as in the case of moneys assessed, levied and collected for the use of the City or County. (16 V. c. 182 s. 83.)

How such
moneys for
County pur-
poses shall be
paid over
when collect-
ed.

180. All money collected for County purposes, or for any of the purposes mentioned in the preceding section, shall be payable by the Collector to the Township, Town or Village Treasurer, and by him to the County Treasurer, and the Corporation of the Township, Town or Village shall be responsible therefor to the Corporation of the County. (16 V. c. 182 s. 84.)

Collectors'
bond to be a
security for
all moneys
collected by
him.

181. Any bond and security given by a Collector or Treasurer to the Corporation of the Township, Town or Village, that he will account for and pay over all moneys collected or received by him, shall apply to all moneys collected or received for County purposes, or for any of the purposes mentioned in the 173rd section.

Treasurer of
Township,
&c., to pay
over money
collected for
County pur-
poses to the
County Treas-
urer.

182. The Treasurer of every Township, Town or Village shall, within fourteen days after the time appointed for the final settlement of the Collector's Rolls, pay over to the Treasurer of the County all moneys which were collected in the Municipality for County purposes, or for any of the purposes mentioned in the one hundred and seventy-ninth section of this Act, (retaining for his fees two and a half per cent. thereon.) (16 V. c. 182 s. 85.)

Mode of en-
forcing such
payment.

183. If default is made in such payment, the County Treasurer may retain or stop a like amount out of any moneys which would otherwise be payable by him to the Municipality, or may recover the same by a suit or action for debt, or may, whenever the same has been an arrear for the space of three months, by Warrant under his hand and seal reciting the facts, direct the Sheriff of the County to levy and collect the amount so due with interest and costs from the Municipality in default. (16 V. c. 182 s. 85.)

How the Sher-
iff shall levy
the amount.

184. The Sheriff upon receipt of the Warrant shall levy and collect the amount with his own fees and costs as if the Warrant had been a Writ of Execution issued by a Court of law, and he shall levy the amount costs and fees, in the same manner and may charge the same costs as is provided by the "Act for

for the regulation of Municipal Institutions in Upper Canada,"
in cases of Writs of Execution. (16 V. c. 182 s. 85.)

185. The County Treasurer, or City Chamberlain, shall
be accountable and responsible to the Crown for all moneys
5 collected for any of the purposes mentioned in the one hundred
and seventy-ninth section of this Act, and shall pay over
such moneys to the Receiver General, less two and a half per
cent: to be retained for himself, and the two and a half per cent.
retained by the Township, Town or Village Treasurers. (16
V. c. 182 s. 86.)

County Treasurers and Chamberlains of Cities, to account to the Crown for certain moneys

10 186. Every County and City shall be responsible to Her Majesty, and to all other parties interested, that all moneys coming into the hands of the Treasurer or Chamberlain of the County or City in virtue of his office, shall be by him duly
15 paid over and accounted for according to law. 16 V. c. 182, s. 87.)

Municipalities to be responsible for moneys collected by collectors.

187. The Treasurer or Chamberlain and his sureties shall be responsible and accountable for such moneys in like manner to the County or City. (16 V. c. 182 s. 87.)

Treasurers to be responsible in Counties and Cities.

20 188. Any Bond or Security given by him that he will duly account for and pay over moneys coming into his hands belonging to the County or City, shall be taken to apply to all such moneys as are mentioned in the one hundred and seventy-ninth section, and may be enforced against the Treasurer or Chamberlain in case of default on his part. (16 V. c. 182 s. 87.)

Their bonds to apply to section 173.

25 189. If the default relates to School moneys or other Public moneys of the Province, Her Majesty may enforce the responsibility of the County or City, by stopping or retaining a like amount out of any Public moneys which would otherwise be
30 payable to the County or City, or to the Treasurer or Chamberlain thereof, or by suit or action against the Corporation. (16 V. c. 182 s. 87.)

What defaultation may be enforced by the Crown.

190. Any person aggrieved by the default of the Chamberlain or Treasurer, may recover from the Corporation of the
35 City or County, the amount due or payable to such person, as money had and received to his use. (16 V. c. 182 s. 87.)

Remedy to persons aggrieved by default of Treasurer.

MISCELLANEOUS.

191. If any person wilfully tears down, injures or defaces any Assessment Roll, advertisement, notice, or other
40 document, which is required by this Act to be posted up at a public place for the information of persons interested, he shall, on conviction thereof in a summary way before any Justice of the Peace having jurisdiction in the locality, be liable to a fine of Five Pounds. (16 V. c. 182 s. 88.)

Penalty for tearing down notices, &c., posted up.

192.

Recovery of
fines imposed
by this Act.

192. The fines and forfeitures authorized to be summarily imposed by this Act, when it is not otherwise herein provided, shall be levied and collected by distress and sale of the offender's goods and chattels, under the authority of Warrant of Distress for that purpose, to be issued by the Justice before whom the offender was convicted; and in case no goods or chattels can be found to satisfy the Warrant, the offender shall be committed to the Common Gaol of the County for a period not exceeding one month. (16 V. c. 182 s. 89.) 5

How to be dis-
posed of.

193. All penalties recovered under this Act shall be paid to the Treasurer or Chamberlain, for the use of the Municipality. (16 V. c. 182, s. 82.) 10

CAP. XLVIII.

An Act respecting Pounds and Pound Keepers.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

*See Municipalities
Act s. 34.*

Until varied or other provisions are made by Act of Parliament, or by By-Laws of the Municipality, the following regulations shall be in force :

1. If not previously replevied, the Pound Keeper shall impound any horse, bull, ox, cow, sheep, pig, or other cattle, or any poultry, distrained for unlawfully running at large, or for trespassing and doing damage, delivered to him for that purpose by any person resident within his division who has distrained the same. 1 V. c. 21, s. 32,—20 V. c. 31, s. 2,—1 V. c. 21, s. 32. Regulations for the government of Pound Keepers.
2. When the common Pound of the Municipality or place wherein a distress has been made is not secure, the Pound Keeper, or person who impounds any animal in the preceding clause mentioned, may confine the same in any inclosed place within the limits of the Pound Keeper's division within which such distress was made. 20 V. c. 21, s. 2,—1 V. c. 21, s. 34,—20 V. c. 31, s. 2. Where the Public Pound is insecure.
3. The person distraining and impounding any such animal shall, at the time or within twenty-four hours thereafter, deliver a statement to the Pound Keeper of his demands against the owner for damages (if any), not exceeding five pounds, done by such animal. 1 V. c. 21, s. 34,—20 V. c. 31, s. 2, latter part. Statement of demand to be made to Pound Keeper by impounder.
4. The Pound Keeper, or person who impounds any animal, shall, within forty-eight hours thereafter, cause written or printed notices thereof to be affixed and continued for three clear successive days, in three public places in the Municipality (of which places the door of the nearest school-house, or of the nearest church, chapel, or other public place in the vicinity shall be one), specifying in such notices the time and place at which such animal will be publicly sold, if not sooner replevied or redeemed by the owner or some one on his behalf paying the penalty imposed by law (if any), the amount of the injury (if any) claimed or decided to have been committed by the animal to the property of the person who distrained and impounded it, together with the lawful fees and charges of the Pound Keeper, and also of the fence-viewers (if any); but no pig or poultry shall be sold till after four clear days, nor any horse or other cattle till after eight clear days from the time of impounding the same respectively. 1 V. c. 21, s. 35,—20 V. c. 31, s. 2. Notice of sale unless redeemed.

Keeper to feed
impounded
cattle.

5. Every Pound Keeper, and every person who impounds or confines, or causes to be impounded or confined, any animal as aforesaid in any common, open, or close Pound, or in any inclosed place, shall daily furnish such animal with good and sufficient food, water, and shelter, during the whole time that such animal continues impounded or confined. 20 V. c. 31, s. 2. 5

6. Every such person who furnishes such animal with food, water, and shelter, may recover the value thereof from the owner of the animal and also a reasonable allowance for his time, trouble and attendance in the premises. 20 V. c. 31, s. 2. 10

7. The value or allowance as aforesaid may be recovered, with costs, by summary proceeding before any one Justice of the Peace within whose jurisdiction the animal was impounded in like manner as fines, penalties or forfeitures for the breach of any By-law of the Municipality may by law be recovered and enforced by a single Justice of the Peace; and the Justice shall ascertain and determine the amount of such value and allowance when not otherwise fixed by law, adhering, so far as applicable, to the tariff of Pound Keepers' fees and charges that may be established by the By-laws of the Municipality. 15

8. The Pound Keeper, or person entitled so to proceed, may, instead of such summary proceeding, enforce the remuneration to which he is entitled in manner hereafter mentioned. 20 V. c. 31, s. 2. 20

Sale how
effected, &c.,
purchase
money ap-
plied.

9. In case such notices have been given and published three clear days, and in case the party claiming to sell any such animal, first makes oath by affidavit in writing, before one of the Justices aforesaid, that such notices were duly affixed and published in the manner above prescribed, and satisfies such Justice thereof, then after the expiration of four clear days in the case of pigs or poultry, and of eight clear days in the case of a horse, or other cattle from the time of impounding the same respectively, if the owner or some one for him does not within the time specified in such notices, or before the sale of the animal, replevy or redeem the same in manner aforesaid, the Pound Keeper shall publicly sell the animal to the highest bidder, at the time and place mentioned in the aforesaid notices, and shall, after deducting the penalty and the damages (if any) and fees and charges aforesaid; apply the produce in discharge of the value of the food and nourishment, loss of time, trouble and attendance so supplied as aforesaid, and the expenses of driving or conveying and impounding or confining the animal, and of the sale and attending the same, or incidental thereto, and the damage, not exceeding five pounds, to be ascertained as aforesaid, done by the animal to the property of the person at whose suit the same was distrained, and return the 30 35 40 45

the overplus (if any) to the original owner of the animal, or if not claimed by him within three months after the sale, the Pound Keeper shall pay such overplus to the Treasurer or Chamberlain of and for the use of the Municipality.

5 **10.** If the owner within forty-eight hours after the delivery of such statement, as provided in the third section of this act, disputes the amount of the damages so claimed, the amount shall be decided by the majority of three fence-viewers of the Municipality, one to be named by the owner of the animal, 10 one by the person distraining or claiming damages, and the third by the Pound Keeper. 20 V. c. 31, s. 2.

Disputes regarding such demand, how determined.

11. Such fence-viewers or any two of them shall, within twenty-four hours after notice of their appointment as aforesaid, view the fence and the ground upon which the animal was 15 found doing damage, and determine whether or not the fence was a lawful one according to the Statutes or By-laws in that behalf at the time of the trespass; and if it was, then they shall appraise the damages committed, and, within twenty-four hours after having made the view, deliver to the Pound Keeper 20 a written statement signed by at least two of them of their appraisal, and of their lawful fees and charges. 20 V. c. 31, s. 2.

Fence-viewers to view and appraise damage.

12. Any fence-viewer neglecting his duty as arbitrator as aforesaid shall incur a penalty of five shillings, to be recovered 25 for the use of the Municipality, by summary proceeding before a Justice of the Peace upon the complaint of the party aggrieved or the Treasurer or Chamberlain of the Municipality. 20 V. c. 31, s. 2.

Penalty for neglect of duty by viewers.

13. If the fence viewers decide that the fence was not a 30 lawful fence, they shall certify the same in writing under their hands together with a statement of their lawful fees to the Pound Keeper, who shall upon payment of all lawful fees and charges deliver such animal to the owner, if claimed before the sale thereof, but if not claimed or if such fees and charges are 35 not paid, the Pound Keeper, after due notice, as required by this act shall sell the animal in the manner before mentioned at the time and place appointed in the notices.

Proceedings where viewers decide against the legality of a fence.

14. In case any Pound Keeper or person who impounds or confines, or causes to be impounded or confined, any 40 animal as aforesaid, refuses or neglects to find, provide and supply such good and sufficient food, water, and shelter to the animal, he shall for every day during which he so refuses or neglects forfeit a sum not less than five nor more 45 than twenty shillings. 20 V. c. 31, s. 3.

15. Every fine and penalty, imposed by this Act, may be recovered and enforced, with costs, by summary conviction, under

under the summary convictions Act, before any Justice of the Peace of the County, or of the Municipality, in which the offence was committed; and, in default of payment, the offender may be committed to the Common Gaol, House of Correction, or Lock up House, of such County or Municipality, there to be imprisoned for any time, in the discretion of the convicting and committing Justice, not exceeding fourteen days unless such fine and penalty, and costs, including the costs of said committal be sooner paid. 20 V. c. 31, s. 3. 5

16. Upon the hearing of any information or complaint exhibited or made under this Act, any person giving or making the information or complaint, and any other person, shall be a competent witness, notwithstanding such person may be entitled to any part of the pecuniary penalty on the conviction of the offender. 15

17. When not otherwise provided, every pecuniary penalty recovered before any Justice of the Peace under this Act shall be paid and distributed in the following manner, one moiety to the Treasurer of the City, Town, Village or Township, in which the offence was committed, to be by such Treasurer applied in repairing streets or roads therein, and the other moiety thereof, with full costs, to the person who informed and prosecuted for the same, or to such other person as to the Justice may seem proper. 20

C A P . X L I X .

An Act to regulate travelling on Public Highways in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: (18 V. c. 138, 8 V. c. 44.)

1. In case any person travelling or being upon any Highway in charge of a vehicle drawn by one or more horses, or one or more other animals meets another vehicle drawn as aforesaid, he shall turn out to the right from the centre of the road, allowing to the vehicle so met, one-half of the road. (18 V. c. 138, s. 2.) Carriages meeting to drive to the right giving half the road.
- 10 2. In case any person travelling or being upon any Highway as aforesaid, or on horseback, is overtaken by any vehicle or horseman travelling at greater speed, he shall turn out to the right, and allow the said vehicle or horseman to pass. (18 V. c. 138, s. 3.) Carriage overtaken to turn to the right.
- 15 3. In the case of one vehicle being met or overtaken by another, if by reason of the extreme weight of the load on either of the vehicles so meeting or on the vehicle so overtaken, the driver finds it impracticable to turn out as aforesaid, he shall immediately stop, and, if necessary for the safety of the other 20 vehicle and if required so to do, he shall assist the person in charge thereof to pass without damage. If the weight of one of them prevents this.
4. In case any person in charge of a vehicle, or of a horse or other animal travelling or being on any Highway as aforesaid, is through drunkenness unable to ride or drive the same 25 with safety to other persons travelling on or being upon the highway, he shall incur the penalties imposed by this Act. (18 V. c. 138, s. 4.) Penalty on drivers, &c., too drunk to manage their horses.
5. No person shall race with or drive furiously any horse or other animal, or shout or use any blasphemous or indecent 30 language upon any highway. (18 V. c. 138, s. 5.) Racing on highways, forbidden.
6. In case any person so races or drives, or shouts or uses blasphemous or indecent language, he shall incur, the penalties imposed by this Act. Swearing on highways, forbidden.
7. Every person travelling upon any highway with a 35 sleigh, sled or cariole, drawn by horse or mule, shall have at least two bells attached to the harness. (18 V. c. 138, s. 7.) Sleigh horses to have bells.
8. Every person who has the superintendence and management of any bridge exceeding thirty feet in length, shall cause to be put up at each end thereof, conspicuously placed a 40 notice legibly printed in the following form: (8 V. c. 44, s. 3.) Notice to be posted at the bridges to which this Act applies
" Any

“ Any person or persons riding or driving on or over this Bridge at a faster rate than a walk, will on conviction thereof, be subject to a fine, as provided by law.”

Penalty on persons defacing such notice.

9. In case any person injures, or in any way interferes with such notice, he shall incur a fine of not less than five nor more than forty shillings, to be recovered in the same manner as other penalties imposed by this Act. (8 V. c. 44, s. 4.) 5

Fast driving over bridges, forbidden.

10. If while such notice continues up, any person rides or drives a horse or other beast of burden, over such bridge at a pace faster than a walk, he shall incur the penalties imposed by this Act. (18 V. c. 138, s. 6.) 10

Penalty for contravening this Act, and how enforced.

11. In cases not otherwise specially provided for, if any person contravenes this Act and such contravention is duly proved by the oath of one credible witness, before any Justice of the Peace having jurisdiction within the County where the offence was committed, the offender shall incur a penalty of not less than five shillings nor more than five pounds, in the discretion of such Justice, with costs, to be paid forthwith, or else to be levied by distress and sale of the goods and chattels of the offender under a warrant signed and sealed by the said Justice, and the overplus, if any, after deducting the penalty, and costs and charges of sale, shall be returned, on demand, to the owner of such goods and chattels ; and in default of payment or distress, the offender shall, by warrant signed and sealed as aforesaid, be imprisoned in the common gaol for a period of not less than one day nor more than twenty days, at the discretion of the Justice, unless such fine, costs and charges be sooner paid ; but such fine or imprisonment shall be no bar to the recovery of damages by the injured party before any Court of competent jurisdiction. (18 V. c. 138, s. 8.) 15
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Not to bar action of damages.

Application of penalties.

12. Every fine collected under this Act shall be paid to the Treasurer or Chamberlain of the Municipality or Place in which the offence was committed, and be applied to the general purposes thereof. (18 V. c. 138, s. 9.)

Appeal.

13. Any conviction under this Act may be appealed in the same manner as other summary convictions before Justices of the Peace. (18 V. c. 138, s. 10.) 35

C A P . L .

An Act respecting Line Fences and Water-courses in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Each of the parties occupying adjoining tracts of land shall make, keep up and repair a just proportion of the Division or Line Fence on the line dividing such tracts, and equally on either side thereof. 8 V. c. 20, s. 2. Each party to make and repair a portion of the division fence.
2. Any Fence coming within the meaning of a lawful fence in any By-law of the Municipal Council in that behalf, is to be considered a lawful Fence, and when no such By-law exists, any Fence Viewers, when called upon, are to exercise their own judgment and decide what they consider to be a lawful fence. 8 V. c. 20, s. 3. What constitutes a lawful fence.
3. The owner of the whole or part of a Division or Line Fence which forms part of the Fence inclosing the occupied or improved land of another person, shall not take down or remove any part of such Fence : Division fences not to be removed without notice.
1. Without giving at least twelve months previous notice of his intention to the owner or occupier of such adjacent inclosure ; 12 months previous.
2. Nor unless such last mentioned owner or occupier, after demand made upon him in writing by the owner of such Fence, refuses to pay therefor a sum to be determined, as provided in the next sub-section ; Nor unless the adjoining occupant refuses to pay therefor.
3. Nor, if such owner or occupier will pay to the owner of such Fence or of any part thereof, such sum as three Fence Viewers or a majority of them in writing determine to be the reasonable value thereof. 8 V. c. 20, s. 9. Nor if he pays what three fence viewers award
4. When any land which has been uninclosed or in common, is afterwards inclosed or improved, the occupier shall pay to the owner of the Division or Line Fence standing upon the divisional line between such land and the enclosure of any other occupant or proprietor, a just proportion of the value thereof. 8 V. c. 20, s. 8. When vacant land is inclosed the owner to pay as a share of the division fence.
5. When a Water Fence or a Fence running into the water is necessary, the same is also to be made in equal parts, unless the parties otherwise agree. 8 V. c. 20, s. 10. Water fences to be made in equal proportions.
6. When lands belonging to or occupied by different persons, are divided from each other by any river, brook, pond, or creek,

a river or
creek.

creek, which of itself is not a sufficient barrier, and it is impracticable to fence upon the true boundary line, the Fence shall be set up on such side of the River, Brook, Pond or Creek, or partly on one side and partly on the other, as may be just. S V. c. 20, s. 11.

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When ditches
or water courses
may be
opened.

7. When it is the joint interest of parties resident, to open a Ditch or Water Course for the purpose of letting off surplus water from swamps or low miry lands, in order to enable the owners or occupiers thereof to cultivate or improve the same, such several parties shall open a just and fair proportion of such Ditch or Water Course according to their several interests. S V. c. 20, s. 12.

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Three fence
viewers to decide
all disputes.

8. Three Fence Viewers of the Municipality, or a majority of them, may decide all disputes between the owners or occupants of adjoining lands, or lands so divided or alleged to be divided as aforesaid, in regard to their respective rights and liabilities under this Act, and also all disputes respecting the opening, making or paying for Ditches and Water Courses, under this Act. S V. c. 20, s. 2.

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Award to be
in writing and
copy delivered.

9. Every determination or award of Fence Viewers, shall be in writing signed by such of them as concur therein, and they shall transmit the same (or a certified copy thereof) to the Clerk of the Municipality, and shall also deliver a copy to every party requiring the same, and such determination or award shall be binding on the parties thereto. S V. c. 20, s. 2.

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What the
fence viewers
are to determine.

10. When the dispute is as to the commencement or extent of the part of the Fence to be made or repaired by either party, or as to the opening of a Ditch or Water Course, or as to the part, width, depth, or extent that, any person should open or make, either party may by writing notify the Fence Viewers, of the dispute and name in the notice for the investigation thereof, the time and place of meeting, and shall also notify the other party to appear at the same time and place. S V. c. 20, ss. 2 & 12.

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The fence
viewers are to
attend upon
receiving notice,
&c.

11. On receiving such notice the Fence Viewers shall attend at the time and place named, and after being satisfied that the other party has been also duly notified, they shall examine the premises and hear the parties and their witnesses if demanded, and according to the subject matter of the reference shall decide the commencement or extent of the part of the fence which either party claims to have made or repaired, or refuses to make or repair; or shall divide or apportion the Ditch or Water Course, among the several parties, having due regard to the interests of each in the opening thereof, and shall fully determine the matters in dispute. S V. c. 20, s. 2.

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- 12** On any reference regarding the opening or making of a Ditch or Water Course, the Fence Viewers shall decide what length of time each of the parties shall have to open the share of the Ditch or Water-Course, which the Fence Viewers decide 5 each such party shall open, and if it appears to the Fence Viewers that the owner or occupier of any tract of land is not sufficiently interested in the opening of the Ditch or Water Course to make him liable to perform any part thereof, and at the same time 10 be continued across such tract, they may award the same to be done at the expense of such other party; and after such award, the last mentioned party may open the Ditch or Water Course across the tract, at his own expense, without being a trespasser. 8 V. c. 20, s. 13.
- 13.** When by reason of any material change of circumstances in respect to the improvement and occupation of adjacent lots or parcels of land, an award previously made under this Act ceases, in the opinion of either of the parties, to be equitable between them, such party may obtain another award of Fence Viewers 20 by a like mode of proceeding herein directed; and if the Fence Viewers called upon to make a subsequent award find no reason for making an alteration, the whole cost of the reference shall be borne by the party at whose instance it was made. 8 V. c. 20, s. 14.
- 14.** If any party neglects or refuses upon demand made in writing as aforesaid, to open or make and keep open, his share or proportion of the Ditch or Water Course allotted or awarded to him by the Fence Viewers, within the time allowed by them, any of the other parties may, after first completing his own 30 share or proportion, open the share or proportion allotted to the party in default, and shall be entitled to recover not exceeding two shillings per rod for the same from the party so in default. 8 V. c. 20, s. 11.
- 15.** If after an award of Fence Viewers, or after being re- 35 quired by a demand in writing by the party occupying the adjoining tract, or a tract separated therefrom by a River, Pond or Creek, a party in the occupation of any tract of land neglects or refuses to make or repair (as the case may be) his proportion of the Division or Line Fence between his tract and such 40 adjoining or separated tract for a period of thirty days, or if the party making the demand neglects or refuses for the like period to make or repair his own proportion of the Fence, either party, after first completing his own proportion, may make or repair, in a substantial manner and of good sound 45 materials, the whole or any part of the Fence, which ought to have been made or repaired by the other party, and may recover from him the value thereof. 8 V. c. 20, s. 3.
- 16.** To ascertain the amount payable by any person who, under the authority of this Act makes or repairs a Fence, or makes,

To decide what length of time shall be allowed to open ditches, &c.

When an award of fence viewers may be reviewed.

If a party refuses to perform his share to a ditch or water course, the other party may do it for him, but at the expense of the person in default.

If a party does not perform his share of the division fence, the other party may do it, but at the expense of the party in default.

How the amount shall be made,

be ascertain- makes, opens, or keeps open any Ditch or Water Course which
ed. another person should have done, and to enforce the payment
of such amount, the following proceedings shall be taken :
8 V. c. 20, s. 4.

A Justice of the Peace to summon three fence viewers. 1. Any of the persons interested may apply to a Justice of the Peace residing within the Municipality or Township in which any such Fence is situated, and if there be no such Justice residing therein, then any Justice of the Peace residing in any adjacent Municipality or Township, and thereupon such Justice shall issue a summons under his hand and seal, directed, by name, to three Fence Viewers of the Municipality in which the Fence is situated, requiring them to attend at the place and on the day and hour therein mentioned, to view such Fence and to appraise the same ;

And the party alleged to be in default. 2. The Justice shall at the same time issue a summons to the party so having neglected or refused to make or repair his proportion thereof (who shall thenceforth be considered the defendant in the case), requiring him to appear at the same time and place, to shew cause why the party claiming payment (who shall thenceforth be considered the plaintiff in the case) should not recover the same ;

Fence viewers to receive four days' notice. 3. The Fence Viewers shall be personally served with the summons at least four days before the day named for their attendance ;

Witnesses may be summoned. 4. If either of the parties desires to procure the attendance of any person to give evidence before the Fence Viewers, the Justice shall, upon the application of such party, issue a Summons to such witness or witnesses to attend before the Fence Viewers at the time and place mentioned in the Summons to the Fence Viewers ; 8 V. c. 20, s. 6.

The fence viewers may swear witnesses. 5. The Fence Viewers, when met at the time and place appointed shall, whenever desired by either party or whenever they themselves think it proper, administer an oath to any witness, which oath is to be in the following form : 8 V. c. 20, s. 6.

Oath. " You do solemnly swear that you will true answer make to such questions as may be asked of you by either of the Fence Viewers now present, touching the matters which they are now to examine and determine. So help you God."

A majority of the fence viewers may decide. 6. The Fence Viewers, or any two of them being present, shall, after having duly examined the Fence and received evidence, determine whether the plaintiff is entitled to recover any and what sum from the defendant ; (8 V. c. 20, s. 5.)

7. In case the commencement or extent of the part of such Division or Line Fence which each should make or repair had not been previously determined by the award of Fence Viewers, the Fence Viewers named in the Summons, or any two of them, shall determine the same, and shall, if they determine in such case that the plaintiff is entitled to recover from the defendant, state also what distance of Fence they have determined the defendant should have made or repaired; (8 V. c. 20, s. 6.)
- 10 8. The Fence Viewers, if required by either party, before they report, shall give to such party a copy of their determination; (8 V. c. 20, s. 5.)
9. The Fence Viewers shall report their determination in writing under their hands to the Justice by whom the Summons was issued, and such determination shall be final; (8 V. c. 20, s. 5.)
10. The Justice to whom the determination of the Fence Viewers is returned, shall transmit the same to the Clerk of the Division Court having jurisdiction over that part of the Municipality, and certify and transmit a copy thereof to the Clerk of the Municipality, to be entered in the book in which the Municipal proceedings are recorded; (8 V. c. 20, s. 7.)
11. The Clerk of the Division Court shall, after the expiration of forty days, but not sooner, from the time of the determination, issue an execution against the goods and chattels of the defendant in the same manner as if the party in whose favor the determination has been made had recovered judgment in the Division Court for the sum which the Fence Viewers have determined he was entitled to receive, with costs. (8 V. c. 20, s. 7.)
17. The following fees, and no more, may be received under this Act, that is to say: (8 V. c. 20, s. 16.)

What to be decided if there has been no previous award.

Fence viewers to deliver copy of award if required.

To deliver their award to the Justice of Peace.

Who shall send the same to the Clerk of the Division Court.

Who after forty days may issue execution thereon.

Fees.

To the Justice of the Peace :

For Summons to Fence Viewers, one shilling and three pence.

- 35 For Subpœna, which may contain three names, one shilling and three pence ;

For transmitting copy of Fence Viewers' determination to Division Court and to Clerk of the Municipality, one shilling and three pence.

To the Fence Viewers :

- 40 Five shillings per day each : if less than half a day employed, two shillings and six pence.

To

To the Bailiff or Constable employed :

For Serving Summons or Subpoena, one shilling.

Mileage—per mile, four pence.

To Witness—per day, each, two shillings and six pence.

Affidavit of
disbursements
to be made.

§ 8. Upon the party in whose favor the determination of the Fence Viewers has been made, making an affidavit, which the Clerk of the Division Court may administer, that such fees have been duly paid and disbursed to the persons entitled thereto, the Clerk shall include the amount thereof, in the execution, and shall pay over the same, when collected, to the said party entitled to recover the same. (8 V. c. 20, s. 17.) 5

CAP. LI.

An Act respecting Weights and Measures.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Set of Weights and Measures according to the Standard of Her Majesty's Exchequer in England, heretofore procured for Upper Canada, shall at all times be and remain in the charge and custody of the Provincial Secretary. (4 G. 4, c. 16, s. 2.) The standard weights and measures to remain in the custody of Provincial Secretary.
2. Whenever any Municipal Council authorized to appoint an Inspector of Weights and Measures addresses the Governor requesting that the Municipality may be furnished with a true copy or set of such Weights and Measures, the Governor may direct the Provincial Secretary forthwith, at the cost of the Municipal Corporation, to furnish such copy or set made of such durable Materials as the Secretary deems the most proper for the purpose. (4 G. 4, c. 16, s. 3,—12 V. c. 135, s. 1.) Provincial Secretary to furnish each municipality with standard weights, &c.
3. The Municipal Council of every City may by By-law appoint one or more Inspectors of Weights and Measures for the Municipality. City and Council may appoint one or more Inspectors of weights &c.
4. The Municipal Council of every Incorporated Town and Village may, by By-law, appoint one Inspector of Weights and Measures for the Municipality. Town and Village Council may appoint one.
5. The Municipal Council of every County may, by By-law, appoint one or more Inspectors of Weights and Measures for such County, or for any Division thereof, to be defined by By-law of such Council, but no such last mentioned appointment or Division shall extend to or include Incorporated Towns or Villages. (18 V. c. 135, s. 1.) County Council may appoint one or more.
6. When there are two or more Inspectors in the Municipality, the Council thereof shall by By-law, appoint one of them to be the Senior Inspector. (13, 14 V. c. 65, s. 8.) When more than one, Council to appoint one to be the Senior.
7. Every Inspector now or hereafter to be appointed shall continue in office until removed by the Municipal Council. To continue in office till removed.
8. The Inspector, or where there is more than one the Senior Inspector, shall have charge of the Standard Weights and Measures of the Municipality, and of the Mark, Stamp, or Brand marked with the Royal initials V. R., for the purpose of marking such Weights and Measures as are required to be marked under this Act ; and such Senior Inspector shall keep the same for the use of himself, and of the other Inspectors. (12 V. c. 85, ss. 2, 9.) Standards to be deposited with Inspector or Senior Inspector, as the case may be.

Inspectors to take an oath of office.

9. Every Inspector shall, before entering on the duties of his office, take and subscribe the following oath : (12 V. c. 85, s. 2.

The Oath.

" I, A. B., do hereby promise and swear that I will carefully preserve all Weights and Measures given me in charge, or for my use as Inspector, as a Standard for the Municipality (or Division, as the case may be,) of and that I will deliver them over to my successor in office, duly appointed for that purpose, when required so to do, and that I will honestly and faithfully discharge the duties of Inspector of Weights and Measures for such Municipality, (or Division) pursuant to the true intent and meaning of the law in that behalf, according to the best of my abilities and knowledge, So help me God."

Inspector to inspect and mark if correct all weights and measures submitted to him.

10. Every Inspector shall carefully examine and compare with the Standard so furnished as aforesaid, any Weights and Measures presented to him for that purpose within his Municipality or Division, and when the same are found of the true Weight or Measure, he shall mark, stamp or brand the same, (if a Measure, as near the two ends, top and bottom, as may be,) with the Stamp or Brand furnished for the purpose. (12 V. c. 85, s. 3.)

Inspector to attend for that purpose at such times and places as the Municipal Council appoints.

11. Every Inspector shall attend at such time and place in his Municipality or Division as the Municipal Council may appoint, once, but not oftener than twice in each year, with the Stamps and Set of Standard Weights and Measures in his custody, to examine and compare, and if found correct, stamp all such Weights and Measures as are brought to him for that purpose, and of the time and place so appointed, he shall give one month's notice by publishing the same in one or more newspapers, or by posting up copies thereof in four of the most public places in his Municipality or Division. (12 V. c. 83, s. 4.)

Fees of Inspectors.

12. Every Inspector may demand and receive six pence, and no more, for every Weight or Measure he marks or stamps. (12 V. c. 85, s. 8.)

Standard weights of different kinds of grain, &c., established for U. C.

13. The following rates shall be the Standard Weight, which in all cases shall be allowed to be equal to the Winchester Bushel, namely : (16 V. c. 193, s. 2.)

Wheat,.....	Sixty pounds,	40
Indian Corn,.....	Fifty-six pounds,	
Rye,	Fifty-six pounds,	
Peas,.....	Sixty pounds,	
Barley,.....	Forty-eight pounds,	
Oats,.....	Thirty-four pounds,	
Beans,.....	Sixty pounds,	45
	Clover	

Clover Seed,..... Sixty pounds,
 Timothy Seed,..... Forty-eight pounds,
 Buck-Wheat,..... Forty-eight pounds,

But the effect of any contract made before this Act shall not be varied by any thing herein contained. Existing contracts not affected.

14. Upon every sale and delivery, and in every contract for the sale or delivery of any Grain, Pulse or Seeds made or hereafter made, the Bushel shall, unless otherwise agreed upon by the parties, be taken to mean the Weight of a Bushel as regulated by this Act, and not a Bushel in Measure, or according to any greater or less Weight. (16 V. c. 193, s. 3.) The bushel to be regulated by weight not by measure.

15. Every Storekeeper, Shopkeeper, Miller, Distiller, Butcher, Broker, Huckster, or other trading person, Wharfinger or Forwarder in any County or place in Upper Canada, who two months after the appointment of an Inspector therefor, uses any Weight or Measure, which has not been duly stamped according to Law, or which may be found light or otherwise unjust, shall on conviction, forfeit a sum of not more than five nor less than two pounds, to be recovered under this Act; And every such light or unjust Weight or Measure so used shall, on being discovered by any Inspector, be seized, and on conviction of the person using the same, be forfeited, and broken up by the Inspector. (12 V. c. 85, s. 4.) Penalty if weight is not stamped with in a certain time.

16. Every such Inspector may at all reasonable times enter any shop, store, warehouse, stall, yard, or place whatsoever within his County or Division where any commodity is bought, sold or exchanged, weighed, exposed or kept for sale, or weighed for conveyance or carriage, and there examine all Weights, Measures, Steel-yards or other Weighing Machines, and compare and try the same with the copies of the Standard Weights and Measures provided by Law. (12 V. c. 85, s. 5.) Inspector may enter shops &c., to examine weights and measures.

17. If upon such examination it appears that the said Weights or Measures or any or either of them are unstamped or are light or otherwise unjust, the same shall be liable to be seized and forfeited, and the person or persons in whose possession the same are found, shall, on conviction, forfeit a sum not exceeding two pounds for the first and five pounds for every subsequent offence, which penalty, together with all reasonable costs, shall be recoverable before any Justice of the Peace, on the oath of the Inspector or of any other credible witness, and shall, if not forthwith paid, be levied by distress and sale of the goods and chattels of the offender, and in default of distress such offender shall be committed to the Common Gaol of the County wherein such conviction takes place for a term not exceeding one month; and such penalty, and all other penalties imposed by this Act, when recovered, shall belong to the Crown for the public uses of the Province, and shall be paid Forfeiture of false or unstamped weights and measures.
Further penalty.
How recovered and applied.

paid over to the Inspector, and be by him accounted for in the same manner as other public moneys coming into his hands by virtue of his office. (12 V. c. 85, s. 5.)

Penalty for having false steel-yards.

18. Any person who shall have in his possession a Steel-yard or other Weighing Machine which may on such examination be found incorrect or otherwise unjust, or who neglects or refuses to produce for such examination when thereto required, all Weights, Measures, Steel-yards or other Weighing Machines, which may be in his possession, or otherwise obstructs or hinders such examination, shall be liable to a like penalty to be recovered and applied as aforesaid. (12 V. c. 85, s. 5.)

Penalty not to be incurred till two months after receipt of standard weights, &c.

19. No penalty as aforesaid shall be incurred in any County Division or Locality, until two months at least after a Standard of Weights and Measures have been received by the Inspector legally appointed therefor.

Punishment of persons forging stamps, &c.

20. If any person makes, forges, or counterfeits, or causes, or procures to be made, forged or counterfeited, or knowingly acts or assists in the making, forging or counterfeiting any stamp or mark now used, or which may hereafter be legally used for the stamping or making of any Weights or Measures in any County or place in Upper Canada, he shall be guilty of a misdemeanor, and on being convicted thereof, shall be liable, at the discretion of the Court, to be fined and imprisoned in the Common Gaol of the County where the conviction takes place; But such fine shall not exceed twenty pounds, and such imprisonment shall not exceed three calendar months.

Penalty for knowingly selling &c., any weight or measure with counterfeit stamp.

21. If any person knowingly sells, alters, disposes of or exposes to sale any Weight or Measure, with such forged or counterfeit stamp or mark thereon, he shall, for every such offence, forfeit, on conviction, a sum not exceeding ten pounds, nor less than forty shillings, to be recovered under the provisions of the seventeenth section of this Act; and all Weights and Measures with such forged or counterfeited stamps or marks shall be forfeited, and broken up by the Inspector. (12 V. c. 85, s. 6.)

Penalty if Inspector stamps weights or measures without due examination.

22. If any Inspector stamps, brands or marks any Weight or Measure without having first duly compared and verified the same with and by the Standard Weights and Measures provided by law for that purpose, or is guilty of a breach of any duty imposed upon him by this Act, he shall on conviction, forfeit a sum not exceeding five pounds to be recovered and applied as aforesaid. (12 V. c. 85, s. 7.)

Standards to be delivered over to successors in Office.

23. When any Inspector of Weights and Measures is removed from office, or resigns, or removes from the place for which he has been appointed, he shall deliver to his successor in office, or to such other person as the Council of the Municipality

pality may for that purpose by By-law appoint, all the Beams, Stamps and Standard Weights and Measures in his possession as such Inspector, and in case of the death of such Inspector, his representatives shall in like manner deliver the same to his
 5 successor in office, or to such other person as aforesaid, and in case of refusal or neglect to deliver the same entire and complete, the successor in office may maintain an action on the case, against the person or persons so refusing or neglecting, and shall recover double the value of such of them as have not
 10 been delivered, and in every such action in which judgment is rendered for the plaintiff, he shall recover double costs; and of the damages levied, one moiety shall be retained by the plaintiff, and the other moiety shall be applied in supplying such Standards as may be required in his office. (12 V. c. 85, s. 13.)

Action given
 for standards
 not so delivered.

CAP. LII.

An Act respecting Common Schools in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Existing school arrangements continued.

1. All Common School Sections or other Common School Divisions, together with all elections and appointments to office, all agreements, contracts, assessments and rate-bills, heretofore duly made in relation to Common Schools and existing when this Act comes into force, shall continue subject to the provisions of this Act. 13 & 14 V. c. 48, s. 1. 5

FIRSTLY—ELECTION AND DUTIES OF SCHOOL TRUSTEES.

I. ANNUAL ELECTIONS.

Annual elections 2nd Wednesday in January.

2. The annual meetings for the election of School Trustees, 10 as hereinafter provided, shall be held in all the Cities, Towns, Townships and Villages, of Upper Canada, on the second Wednesday in January, in each year, commencing at the hour of Ten of the clock in the forenoon. 13, 14 V. c. 48, s. 2.

2. TOWNSHIP SCHOOL SECTIONS AND TRUSTEES.

Trustees' term of office.

3. For each Township School Section there shall be three 15 trustees, each of whom, after the first election of Trustees, shall hold office for three years and until his successor has been elected. 12 V. c. 83, ss. 18 & 19,—13, 14 V. c. 48, s. 4.

Term for vacancies.

4. Any Trustee elected to fill an occasional vacancy shall 20 hold office only for the unexpired Term of the person in whose place he has been elected. 13, 14 V. c. 48, s. 12, No. 12.

Trustees not to hold certain office.

5. And no Trustee of a School Section shall hold the office 25 of Local Superintendent or of a Teacher within the Section of which he is a Trustee. 13, 14 V. c. 48, s. 6, No. 3,—16 V. c. 185, s. 14.

Proceedings on formation of a new section.

6. Whenever a School Section is formed in any Township, 30 as provided in the 37th section of this Act, the Clerk of the Township shall give notice to the person appointed to call the first School Meeting for the election of Trustees, of the description and number of such School Section. 13, 14 V. c. 48, s. 4. 30

A meeting to be called within 20 days.

7. The person so appointed shall within twenty days after 35 receiving such notice prepare a notice in writing, describing such Section, and appointing a time and place for the first School Section Meeting, and shall cause copies of such notice to be posted

posted in at least three public places in such School Section, at least six days before the time of holding such Meeting. 13, 14 V. c. 48, s. 4.

8. At such first School Section Meeting, the Electors present shall by a majority of votes elect from the freeholders or householders in such Section, three Trustees. 13, 14 V. c. 48, s. 5. Three trustees to be elected.

9. The freeholders and householders of such School Section present, shall elect one of their own number to preside over the proceedings of such Meeting, and shall also appoint a Secretary, who shall record all the proceedings of the Meeting. 13, 14 V. c. 48, s. 5. Chairman and Secretary to be appointed.

10. The Chairman of such Meeting shall decide all questions of order, subject to an appeal to the Meeting, and in case of an equality of votes, shall give the casting vote, but he shall have no vote except as Chairman. 13, 14 V. c. 48, s. 5. Duties of Chairman—his vote.

11. The Chairman shall take the votes in the manner desired by a majority of the electors present, but he shall at the request of any two electors, grant a poll for recording the names of the voters by the Secretary. 13, 14 V. c. 48, s. 5. Recording votes.

12. The Trustees so elected shall respectively continue in office, as follows :

20 1. The first person elected shall continue in office for two years to be reckoned from the Annual School Meeting next after his election and thence until his successor has been elected ; School trustees' term of office.

25 2. The person secondly elected shall continue in office one year to be reckoned from the same period and until his successor has been elected ;

3. The person thirdly or lastly elected shall continue in office until the next ensuing Annual School Meeting in such Section and until his successor has been elected. 13, 14 V. c. 48, s. 5.

30 13. A correct copy of the proceedings of such first and of every annual School Section Meeting, signed by the Chairman and Secretary, shall be forthwith transmitted by the Secretary to the Local Superintendent of Schools. 13, 14 V. c. 48, s. 5. Proceedings to be sent to Superintendent.

35 14. A Trustee shall be elected to office at each ensuing annual school meeting, in place of the one whose term of office is about to expire : And the same individual, if willing, may be re-elected ; but no School Trustee shall be re-elected, except by his own consent, during the four years next after his going out of office. 13, 14 V. c. 48, s. 3. A trustee to be annually elected for such section.

40 15. At every annual School Section Meeting in any Township, as authorized and required to be held by the second Section of this Act, the freeholders or householders of such Section present at such Meeting, or a majority of them. Proceedings at annual meetings.

- Chairman and Secretary.** 1. Shall elect a Chairman and Secretary, who shall perform the duties required of the Chairman and Secretary, by the tenth and eleventh Sections of this Act ;
- Trustees' financial report.** 2. Shall receive and decide upon the report of the Trustees, as required by the twenty-sixth Section of this Act ; No. 21. 5
- Election of trustees.** 3. Shall elect a Trustee or Trustees, to fill up vacancies in the Trustee Corporation.
- Support of school.** 4. Shall decide upon the manner in which the salaries of the Teacher or Teachers, and all other expenses connected with the operation of the School or Schools, shall be provided for. 10
13, 14 V. c. 48, s. 6.
- Challenging voters.** 16. If any person offering to vote at an annual or other School Section Meeting, is challenged as unqualified by any legal voter, the Chairman presiding at such Meeting shall require the person so offering, to make the following declaration : 15
- Declaration required.** " I do declare and affirm that I am a freeholder (*or* householder) in this School Section, and that I am legally qualified to vote at this Meeting."
- Effect of such declaration.** And every person making such declaration shall be permitted to vote on all questions proposed at such Meeting ; but if any person refuses to make such declaration, his vote shall be rejected. 13, 14 V. c. 48, s. 7. 20
- Penalty for false declaration.** 17. If any person wilfully makes a false declaration of his right to vote, he shall be guilty of a misdemeanor, and be punishable by fine or imprisonment, at the discretion of any Court of Quarter Sessions, or by a penalty of not less than one pound five shillings, or more than two pounds ten shillings, to be sued for and recovered, with costs, before a Justice of the Peace by the Trustees of the School Section, for its use. 13, 14 V. c. 48, s. 8. 25
£1 5s. or
£2 10s. and
costs.
- How applied.** 30
- Separatists not to vote at common school meetings.** 18. No person subscribing towards the support of a Separate School established under the Act respecting Separate Schools either for Roman Catholics, Protestants, or colored people or sending children thereto, shall be allowed to vote at the election of any Trustee for a Common School in the City, Town, Village or Township in which such Separate School is established. 16 V. c. 185, s. 4,—8 V. c. 131, s. 16. 35
- Place of annual meeting to be appointed by trustees.** 19. The Trustees of each school section shall appoint the place of each annual school meeting, or of a special meeting for the selection of a new School site and shall cause notices to be posted in three or more public places of such section, at least six days before the time of holding such meeting ; and shall also call and give like notices of any special meeting of the freeholders 40

holders and householders of such section, for the filling up of any vacancy in the Trustee Corporation, occasioned by death, removal, or other cause, or for any other school purpose, which they may think proper; and shall specify in such notices the object of such meeting; and such meeting shall be organized, and its proceedings be recorded in the same manner, as in the case of an annual school meeting; and a copy of the proceedings of every such meeting shall in like manner be transmitted to the local Superintendent. 13, 14 V. c. 48, s. 1, No. 12.

Also day, hour and place of special meetings.

Objects to be specified.

Proceedings to be sent to superintendent.

10 **20.** In case any annual or other School Section Meeting has not been held for want of the proper notice, each Trustee or other person whose duty it was to have given such notice, shall forfeit the sum of one pound five shillings, to be sued for and recovered before a Justice of the Peace by any resident inhabitant in such Section for the use thereof. 13, 14 V. c. 48, s. 9.

Penalty for not calling certain meetings.

21. In case from the want of proper notice, any first or annual School Section Meeting, required to be held for the election of Trustees was not held at the proper period, any two freeholders or householders in such Section may, within twenty days after the time at which such meeting should have been held, call a Meeting by giving six days' notice, to be posted in at least three public places in such School Section; and the Meeting thus called shall possess all the powers and perform all the duties of the Meeting in the place of which it has been called. 13, 14 V. c. 48, s. 9.

Meetings in default of first or annual meetings.

Powers and duties thereof.

22. If any person chosen as Trustee, refuses to serve, he shall forfeit the sum of one pound five shillings; and every person so chosen and not having refused to accept the office who does at any time refuse or neglect to perform its duties, shall forfeit the sum of five pounds, to be sued for and recovered before a Justice of the Peace, by the Trustees of the School Section, for its use. 13, 14 V. c. 48, s. 8.

Penalty for refusing to serve as trustee.

23. Any person chosen as Trustee may resign with the consent expressed in writing, of his colleagues in office and of the Local Superintendent. 13, 14 V. c. 48, s. 8.

Trustee may resign.

24. Each Local Superintendent of Schools may—

1. Within twenty days after any meeting for the Election of Common School Section Trustees within the limits of his charge, receive and investigate any complaint respecting the mode of conducting such Election, and according to the best of his judgment confirm it or set it aside, and appoint the time and place for a new Election, and may—

Contested elections in sections.

Proceedings thereon.

2. In his discretion, at any time for any lawful purpose, appoint the time and place for a Special School Section Meeting. 16 V. c. 185, s. 14.

Other special meetings.

Trustees to be a corporation. **25.** The Trustees in each School Section shall be a Corporation, under the name of "The Trustees of School Section Number _____, in the Township of _____, in the County of _____:" And no such Corporation shall cease by reason of the want of Trustees, but in case of such want, any two freeholders or householders of such Section may, by giving six days' notice to be posted in at least three public places in the Section, call a Meeting of the freeholders or householders, who shall proceed to elect three Trustees, in the manner prescribed in the eighth, ninth, tenth, eleventh and twelfth Sections of this Act, and the Trustees thus elected shall hold and retire from office in the manner prescribed for Trustees elected under the authority of the said eighth, ninth, tenth, eleventh and twelfth Sections. 13, 14 V. c. 48, s. 10. 5 10 15

Duties of trustees. **26.** It shall be the duty of the Trustees of each school section and they are hereby empowered: 13, 14 V. c. 48, s. 12, No. 1.

Secretary-Treasurer. 1. To appoint one of themselves, or some other person, to be Secretary-Treasurer to the Corporation; who shall give such security as may be required by a majority of the Trustees. 20

His duties. *a.* For the correct and safe keeping and forthcoming (when called for) of the papers and moneys belonging to the Corporation.

b. And the correct keeping of a record of all their proceedings, in a book procured for that purpose; 25

c. And for the receiving and accounting for all school moneys collected by rate-bill subscription, or otherwise, from the inhabitants of such school section;

d. And for the disbursing of such moneys in the manner directed by the majority of the Trustees; 30

Collector. 2. To appoint, if they think it expedient, one of themselves or some other person a Collector (who may also be Secretary-Treasurer), to collect the rates imposed by them upon the inhabitants of their school section, or which the said inhabitants may have subscribed; and may pay such Collector, at the rate of not less than five nor more than ten per cent. on the moneys collected by him; and every Collector shall give security satisfactory to the Trustees, and shall have the same powers by virtue of a warrant, signed by a majority of the Trustees, in collecting the school-rate or subscription, and shall proceed in the same manner as ordinary Collectors of County and Township rates and assessments; 13, 14 V. c. 48, s. 12, No. 2—16 V. c. 182, s. 26. 35 40

Remuneration.

Security.

Powers equal to municipal collectors.

3. To take possession and have the custody and safe keeping of all Common School property, which may have been acquired or given for Common School purposes in such section, and to acquire and hold as a Corporation, by any title whatsoever, any land, moveable property, moneys or income for Common School purposes, until the power hereby given is taken away or modified, and shall apply the same according to the terms of acquiring or receiving them ; 13, 14 V. c. 48, s. 12, No. 3. Possession of school property.
May acquire lands, &c.
4. To do whatever they may judge expedient with regard to the building, repairing, renting, warming, furnishing and keeping in order the section school-house, and its furniture and appendages, and the school lands and enclosures, held by them, and for procuring apparatus and text-books for their School ; 13, 14 V. c. 48, s. 12, No. 3. Providing school premises.
5. To rent, repair, furnish, warm and keep in order a house, and its appendages, to be used as a school-house when there is no suitable school-house belonging to such section, or when a second school-house is required. 13, 14 V. c. 48, s. 12, No. 3. Renting school houses.
6. To establish, if they deem it expedient, with the consent of the local Superintendent of Schools both a female and male school in the section, each of which Schools shall be subject to the same regulations and obligations as common schools generally. Establishing female school.
7. To take such steps as they may judge expedient to unite their school with any public grammar school, which may be within or adjacent to the limits of their section. 16 V. c. 185, s. 8. Union with grammar school.
8. To contract with and employ Teachers for such School section, and determine the amount of their salaries ; but no agreement between Trustees and a Teacher in any School Section, made between the first of October in any year and the second Wednesday in January then next, shall be valid or binding on either party after that day, unless such agreement has been signed by the two Trustees of such School Section whose period of office will extend to one year beyond such second Wednesday ; 16 V. c. 183, s. 11. Employing teachers.
Certain agreements there-with invalid.
9. To give the Teachers employed by them the necessary orders upon the Local Superintendent for the School Fund apportioned and payable to the Trustees respectively of their school section ; but they shall not give such order in behalf of any Teacher who does not, at the time of giving such order, hold a legal certificate of qualification. 13, 14 V. c. 48, s. 12, No. 6. Orders to teachers for School Fund.
Such teacher to have a certificate.
10. To provide for the salaries of Teachers and all other expenses of the School, in such manner as may be desired by a majority of the freeholders and householders of such section, at the Providing for salaries and expenses as the

- authorized by inhabitants. the annual school meeting, or at a special meeting called for that purpose, as provided by this Act, and to employ all lawful means, to collect the sums required for such salaries and other expenses ; and should the sums thus provided be insufficient to defray all the expenses of such school, the Trustees may assess and cause to be collected any additional rate, in order to pay the balance of the Teacher's salary and other expenses of such school ; 13, 14 V. c. 48, s. 12, No. 7. 5
- Rate-bill and collector's warrant. 11. To make out a list of the names of all persons rated by them for the school purposes of such section, and the amount payable by each, and annex to such list a Warrant directed to the Collector of the School section, for the collection of the several sums mentioned in such list ; and any school-rate imposed by Trustees, according to this Act, may be made payable monthly, quarterly, half-yearly or yearly, as they may think expedient ; 13, 14 V. c. 48, s. 12, No. 8. 10
- How often levied.
- Application to municipality, or may levy themselves. 12. To apply to the Municipality of the Township, or employ their own lawful authority, as they may judge expedient, for the raising and collecting by rate, according to the valuation of taxable property as expressed in the Assessor's or Collector's Roll, all sums for the support of their School, for the purchase of School sites and the erection of School houses, and for any other School purpose authorized by this Act to be collected from the freeholders and householders of such section, and the Township Clerk or other officer having possession of such roll is hereby required to allow any one of the Trustees or their authorized Collector, to make a copy of such roll, as far as it relates to their school section ; 13, 14 V. c. 48, s. 13, No. 9. 20
- For what purposes.
- Township roll to be furnished. 13. In their discretion to exempt from the payment of school-rates, wholly or in part, any indigent persons, and to charge the amount of such exemption upon the other rateable inhabitants of the school section, but the same shall not be deducted from the salary of a Teacher ; 13, 14 V. c. 48, s. 12, No. 10. 30
- Exempting indigent persons.
- Suing non-residents. 14. To sue for and recover by their name of office, the amounts of school-rates or subscriptions due from persons residing without the limits of their school section, who make default in payment ; 13, 14 V. c. 48, s. 12, No. 11. 35
- Return of uncollected rates. 15. And also, before the end of the then current year, to make a return of the rates on the property of non residents of their section, (as provided in the one hundred and thirtieth section of this Act) and which they have been unable to collect. 40
- Residents between ages of 5 and 21 are lawful pupils. 16. To permit all residents in such section between the ages of five and twenty-one years, to attend the school, so long as they conduct themselves in conformity with the rules of such school, and the fees or rates required to be paid on their behalf, 45

- behalf, are fully discharged, but this privilege shall not extend to the children of persons in whose behalf a separate school has been established, according to the Act respecting the establishment of separate Schools. 13, 14 V. c. 48, s. 13. Exception.
- 5 17. To visit from time to time, each school under their charge and see that it is conducted according to the authorized regulations, and that each such school is, at all times, duly provided with a Register and Visitor's Book, in the form prescribed by the Chief Superintendent. (13, 14 V. c. 48, s. 14.) Visiting schools—
what for.
- 10 18. To see that no unauthorized books are used in the school, and that the pupils are duly supplied with a uniform series of authorized text-books, sanctioned and recommended by the Council of Public Instruction, and to procure annually, for the benefit of their school section, some periodical devoted to education. (13, 14 V. c. 48, s. 15.) Proper Text-
books in
school.
19. To appoint a Librarian, and to take such steps authorized by law as they may judge expedient, for the establishment, safe-keeping, and proper management of a school library, whenever provision has been made and carried into effect for the estab-
20 lishment of such library in their section. (13, 14 V. c. 48, s. 12, No. 17.) Establishing
library.
20. To exercise all the corporate powers vested in them by this Act, for the fulfilment of any contract or agreement made by them; and in case they or any of them wilfully neglects or
25 refuses to exercise such powers, the Trustee or Trustees so neglecting or refusing shall be personally responsible for the fulfilment of such contract or agreement. (13, 14 V. c. 48, s. 12, No. 16.) Exercising
Corporate
powers.
Wilful ne-
glect.
Personal re-
sponsibility.
21. To cause to be prepared and read at the annual meeting
30 of their section, their annual school report for the year then terminating, which report shall include, among other things, a full and detailed account of the receipts and expenditures of all school moneys received and expended in behalf of such section, for any purpose whatsoever, during such year, and in case of
35 dispute the matter shall be referred to arbitration in the manner provided in the 28th section of this Act. (13, 14 V. c. 48, s. 12, No. 18.) Reporting to
constituents.
Contents of
report.
Arbitration.
22. To transmit to the local Superintendent, on or before the thirtieth day of June, and the thirty-first day of December
40 in each year, a correct return of the average attendance of pupils in each of the schools under their charge during the six months then immediately preceding; and in case such Trustees neglect to transmit a verified statement of such average attendance then
45 such school section shall not be entitled to the apportionment from the school fund for the said six months. (16 V. c. 183, s. 5.) Half-yearly
report to local
Superinten-
dent.
Penalty for
neglect.

Yearly report to local Superintendent.	23. To ascertain the number of children between the ages of five and sixteen years residing in their section on the thirty-first day of December in each year; and to prepare and transmit annually, on or before the fifteenth day of January a report to the Local Superintendent; signed by a majority of the Trustees, and made according to a form provided by the Chief Superintendent of Education, and shall specify therein. (13, 14 V. c. 48, s. 12, No. 19.)	5
Contents thereof.		
Time School was open.	1. The whole time the school in their section was kept by a qualified Teacher during the year ending the thirty-first day of the previous December;	
Moneys received and paid.	2. The amount of moneys received for the school fund, from local rates or contributions, and from other sources, distinguishing the same; and the manner in which all such moneys were expended;	15
Children--resident and attending school.	3. The whole number of children residing in the school section, over the age of five years, and under the age of sixteen; the number of children and young persons taught in the school in winter and summer, distinguishing the sexes, and those who were over and under sixteen years of age; and the average attendance of pupils in both winter and summer; but the Trustees of the Common School sections within the limits of which one or more separate school sections are established as hereinafter provided, shall not in their return of children of school age residing in their school sections, include the children attending such separate school or schools. (13, 14 V. c. 48, s. 12, No. 9.)	20
Exceptions.		25
Branches taught, &c.	4. The branches of education taught in the school; the numbers of pupils in each branch; the text-books used; the numbers of public school examinations, visits, and lectures and by whom made or delivered, and such other information respecting the school premises and library, as may be required. (13, 14 V. c. 48, s. 12, No. 19.)	30
Penalty for delaying yearly report.	27. In case the Trustees of any school section neglect to prepare and forward the aforesaid Report to their local Superintendent by the thirty-first day of January in each year, each of them shall, for each week after such thirty-first day of January, and until such report has been prepared and presented, forfeit the sum of one pound five shillings to be sued for by such local Superintendent, and collected and applied in the manner provided by the twentieth section of this Act. 16 V. c. 40 185, s. 10.	35
Unsatisfactory accounts to be referred to arbitration.	28. In case the account mentioned in the 26th section, No. 21, is not satisfactory to a majority of the freeholders and house-holders present at such meeting, then a majority of the said freeholders and householders shall appoint an arbitrator, and the Trustees shall appoint another, and the two arbitrators	45
Decision thereon.		

trators thus appointed shall examine the said account, and their decision respecting it shall be final; or, if the two arbitrators thus appointed cannot agree, they shall select a third, and the decision of the majority of them shall
 5 be final; and such arbitrators, or if a third has been appointed, a majority of them, shall collect whatever sum or sums may have been by them awarded against any person, in the same manner and under the same regulations as those according to which Trustees are authorized by the 26th section of
 10 this Act to collect school-rates; and shall pay over the sums collected to the Trustees of the school, and such Trustees shall expend the amount in the same manner as other moneys for the common school purposes of their section. 13, 14 V. c. 118, s. 12, No. 18.

Enforcing decision.

Moneys recovered.

15 **29.** No steps shall be taken by the Trustees of any School Section for procuring a School site on which to erect a new School House, or for changing the site of an established School House, without calling a Special Meeting of the freeholders and householders of their Section to
 20 consider the matter; and in case of a difference as to the site of a school-house between the majority of the Trustees and a majority of the freeholders and householders at such special meeting, each party shall choose an arbitrator, and the local Superintendent, or in case of his inability to attend, any person appointed by him to act on his behalf, shall be a third arbitrator, and such three arbitrators or a majority of them, shall
 25 finally decide the matter. (16 V. c. 185, s. 6.)

New school sites to be authorized by special meeting.

Difference between trustees and people to be referred to arbitration.

Decision thereof final.

30. The Trustees of each School Section shall be personally responsible for the amount of any School moneys forfeited by or lost to such School Section in consequence of
 30 their neglect of duty during their continuance in office; and the amount thus forfeited or lost shall be collected and applied in the manner provided by the 20th section of this Act. (16 V. c. 185, s. 9.)

Trustees personally responsible for moneys lost.

35 **31.** In case a majority of the school sections of any Township, by the votes of a majority of the resident freeholders and householders of each section at public meetings for that purpose separately called by the Trustees of each such section, express a desire that local school sections should be
 40 abolished, and that all their schools should be conducted under one system and one management like the schools in Cities and Towns, the Municipal Council of such Township may comply with the request so expressed, by passing a By-law to give effect thereto; in which event all the Common Schools of such Town-
 45 ship shall be managed by one Board of five Trustees, one of which Trustees shall be chosen in and for each ward if the Township be divided into wards, and if not so divided, then the whole number of such Trustees shall be chosen in and for the whole Township, and the election of such Trustees shall
 be

All the sections of a township may be united, and a township board elected.

By-law required.

Board elected.

Their powers. be held at the time and in manner prescribed in the 2nd, 7th and 21st sections of this Act; and such Trustees shall be invested with the same powers and be subject to the same obligations as Trustees in Cities and Towns, by the 77th section of this Act, and shall be a corporation under the name of "The Board of Trustees of Common Schools in the township of . . ." (13, 14 V. c. 48, s. 20.) 5

SECONDLY.—DUTIES OF TOWNSHIP COUNCILS.

Assess any section at request of trustees and desired by inhabitants thereof. **32.** Each Township Council shall for the purchase of a school-site, the erection, repairs, renting and furnishing of a School-house, the purchase of apparatus and text-books for a school, books for the library, and salary of the Teacher, levy such sum, by assessment, upon the taxable property in any school section, as may be required by the Trustees of such school section in accordance with the desire of the majority of the freeholders and householders expressed at a public meeting called for such purpose, as authorized by the 26th section of this Act, number 10. (13, 14 V. c. 48, s. 18, No. 1.) 10 15

Authorizing trustees to borrow money for special purposes. **33.** Each Township Council may grant to the Trustees of any school section, on their application, authority to borrow any sums of money necessary for the purposes herein mentioned, in respect to school-sites, school-houses and their appendages, or for the purchase or erection of a Teacher's residence, and cause to be levied upon the taxable property in such section, such sum in each year as shall be necessary for the payment of the interest on the sum so borrowed, and be sufficient to pay off the principal within ten years. (13, 14 V. c. 48, s. 18, No. 1.) 20 25

But not to levy more than one rate, except in certain cases. **34.** No Township Council shall levy and collect in any School Section during any one year, more than one School Section rate, except for the purchase of a School site or the erection of a School house; and no such Council shall give effect to any application of Trustees for the purposes aforesaid unless the Trustees of the School-Section make the application to such Council at or before its meeting in August of the year in which such application is made. (16 V. c. 185, s. 17.) 30 35

Established Libraries. **35.** Each Township Council may levy such sums as it judges expedient for purchasing books for a Township Library, under such regulations as may be provided in that behalf, and for procuring the site and for the erection and support of a Township Model School: and in such event the members of such Township Council shall be the Trustees of such Model School, and shall possess the powers of Common School Trustees in respect to all matters affecting such Model School. (13, 14, V. c. 48, s. 18, No. 2.) 40

And model school. **36.** The Trustees of any one or more common Schools may at their discretion, and with the consent of such Council, **Council to be trustees.** merge 45

Common schools may be united.

merge their schools into such Model School; and tuition to student-teachers in such Model School shall be free. (13, 14 V. c. 48, s. 18, No. 2.) Free tuition Teachers.

37. Each Township Council shall form portions of the Township, where no schools have been established, into school sections; and appoint a person in each new school section to call the first school section meeting; and shall cause such person to be notified in the manner prescribed in the 6th section of this Act. (13, 14 V. c. 48, s. 18, No. 3.) New sections to be formed.

38. In case it clearly appears that all parties to be affected by any proposed alteration have been duly notified of the intended step or application, any Township Council may alter any school-section already established therein;—But no alteration in the boundaries of a school section shall take effect before the twenty-fifth day of December next after such alteration has been made. (13, 14, V. c. 48, s. 18, No. 4.) Alteration of existing sections, notice to be given. When to take effect.

39. In case at a Public Meeting of each of two or more sections called by the Trustees for that purpose, a majority of the freeholders and householders of each of the sections affected, request to be united, then the Council shall unite such school sections into one. (13, 14 V. c. 48, s. 18, No. 4.) Union of existing sections; meetings to be called.

40. The first election in such united section shall be appointed and held in the same manner as is provided for in the 6th to the 11th sections of this Act, in respect to a new school section. (13, 14 V. c. 48, s. 18, No. 4.) First election in such united section.

41. The several parts of any altered or united school sections shall have respectively the same right to a share of the Common School Fund for the year of the alteration or union, as if they had not been altered or united. (13, 14 V. c. 48, s. 18, No. 4.) Share of school fund preserved.

42. In case a school site, or school-house, or other school property is no longer required in consequence of the alteration or union of school sections, the same shall be disposed of by sale or otherwise, in such manner as a majority of the freeholders and householders in the altered or united school sections decide at a public meeting called for that purpose, and the inhabitants transferred from one school section to another, shall be entitled, for the common school purposes of the section to which they are attached, to such a proportion of the proceeds of the sale of such school-house or other common school property, as the assessed value of their property bears to that of the other inhabitants of the school section from which they have been so separated; and the residue of such proceeds shall be applied to the erection of a new school-house, or to other common school purposes of such united or altered sections. (13, 14 V. c. 48, s. 18, No. 4.) Disposal of property. Share in proceeds.

43. Under the conditions prescribed in the 38th section of this Act in respect to alterations of other school sections, union school sections consisting of parts of two or more Townships, may be formed and altered by the Reeves and Local Superintendents of the Townships out of parts of which such sections are proposed to be formed, at a meeting appointed for that purpose by any two of such Town Reeves, of which meeting the other parties authorized to act with them shall be duly notified. (13, 14 V. c. 48, s. 18, No. 4.)

Union sections of two or more townships to be formed, and altered.
Meeting of Reeves and Superintendents.

44. Each union school section composed of portions of adjoining Townships, shall, for all purposes of the election of Trustees and of their control, be deemed one school section, and shall be considered, in respect to superintendence and taxation for the erection of a school-house, as belonging to the Township in which the school-house may be situated. (16 V. c. 185, s. 17.)

Such union section to belong to township in which house is situated.

45. Each Township Council may under the restrictions imposed by law in regard to the alteration of School Sections, separate such part of any Union School Section, as is situated within the limits of its jurisdiction from the Union Sections and form the part so separated into a distinct School Section, or attach it to one or more existing School Sections or parts of Sections within its jurisdiction, as such Council may judge expedient. (16 V. c. 185, s. 17.)

Such union section may be dissolved by either township council.

Part within limits of township to be taken.

46. Each Township Council shall cause the Clerk of such Township to furnish the Local Superintendent of Schools with a copy of all the proceedings of such Council relating to the formation or alteration of school sections, all school assessments, and other educational matters. (13, 14 V. c. 18, s. 18, No. 5.)

Clerk to furnish information to local Superintendent.

47. The Clerk of each Township Municipality shall prepare in duplicate, a Map of the Township, shewing the divisions of the Townships into School Sections and parts of Union School Sections, one copy of which Map shall be furnished to the County Clerk, for the use of the County Council, and the other shall be retained in the Township Clerk's Office, for the use of the Township Corporation. (16 V. c. 185, s. 21.)

Clerk to prepare maps of township shewing section divisions.

THIRDLY—DUTIES OF COUNTY MUNICIPAL COUNCILS.

TO RAISE NECESSARY FUNDS.

48. Each County Council shall cause to be levied yearly upon the several Townships of such County, such sums of money, for the payment of the salaries of legally qualified Common School Teachers, as shall at least equal (clear of all charges of collection) the amount of school money by the Chief Superintendent of

To raise equivalent to Legislative school grant.

of Education apportioned to the several Townships thereof for such year, and notified by him to such Council through the County Clerk; and the sums so levied may be increased at the discretion of such Council, either in aid of the County School Fund, or to give special or additional aid to new or needy School Sections, on the recommendation of one or more Local Superintendents. (13, 14 V. c. 18, s. 17, No. 1.)

Such equivalent may be increased.

Poor school.

49. The sum annually required to be levied in such County, for the salaries of legally qualified Teachers, shall be collected and paid into the hands of the County Treasurer, on or before the Fourteenth day of December in each year; but notwithstanding the non-payment of any part thereof to such Treasurer in due time, no Teachers shall be refused the payment of the sum to which he may be entitled from such year's County School Fund, but the County Treasurer shall pay the local Superintendent's lawful order in behalf of such Teacher, in anticipation of the payment of the County School Assessment; and the County Council shall make the necessary provision to enable the County Treasurer to pay the amount of such lawful order. (13, 14 V. c. 18, s. 17, No. 1.)

Such equivalent to be collected by 14th December.

Teachers not to be refused payment. Provision to be made for such payments.

50. Each County Council shall raise by assessment such sums of money as it may judge expedient, for the establishment and maintenance of a County Common School Library. (13, 14 V. c. 18, s. 15, No. 1.)

To establish Library.

TO APPOINT LOCAL SUPERINTENDENT.

51. Each County Council shall appoint annually a Local Superintendent of Schools for the whole County, or for any one or more Townships in such County, as it may judge expedient; and fix (within the limits prescribed by the 86th and 87th sections of this Act) and provide for the salary of such Local Superintendent; (13, 14 V. c. 18, s. 17, No. 3.)

To appoint local Superintendents.

Salary.

52. No such Local Superintendent shall have the oversight of more than one hundred Schools;

Not more than 100 schools.

53. The County Clerk shall forthwith notify the Chief Superintendent of Education of the appointments and address of each such Local Superintendent, and of the County Treasurer; and shall likewise furnish him with a copy of all proceedings of such Council relating to school assessments and other educational matters; (13, 14 V. c. 18, s. 17, No. 3.)

Clerk to report appointments and proceedings to Chief Superintendent.

54. Each County Council shall see that sufficient security is given by all officers of such Council to whom school moneys are to be entrusted and shall also see that no deduction is made from the School Fund by the County Treasurer or sub-Treasurer for the receipt and payment of school moneys. (13, 14 V. c. 18, s. 17, No. 1.)

To secure all school moneys.

Sub-Treasurers for townships may be appointed. **55.** If deemed expedient, the County Council shall appoint one or more sub-Treasurers of school moneys for one or more Townships of such County ; in which event each such sub-Treasurer shall be subject to the same responsibilities and obligations in respect to the accounting for school moneys and the payment of lawful orders for such moneys given by any Local Superintendent within the parts of the County for which he is appointed sub-Treasurer, as are imposed by this Act upon each County Treasurer in respect to the paying and accounting for school moneys. (13, 14 V. c. 18, s. 17, No. 1.)

Auditors of school moneys to be appointed. **56.** Each County Council shall annually, or oftener, appoint Auditors, who shall audit the accounts of the County Treasurer and other officers to whom school moneys may have been intrusted, and report to such Council ; 13, 14 V. c. 18, s. 17, No. 1.

Clerk to transmit audited accounts to the Chief Superintendent. **57.** The County Clerk shall transmit to the Chief Superintendent of Education, on or before the first day of March in each year, a certified copy of the abstract of the report of the auditors, and also give any explanation relating thereto, as far as he is able, which may be required by the Chief Superintendent. 13, 14 V. c. 42, s. 17, No. 5.

FOURTHLY—COUNCILS AND TRUSTEES IN CITIES, TOWNS AND INCORPORATED VILLAGES, AND THEIR DUTIES.

Powers of Councils. **58.** The Municipal Council of each City, incorporated Town and Village in Upper Canada is hereby invested, within its limits, with the same powers and shall be subject to the same obligations as the Municipal Council of each County and Township by the thirty-second and the fifteen next following and the forty-eight and nine next following sections of this Act, 13, 14 V. c. 43, s. 18.

Local superintendent appointed by Board. **59.** The Board of School Trustees for every such City, Town or Village respectively shall appoint the Local Superintendent of Schools for such City, Town or Village.

Two trustees in each ward of a city or town. **60.** For each ward into which any City or Town has been divided, there shall be two School Trustees, each of whom after the first election of Trustees, shall continue in office two years, and until his successor has been elected, and one of such Trustees shall retire on the second Wednesday in January yearly in rotation. 13, 14 V. c. 43, s. 12.

First elections in cities and towns. **61.** On the incorporation of any City or Town and the division thereof into Wards, two fit and proper persons shall, at the first election of School Trustees, be elected School Trustees of each such Ward by a majority of the votes of the freeholders and householders thereof. And one of such Trustees,

tees, to be determined by lot at the first meeting of Trustees after their election, shall retire from office on the second Wednesday of January in the first year after his election, and the other shall retire from office on the second Wednesday in 5 January in the second year after his election, but each such Trustee shall continue in office until his successor has been elected. 13, 14 V. c. 43, s. 18.

62. The Term for which each School Trustee who holds office at the time this Act takes effect, shall continue as if such 10 term had commenced by virtue of an election under this Act ; and on the second Wednesday, in January next after the passing of this Act, the Trustee or Trustees whose term of office then expires shall retire from office but may with his own consent be re-elected under the provisions of this Act.

15 63. In every such City and Town respectively, at the time prescribed by the second section of this Act, and at an election to be held at the place where the last municipal election was held for each respective ward thereof, and under the direction of the same returning officer who held such election, or, in 20 his default, of such person as the electors present shall choose, and conducted in the same manner as an ordinary municipal ward election, one fit and proper person to be a Trustee, shall be elected by a majority of the votes of the freeholders and householders, in and for each such ward respectively, and 25 such Trustee shall continue in office for two years, and until his successor has been elected. 13, 14 V. c. 43, s. 13.

64. In each incorporated Town, not divided into Wards, and in each incorporated Village there shall be six School Trustees, two of whom after the first election shall retire 30 yearly on the second Wednesday in January.

65. Upon the incorporation of any such Town or Village the Returning Officer appointed to hold the first Municipal Election in such Town or Village shall, or in case of his neglect for one month, any two Freeholders in such Town or Village, 35 may on giving six days notice in at least three public places in such Town or Village, call a meeting for the election of School Trustees for such Town or Village, to take place at the time prescribed in the second section of this Act, and at such meeting six Trustees shall be elected, who shall 40 hold office during the periods hereinafter expressed, and from thence until their successors respectively have been elected. 16 V. c. 183.

66. The Trustees of every such Town and Village shall be divided into three classes, of two individuals each, to be 45 numbered one, two, three, and each of such classes shall hold office for three years, and until their successors have been elected. 13, 14 V. c. 184, s. 13.

67.

Term of office
of such trustees.

67. The Trustees composing one of such classes, shall retire yearly in rotation, the order of such rotation of the Trustees first elected to be determined by lot at their first meeting after being elected, and except the Trustees elected at the first election, the Trustees so to retire shall be those who have held the office for the then next preceding three years, or who have been elected to supply any vacancy in the retiring class. 5

Annual elections in villages and town municipalities.

Two trustees to be elected.

68. A school meeting shall be held annually on the second Wednesday in January, in each incorporated Village, at the place of the then last annual election of Councillors, at which meeting the taxable inhabitants of such Village shall elect two persons to be Trustees in the place of the two retiring from office, which Trustees elect shall continue in office three years, and until their successors have been elected. 13, 14 V. c. 84, s. 14. 10 15

Challenging voters.

69. In case an objection is made to the right of any person to vote at an Election in any City, Town or Village, or upon any other subject connected with School purposes therein, the Returning Officer presiding at such Election shall require the person whose right of voting is objected to, to make the following declaration: 16 V. c. 182, s. 3. 20

Declaration of voters.

“ I do declare and affirm that I have been rated on the Assessment-Roll of this City (Town or Village, *as the case may be*) as a Freeholder (or householder, *as the case may be*) and that I have paid a public School tax in this Ward, (Town or Village, *as the case may be,*) within the last twelve months, and that I am legally qualified to vote at this Election.” 25

Effect of such declaration.

Whereupon the person making such declaration shall be entitled to vote; and any person wilfully making a false declaration of his right to vote, shall be guilty of a misdemeanor, and upon conviction, upon the complaint of any other person shall be punishable by fine and imprisonment in the manner provided for in the seventeenth section of this Act. 30

Contested elections in cities, towns and villages.

70. The Judge of the County Court shall within twenty days after the election of a Common School Trustee in any City, Town or incorporated Village within his County receive and investigate any complaint respecting the mode of conducting such election, and confirm it, or set it aside and appoint the time and place of holding a new election, as he may judge right. (18 V. c. 132, s. 2—16 V. c. 185, s. 11, No. 6.) 40

Penalty on returning officer for wrong-doing.

£5 or £25.

71. If the returning officer at any such election of a Common School Trustee is convicted before the County Judge of disregarding the requirements of the law or acting partially in the execution of his office, he shall be fined a sum of not less than five pounds, nor more than twenty-five pounds, at the discretion of such County Judge. (18 V. c. 132, s. 2.) 45

- 72.** The expenses of any School election contest shall be paid by the parties concerned in it, as may be decided by the County Judge. (18 V. c. 132, s. 2.) Costs of con-
tested elec-
tions.
- 73.** Any Trustee elected to fill an occasional vacancy in a Board of School Trustees, shall hold office only for the unexpired term of the person in whose place he has been elected to serve. Term for va-
cancies.
- 74.** Any retiring Trustee may be re-elected with his own consent, otherwise he shall be exempted from serving for four years next after leaving office. Re-election of
trustees.
- 75.** The School Trustees for each City, Town and Incorporated Village, shall be a corporation under the name of "The Board of School Trustees of the City, Town or Village of _____ in the County of _____." 13, 14 V. c. 138, s. 21. Trustees to be
a corporation.
- 76.** The first meeting of the Board may be called by any Trustee to take place in the City, Town or Village Council room. 13, 14 V. c. 138, s. 21. First meeting.
- 77.** It shall be the duty of the Board of School Trustees of every City, Town and Village respectively, and they are hereby authorized. 13, 14 V. c. 48, s. 24, No. 1. Duties of
Board.
1. To elect annually or oftener from among its own members, a Chairman, who shall have a right to vote at all times, and in case of an equality of votes [the question shall be held to be decided in the negative.] 13, 14 V. c. 48, s. 24, No. 1. Chairman.
His vote.
2. To appoint a Secretary, Superintendent of Schools, and if requisite one or more Collectors of school rates, which or Collectors may be of their own number; and one of whom may also be Secretary-Treasurer, and who shall be subject to the same obligations, provisions and penalties as provided in the cases of Secretary-Treasurers in School sections; 13, 14 V. c. 48, s. 24, No. 1. Secretary,
Superintend-
ent, Collector,
Secretary-
Treasurer.
3. To appoint the times and places of their meetings, and the mode of calling them; and of conducting and recording their proceedings; and of keeping all their School accounts; 13, 14, V. c. 48, s. 24, No. 1. Meetings of
Board.
4. To take possession of all Common School property, and accept and hold as a Corporation all property acquired or given for Common School purposes in the City, Town or Village, by any title whatsoever; Possession of
school pro-
perty.
5. To manage or dispose of such property, and all moneys or income for Common School purposes, until the power hereby given has been taken away or modified by law. Management
of school pro-
perty.

Proceeds of school property.	6. To apply the same, or the proceeds, to the objects for which they have been given or acquired; 13, 14 V. c. 48 s. 24, No. 2.	
Providing school premises.	8. To do whatever they may judge expedient with regard to purchasing or renting school-sites and premises; building, repairing, furnishing, warming and keeping in order the school-houses and appendages, lands, enclosures and moveable property; for procuring suitable apparatus and text-books and for establishing and maintaining School Libraries. 13, 14 V. c. 48, s. 24, No. 3.	5 10
Apparatus, text-books and library.		
Kind of schools.	8. To determine the number, sites, kind and description of schools to be established and maintained in the City, Town or Village;	
Teachers and their salaries.	(1). The Teacher or Teachers to be employed; (2). The terms of employing them; (3). The amount of their remuneration, and the duties which they are to perform;	15
Superintendent.	(4). The salary of the Superintendent of Schools appointed by them, and his duties, and;	
Union with grammar school.	(5). To adopt, at their discretion, such measures as they judge expedient, in concurrence with the Trustees of the County Grammar School, for uniting one or more of the Common Schools of the City, Town or Village with such Grammar School.	20
Committee for each school.	9. To appoint annually, or if they judge it expedient oftener, and under such regulations as they think proper, a Committee of not more than three persons for the special charge, oversight, and management thereof for each School within the City, Town or Village. 13, 14 V. c. 118, No. 4.	25
Estimate for municipal Council.	10. To prepare from time to time, and lay before the Municipal Council of such City, Town or Village, an estimate of the sums which they think requisite. 13, 14 V. c. 118, s. 24, No. 6.	30
Salaries.	(1). For paying the whole or part of the salaries of Teachers;	
Premises.	(2). For purchasing or renting school premises;	
Building. Rents and repairs.	(3). For building, renting, repairing, warming, furnishing and keeping in order the school-houses and their appendages and grounds;	35
Apparatus and books.	(4). For procuring suitable apparatus and text-books for the schools;	
	(5).	

- (5). For the establishment and maintenance of school libraries, and ; **Libraries.**
- (6). For all the necessary expenses of the schools under their charge ; and the Council of such City, Town or Village, shall **Other expenses.**
 5 provide such sums and in such manner as may be desired by the said Board of School Trustees. **Council to provide necessary funds.**
11. To levy any rates upon the parents or guardians of children attending any school under their charge, and to employ the same means for collecting such rates, as Trustees of Common **Rates for children attending school.**
 10 Schools in any Townships may do under the twenty-sixth section of this Act : and all moneys thus collected shall be paid into the hands of the Chamberlain or Treasurer of such City, Town or Village, or of their Secretary-Treasurer, for the **Payable to certain officers.**
 15 the order of the said Board of School Trustees. 13, 14 V. c. 48, s. 24, No. 7.
12. To give orders to Teachers and other school officers and creditors upon the Chamberlain or Treasurer of such City, **Orders for sums due to creditors.**
 20 Town or Village, or to their own Secretary-Treasurer, for the sums due to them. 13, 14 V. c. 48, s. 24, No. 8.
13. To call and give notice of annual and special school meetings of the taxable inhabitants of the City, Town or Village, **Annual and special meetings.**
 or of any Ward therein, in the same manner and under the same regulations as are prescribed in the nineteenth section of this Act, **for the appointment of annual and special school meetings in the school sections of Townships. 13, 14 V. c. 48, s. 24, No. 10.**
 25
14. To see that all the pupils in the schools are duly supplied with a uniform series of authorized text-books, and to appoint a Librarian, and take charge of the school library or **Proper School books. Librarian.**
 30 libraries whenever established. 13, 14 V. c. 48, s. 24, No. 10.
15. To see that all the schools under their charge are conducted according to the authorized regulations ; and, at the close of each year, to prepare and publish, in one or more of the public papers, or otherwise, for the information of the inhabitants of such City, Town or Village, an annual report of their **Observance of regulations. Publication of financial and general report in some newspapers.**
 35 proceedings, and of the progress and state of the schools under their charge, and of the receipts and expenditure of all school moneys.
16. To prepare and transmit annually, before the fifteenth **Annual report to Chief Superintendent.**
 40 of January, to the Chief Superintendent of Education, in the form by him provided for that purpose, a report, signed by a majority of the Trustees, containing all the information required in the reports of Common School Trustees by the twenty-sixth section of this Act, and any additional items of information which may be required. 13, 14 V. c. 48, s. 24, No. 11.

May exercise same powers as section trustees. 17. To exercise as far as they judge expedient, in regard to each City, Town and Village, all the powers vested in the Trustees of each School Section in regard to such School Section. 16 V. c. 181, s. 4.

FIFTHLY.—COMMON SCHOOL TEACHERS AND THEIR DUTIES.

Teacher defined. 78. No Teacher shall be deemed a qualified Teacher within the meaning of this Act, who does not at the time of his engaging with the Trustees, and applying for payment from the School Fund, hold a certificate of qualification, as in this Act provided. 13, 14 V. c. 48, s. 15. 5

Teacher not to hold certain offices. 79. No Teacher shall hold the office of School Trustee or of Local Superintendent. 13, 14 V. c. 48, s. 6, No. 3; 16 V. c. 185, s. 14. 10

Duties of Teachers. 80. It shall be the duty of every Teacher of a Common School. 13, 14 V. c. 48, s. 12, No. 12,—s. 6, No. 3.

Teaching according to law and regulations. 1. To teach diligently and faithfully all the branches required to be taught in the School according to the terms of his engagement with the Trustees, and according to the provisions of this Act. 13, 14 V. c. 48, s. 16, No. 1. 15

Register. 2. To keep the daily, weekly and monthly or quarterly registers of the School. 13, 14 V. c. 48, s. 16, No. 2. 20

Discipline. 3. To maintain proper order and discipline in his School according to the authorized forms and regulations. 13, 14 V. c. 48, s. 16, No. 2.

Visitor's book. 4. To keep a Visitors' Book (which the Trustees shall provide) and enter therein the visits made to his school, and to present such book to each Visitor, and request him to make therein any remarks suggested by his visit. 13, 14 V. c. 48, s. 16, No. 2. 25

Access to registers and visitors' book. 5. At all times, when desired by them, to give the Trustees and Visitors access to the Registers and Visitors' Book appertaining to the school, and upon his leaving the school, to deliver up the same to the order of the Trustees. 13, 14 V. c. 48, s. 16, No. 5. 30

Public quarterly examinations. 6. To have at the end of each quarter, a public examination of his school, of which he shall give due notice to the Trustees of the School, to any School Visitors who reside in or adjacent to such school section, and through the pupils, to their parents and guardians. 13, 14 V. c. 48, s. 16, No. 3. 35

7. To furnish to the Chief or Local Superintendent of Schools when desired, any information which it may be in his power to give respecting any thing connected with the operations of his school, or in any wise affecting its interests or character. 13, 14 V. c. 48, s. 16, No. 4.

Information to chief or local Superintendent.

81. Every Teacher after the expiration of the period of his agreement with the Trustees shall be entitled to be paid at the rate mentioned therein until the Trustees have paid him the whole of his salary, including such extra time as Teacher of the School. 13, 14 V. c. 48, s. 17.

Protection of Teachers.

82. In case of any difference between Trustees and a Teacher in regard to his salary, the sum due to him, or any other matter in dispute between them, the same shall be submitted to arbitration, in which case,—13, 14 V. c. 48, s. 17.

Difference between teacher and trustees.

15 1. Each party shall choose an Arbitrator ;

Arbitration.

2. And in case either party in the first instance neglects or refuses to appoint an Arbitrator on his behalf, the party requiring such arbitration may by a notice in writing to be served upon the party so neglecting or refusing, require the last mentioned party within three days, inclusive of the day of the service of such notice, to appoint an Arbitrator on his behalf, which notice shall name the Arbitrator of the party serving such notice ; and in case the party upon whom such notice has been served does not within the three days mentioned in such notice, name and appoint an arbitrator, then the party requiring such arbitration may appoint the second arbitrator ;

If one neglects to appoint arbitrator.

Notice to appoint.

Time given.

Other arbitrator appointed.

And 3. the Local Superintendent or in case of his inability to attend, any person appointed by him to act on his behalf shall be a third Arbitrator and such three Arbitrators or a majority of them shall finally decide the matter. 13, 14 V. c. 48, s. 17.

Local superintendent to be an arbitrator.

83. The Arbitrators may administer oaths to and require the attendance of all or any of the parties interested in the reference, and of their witnesses, with all such books, papers and writings as such Arbitrators may require them or either of them to produce. 16 V. c. 185, s. 15.

Powers of arbitrators to examine.

84. The said Arbitrators, or any two of them, may issue their warrant to any person to be named therein, to enforce the collection of any sum of money by them awarded to be paid, and the person named in such warrant shall have the same power and authority to enforce the collection of the moneys mentioned in the said warrant, with all reasonable costs, by seizure and sale of the property of the party or corporation against whom the same has issued, as any Bailiff of a Division Court has in enforcing a judgment and execution issued out of such Court. 16 V. c. 185, s. 15.

Warrant of arbitrators.

Equivalent to execution of a Division Court.

No such dispute to be brought into any Court.

85. No action shall be brought in any Court of Law or Equity, to enforce any claim or demand between Trustees and Teachers which may be referred to arbitration as aforesaid. 16 V. c. 185, s. 15.

SIXTHLY.—DUTIES OF LOCAL SUPERINTENDENTS OF SCHOOLS.

Term of office of local Superintendent's lary.

86. Each Local Superintendent appointed as provided for in the fifty-first section of this Act, shall, unless he resigns or is removed from office for neglect of duty, improper conduct, or incompetency, continue in office, until the first day of April of the year following that of his appointment, and he shall be entitled annually, to not less than one pound currency per School placed under his charge, together with any additional remuneration or allowance which the Council appointing him may grant, and the County Treasurer shall pay him the same by quarterly instalments. 16 V. c. 185, s. 14,—13, 14 V. c. 48, s. 30. 5
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Vacancies to be filled.

87. In the event of any Local Superintendent resigning his office, the Warden of the County within which such Superintendent held office, may appoint a fit and proper person to the office vacated until the next ensuing meeting of the Council of such County. 13, 14 V. c. 48, s. 30,—16 V. c. 185, s. 14. 20

Superintendent not to hold certain offices.

88. No Local Superintendent shall be a Teacher or Trustee of any Common School while he holds the office of Superintendent; 16 V. c. 185, s. 14.

Distribution of School Fund.

89. As soon as the County Clerk notifies the Local Superintendent of the amount of money apportioned to the Townships within the limits of his charge, each Superintendent so notified shall (unless otherwise instructed by the Chief Superintendent of Education) apportion the same among the several School sections entitled to receive it, according to the rates of the average attendance of pupils at each Common School, (the mean attendance of pupils for both summer and winter being taken) as compared with the whole average number of pupils attending the Common Schools of such Township; 13, 14 V. c. 48, s. 31, No. 1. 25
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Basis.

How union sections shall be paid.

90. The Local Superintendents of adjoining Townships, shall determine the sums to be paid from the school apportionment and assessment of each Township in support of the Schools of Union School Sections consisting of portions of such Townships; and shall also determine the manner in which such sums shall be paid: but in the event of one person being Local Superintendent of both of the Townships concerned, he shall act in behalf of such Townships. 16 V. c. 185, s. 14. 35
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91. In the event of the Local Superintendents of Townships thus concerned not being able to agree as to the sum to be paid to each such Township, the matter shall be referred to the Warden of the County or Union of Counties for final decision. 16 V. c. 185, s. 14.

Warden to decide in case of a dispute.

92. It shall be the duty of each Local Superintendent, and he is hereby empowered ;

Duties of Superintendents.

1. To give to any qualified Teacher, and to no other, on the order of the Trustees of any School section, a Check upon the County Treasurer or Sub-Treasurer, for any sum or sums of Money apportioned and due to such section ; But he shall not, except in the case of a new School section, give a check upon such order, unless a satisfactory annual School report for the year ending the last day of December preceding has been received from the Trustees ; nor unless it appears by such report, that a School had been kept by a qualified Teacher in such section, for at least six months during the year ending at the date of such report ; 13, 14 V. c. 48, s. 31, No. 2.

Orders to teachers—and no other.

Conditions and report showing—

Six months' school under qualified teacher

2. To visit each Common School within his jurisdiction, twice in each year, unless oftener required by the Council of the Municipality which appointed him, or rendered necessary for the adjustment of disputes, one of which half yearly visits shall be made some time between the first of April and the first of October, and the other sometime between the first of October and the first of April ; 13, 14 V. c. 48, s. 31, No. 3.

Two visits to each school.

3. At the time of each such half yearly visit to examine into the state and condition of the School, as respects the progress of the pupils in learning,—the order and discipline observed,—the system of instruction pursued,—the mode of keeping the School Registers,—the average attendance of pupils,—the character and condition of the building and premises,—and to give such advice as he may judge proper ; 13, 14 V. c. 48, s. 31, No. 3.

Examination of each school.

4. To deliver in each of his School sections, at least once a year, a public lecture on some subject connected with the objects, principles and means of practical education ; and to do all in his power to persuade and animate Parents, Guardians, Trustees and Teachers, to improve the character and efficiency of the Common Schools, and secure the sound education of the young generally ; 13, 14 V. c. 48, s. 31, No. 4.

Annual lecture in each section.

5. To see that all the Schools are managed and conducted according to law,—to prevent the use of unauthorized, and to recommend the use of authorized books in each School,—and to acquire and give information as to the manner in which such authorized books can be obtained, and the economy and advantage of using them ; 13, 14 V. c. 48, s. 31, No. 5.

See to observance of law and regulations.

6.

- Attend certain meetings- 6. To attend the meetings of the County Board of Public Instruction, and to meet and confer with the Chief Superintendent of Education at such time and place as he may appoint when making official visits to such County ; 13, 14 V. c. s. 31, No. 6. 5
- Arbitrations decide disputes. 7. To attend the Arbitrations, and the meetings of Town-Reeves provided for in the 26th and 43rd sections of this Act,—to decide upon any questions submitted to him, which arise between interested parties under the operation of this Act, or if he deems it advisable, to refer any such question to the Chief Superintendent of Education ; and any aggrieved or dissatisfied party, in any case not otherwise provided for, shall have the right of appeal to the Chief Superintendent of Education ; 13, 14 V. c. 48, s. 31, No. 7. 10
- Appeal to the Chief Superintendent. Chief Superintendent of Education ; and any aggrieved or dissatisfied party, in any case not otherwise provided for, shall have the right of appeal to the Chief Superintendent of Education ; 13, 14 V. c. 48, s. 31, No. 7.
- Suspending teacher's certificate. 8. To suspend the certificate of qualification of any Teacher, granted by the County Board of Public Instruction, for any cause which may appear to him to require it, until the next ensuing meeting of such County Board, of which meeting due notice shall be given to the Teacher suspended, and such Board shall dispose of the case in such manner as a majority of the members present think proper ; and the cancelling or suspension of a Teacher's certificate of qualification shall release his School Trustees from any obligation to continue him in their employment. 13, 14 V. c. 48, s. 31, No. 8. 15 20
- Effect thereof. 8. To suspend the certificate of qualification of any Teacher, granted by the County Board of Public Instruction, for any cause which may appear to him to require it, until the next ensuing meeting of such County Board, of which meeting due notice shall be given to the Teacher suspended, and such Board shall dispose of the case in such manner as a majority of the members present think proper ; and the cancelling or suspension of a Teacher's certificate of qualification shall release his School Trustees from any obligation to continue him in their employment. 13, 14 V. c. 48, s. 31, No. 8.
- Temporary certificates to teachers. 9. On due examination, according to the programme authorized for the examination of Teachers, to give any Candidate a certificate of qualification to teach a School within the limits of the charge of such Superintendent until (but no longer than) the next ensuing meeting of the County Board of Public Instruction of which such Local Superintendent is a Member ; but no such certificate shall be given a second time, or be valid if given a second time, to the same person in the same County ; 16 V. c. 185, s. 14. 25 30
- Observing regulations—giving information to Chief Superintendent and County Auditors. 10. To act in accordance with the regulations and instructions provided for his guidance, to give any information in his power (when desired) to the Chief Superintendent of Education respecting any Common School matter within his jurisdiction,—to furnish the County Auditors, when required, with the Trustees' orders as the authority for his Checks upon the County or Sub-Treasurer for School moneys, and on retiring from office, to deliver copies of his official correspondence, and all school papers in his custody, to the order of the County Council ; 13, 14 V. c. 48, s. 31, No. 9. 35 40
- Retiring from office. 10. To act in accordance with the regulations and instructions provided for his guidance, to give any information in his power (when desired) to the Chief Superintendent of Education respecting any Common School matter within his jurisdiction,—to furnish the County Auditors, when required, with the Trustees' orders as the authority for his Checks upon the County or Sub-Treasurer for School moneys, and on retiring from office, to deliver copies of his official correspondence, and all school papers in his custody, to the order of the County Council ; 13, 14 V. c. 48, s. 31, No. 9.
- Annual report to Chief Superintendent. 11. To prepare and transmit to the Chief Superintendent of Education, on or before the first day of March, an annual report, in the form provided by the said Chief Superintendent, and which shall state : 13, 14 V. c. 48, s. 31, No. 10. 45

- (1). The whole number of Schools and School Sections or parts of sections in each Township within his jurisdiction ; its contents.
- (2). The number of pupils taught in each school over the age of five, and under the age of sixteen ; the number between the ages of sixteen and twenty-one years ; the whole number of children residing in each section, or part of a section, over the age of five and under the age of sixteen years ; Schools pupils.
- (3). The length of time a school has been kept by a qualified Teacher in each of such sections or parts of sections ; the branches taught ; the number of pupils in each branch, the books used ; and the average attendance of pupils, both male and female, in summer and in winter ; Time open. Branches taught.
- (4). The amount of moneys which have been received and collected in each section or part of a section—distinguishing the amount apportioned by the Chief Superintendent of Education, the amount received from County assessment, the amount raised by Trustees, and the amount from any other and what sources ; also how such moneys have been expended, or whether any part remains unexpended, and from what causes ; and the annual salary of Teachers, male and female, with and without board ; Moneys— from what sources. Teacher's salaries.
- (5). The number of school visits made by himself and others during the year ; the number of school lectures delivered ; the whole number of school-houses, their sizes, description, furniture and appendages, the number rented, the number erected during the year, of what description, and by what means ; Visits, lectures, school houses.
- (6). The number of qualified Teachers ; their standing, sex, and religious persuasion ; the number, so far as he can ascertain, of private schools ; the number of pupils and subjects taught therein ; the number of libraries, their extent, and how established and supported ; also, any other information which he may possess respecting the educational state, wants and advantages in each Township of his charge, and any suggestions which he thinks proper to make with a view to the improvement of schools and diffusion of useful knowledge ; Teachers, private school, Libraries. Other information.

SEVENTHLY—CONSTITUTION AND DUTIES OF THE COUNTY BOARDS OF PUBLIC INSTRUCTION.

93. Where there is only one County Grammar School the Board of Trustees for such School and the Local Superintendent or Superintendents of Schools in such County, shall constitute a Board of Public Instruction for such County. 18 & 14 V. c. 48, s. 18. Boards of public instruction constituted.
94. Where there is more than one Grammar School in a County, the County Council shall divide such County into as many When more than one

- grammar school. many Circuits as there are County Grammar Schools, and for each such circuit the Trustees of the County Grammar School therein and the Local Superintendent or Superintendents of Schools therein, shall be a Board of Public Instruction. 13 & 14 V. c. 48, s. 28. 5
- Quorum of Board. **95.** At any lawful meeting of the Board of Public Instruction, three members including a Local Superintendent of Schools shall constitute a *quorum* for examining and giving certificates of qualification to Common School Teachers, and five members shall constitute a *quorum* for the transaction of 10 any other business. 13 & 14 V. c. 48, s. 28.
- County Council to defray expenses. **96.** The Municipal Council of such County shall provide for the incidental expenses connected with the meeting and proceedings of each County Board of Public Instruction. 13 & 14 V. c. 48, s. 28. 15
- Duties of Board. **97.** It shall be the duty of each County Board of Public Instruction—and each such Board is hereby empowered:
- Quarterly meetings. Proceedings. 1. To meet not less than four times a year; and to determine the time and places of its own meetings, and the order of its proceedings, and the manner of recording them. 13 & 14 V. c. 20 48, s. 29, No. 1.
- Examination of Teachers. 2. To examine and give certificates of qualification to Teachers of Common Schools, arranging such Teachers into three classes according to their attainments and abilities, as prescribed in a programme of examination and instructions 25 provided for that purpose, and any such certificate may be general, as regards the County, or limited as to time or place, at the pleasure of the majority of the members of the County Board of Public Instruction present at such examination;
- Extent of certificates. 3. To annul any such certificate as the Board may judge 30 expedient. 13 & 14 V. c. 48, s. 29, No. 2.
- Conditions of certificate. **98.** Every such certificate of qualification shall have the signature of at least one Local Superintendent of Schools, but no such certificate shall be given to any person as a teacher, who does not furnish satisfactory proof of good moral 35 character, or who at the time of applying for such certificate of qualification, is not a natural-born or naturalized subject of Her Majesty, or who does not produce a certificate of having taken the oath of allegiance to Her Majesty, before a Justice of the Peace for the County in which he such person resides. 40 (13 & 14 V. c. 48, s. 29, No. 2.)
- Selecting text books. **99.** Each County Board of Public Instruction shall (if deemed expedient) select from a list of text-books recommended or authorized by the Council of Public Instruction, 40
tion,

tion, such books as they think best adapted for use in the Common Schools of such County or Circuit, and shall ascertain and recommend the best facilities for procuring such books. 13 & 14 V. c. 48, s. 29, No. 3.

- 5 **100.** Each County Board of Public Instruction shall adopt all such lawful means in their power as they may judge expedient to advance the interests and usefulness of Common Schools, to promote the establishment of School Libraries, and to diffuse useful knowledge in the County or
10 Circuit. 13 & 14 V. c. 48, s. 29, No. 4. Promotion of education.

EIGHTHLY—SCHOOL VISITORS, AND THEIR DUTIES.

- 101.** All Clergymen recognized by law, of whatever denomination, all Judges, Members of the Legislature, Magistrates, Members of County Councils and Aldermen, shall be School Visitors in the Townships, Cities, Towns and Villages where they respectively reside: But persons holding the Commission of the Peace for the County only, shall not be School
15 Visitors within Towns and Cities: And each Clergyman shall be a School Visitor only in the Township, Town or City where he has pastoral charge. 13 & 14 V. c. 48, s. 32. School Visitors defined.

- 102.** Each of the said School Visitors, may visit, the
20 Public School in such Township, City, Town or Village; and attend the quarterly examination of Schools, and, at the time of any such visit, examine the progress of the pupils, and the state and management of the School, and give such advice to the Teacher and pupils, and any others present, as he may
25 think advisable, in accordance with the regulations and instructions provided in regard to School Visitors. 13 & 14 V. c. 48, s. 33. Their authority to visit schools.

- 103.** A general Meeting of such Visitors may be held at any time or place appointed by any two Visitors,
30 on sufficient notice being given to the other Visitors in the Township, City, Town or Village, and the Visitors, thus assembled, may devise such means as they deem expedient for the efficient visitation of the Schools, and for promoting the establishment of Libraries and the diffusion of useful know-
35 ledge. 14 & 15 V. c. 48, s. 33. General meeting of visitors.

NINTHLY—DUTIES OF THE CHIEF SUPERINTENDENT OF EDUCATION.

- 104.** The Governor may, from time to time, by Letters Patent under the Great Seal of the Province, appoint a fit and proper person to be Chief Superintendent of Education for Upper Canada, who shall hold office during pleasure, and shall receive
40 a salary of the same amount as the Superintendent of Education in Lower Canada. (13 & 14 V. c. 48, s. 34. The Superintendent to be appointed.

- His responsibility.** **105.** The Chief Superintendent shall be responsible to, and subject to the direction of the Governor, communicated through such Department of the Provincial Government, as he may deem meet. 13 & 14 V. c. 48, s. 34.
- Allowed Clerks.** **106.** The Chief Superintendent shall be allowed two Clerks, who shall receive the same salaries as those attached to similar offices in Lower Canada, and he shall account for the contingent expenses of his office, as provided in respect of other public offices. 13 & 14 V. c. 48, s. 34. 5
- Duties of the Chief Superintendent.** **107.** It shall be the duty of the Chief Superintendent of Education, and he is hereby empowered :
- Apportioning legislative grant.** i. To apportion annually, on or before the first day of May, to the several Counties, Townships, Cities, Towns and incorporated Villages according to the ratio of population in each, as compared with the whole population of Upper Canada, all moneys granted or provided by the Legislature for the support of Common Schools in Upper Canada, and not otherwise appropriated, or when the census or returns upon which such an apportionment is to be made, are so far defective, as to render it impracticable for the Chief Superintendent to ascertain therefrom the share of school moneys which ought to be so apportioned, he shall make such apportionment according to the ratio in which by the best evidence in his power, the same can be most fairly and equitably made. 13 & 14 V. c. 48, s. 35, No. 1. 15
- Basis.**
- Other ratio.**
- Distribution by Local Superintendents.** 2. To direct as he may deem it expedient, the distribution of the Common School fund of any Township, among the several School Sections and part of sections entitled to share in the same, according to the length of time in each year, during which a School has been kept open by a legally qualified Teacher in each of such Sections or parts of Sections. 16 V. c. 185, s. 28. 20
- Notice to Inspector General and Clerks.** 3. To certify to the Inspector General, the apportionments made by him, so far as they relate to the several Counties, Cities, Towns and incorporated Villages in Upper Canada, and shall give immediate notice thereof to the Clerk of each County, City, Town and Village interested therein, stating the time when the amount of moneys so apportioned will be payable to the Treasurer of such County, City, Town or Village. 13 & 14 V. c. 48, s. 35, No. 2. 35 40
- Apportioning library grant.** 4. To apportion the moneys provided by the Legislature for the establishment and support of School Libraries; but no aid shall be given towards the establishment or support of any School Library unless an equal amount be contributed and expended from local sources for the same object. 13, 14 V. c. 37, s. 17, No. 10. 45
- Conditions.**

5. To prepare suitable forms, and to give such instructions as he may judge necessary and proper, for making all reports and conducting all proceedings under this Act, and to cause the same, with such general regulations as may be approved of by the Council of Public instruction for the better organization and government of Common Schools, to be transmitted to the officers required to execute the provisions of this Act. 13, 14 V. c. 37, s. 18, No. 3. Preparing forms and regulations.
6. To cause to be printed from time to time, in a convenient form, so many copies of this Act, with the necessary forms, instructions, and regulations to be observed in executing its provisions, as he may deem sufficient for the information of all officers of Common Schools, and to cause the same to be distributed for that purpose. 13, 14 V. c. 38, s. 18, No. 4. Distributing of Act and forms.
7. To see that all moneys apportioned by him, are applied to the objects for which they have been granted; and for that purpose, and when not otherwise provided for, to decide upon all matters and complaints submitted to him which involve the expenditure of any part of the School Fund; and to direct the application of such balances of the School Fund apportioned for any year as may be forfeited according to the provisions of this Act, towards making up the salaries of Teachers in the County to which the same has been apportioned. 13, 14 V. c. 37, s. 19, No. 5. Protecting school moneys.
Deciding complaints.
Balances of the School Fund.
8. To appoint one of his Clerks as his Deputy, to perform the duties of his office in his absence; and to appoint one or more persons, as he, from time to time, deems necessary, to inspect any school, or examine into and report to him upon any school matter in the County where such person or persons reside; but no allowance or compensation shall be made to such special inspector or inspectors for any services performed by him or them. 13, 14 V. c. 18, s. 15, No. 6. Appointing a Deputy and Special Inspectors.
9. To take the general Superintendence of the Normal School; and use his best endeavours to provide for and recommend the use of uniform and approved text-books in the Schools generally. 13, 14 V. c. 18, s. 15, No. 7. Supervision of Normal school.
10. To employ all lawful means in his power to procure and promote the establishment of School Libraries for general reading, in the several Counties, Townships, Cities, Towns and Villages; and to provide and recommend the adoption of suitable plans of School-houses, with the proper furniture and appendages; and to collect and diffuse among the people of Upper Canada useful information on the subject of education generally. 13, 14, V. c. 18, s. 15, No. 8. Promotion of Education.
11. To submit to the Council of Public Instruction, all books or manuscripts which may, with the view of obtaining the Books and manuscripts

- for Council of Public Instruction. the recommendation or sanction of such Council, for their introduction as text-books or library books, be placed in his hands ; and shall prepare and lay before the Council of Public Instruction, for its consideration, such general regulations for the organization and government of Common Schools, and the management of School Libraries as he may deem necessary and proper. 13, 14 V. c. 18, s. 15, No. 9. 5
- General regulations. 5
- Teachers Institutes. 12. To appoint proper persons to conduct County Teachers Institutes, and to furnish such rules and instructions as he may judge advisable in regard to the proceedings of such Institutes, and the best means of promoting and elevating the profession of school teaching and increasing its usefulness. 13, 14 V. c. 18, s. 15, No. 11. 10
- Responsibility for moneys. 13. To be responsible for all moneys paid through him in behalf of the Normal and Model Schools, and give such security for the same as the Governor may require ; and shall prepare and transmit all correspondence directed or authorized by the Council of Public Instruction for Upper Canada. 13, 14 V. c. 18, s. 15, No. 12. 15
- Correspondence of Council of Public Instruction 15
- Annual report to the Governor. 14. To make annually to the Governor, on or before the first day of July, a report of the actual state of the Normal, Model and Common Schools throughout Upper Canada, showing the amount of moneys expended in connection with each and from what sources derived, with such statements and suggestions for improving the Common Schools and the Common School laws, and promoting education generally as he may deem useful and expedient. 13, 14 V. c. 18, s. 15, No. 13. 20 25
- Financial report to the Parliament. 15. To lay before the Legislature, at each sitting thereof, a correct and full account of the disposition and expenditure of all moneys which come into his hands as Chief Superintendent ; and annually on or before the thirtieth of January in each year to make the Report required by the Statutes for the more efficient Auditing of Public Accounts. 13 V. c. 182, s. 8, 14 V. c. 71, s. 11. 30
- Provincial certificates to Normal school Students. 108. The Chief Superintendent of Education, on the commendation of the Teachers in the Normal School, may give to any Teacher of Common Schools a certificate of qualification which shall be valid in any part of Upper Canada until revoked according to Law ; but no such certificate shall be given to any person who has not been a student in the Normal School. 13, 14 V. c. 17, s. 15. 35 40
- Uniformity of school decisions. 109. It being highly desirable that uniformity of decision should exist in cases tried in the Division Courts in which the Superintendents, Trustees, Teachers and others acting under the provisions of this Act are parties, the Judge of any Division Court wherein any such action may be tried shall, at the request of 45

of either party order the entering of judgment to be delayed for a sufficient time to enable such party to apply to the Chief Superintendent of Education to appeal the case, and after Notice of Appeal has been served as hereinafter provided, no further proceedings shall be had in such case until the matter of the Appeal has been decided by a Superior Court. 16 V. c. 183, s. 21.

Judgment of Division Court may be delayed.

10 **110.** The Chief Superintendent may, within one month after the rendering of Judgment in any such case appeal from the decision of the Division Court Judge to either of the Superior Courts of Law, at Toronto, by serving notice in writing of such appeal upon the Clerk of the Division Court appealed from, which Appeal shall be entitled, "The Chief Superintendent of Schools for Upper Canada, Appellant, in the matter between (A. B. and C. D.);"

Chief Superintendent may appeal from such Court to Superior Courts of Law.

Title of Appeal.

15 **111.** The Judge whose decision is appealed from shall thereupon certify under his hand, to the Superior Court appealed to, the summons and statement of claim and other proceedings in the case, together with the evidence and his own Judgment thereon, and all objections made thereto.

Judge to send papers to Superior Court.

20 **112.** The matter shall be set down for argument at the next term of such Superior Court, and such Court shall give such Order or direction to the Court below, touching the Judgment to be given in such matter, as law and equity require, and shall also in their discretion, award costs against the Appellant. 25 which costs shall be certified to and form part of the Judgment of the Court below;

Superior Court to give such order as Law and Equity require.

113. Upon receipt of such Order, direction and certificate, the Judge of the Division Court shall forthwith proceed in accordance therewith.

Proceedings in Division Court thereon.

30 **114.** All costs awarded against an Appellant, and all costs incurred by him, shall be paid by the Chief Superintendent, and charged as Contingent expenses of his office. 16 V. c. 183, s. 15.

Costs of appeal.

TENTHLY.—CONSTITUTION AND DUTIES OF THE COUNCIL OF PUBLIC INSTRUCTION.

35 **115.** The Governor may appoint a Council of Public Instruction for Upper Canada, to consist of not more than nine persons (of whom the Chief Superintendent of Education shall be one) to hold office respectively during pleasure, which Council shall in the exercise of its duties, be subject to all lawful orders and directions from time to time issued by the Governor. 40 13, 14 V. c. 18, s. 15.

Council of Public Instruction to be appointed.

Subject to Governor.

116. The Chief Superintendent shall provide a place for the meetings of the Council of Public Instruction, and may call

Chief Superintendent to

provide place and call meetings. a special meeting at any time by giving due notice to the other members. 13, 14 V. c. 18, s. 15.

Expenses of Council.

117. The expenses attending the proceedings of the said Council, shall be accounted for by the Chief Superintendent as part of the contingent expenses of the Education Office. 5

Recording Clerk and his duties.

118. The Senior Clerk in the Education Office shall be Recording Clerk to the said Council,—he shall enter all its proceedings in a book kept for that purpose,—and shall, as may be directed, procure the books and stationery for the Normal and Model Schools, and keep all the accounts of the said Council. 13, 14 V. c. 18, s. 15. 10

Duties of Council.

119. At any lawful meeting of the Council of Public Instruction, three members shall form a quorum for the transaction of business. 13, 14 V. c. 18, s. 15. 15

120. It shall be the duty of such Council and they are hereby empowered—

Chairman—his vote.

1. To appoint a Chairman, and establish the times of its meetings, and the mode of its proceedings; and in case of an equality of votes on any question, the Chairman shall be entitled to a second or casting vote; 13, 14 V. c. 48, s. 38, No. 1. 20

Establishment of Normal and Model schools.

2. To adopt all needful measures for the permanent establishment and efficiency of the Normal School for Upper Canada, containing one or more Model Schools for the instruction and training of Teachers of Common Schools in the science of Education and the Art of Teaching; 13, 14 V. c. 48, s. 38, No. 2. 25

Regulations for normal and model schools.

3. To make from time to time the rules and regulations necessary for the management and government of such Normal School; to prescribe the terms and conditions on which students will be received and instructed therein; to select the location of such school, and erect or procure and furnish the buildings therefor; to determine the number and compensation of teachers, and of all others who may be employed therein; and to do all lawful things which such Council deem expedient to promote the objects and interests of such school; 13, 14 V. c. 48, s. 38, No. 3. 30 35

Regulations for common school teachers and libraries.

4. To make such regulations from time to time, as it deems expedient, for the organization, government and discipline of Common Schools,—the classification of Schools and Teachers, and for School Libraries throughout Upper Canada; 13, 14 V. c. 48, s. 38, No. 4. 40

Text and library books.

5. To examine, and at its discretion, recommend or disapprove of text-books for the use of schools, or books for School Libraries; 45

Libraries: and no portion of the Legislative School Grant shall be applied in aid of any school in which any book is used that has been disapproved of by the Council, and public notice given of such disapproval; 13, 14 V. c. 48, s. 38, No. 5. Effect of dis-approval.

5 6. To prescribe such regulations, with the approbation of the Governor in Council as it, from time to time, deems expedient, for granting pensions to superannuated or worn out Teachers of Common Schools; but no annual allowance to any superannuated or worn out Teacher shall exceed the rate of One Pound Ten Shillings for each year that such Teacher has taught a Common School in Upper Canada; and no Teacher shall be entitled to share in the said fund unless he has contributed to such fund the sum of One Pound or more per annum, for the period of his teaching School, or receiving aid from such fund, and unless he furnishes satisfactory proof to the Council of Public Instruction, of inability, from age or loss of health in teaching, to pursue that profession any longer; 16 V. c. 185, s. 23. Regulations for granting pensions to superannuated teachers.
Conditionis.

7. And shall transmit annually, through the Chief Superintendent of Education, to the Governor, to be laid before the Legislature, a true account of the receipt and expenditure of all moneys granted for the establishment and support of the Normal School. 13, 14 V. c. 48, s. 38, No. 6. Annual report to Governor.

ELEVENTHLY—SOURCES AND APPROPRIATION OF SCHOOL MONEYS.

121. Out of the share of the Legislative School Grant coming to Upper Canada, the Governor in Council may authorize the expenditure annually. 13, 14 V. c. 48, s. 41. Certain appropriations authorized.

1. Of a sum, not exceeding three thousand pounds, for the establishment and support of School Libraries, under such regulations as are provided for by this Act; 13, 14 V. c. 48, s. 41. Libraries.

2. A sum not exceeding twenty-five pounds in any County or Riding for the encouragement of a Teacher's Institute, under the regulations in this Act provided; 13, 14, V. c. 48, s. 41. Teacher's institutes.

3. A sum not exceeding two hundred pounds in any one year, to procure plans and publications for the improvement of School, Architecture and practical Science in connexion with the Common Schools: 13, 14 V. c. 48, s. 41. School Architecture.

122. But the amount apportioned in aid of common schools to the several Counties, Cities, Towns and Villages in Upper Canada, before the twenty-fourth of July, one thousand eight hundred and fifty, shall not be lessened by the appropriation of such sums, which sums shall be taken out of any additional amount Grant to common schools not to be lessened.

amount awarded to Upper Canada out of the said Grant, in consideration of the increase of its population in proportion to that of the whole Province. 13, 14 V. c. 48, s. 41.

Normal school.

123. A sum not exceeding fifteen hundred pounds per annum shall be allowed out of the Legislative School Grant for the salaries of officers and other contingent expenses of the Normal School; and a sum not exceeding one thousand pounds per annum shall be allowed out of the said grant to facilitate the attendance of Teachers in training at the Normal School, under such regulations as may from time to time be adopted by the Council of Public Instruction. 13, 14 V. c. 48, s. 39. 5 10

121. The additional sums of money from time to time granted by the Legislature in aid of Common Schools or in aid of Common and Grammar Schools in Upper Canada, shall, unless otherwise expressly appropriated by law, be expended in the following manner: 16 V, c. 185, s. 23. 15

I. IN AID OF COMMON SCHOOLS.

Poor Schools.

Firstly—A sum of not less than Four Thousand Pounds shall be apportioned and expended for the support of Common Schools, as provided in the one hundred and seventh Section of this Act, of which sum not exceeding Five Hundred Pounds may be expended in special aid of Common Schools in new and poor Townships; 16 V. c. 185, s. 23. 20

Journal of education.

Secondly—A sum not exceeding One Thousand Pounds per annum shall be expended in further support of the Normal and Model Schools for Upper Canada, and in supplying a copy of the Journal of Education to each School Corporation and each local Superintendent of Schools in Upper Canada, but not more than Four Hundred and Fifty Pounds of the said sum shall be expended in the circulation of the Journal of Education; and the balance of such sum shall be expended as provided for in the one hundred and seventh Section of this Act; 16 V. c. 185, s. 23. 25 30

Canadian library, and Museum.

Thirdly—A sum not exceeding Five Hundred Pounds per annum may be expended by the Chief Superintendent of Education in the purchase, from time to time, of Books, Publications, Specimens, Models and Objects, suitable for a Canadian Library and Museum, to be kept in the Normal School Buildings, and to consist of Books, Publications and Objects relating to Education and other departments of Science and Literature, and Specimens, Models and Objects illustrating the Physical Resources and Artificial Productions of Canada, especially in reference to Mineralogy, Zoology, Agriculture and Manufactures; 16 V. c. 185, s. 23. 35 40

Worn out Teachers.

Fourthly—A sum not exceeding Five Hundred Pounds per annum, shall be applied towards forming a fund for the support of superannuated or worn out Common School Teachers. 16 V. c. 185, s. 23. 45

2. IN AID OF COMMON AND GRAMMAR SCHOOLS.

5 Firstly—A sum not exceeding two thousand and five hundred pounds per annum, may be expended in providing the Grammar and Common Schools, with maps and apparatus, upon the same terms and in the same manner as books are or may be provided for Public School Libraries; 18 V. c. 132, s. 1. Maps and apparatus.

10 Secondly—A sum not exceeding three thousand five hundred pounds per annum, may be expended in further aiding in the establishment and extension of Public Libraries in connexion with the Grammar and Common Schools. Public Libraries.

15 Thirdly—A sum not exceeding three hundred and fifty pounds per annum, shall be allowed for the payment of two Assistant Clerks and a Salesman of the Public Library, map and school apparatus depositories, in connexion with the department of Public Instruction in Upper Canada; Depository.
Clerks.

Fourthly—A sum not exceeding five hundred pounds per annum, shall be allowed for the support and maintenance of superannuated Teachers;

20 Fifthly—The whole of the remainder of such grants not exclusively appropriated as aforesaid, shall be expended as further aid to the Common Schools according to the provisions of this Act. 18 V. c. 132, s. 7.

25 **125.** The sum of money apportioned annually by the Chief Superintendent of Education to each County, Township, City, Town or Village, in aid of Common Schools therein respectively, shall be payable on or before the first day of July, in each year, to the Treasurer of each County, City, Town and Village, in such way as the Governor in Council from time to time directs, and such sum together with at least an equal sum raised annually by local assessment, shall constitute and be hereafter called Grant payable on 1st July in each year.

30 the Common School Fund of such County, Township, City, Town or Village; and no part of the Salaries of the Chief or Local Superintendents, nor of any other persons employed or of any expenses incurred in the execution of this Act, shall be paid out of the said Common School Fund, but such Fund Common school fund defined.

35 shall wholly and without diminution, be expended in the payment of Teachers' Salaries as herein provided. 13, 14 V. c. 48, s. 45,—13, 14 V. c. 48, s. 42.

40 **126.** No County, City, Town or Village shall be entitled to a share of the Legislative School Grant without raising by assessment a sum at least equal (clear of all charges for collection) to the share of the said School Grant apportioned to it; and should the Municipal Corporation of any County, City, Town or Village, raise in any one year a less sum than that apportioned to it out of the Legislative School Grant, the Chief Conditions of receiving share of grant

45 Superintendent of Schools shall deduct a sum equal to the deficiency, from the apportionment to such County, City, Town or Village in the following year. 13, 14 V. c. 48, s. 40. Case of default to raise sufficient funds.

Schools to be supported by— **127.** All the School expenses of each Section shall be provided for by any or all of the three following methods :

- Subscription. 1. Voluntary subscription ;
- Rate bill. 2. Rate-bill for each pupil attending the School ; or
- Rate on property. 3. Rate upon property ; 5

Rate bill limited. But no rate-bill shall be imposed exceeding one Shilling and Three Pence per month for each pupil attending the School. 16 V. c. 185, s. 13.

TWELTHLY—SPECIAL PROVISIONS.

Non-resident attendance forbidden. **128.** Any person residing in one School Section, and sending a child or children to the School of a neighboring School Section, shall nevertheless be liable for the payment of all rates assessed for the School purposes of the Section in which he resides, as if he sent his child or children to the School of such Section; and such child or children shall not be returned as attending any other than the School of the Section in which the parents or guardians of such child or children reside; but this clause shall not be held to apply to persons sending children to or supporting separate Schools, or to prevent any person, who may be taxed for Common School purposes on property situate in a different School Section from that in which he resides, from sending his children to the School of the Section in which such property may be situate on as favorable terms as if he resided in such Section. 16 V. c. 185, s. 2. 10
15
20

Assessors to value lands situated in each section. **129.** Whenever the lands or property of any individual or company are situated within the limits of two or more School Sections, each Assessor appointed by any Municipality, shall assess and return on his Roll, separately, the parts of such lands or property within the limits of which Sections according to the divisions of the School such lands or property may be situate; but every undivided occupied lot or part of a lot, shall only be liable to be assessed for School purposes in the School Section where the occupant resides. 16 V. c. 185, s. 6. 25
30

Rates on lands of absentees to be returned to Clerk of Municipality. **130.** If the Collector appointed by the Trustees of any School Section, is unable to collect that portion of any School rate which has been charged on any parcel of land liable to assessment, by reason of there being no person resident thereon, or no goods and chattels to distrain, the Trustees shall make a return to the Clerk of the Municipality, before the end of the then current year, of all such parcels of land and the uncollected rates thereon; and the Clerk shall make a return to the County Treasurer of all such lands and the arrears of School rates thereon, and such arrears shall be collected and accounted for by such Treasurer in the same manner as the arrears of other taxes; and 35
40

How collected.

and the Township, Village, Town or City in which such School Section is situate, shall make up the deficiency arising from uncollected rates on lands liable to assessment, out of the General Funds of the Municipality. 16 V. c. 185, s. 22.

Municipality to make up such deficiency.

5 **131.** No person shall use any foreign books in the English branches of education in any Model or Common School, without the express permission of the Council of Public Instruction; nor require any pupil in any such School to read or study in or from any religious book, or join in any exercise of devotion or religion which may be objected to by his or her parents or guardians; but within this limitation, pupils shall be allowed to receive such religious instruction as their parents and guardians desire, according to any general regulations provided for the government of Common Schools. 13, 14 V. c. 15 48, s. 14.

Principles of the common school system as to books and religious instruction.

THIRTEENTHLY.—PENAL CLAUSES.

132. If any Secretary-Treasurer appointed by the School Trustees of any school section or any person having been such Secretary-Treasurer, and having in his possession any books, papers, chattels, or moneys, which came into his possession, as such Secretary-Treasurer, wrongfully withholds or refuses to deliver up, or to account for and pay over the same or any part thereof to such person, and in the manner directed by a majority of the School Trustees for such School Section then in office, such withholding or refusal shall be a misdemeanor. 13, 14 V. c. 48, s. 5.

Penalty on Secretary-Treasurer for refusing to account.

133. Upon application to the Judge of the County Court, by a majority of such Trustees, supported by their affidavit made before some Justice of the Peace, of such wrongful withholding or refusal, such Judge shall make an order that such Secretary-Treasurer or person having been such, do appear before him at a time and place to be appointed in the order. 13, 14 V. c. 48, s. 5.

County Judge to have jurisdiction.

134. Any Bailiff of a Division Court, upon being required by such Judge, shall serve such order personally on the party complained against, or leave the same with a grown-up person at his residence. 13, 14 V. c. 48, s. 5.

Order to be served.

135. At the time and place so appointed, the Judge, being satisfied that such service has been made, shall, in a summary manner, and whether the party complained of does or does not appear, hear the complaint, and if he is of opinion that the complaint is well founded, such Judge shall order the party complained of to deliver up, account for and pay over the books, papers, chattels or moneys as aforesaid by a certain day to be named by the Judge in the order, together with the reasonable costs incurred in making such application, as the Judge may tax. 13, 14 V. c. 48, s. 5.

County Judge to hear and determine cases.

- 136.** In the event of a non-compliance with the terms specified in such order or any or either of them, such Judge shall order the said party to be forthwith arrested by the Sheriff of any County in which such party may be found, and to be committed to the Common Gaol of his County, there to remain without bail until such Judge is satisfied that such party has delivered up, accounted for or paid over the books, papers, chattels or moneys in question, in the manner directed by the majority of the Trustees as aforesaid. 13, 14 V. c. 48, s. 5. 5
- 137.** Upon proof of his having so done, such Judge shall make an order for his discharge, and he shall be discharged accordingly. 13, 14 V. c. 48, s. 5. 10
- 138.** No such proceeding shall impair or affect any other remedy which the said Trustees may have against such Secretary-Treasurer, or person having been such, or his sureties. 13, 14 V. c. 48, s. 5. 15
- 139.** If any part of the Common School Fund is embezzled or lost through the dishonesty or faithlessness of any party to whom it has been entrusted, and proper security against such loss has not been taken, the person whose duty it was to have exacted such security, shall be personally responsible for the sums so embezzled or lost, and the same may be recovered from him by the party entitled to receive the same by action at law in any Court having jurisdiction to the amount, or by information at the suit of the Crown. 13, 14 V. c. 48, s. 43. 20 25
- 140.** If any Trustee of a Common School knowingly signs a false report, or if any Teacher of a Common School keeps a false school Register, or makes a false return, with the view of obtaining a larger sum than the just proportion of school moneys coming to such Common School, such Trustees or Teacher shall, for each offence, forfeit to the Common School Fund of the Township, the sum of five pounds, for which any person whatever may prosecute him before a Justice of the Peace, and for which he may be convicted on the oath of one credible witness other than the prosecutor, and if upon conviction the penalty is not forthwith paid, the same shall under the warrant of such Justice be levied with costs by distress and sale of the goods and chattels of the offender, and such penalty when so paid or collected shall by such Justice be paid over to the said Common School Fund, or the said offender may be prosecuted and punished for the misdemeanor. 13, 14 V. c. 48, s. 18. 30 35 40
- 141.** Any person who wilfully disturbs, interrupts or disquiets the proceedings of any school meeting authorized to be held by this Act, or any school established and conducted under its authority, or wilfully interrupts or disquiets any Grammar, Common or other Public School, by rude or indecent behaviour, or by

by making a noise either within the place where such school is kept or held, or so near thereto as to disturb the order or exercises of such school, shall, for each offence on conviction thereof before a Justice of the Peace; on the oath of one credible witness, forfeit and pay for Common School purposes to the School Section, City, Town or Village within which the offence was committed, such sum not exceeding Five Pounds, together with the costs of the conviction, as the said Justice may think fit or the offender may be indicted and punished for any of the offences hereinbefore mentioned as a misdemeanor. 13, 14 V. c. 48. s. 46,—16 V. c. 185, s. 19.

Prosecution
before a Jus-
tice of the
Peace.

142. Unless it is in this Act otherwise provided, all fines, penalties and forfeitures recoverable by summary proceeding may be sued for, recovered and enforced with costs by and before any Justice of the Peace having Jurisdiction within the School Section, City, Town or Village in which such fine or penalty has been incurred, and if any such fine or penalty and costs be not forthwith paid the same shall by and under the warrant of the convicting Justice, be enforced, levied and collected with costs by distress and sale of the goods and chattels of the offender, and shall be by such Justice paid over to the School Treasurer of the School Section, City, Town or Village, or other party entitled thereto, and in default of such distress, such Justice shall by his warrant cause the offender to be imprisoned for any time not exceeding thirty days, unless the fine and costs, and the reasonable expenses of endeavouring to collect the same, are sooner paid. 16 V. c. 185, s. 19.

How penalties
shall be reco-
verable.

INTERPRETATION.

143. The Interpretation Act shall apply to this Act: the word "Teacher" shall include female as well as male teachers; the word, "County" shall include Unions of Counties, and the word "Townships" shall include Unions of Townships made for Municipal purposes. 13, 14 V. c. 48, s. 48.

Interpretation
clause.

SHORT TITLE TO SCHOOL ACTS.

144. In citing or otherwise referring to this Act, it shall be sufficient to designate it as "The Upper Canada Common School Act," and in citing or otherwise referring to this Act, or any other Act or Acts relative to Common Schools, which may at the time of such citation or reference be in force in Upper Canada, it shall be sufficient to use the expression, "The Common School Acts of Upper Canada." 16 V. c. 185, s. 28.

Short Title.

C A P . L I I I .

An Act respecting Separate Schools.

HER Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

PROTESTANT AND COLOURED PEOPLE.

- 1.** Upon the application in writing of twelve or more heads of families resident in any Township, City, Town or Incorporated Village, being Protestants, the Municipal Council of the said Township or the Board of School Trustees of any such City, Town or Incorporated Village, shall authorize the establishment therein of one or more separate schools for protestants ; and upon the application in writing of twelve or more heads of families resident in any Township, City, Town or Incorporated Village, being colored people, the Council of such Township or the Board of School Trustees of any such City, Town or Incorporated Village, shall authorize the establishment therein, of one or more separate schools for colored people, and in every such case, such Council or Board, as the case may be, shall prescribe the limits of the section or sections of such schools. 13, 14 V. c. 48, s. 19. 5
- 2.** There shall be three Trustees for each separate school, and the first meeting for the election of such Trustees, shall be held and conducted in the the manner and according to the rules provided in the 6th to the 11th sections of the Act respecting Common Schools for holding the first school meeting in a new school section. 13, 14 V. c. 48; s. 19. 20
- 3.** Each such separate school shall go into operation at the same time as is provided in the case of altered school sections, of Common Schools, and shall with respect to the persons for whom any school has been established, be under the same regulations as Common Schools generally. 14, 15 V. c. 111, s. 1. 30
- 4.** None but coloured people shall vote at the election of Trustees of any separate school established for colored people and none but the parties petitioning for the establishment of, or sending children to a separate protestant school, shall vote at the election of Trustees of such school. 13, 14 V. c. 48, 35 s. 19. 35
- 5.** In any City or Town the persons who make application according to the provisions of the first section of this Act, may have a separate School in each Ward, or in two or more wards united, as the said persons may judge expedient. 14, 15 V. c. 111, s. 1. 40

6. No protestant separate school shall be allowed in any school section, except when the Teacher of the Common School in such section is a Roman Catholic. 13, 14 V. c. 48, s. 19. Special condition.

7. In all Cities, Towns, incorporated Villages and Town-ship Common School Sections in which such Separate Schools exist, each protestant or coloured person (as the case may be) sending children to any such School or supporting the same by subscribing thereto annually an amount equal to the sum at which such person, if such Separate School did not exist, must have been rated in order to the obtaining the annual Legislative Common School Grant, shall be exempt from the payment of all rates imposed for the support of the common Schools of such City, Town, incorporated Village and School Section respectively, and of all rates imposed for the purpose of obtaining such Common School Grant. 16 V. c. 184, s. 4. Exemption from common school rates.

8. The exemption from the payment of school rates, as herein provided, shall not extend beyond the period during which such persons send children to or subscribe as aforesaid for the support of such Separate School; nor shall such exemption extend to school rates or taxes imposed or to be imposed to pay for school-houses, the erection of which was undertaken or entered into before the establishment of such Separate School. 16 V. c. 184, s. 4. Such exemption conditional.

9. Such Separate Schools shall not share in any school money raised by Local Municipal Assessment. 16 V. c. 184, s. 4. Not to share in Municipal Assessment.

10. Each such separate school shall share in such Legislative Common School Grant according to the yearly average number of pupils attending such Separate School, as compared with the whole average attendance of pupils attending the Common Schools in each such City, Town, incorporated Village or Township; the mean attendance of pupils for winter and summer being taken. 16 V. c. 184, s. 4. Share of legislative school grant determined.

11. A Certificate of qualification, signed by the majority of the Trustees of such Separate School, shall be sufficient for any Teacher of such School. 16 V. c. 184, s. 4. Certificate of teacher.

12. The Trustees of each such Separate School shall, on or before the thirtieth day of June, and thirty-first day of December of each year, transmit to the Local Superintendent of Schools a correct return of the names of all protestant or colored persons (as the case may be), who have sent children to, or subscribed as aforesaid for the support of such Separate School during the then last preceding six months, and the names of the children sent, and amounts subscribed by them respectively, together with the average attendance of pupils in such Separate School during such period. 16 V. c. 184, s. 4. Half-yearly returns to the Local Superintendent.

Local Superintendent to report to Clerk and trustees. **13.** The Local Superintendent shall upon the receipt of such return, forthwith make a return to the Clerk of the Municipality and to the Trustees of the Common School Section or Municipality in which such Separate School is established, stating the names of all the persons who, being protestants or colored persons (as the case may be), contribute or send children to such Separate School. 16 V. c. 184, s. 4. 5

Clerks and Trustees to exempt from rates supporters of Separate Schools. **14.** The Clerk shall not include in the Collector's Roll for the general or other school-rate, and the Trustees or Board of Trustees shall not include in their school-rolls, except for any rate for building school-houses undertaken before the establishment of such Separate School, the name of any such person as appears upon such last mentioned return. 16 V. c. 184, s. 4. 10

Clerk to allow use of Assessor's Roll. **15.** The Clerk or other Officer of the Municipality within which such Separate School is established, having possession of the Assessor's or Collector's Roll of the said Municipality, shall allow any one of the said Trustees, or their authorized Collector, to make a copy of such Roll as far as it relates to their School Section. 16 V. c. 184, s. 4. 15

Certain Act to apply. **16.** The provisions of the 140th section of the Act respecting Common Schools shall apply to the Trustees and Teachers of such Separate Schools. 16 V. c. 184, s. 4. 20

Separate school trustees to have same power as common school trustees. **17.** The Trustees of each such Separate School shall be a corporation, and shall have the same power to impose, levy and collect school-rates or subscriptions, upon and from persons sending children, to, or subscribing towards the support of such Separate School, as the Trustees of a Common School Section have to impose, levy and collect school-rates or subscriptions from persons having property in such section, or sending children to or subscribing towards the support of the Common School of such section. 16 V. c. 184, s. 4. 25 30

2.—ROMAN CATHOLIC SEPARATE SCHOOLS.

Conditions: Five heads of families to call meeting. **18.** Any number of persons, not less than five, being heads of families and freeholders or householders, resident within any School Section of any Township or within any Ward of any City or Town, and being Roman Catholics, may convene a public meeting of persons desiring to establish a Separate School for Roman Catholics in such School Section or Ward for the election of Trustees for the management of the same. 18 V. c. 181, s. 2. 35

Meeting of ten persons may elect three trustees. **19.** A majority of the persons present, not less than ten in number, being freeholders or householders, and being Roman Catholics, at any such meeting may elect three persons resident within such Section to act as Trustees for the management of such Separate School, and any person, being a British subject, 40

subject, may be elected as such Trustee whether he be a freeholder or householder, or not. 18 V. c. 131, s. 3. British subject.

20. A notice in writing addressed to the Reeve, or to the Chairman of the Board of Common School Trustees, in the Township, City or Town in which such section is situate, may be given by all persons whether they were present at such meeting or not, who are freeholders or householders, residents within such sections, and Roman Catholics and favorable to the establishment of such separate school, declaring that they desire to establish a Separate School, in such School Section, and designating by their names, professions and places of abode the persons elected in the manner aforesaid as Trustees for the management thereof. 18 V. c. 131, s. 4. Written notice to certain officers.
Contents of notice.

21. Every such notice shall be delivered to the proper officer by one of the Trustees so elected, and it shall be the duty of the officer receiving the same to endorse thereon the date of the receipt thereof, and to deliver a copy of the same, so endorsed and duly certified by him, to such Trustee. 18 V. c. 131, s. 5. Endorsement to be made on such notice.

22. From the day of the delivery and receipt of every such notice, the Trustees therein named shall be a body Corporate under the name of "The Trustees of the Roman Catholic Separate School for the Section Number _____, in the Township (City or Town, as the case may be,) in the County of _____." (18 V. c. 131, s. 6.) Thereafter trustees to be a Corporation.

23. When such Separate Schools are established in more than one Ward of any City or Town, the Trustees of such Separate Schools may, if they think fit, form a union of such Separate Schools, and, from the day of the notice in any public newspaper published in such City or Town announcing such union, the Trustees of the several Wards shall together form a body Corporate under the title of "The Board of Trustees of the Roman Catholic United Separate Schools for the City (or Town) of _____, in the County of _____." (18 V. c. 131, s. 7.) Union of Wards in cities and towns.
Notice in a newspaper.
Effect thereof.

24. The Trustees of such Separate Schools forming a body Corporate under this Act, shall have the same power to impose, levy and collect School rates or subscriptions, upon and from persons sending children to, or subscribing towards the support of such Schools, and all other powers in respect of Separate Schools, as the Trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools. (18 V. c. 131, s. 8.) Separate school trustees to have same power as common school trustees.

25. The Trustees of such separate School shall perform the same duties and shall be subject to the same penalties as Trustees of Common Schools; and Teachers of Separate Schools And be subject to same penalties

Also teachers. Schools shall be liable to the same penalties as Teachers of Common Schools. (18 V. c. 131, s. 8.)

All trustees to be elected annually. **26.** The Trustees of such separate School shall remain in office until the second Wednesday of the month of January next following their election, on which day in each year an Annual Meeting shall be held in each such section or ward, commencing at the hour of ten of the clock in the forenoon, for the election of three Trustees for Separate Schools theretofore established; but no Trustee shall be re-elected at any such meeting without his consent, unless after the expiration of four years from the time when he went out of office. (18 V. c. 131, s. 9.)

Children from other sections. **27.** The Trustees of such Separate Schools shall allow children from other School Sections, whose parents or lawful guardians are Roman Catholics, to be received into any Separate School under their management, at the request of such parents or guardians; and no children attending such School shall be included in the return, hereafter required to be made to the Chief Superintendent of Education, unless they are Roman Catholics. (18 V. c. 131, s. 10.)

Certificates of teachers. **28.** A majority of the Trustees of such Separate Schools in any Township or Village or of the Board of Trustees in any Town or Village, shall have power to grant certificates of qualification to Teachers of Separate Schools under their management, and to dispose of all School Funds of every description coming into their hands for School purposes. (18 V. c. 131, s. 11.)

Exemption from common school rates. **29.** Every person liable to rates, whether as proprietor or tenant, who, on or before the first day of February of any year, gives to the Clerk of the Municipality in which any Separate School is situated, notice in writing, signed by him or by his agent duly authorized in writing under the hand of the principal, that he is a Roman Catholic and a supporter of such Separate School, shall be exempted from the payment of all rates imposed for the year then next following for the support of Common Schools and of Common School Libraries, within the Ward or School Section wherein such separate School is established. (18 V. c. 131, s. 12.)

Certificate of clerk. **30.** Every Clerk of a Municipality, upon receiving any such notice, and when signed by an agent, the authority of the agent to sign the same, shall deliver a certificate to the person giving such notice to the effect that the same has been given, and shewing the date of such notice. (18 V. c. 131, s. 12.)

Fraudulent notice. **31.** Any person who fraudulently gives any such notice, or wilfully makes any false statement therein, shall not thereby secure any exemption from rates, but shall, on the contrary, be liable to a penalty of ten pounds currency recoverable, with

with costs, before any Justice of the Peace at the suit of the Municipality interested. (18 V. c. 131, s. 12.)

32. Nothing in the last three preceding sections contained shall exempt any person from paying any rate for the support of Common Schools or Common School Libraries, or for the erection of a School-house or School-houses, imposed before the establishment of such Separate School. (18 V. c. 131, s. 12.)

Exception as to present rates.

33. Every such Separate School shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of Common Schools, according to the average number of pupils attending such School during the twelve next preceding months or during the number of months which may have elapsed from the establishment of a new Separate School, as compared with the whole average number of pupils attending School in the same City, Town, Village or Township. (18 V. c. 131, s. 13.)

Share in legislative school grant.
Basis.

(1). But no such Separate School shall be entitled to a share in any such fund unless the average number of pupils attending the same be fifteen or more, (periods of epidemic or contagious diseases excepted);

Average must be 15.

(2). Nothing herein contained shall entitle any such Separate School within any City, Town, Village or Township to any part or portion of School moneys arising or accruing from local assessment for Common School purposes within any such City, Town, Village or Township, or the County within which such City Town, Village or Township is situate ;

Not to share in municipal assessment.

34. The Trustees of each such Separate School shall on or before the thirtieth day of June and the thirty-first day of December in each year, transmit to the Chief Superintendent of Education for Upper Canada a correct statement, verified by at least one of such Trustees under oath made before a Justice of the Peace for the County within which such Separate School is situate, of the names of the children attending such School, together with the average attendance during the six next preceding months, or during the number of months which have elapsed since the establishment thereof, and the number of months it has been so kept open, and the Chief Superintendent shall thereupon determine the proportion which the Trustees of such Separate School are entitled to receive out of such Legislative grant, and shall pay over the amount thereof to such Trustees. (18 V. c. 131, s. 14.)

Half yearly returns to the Chief Superintendent.
Amount of grant determined.
Oath of trustees.

35. The election of Trustees for any such Separate School, shall become void unless a Separate School be established under their management within two months from the election of such Trustees. (18 V. c. 131, s. 15.)

Special conditions.

36.

Separate to
not to vote at
common school
meetings.

36. No person subscribing towards the support of a Separate School established as herein provided either for Roman Catholics, Protestants, or colored people, or sending children thereto, shall be allowed to vote at the election of any Trustee for a Common School in the City, Town, Village or Township in which such Separate School is situate. (16 V. c. 185, s. 4.— 5 S V. c. 31, s. 16.)

C A P . L I V .

An Act respecting Grammar Schools.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. There shall be one or more Grammar Schools in Name of each Grammar School.
5 each County and Union of Counties in Upper Canada to be distinguished by prefixing to the term "County" the name of the City, Town or Village within the limits of which it may be situate. 47 G. 3, c. 6, s. 2,—16 V. c. 186, s. 12.
2. The Grammar School of the County or Union of Which shall be the Senior School.
10 Counties situate at the County Town of any County or Union of Counties in Upper Canada, shall be the Senior County Grammar School of such County or Union of Counties, and if the Assizes for any of such Counties or Union of Counties are usually held in a City, such City for the purposes of
15 this Act shall be considered a County Town. 16 V. c. 186, s. 13.
3. All other Grammar Schools established, on or before Where such Schools shall be situated.
20 the 1st January, 1854, shall be continued at the places where they are respectively held; but the Board of Trustees of each of the said Schools may change the place of holding such School by a resolution to be passed for that purpose and approved of by the Governor in Council: and the place of holding any Grammar School established since the 1st January, 1854, may be changed by the County Council of the County within
25 which it is established. 16 V. c. 186, s. 15.
4. All moneys arising from the sale of lands at any time Investment of Grammar School funds.
set apart for the encouragement of Grammar Schools in Upper Canada, and not specially granted to or vested in or for the benefit of any particular College, Grammar School, or other
30 Seminary or place of Education, or otherwise departed with by the Crown, and all annual grants which have been or may after this Act takes effect be made by Parliament, or which may be otherwise available from any other sources for that purpose, shall form a fund to be called *The Upper Canada Grammar*
35 *School Fund*, and shall be invested in Government or other securities by the direction of the Governor in Council. 16 V. c. 186, s. 15, No. 1.
5. Out of the annual income thereof the sum of one hundred pounds shall (unless the average number of scholars is Special grant to senior schools.
40 under ten) be appropriated for the teacher of the Senior Grammar School in each County, and if the average number of scholars is under ten, the sum of Fifty pounds shall be so appropriated. 59 G. 3, c. 14, s. 11.

- Annual income to be distributed.** **6.** After deducting such yearly sum of one hundred pounds or fifty pounds as the case may be, the residue of such annual income shall, with the said sum of one hundred pounds or fifty pounds for each Senior Grammar School as aforesaid, be by the Chief Superintendent of Education, annually apportioned to the several Counties and Unions of Counties in Upper Canada, according to the ratio of population in each County and Union of Counties as compared with the population of Upper Canada. 59 G. 3, c. 14, s. 11. 5
- Defective census provided against.** **7.** If the Superintendent thinks it expedient in case of a defective census, he may, with the approbation of the Governor in Council, apportion such residue according to the best evidence which he can obtain of the relative proportions of such population, having respect to an equitable apportionment thereof according to the said ratio of population. 59 G. 15 3, c. 14, s. 11.
- Money payable half yearly.** **8.** The sums of money annually apportioned to each County, as aforesaid, shall be payable to the Treasurer of each County entitled to receive it, one half on or before the first day of July, and the other half on or before the thirty-first day of December, in each year, in such manner as may be determined by the Governor: and such moneys shall be expended in the payment of the salaries of Teachers, and for no other purpose. 16 V. c. 186, s. 4. 20
- For Teachers' salaries.**
- Share of each Grammar School.** **9.** The sums of money apportioned out of the Grammar School Fund to each County, shall be distributed amongst the several Grammar Schools of such County within the restrictions imposed by this Act, and under such rules and regulations as may from time to time be made by the Council of Public Instruction for Upper Canada, and approved by the Governor in Council. 30
- Grant for superior Education.** **10.** The sum of five thousand pounds currency, shall be yearly appropriated out of the Consolidated Revenue Fund of this Province, for the encouragement of superior Education in Upper Canada, and be distributed among the several Collegiate Educational Institutions in Upper Canada, or such of them as may be designated by an annual vote of the Provincial Parliament. 19 V. c. 54, s. 18. 35
- Distributed by Parliament.**
- Distribution of other grants.** **11.** Out of the additional grants from time to time made by the Legislature for Grammar and Common School purposes in Upper Canada, there shall, exclusive of the above mentioned five thousand pounds, be annually expended as follows: 18 V. c. 132, s. 1. 40
- Model grammar school.** **1.** A sum not exceeding one thousand pounds per annum, may be expended under the direction of the Council of Public Instruction for the establishment and maintenance of a Model Grammar 45

Grammar School in connexion with the Normal and Model Schools for Upper Canada, including also any expenses which may be incurred in the examination of Candidates for Master-ships of Grammar Schools ;

- 5 2. A sum not exceeding two hundred and fifty pounds per annum, may be expended under the direction of the Council of Public Instruction in the payment of Inspectors of Grammar Schools and such Council shall appoint such Inspectors prescribe their duties and fix their remuneration ; Inspectors of grammar schools.
- 10 12. In each County Grammar School provision shall be made for giving, by a Teacher or Teachers of competent ability and good morals, instruction in all the higher branches of a practical English and Commercial Education including the Elements of Natural Philosophy and Mechanics, and also Grammar schools to prepare pupils for university of Toronto and certain colleges.
- 15 in the Latin and Greek Languages and Mathematics so far as to prepare students for University College or any College affiliated to the University of Toronto, according to a programme of studies and general rules and regulations to be prescribed by the Council of Public Instruction for Upper Canada, and Programme of studies.
- 20 approved by the Governor in Council : And no Grammar School shall be entitled to receive any part of the Grammar School Fund, which is not conducted according to such programme, rules and regulations. 16 V. c. 186, s. 5. Special conditions.
- 25 13. No person (except a Graduate of some University or of University College,) shall be appointed Master of a Grammar School unless he has previously obtained a Certificate of qualification from a Committee of Examiners (one of whom shall be the Head Master of the Normal School,) appointed by the Council of Public Instruction. 16 V. c. 186, s. 11, No. 2. Qualification of grammar school masters.
- 30 14. The President of University College and the President or other Head of each of the Colleges in Upper Canada affiliated to the University of Toronto, shall for the purposes of this Act, be Members of the Council of Public Instruction. Heads of colleges to be members of C. P. I.
- 35 15. Such Council shall prepare and prescribe a list of text-books, programme of studies, and general rules and regulations for the organization and government of the County Grammar Schools, to be approved by the Governor in Council, and shall also appoint Inspectors of Grammar Schools, prescribe their duties and fix their remuneration. 16 V. c. 186, s. 6. Council to prescribe rules.

DUTIES OF MUNICIPAL COUNCILS.

- 40 16. The Municipal Council of each County, Township, City, Town and incorporated Village, may from time to time, levy and collect by assessment such sums as it may judge expedient, to purchase the sites of, to rent, build, repair, furnish, warm and keep in order, Grammar School Houses and their Municipal Councils to raise moneys.
- 33 appendages,

appendages, grounds and enclosures, and for procuring apparatus and text-books, and for providing the salary of the Teachers, and for all other necessary expenses of such County Grammar Schools; and all sums so collected shall be paid over to the Treasurer of the County Grammar School for which the assessment is made. And the sums raised by local assessment or subscriptions for the support of Grammar Schools shall be payable each year on or before the fourteenth day of December. 16 V. c. 186, s. 2.

To whom payable.

When.

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Additional grammar schools established.

Condition.

17. The several County Councils may establish additional Grammar Schools within the limits of their Municipality, and appoint Trustees therefor according to the twentieth Section of this Act, but no new Grammar School shall be established until the state of the Grammar School Fund permits the application of a sum equal at the least to Fifty Pounds annually to such new School, after deducting for each Senior County Grammar School the sum of One Hundred Pounds, and for each of the other Grammar Schools within such County, the sum of Fifty Pounds annually. 16 V. c. 186, s. 16.

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CHIEF SUPERINTENDENT.

Apportionment to be notified.

Chief Superintendent to report annually on grammar schools.

Administer law.

Furnish Act.

18. The Chief Superintendent of Education for Upper Canada shall, on or before the first day of May in each year, notify each County Council, through the Clerk of the Council, of the annual apportionment of Grammar School moneys to such County, and shall give notice of the same to the Inspector General. 16 V. c. 186, s. 3.

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19. The Chief Superintendent of Education shall make annually to the Governor on or before the first day of July, a report of the actual state of the Grammar Schools throughout Upper Canada, showing the amount of moneys expended in connection with each and from what sources derived, with such suggestions for their improvement as he deems useful and expedient,—he shall see that the County Grammar School Fund apportioned by him, is, in all cases, applied to the purposes hereinbefore prescribed, and that each County Grammar School is conducted according to the rules and regulations legally established, and shall prepare suitable forms, and give such instructions as he judges necessary and proper for making all reports and conducting all proceedings under this Act, and shall cause the same, with a sufficient number of copies of this Act and, so far as the same relate to Grammar Schools, copies of the general rules and regulations established and approved of as aforesaid to be printed in a convenient form and transmitted to the parties required to execute the provisions of this Act. 16 V. c. 186, s. 4.

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TRUSTEES.

TRUSTEES.

20. In each County in which one or more Grammar Schools are established, there shall be a Board of Trustees, consisting of not less than six nor more than eight fit and proper persons, appointed by the County Council in the manner hereinafter provided ; of which Board three shall be a *quorum* for the transaction of business. 16 V. c. 16, ss. 9 & 10.

Trustees of Grammar schools.

Quorum.

21. The Members of each Board of Trustees for each Grammar School in each County in office at the time this Act comes into force, shall continue in office as such Trustees until the thirty-first day of January then next, unless a vacancy occurs for which provision is hereinafter made, and on the said thirty-first of January, and annually on the thirty-first of January in each year, two of the Members of each Board of Trustees for the time being shall retire from the said board in rotation according to seniority in office. 16 V. c. 186, s. 9.

Retirement of trustees.

22. The County Council shall fill up any occasional vacancy in the said Board, and the person appointed to fill such vacancy shall hold office for the unexpired part of the term for which the person causing such vacancy had been appointed to serve. 16 V. c. 186, s. 9.

Occasional vacancies supplied.

23. The County Council shall at its first meeting to be held after the first day of January in each year, appoint two Trustees to fill the vacancies caused by the annual retirement of two Trustees as aforesaid ; But any retiring Trustee may (with his own consent) be reappointed, and all Trustees for the time being shall hold office until their successors are appointed as herein provided. 16 V. c. 186, s. 9.

Annual appointments of trustees.

24. The Board of Trustees of each County Grammar School shall be a Corporation by the name of "The Trustees of the County Grammar School," prefixing to the term "County" the name of the City, Town or Village within which such Grammar School is situated ; and shall have and possess all the powers usually enjoyed by Corporations so far as the same are necessary for carrying out the purposes of this Act ; and they shall meet at or near the place where each such School is held, on the first Wednesday in February in each year. 16 V. c. 186, s. 9.

Trustees to be a Corporation.

Powers as such.

25. It shall be the duty of such Trustees ;

Duties of trustees.

1. To appoint annually, or oftener, from amongst themselves, a Chairman, Secretary and Treasurer, and subject to the provisions hereinbefore contained, to fix the times and places of the Board meetings, the mode of calling and conducting such meetings, and of keeping a full and correct account of the proceedings of such meetings. 16 V. c. 186, s. 14.

Appointing officers, &c.

- Charge of school.** 2. To take charge of the County Grammar School for which they are appointed Trustees, and the buildings and lands appertaining to it ;
- Master and teachers.** 3. To remove if they see fit, and in case of vacancies, appoint the Master and other Teachers in such School, and to fix their salaries and prescribe their duties ; 5
- Officers, &c.** 4. To appoint such other officers and servants in such School as they may judge expedient, and fix their remuneration ;
- Care of school.** 5. To do whatever they deem expedient with regard to erecting, repairing, warming, furnishing or keeping in order, the buildings of such School and its appendages, lands and enclosures, and to apply (if necessary) for the requisite sums to be raised by Municipal authority for any such purposes. 16 V. c. 186, s. 18.
- Rate bill on parents.** 6. To settle the amount to be paid by parents and guardians for each pupil attending such School, and to fix the times of payment, and apply the moneys received therefor as they may judge expedient towards making up the salaries of Teachers, providing the proper apparatus, maps, text-books and registers, and defraying any other necessary expenses of such School ; 20
- May sue for same.** and they may sue for and recover such amounts, and when collected the same shall be paid over to the Treasurer of the said Board of Trustees. 16 V. c. 186, s. 18.
- Union with common schools.** 7. To employ in concurrence with the Trustees of the School Section, or the Board of Common School Trustees in the Township, Village, Town or City in which such Grammar School may be situate, such means as they may judge expedient, for uniting one or more of the Common Schools of such Township, Village, Town or City, or departments of them, with such Grammar School ; but no such union shall take place without ample provision being made for giving instruction to the pupils in the elementary English branches, by duly qualified English Teachers ; And the Schools thus united shall be under the management of a Joint Board of Grammar and Common School Trustees, who shall consist of and have the powers of the Trustees of both the Common and Grammar Schools, but when the Trustees of the Common School exceed six in number, six only of their number to be by them selected shall be the Common School portion of such Joint Board. 16 V. c. 186, s. 18. 40
- Conditions.**
- Powers of Joint Board.**
- Trustees limited.**
- Books and examinations.** 8. To see that the pupils of such Grammar School are supplied with proper text-books ; that public half-yearly examinations of the pupils are held, and due notice given of them ; and that such School is conducted in accordance with the legally established regulations. 16 V. c. 186, s. 18. 45

9. To give the necessary orders upon the County Treasurer Orders on for the amount of public money to which such School is treasurers. entitled, and upon their own Treasurer for any moneys in his hands, for the payment of the salaries of the officers of such School and of any necessary expenses. 16 V. c. 186, s. 14.

10. To prepare and transmit, before the fifteenth day of Annual report January, to the Chief Superintendent of Education, an an- to Chief Su- nual report, in accordance with a form of report which shall perintendent. be provided by him for that purpose, and which Report shall contain a full and accurate account of all matters appertain-
10 ing to such School.

26. The Master of every Senior County Grammar School, Meteorological shall make the requisite observations for keeping and shall observations keep a Meteorological Journal, embracing such observations in senior and kept according to such form as may from time to time schools. be directed by the Council of Public Instruction; and all such Journals or Abstracts of them shall be presented annually by the Chief Superintendent of Education to the Governor
20 with his Annual Report; and if not already done every Senior Instruments County Grammar School shall be provided, at the expense of therefor. the County, with the following Instruments:

One Barometer:

One Thermometer for the temperature of the air:

25 One Daniel's Hygrometer, or other Instrument for showing the Dew-Point:

One rain-guage and measure:

One wind-vane:

And the Chief Superintendent of Education shall procure these Duty of Mas-
30 Instruments at the request and expense of the Municipal Coun- ter. cil of any County, and furnish the Master of the Senior County Grammar School with a Book for registering observations, and with forms for abstracts thereof, and such Master shall transmit the same to the Chief Superintendent and shall certify that the
35 observations required have been made with due care and regularity.

27. All existing appointments of Masters or Teachers of Existing ap- Grammar Schools, shall continue in force as if made under this pointments Act until revoked or changed according to the provisions he- confirmed.
40 reof. 16 V. c. 186, s. 9.

SPECIAL

SPECIAL GRANTS OF SCHOOL SITES.

- Conveyance of property for school sites. **28.** In case any persons residing in Upper Canada, interested in any School established in any City, Town, Village or Township therein, whether as Parents of Children frequenting such Schools, or as contributors to the same, or both, have occasion or are desirous to take a conveyance of real property for the use of such Schools, such persons may elect from among themselves, and appoint any number of Trustees, not exceeding seven nor less than five, to whom and to whose successors, to be appointed in the manner specified in the Deed of Conveyance, the real property requisite for such School may be conveyed; and such Trustees, and their successors in perpetual succession, by the name expressed in such Deed, may take, hold and possess such real property, and commence and maintain any action at law or in equity for the protection thereof, and of their right thereto: But there shall not be held in trust as aforesaid more than ten acres of land at any one time for any one School: and this Section shall not extend to Common Schools. (9 V. c. 17, s. 1.)
- Trustees. 5
- To have succession. 10
- Not to apply to common schools. 15
- Deed to be registered. **29.** The Trustees shall, within twelve months after the execution of any such Deed, cause the same to be registered in the Office of the Registrar of the County in which the land lies. (9 V. c. 17, s. 2.) 20
- Certain cases provided for. **30.** In case any lands in Upper Canada have been or after the passing of this Act are surrendered, granted, devised or otherwise conveyed to the Crown, or to the Trustees of any County Grammar School, or to any other Trustees, in trust for the purposes of or as a site for any such Grammar School, or for any other Educational Institution established in any County or place therein for the benefit of the inhabitants thereof generally, and in case such lands are found not to afford the most advantageous site for such School or Institution, or there is no School or Institution bearing the precise designation mentioned in the deed of surrender, grant, devise or other conveyance, or in case it may be for the benefit of such School or Institution that such lands should be disposed of, and others acquired in their stead for the same purpose, or the proceeds of the sale applied thereto,—the Trustees in whom any such lands are vested in trust as aforesaid, may, (with the consent of the Municipal Council expressed at a legal meeting and certified under the hand of the head and the corporate seal of the Municipality in which such School or Institution has been or is to be established,) surrender and convey such lands to the Crown unconditionally, and such conveyance shall vest the lands absolutely in the Crown, without formal acceptance, by the Crown, Governor or other Officer or person for the Crown. (18 V. c. 121, s. 1 & 2.) 25 30 35 40 45
- If site be not suitable. 30
- Such lands may be surrendered to the crown. 40
- Such lands to be sold for be **31.** Any lands surrendered, granted, devised or otherwise conveyed to the Crown for any such purpose as aforesaid, may 45

may be sold by order of the Governor in Council, and the proceeds applied to the purchase of other lands to be vested in the Crown for the purposes of the same School or Institution, or in the case of there being no School bearing the precise designation intended as aforesaid by the person who granted or devised the lands to the Trustees from or through whom the lands so sold came to the Crown, then for the purposes of the Grammar School or other Public Educational Institution established for the benefit of the Inhabitants of the Municipality generally, which, in the opinion of the Governor in Council, comes nearest in its purposes and designs to that intended by such person as aforesaid. (18 V. c. 121, s. 1.)

32. If such proceeds are applied to the purchase of lands for Grammar school purposes, the title to such Lands may be vested in the Board of Trustees for any Grammar School, by their Corporate name: and if there be any surplus of such proceeds after such purchase, or if it be found that no lands are required as a site for, or for other purposes of such School or Institution, then such surplus or proceeds (as the case may be) may be invested or applied for the purposes of such School or Institution in such manner as the Governor in Council deems most for the advantage thereof.

33. No purchaser of land from the Crown under this Act shall be in any way bound to see to the application of the purchase money. (18 V. c. 121, s. 3.)

34. Nothing in this Act shall impair the rights of any private party in or upon any lands, in so far as such rights would have existed and could be exercised without this Act. (18 V. 121, s. 4.)

35. The Crown may grant to the Trustees of any Grammar School, or of any other Public Educational Institution established for the benefit of the Inhabitants of the Municipality generally, any lands which have been or may after the passing of this Act be surrendered, granted, devised or otherwise conveyed to the Crown as aforesaid. (18 V. c. 121, s. 5.)

C A P . L V .

An Act respecting the University of Toronto, University College, and Upper Canada College and Royal Grammar School.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Royal charter.

1. So much of the Charter granted by His late Majesty King George the Fourth, dated at Westminster, the fifteenth day of March, in the eighth year of His Reign, for the establishment of a College in Upper Canada, called "King's College," and incorporated by the name of "The Chancellor, President and Scholars of King's College at York, in the Province of Upper Canada," as is not inconsistent with this Act, shall remain in force. 16 V. c. 89, s. 1,—7 W. 4, c. 16. 5 10

UNIVERSITY OF TORONTO.

Corporate name of University.

General powers.

2. The name of the said College having been, by Act of the Provincial Legislature, changed to the name of "The University of Toronto," the University established by the Charter aforesaid shall continue and be called "The University of Toronto," and shall continue to be a Body Corporate, with the powers vested in Corporate bodies by the Interpretation Act, with power to hold such real property assigned to it under the provisions of any former Act or of this Act, and such other powers and privileges as are conferred upon it by those portions of the said Charter remaining in force, or by any such Act, but such powers shall be exercised in accordance with the provisions of this Act; and the Chancellor, and Vice-Chancellor, and the Senate and all other Officers and Servants, and all existing Appointments, By-laws, Rules and Regulations affecting such University, shall continue subject to the provisions of this Act. 16 V. c. 89, s. 2. 15 20 25

Functions of University defined.

3. There shall be no Professorship or other Teachership in the said University of Toronto, but its functions shall be limited to the examining of Candidates for Degrees in the several Faculties, or for Scholarships, Prizes, or Certificates of Honor in different branches of knowledge, and to the granting of such Degrees, Scholarships, Prizes and Certificates, after examination, in the manner hereinafter mentioned. 16 V. c. 89, s. 3. 30

Corporation how composed.

4. The said Corporation of The University of Toronto shall consist of one Chancellor, one Vice-Chancellor, and such number of other Members of the Senate not less than ten as the Governor may from time to time appoint under His Hand and Seal at Arms, and as may be appointed by the Senate under the power hereinafter given. 16 V. c. 89, s. 4. 35 40

5. The Chancellor, Vice-Chancellor and other Members of the Senate for the time being, shall constitute the Senate of the said University. 16 V. c. 89, s. 5.

Senate Chancellor and Vice-Chancellor.

6. The Governor shall continue to be the Visitor of the said University on behalf of Her Majesty, and His visitatorial powers may be exercised by commission under the Great Seal and the proceedings of such commission having been first confirmed by the Governor, shall be binding on the said University and its Members and on all others whomsoever. 16 V. c. 89, s. 9.

Governor to be visitor.

7. Whenever a vacancy occurs in the office of Chancellor of the said University, either by death, resignation or otherwise, the Governor may, in the manner aforesaid, nominate a fit and proper person to be the Chancellor. 16 V. c. 89, s. 6.

Vacancies in Chancellorship.

8. The office of Vice-Chancellor of the said University shall be biennial, that is to say, the term of office of each Vice-Chancellor shall expire on some day, in the calendar year next but one after that in which he has been appointed or elected, and the day on which the term of office is to expire shall be appointed by Statute of the University; and at a meeting of the Senate to be holden on some day within the month next before the expiration of the said term of office, of which meeting notice shall be given in the manner directed by Statute, of the University, the Members of the Senate shall elect some one of such Members to be Vice-Chancellor when the term of office of the then Vice-Chancellor expires, and so from time to time biennially. 16 V. c. 89, s. 7.

Office of Vice-Chancellor after the first to be elective one.

9. In case of the death, resignation, or other vacancy in the office of any such Vice-Chancellor before the expiration of his term of office, the Members of the Senate shall, at a meeting to be holden by them for that purpose as soon as conveniently may be, of which notice shall be given in manner aforesaid, elect one other of the said Members of the Senate to be Vice-Chancellor for the remainder of such term. 16 V. c. 89, s. 7.

Election to be biennial.

10. In case, by death or otherwise, the Members of the Senate are reduced below the number of ten, exclusive of the Chancellor and Vice-Chancellor for the time being, then if the Governor does not think proper to complete the said number by appointment, the Members of the Senate as soon as conveniently may be, at a meeting to be holden for that purpose, of which notice is to be given in the manner provided by Statute of the University, shall elect one or more fit and proper persons to be additional Members of the Senate, to the end that the number of ten Members of the Senate may be thereby completed, exclusive of the Chancellor and Vice-Chancellor but no person shall be appointed or elected a Member of the Senate who is not a subject of Her Majesty. 16 V. c. 89, s. 8.

Election of members of Senate by the remaining members in certain cases.

Senate to manage the business of the University.

11. The Chancellor, Vice-Chancellor and Members of the Senate for the time being, shall subject to the provisions of this Act relative to the income and property of the said University, have the management of and superintendence over the affairs and business of the University. 16 V. c. 89, s. 10. 5

Power to make statutes.

12. The said Chancellor, Vice-Chancellor and Members of the Senate may from time to time make and alter any Statutes not being repugnant to the laws of Upper Canada, or to the general objects and provisions of this Act :

1. Touching the examination for Degrees, or for Scholarships, Prizes or Certificates of Honor, and ; 10

2. The granting of such Degrees, Scholarships or Certificates, and ;

3 The fees to be paid by Candidates for examination or upon taking any Degree, and ; 15

4. The application of such fees, and ;

5. Touching the periods of the regular meetings of the Senate and the mode of convening special meetings thereof, and ;

6. In general for promoting the purposes and touching all other matters whatsoever regarding the said University or the business thereof, or for any purpose for which provision may be required for carrying out this Act according to its intent and spirit in any case not herein provided for. 16 V. c. 89, s. 10. 20

All statutes to be in writing and sealed and approved of by the visitor.

13. All such Statutes shall be reduced into writing, and the Common Seal of the said University shall be affixed thereto, and when they have been approved of by the Visitor, they shall be binding upon all persons being Members or Officers of the University and upon all Candidates for degrees, Scholarships, Prizes or Certificates of Honor to be conferred by the said University, and all others whom it may concern. 16 V. c. 89, s. 10. 25 30

Copies to be deposited with Provincial Secretary.

14. A certified copy of such Statutes shall be deposited with the Provincial Secretary within ten days after the passing thereof, to be laid before the Visitor of the University, for his approval ; and no such Statute shall have force or effect until it has been approved by the Visitor, and such approval has been signified through the said Secretary. 16 V. c. 89, s. 10. 35

Certain powers may be delegated by Statute.

15. By any such Statute approved as aforesaid power may be given to any Committee, Officers or persons to make Regulations for better carrying out the provisions or object of any Statute of the University, in the manner and to the extent therein prescribed. 16 V. c. 89, s. 10. 40

16. In addition to the power of conferring Degrees in Arts and Faculties vested in the said University, the Chancellor, Vice-Chancellor and Members of the Senate may, after examination, grant Certificates of Honor in such branches of knowledge as they, from time to time, by Statutes to be made in that behalf, determine. 16 V. c. 89, s. 11.

Power to grant certificates of honor.

17. All questions which come before the Chancellor, Vice-Chancellor and Members of the Senate, shall be decided by the majority of the Members present; but in case of equality of votes, the maxim *præsumitur pro negante* shall prevail. 16 V. c. 89, s. 12.

Majority to decide, &c.

18. No question shall be decided at any meeting unless the Chancellor or Vice-Chancellor, and four other Members of the Senate, or in the absence of the Chancellor and Vice-Chancellor, unless five other members of the Senate at the least, are present at the time of such decision, nor shall any Meeting be legal unless held at the times or convened in the manner provided for by Statute to be passed as aforesaid. 16 V. c. 89, s. 13.

Quorum. Legal meetings of the Senate.

19. At every Meeting of the Chancellor, Vice-Chancellor and Members of the Senate, the Chancellor, or in his absence the Vice-Chancellor, shall preside as Chairman, or in the absence of both, a Chairman shall be chosen by the Members present or a majority of them. 16 V. c. 89, s. 14.

Chairman.

20. The said Chancellor, Vice-Chancellor and Members of the Senate for the time being, may from time to time, by Statute of the University, appoint all Examiners, Officers and Servants of the said University, except the Bursar, and may in like manner remove them or any of them. 16 V. c. 89, s. 15.

Officers.

21. The said Chancellor, Vice-Chancellor and Members of the Senate, once at least in every year, at a time or times to be fixed by Statute of the University, shall cause to be held an Examination of the Candidates for Degrees, Scholarships, Prizes or Certificates of Honor as aforesaid; and at every such Examination the Candidates shall be examined by Examiners appointed for the purpose by the said Chancellor, Vice-Chancellor and Members of the Senate; and at every such Examination the Candidates shall be examined orally or in writing or otherwise, in as many branches of general knowledge as the Chancellor, Vice-Chancellor and Members of the Senate consider the most fitting subjects for such examination; and special Examinations may be held for Honors; and all such Examinations shall be open and public. 16 V. c. 89, s. 16.

Examination for degrees, &c.

For honors.

22. And in order to extend the benefits of Colleges and Establishments already instituted in this Province for the promotion of Literature, Science and Art, whether incorporated

From what college, &c., students may or

examined for
degrees in
arts.

or not incorporated, by connecting them with the said University, all persons shall be admitted as Candidates for the respective Degrees of Bachelor of Arts and Master of Arts, in the said University on satisfying the Chancellor, Vice-Chancellor and Members of the Senate, by proper Certificates, that such persons have in any of the Institutions hereinafter mentioned, gone through and completed such course of instruction as the said Chancellor, Vice-Chancellor and Members of the Senate by Statutes to be made as aforesaid from time to time, determine. 16 V. c. 89, s. 17. 5 10

Governor may
nominate
others.

23. The Institutions in which such course of instruction may be completed shall be all Colleges in Upper or Lower Canada incorporated by Royal Charter or by Act of the Parliament of this Province, or of either of the late Provinces of Upper or Lower Canada, and also such other Institutions, incorporated or unincorporated, now or at any time after this Act takes effect, established for the purposes of education within this Province, as the Governor from time to time prescribes to the said Chancellor, Vice-Chancellor and Members of the Senate, under His Hand and Seal at Arms. 16 V. c. 89, s. 17. 15 20

From what
institutions
students may
be examined
for degrees in
law or medi-
cine.

24. And for the purpose of granting the Degrees of Bachelor of Medicine and Doctor of Medicine, and the improvement of Medical Education in all its branches, as well in Medicine as in Surgery, Midwifery and Pharmacy, and for the purpose of granting the Degrees of Bachelor of Laws and Doctor of Laws, respectively, the said Chancellor, Vice-Chancellor and Members of the Senate shall, from time to time, report to the Governor, through the Provincial Secretary, which appear to them to be the Medical Schools and Institutions, or the Law Schools and Institutions, whether incorporated or unincorporated, in this Province, from which, either singly or jointly with other Medical or Law Schools or Institutions in this Province, or in other parts of Her Majesty's Dominions, or in Foreign parts, it may be fit and expedient, to admit Candidates for Degrees in Medicine or in Law, and on approval of such report by the Governor, the Senate shall admit any person to examination as a Candidate for the respective Degrees of Bachelor of Medicine or Doctor of Medicine, Bachelor of Laws or Doctor of Laws, of the said University, on his satisfying the said Chancellor, Vice-Chancellor and Members of the Senate, that he has in one or more of such Schools or Institutions gone through and completed the course of instruction and during such period as the regulations of the Senate in that behalf, determine. 16 V. c. 89, s. 18. 25 30 35 40 45

Affiliated ins-
titutions—
what.

25. The said Chancellor, Vice-Chancellor and Members of the Senate, may from time to time, with the approval of the Governor, vary, alter and amend any such reports, by striking out any of the Institutions or Schools included therein, or by adding

adding others thereto: and all Institutions from which, under this or the three last preceding section Students may be examined for Degrees, shall be said to be affiliated for that purpose to the said University. 16 V. c. 89, s. 18.

- 5 **26.** The said Chancellor, Vice-Chancellor and Members of the Senate may after examination, confer the several Degrees of Bachelor of Arts, Master of Arts, Bachelor of Laws, Doctor of Laws, Bachelor of Medicine and Doctor of Medicine, and examine for Medical Degrees in the four branches of
10 Medicine, Surgery, Midwifery and Pharmacy; and such reasonable fees shall be charged to the Candidates for Examination, for Degrees or for Certificates of Honor as aforesaid, as the Chancellor, Vice-Chancellor and Members of the Senate, by Statute in that behalf, from time to time determine, and
15 such fees shall be paid and applied as is determined by Statute of the University. 16 V. c. 89, s. 19.
- Power to confer degrees in arts and faculties.
Fees.

- 27.** The regulations which are made with respect to the literary and scientific attainments of persons obtaining Degrees or Certificates of Honor, and their Examination, shall, in so
20 far as circumstances will, in the opinion of the Chancellor, Vice-Chancellor and Members of the Senate, permit, be similar to those in force for like purposes in the University of London, to the end that the standard of qualification in the *University of Toronto* may not be inferior to that adopted for a like
25 Degree, Certificate or Honor in the University of London. 16 V. c. 89, s. 20.
- Standard of qualification for degrees, &c.

28. The Examiners may be required to make the following declaration before the Chancellor or Vice-Chancellor:

Examiners to make a declaration of impartiality.

- 30 “ I solemnly declare that I will perform my duty of Examiner without fear, favor, affection or partiality towards any Candidate, and I that will not knowingly allow to any Candidate any advantage which is not equally allowed to all.”
16 V. c. 89, s. 21.

- 29.** The said Chancellor, Vice-Chancellor and Members of the Senate, may make such special Regulations as to them
35 may seem just, with regard to the examination of Students who had matriculated in the said University before the 22nd day of April, 1853, and with regard to the completion by them of the prescribed course of instruction, but in so far only as
40 relates to the first Degree to be taken by any such Student after that day, after which they shall be subject to the same regulations as other Candidates. 16 V. c. 89, s. 22.
- As to Students in the university before the passing of this act.

- 30.** The said Chancellor, Vice-Chancellor and Members of the Senate, may grant Scholarships, Prizes and Rewards to
45 persons who distinguish themselves at their examination, but the sum to be expended for such purposes in any one year shall
- Scholarships prizes and rewards to be granted.

shall not exceed the sum appropriated for that purpose under the provisions hereinafter made, and such Scholarships shall be of the nature and extent of those next mentioned; and all such Scholarships, Prizes and Rewards shall be granted according to Regulations previously made and published. 16 V. c. 89, s. 23. 5

Nature of such scholarships.

31. To each of such Scholarships an annual stipend shall be attached payable out of the University Income Fund, for such periods and on such conditions as are fixed by the regulations to be made by Statute of the University in that behalf. 16 V. c. 89, s. 24. 10

Title.

32. The holder of any Scholarship granted under this and the two next preceding sections shall have the title of "University Scholar." But every Scholarship in the University of Toronto granted before the 22nd of April, 1853, and between that day 15 and the day on which this Act comes into force, shall be a University Scholarship in University College hereinafter mentioned, and the holder thereof shall have the said title of "University Scholar." 16 V. c. 89, s. 24.

Said scholarship to be university scholarships.

33. The said Scholarships shall be held to be University 20 Scholarships in any of the affiliated Institutions in Upper Canada, and for the purpose of being awarded according to the proficiency manifested on examination in prescribed subjects, shall be so held by the Chancellor, Vice-Chancellor and Members of the Senate. 16 V. c. 89, s. 24. 25

What acts to remain in force.

34. All Statutes of the University heretofore made under any Act of Parliament relating to the said University and which are in force on the day on which this Act takes effect, shall remain in force, in so far as they may not be inconsistent with this Act, unless and until repealed or altered by the Chan- 30 cellor, Vice-Chancellor and Members of the Senate of the said University. 16 V. c. 89, s. 25.

Senate to make certain reports to the Governor.

34. The Senate of the said University, shall annually report to the Governor, at such time as he may appoint, on the general state, progress and prospect of the University, and upon all 35 matters touching the same, with such suggestions as they think proper to make; and the said Senate shall also at all times when thereunto required by the Governor, inquire into, examine and report upon any subject or matter connected with the University; and copies of such annual or other reports 40 shall be laid before both Houses of the Provincial Parliament at the then next Session thereof. (16 V. c. 89, s. 26.)

Copies to be laid before Parliament.

UNIVERSITY COLLEGE.

College, President, &c., to

35. The Collegiate Institution heretofore constituted at the City of Toronto, by the name of *University College*, and the President, 30

President, Professors and all other Officers and Servants, the Council and all existing appointments, statutes, by-laws, rules and regulations thereof are hereby continued; subject to the provisions of this Act, and the said College shall be under the direction, management and administration of a Body Corporate to be called *The Council of University College*, which shall have perpetual succession and a Common Seal, with power to hold real and personal property, subject to the provisions hereinafter made, and shall be capable of suing and being sued, pleading and being impleaded by the name aforesaid, and shall have other the usual powers of Corporate Bodies, according to the Interpretation Act, subject to the said provisions. (16 V. c. 89, s. 26.)

36. The said Corporation shall consist of a President, Vice-President, and such Professors as may from time to time be appointed to Chairs in the said University College. (16 V. c. 89, s. 28.)

37. The Governor shall be the Visitor of the said College on behalf of the Crown, and his visitatorial powers may be exercised by Commission under the Great Seal, and the proceedings of any Commission so appointed being confirmed by the Governor, shall be binding on the said College and the Council thereof, and on all persons whomsoever. (16 V. c. 89, s. 36.)

38. The President, or in his absence the Vice-President, or if both be absent, then the Senior Member of the Council present, shall preside at all Meetings of the said Corporation, and in case of an equal division of votes among the Members present, the rule *præsumitur pro negante* shall prevail; and among Members appointed on the same day, the order of time in which their appointments were made shall be the order of Seniority; and all such Meetings shall be held at the times to be prescribed by the Statutes of the said College. (16 V. c. 89, s. 29.)

39. Any five Members of the said Council shall be a quorum for transacting any business of the Council and doing all things which the said Council may lawfully do; and all things done at any Meeting of the Council shall be ordered by the majority of the votes of the Members present thereat, subject to the provision hereinbefore made for the case of an equal division of votes. (16 V. c. 89, s. 30.)

40. The said Council may make Statutes for the good government, discipline, conduct and regulation of the said College, and of the Professors, Teachers, Students, Officers and Servants thereof, for regulating the Fees to be paid by Students or persons attending lectures or receiving instruction in the said College, and the times of regular Meetings of the Council, and generally

generally for the management of the property and business thereof, and for any purpose necessary for carrying this Act into effect according to its intent and spirit in cases for which no provision is made, so that such Statutes are not inconsistent with this Act or the laws of this Province, and may from time to time amend or repeal the same ; But no Statute made by the said Council shall have force and effect until it has been submitted to the Visitor of the said College and by him approved ; and a certified copy of all such Statutes shall be transmitted to the Provincial Secretary, within ten days from the passing thereof, to be submitted to the said Visitor for his approval. (16 V. c. 89, s. 31.)

Council to determine the branches of knowledge to be taught.

41. There shall be in the said College such Professors, Lecturers and Teachers, and there shall be taught in the said College such Sciences, Arts and Branches of Knowledge, as the Council, by Statutes in that behalf, from time to time determines, such Statutes being consistent with the Statutes of *The University of Toronto*, as regards the prescribed subjects of Examination ; But there shall be no Professor or Teacher of Divinity in the said College ; and there shall be no Professorship or Teachership of Law, or of any of the branches of Medicine or Surgery, except in so far as the same may form part of a general system of liberal Education. (16 V. c. 89, s. 32.)

President, &c. to be appointed by the governor.

42. The President and Vice-President, Professors, Lecturers, Teachers, Officers and Servants of the said College shall be appointed by the Governor, after such examination, inquiry and report as he considers necessary, and shall hold office during his pleasure. (16 V. c. 89. s. 33.)

No religious test, &c., to be required.

43. No religious test or profession of religious faith shall be required of any Professor, Lecturer, Teacher, Student, Officer or Servant of the said College, nor shall religious observances, according to the forms of any particular religious denomination be imposed on them or any of them ; but the Council may make such Regulations as they think expedient touching the moral conduct of the Students and their attendance on public worship in their respective Churches or other places of religious worship, and respecting their religious instruction by their respective Ministers, according to their respective forms of religious faith, and every facility shall be afforded for such purposes. (16 V. c. 89, s. 34.)

Professorships may be founded by private parties, and how.

44. Any person, body politic or corporate may found Professorships, Fellowships, Lectureships, Scholarships, Exhibitions, Prizes and other Rewards, in the said College, by providing a sufficient endowment in land or other property, and surrendering or conveying the same to the Crown for the purposes of the said College, and thereupon suing out Letters Patent from the Crown, instituting, establishing and endowing the same with the property so provided for that purpose as aforesaid. (16 V. c. 89, s. 35.)

45. In such Letters Patent shall be set forth such Rules and Regulations for the appointing to and conferring of such Professorships, Fellowships, Lectureships, Scholarship, Prizes or other Rewards, as the respective Founders thereof, with the ap-
 5 probation of the Crown, think fit to prescribe for that purpose, all which Rules and Regulations the authorities of the said College shall observe and give effect to, as in the said Letters Patent may be directed. (16 V. c. 89, s. 35.)

Letters patent shall set forth rules, &c.

46. Every such endowment as aforesaid shall be vested in
 10 the Crown for the purposes for which it was given, as shall also any property real or personal, given, devised or bequeathed to the said College or for the use thereof; But no Professorship or Lectureship shall be so founded for the teaching of any subject which under this Act is not to be taught in the said
 15 College. (16 V. c. 89, s. 35.)

Endowment to be vested in the crown.

47. The Council of the said College, shall annually report
 to the Governor, at such time as he may appoint on the general state, progress and prospects of the College, and upon
 20 all matters touching the same, with such suggestions as they may think proper to make; and the said Council shall also, at all times when thereunto required by the Governor, inquire into, examine and report upon any subject or matter connected with the said College; and copies of such annual or other reports shall be laid before both Houses of the Provincial Parlia-
 25 ment at the then next Session thereof. (16 V. c. 89, s. 37.)

Council to report annually to the governor.

Copies to be laid before parliament.

48. All terms kept or studies or exercises performed in the
 University of Toronto as constituted before the 22nd day of April, 1853, shall be valid and effectual, and shall be deemed
 30 to be terms kept, or studies or exercises performed in University College; and the Statutes and Regulations of the said University in force at the time this Act takes effect shall remain in force and apply to University College, so far as inconsistent with this Act, unless or until repealed or altered by Statutes made by virtue of this Act. 16 V. c. 89, s. 38.

Forms, &c., kept in the former university to avail to students.

UPPER CANADA COLLEGE AND ROYAL GRAMMAR SCHOOL.

35 49. The Upper Canada College and Royal Grammar School, and all the affairs and business thereof, shall be under the control, management and direction of the Chancellor, Vice-Chancellor and Members of the Senate of the University of Toronto, subject to the provisions of this Act. 16 V. c. 89, s. 39.

Who to control U. C. college.

40 50. The Governor shall be the Visitor of the said College and Royal Grammar School, on behalf of Her Majesty, and his visitatorial powers may be exercised by Commission under the Great Seal, the proceedings whereof, having been first confirmed by the Governor in Council, shall be binding upon
 34 the

Governor to be the visitor.

the said College and Royal Grammar School, and upon the said Senate and all others whomsoever. 16 V. c. 89, s. 40.

Senate of university to make statutes for the government of this institution.

51. The said Chancellor, Vice-Chancellor and Members of the Senate of the University of Toronto, shall have full power and authority to make Statutes for the good government, conduct and regulation of the said College and Royal Grammar School and of the Principal, Masters, Pupils, Officers and Servants thereof, for regulating the fees to be paid by Pupils receiving instruction in the said College, and generally for the management of the business and affairs thereof, and for any purpose necessary for carrying this Act into effect according to its intent and spirit in cases in which no provision is made by law, such Statutes not being inconsistent with the provisions of this Act or the laws of the Province, and from time to time to amend or repeal the same. 16 V. c. 89, s. 41.

Statutes to have no force until approved by the Governor.

52. The said Chancellor, Vice-Chancellor and Senate, may by any such Statutes empower the Principal to make Regulations for the government of the Masters and Pupils, Officers and Servants, and for the conduct and discipline of the said College and Royal Grammar School, in such matters and to such extent as may be limited in such Statutes, and subject to such control or approval as may be therein mentioned; But no Statute shall have force and effect until it has been submitted to the Visitor of the said College and Royal Grammar School, and by him approved; and a certified copy of all such Statutes shall be transmitted to the Provincial Secretary, within ten days from the passing thereof, to be submitted to the said Visitor for his approval. 16 V. c. 89, s. 41.

Officers of the College.

53. There shall be in the College and Royal Grammar School, a Principal, and such Masters, Officers and Servants, as may from time to time be directed by any Statute relating to the said Institution, approved as aforesaid, and the salary and emoluments attached to each such office, shall be from time to time fixed by Statute. 16 V. c. 89, s. 42.

Officers to be appointed by the Governor.

54. The said Principal, Masters, Officers and Servants shall be appointed by the Governor and shall hold Office during his pleasure: But until it shall be otherwise ordered by the Governor, the present Principal, Masters, Officers and Servants of the said Institution shall remain in Office, and until it be otherwise ordered by Statute, the Salaries and Emoluments attached to each Office shall be those now attached to the same respectively. 16 V. c. 89, s. 42.

Present Statutes to remain in force until repealed.

55. All Statutes, Rules and Ordinances of the said College and Royal Grammar School in force on the day on which this Act takes effect, and which are not inconsistent with the provisions hereof, shall be and continue in force, until repealed, altered or amended by some Statute hereafter enacted or made for that purpose. 16 V. c. 89, s. 43.

56. No religious test or profession of religious faith shall be required of any Principal, Master, Pupil, Officer or servant of the said College, nor shall religious observances according to the forms of any particular religious denomination, be imposed on them or any of them ; but the Chancellor, Vice-Chancellor and Members of the Senate of the University of Toronto, may by Statute, make such Regulations as they think expedient touching the moral conduct of the Pupils and their attendance on public worship in their respective Churches or other places of religious worship, and respecting their religious instruction by their respective Ministers, according to their respective forms of religious faith, and every facility shall be afforded for such purposes. 16 V. c. 89, s. 44.

No religious test, &c., to be required.

57. The Chancellor, Vice-Chancellor and Members of the Senate of the University of Toronto, shall annually report to the Governor, at such time as he may appoint, on the general state, progress and prospects of the College and Royal Grammar School and upon all matters touching the same, with such suggestions as they may think proper to make ; and shall also, at all times when thereunto required by the Governor inquire into, examine and report upon any subject or matter connected with the said College and Royal Grammar School ; and copies of such annual or other reports shall be laid before both Houses of the Provincial Parliament at the then next Session thereof. 16 V. c. 89, s. 45.

Senate to make annual report to the Governor.

Copies to be laid before Parliament.

ENDOWMENT AND PROPERTY.

58. All property, real and personal, which may be hereafter given, devised or bequeathed to or for the use of any of the Institutions, in this Act named and provided for, shall be vested in the Crown for the purposes hereof, and the said property together with all the property and effects, real and personal, of what nature or kind soever, at present vested in the Crown in trust for the same purposes, shall be managed and administered, under the orders of the Governor in Council, by an Officer to be appointed by Commission under the Great Seal of this Province, to hold his office during pleasure, and to be called the Bursar of the University and Colleges at Toronto. 16 V. c. 89, ss. 46, 47.

All institution property vested in the Crown.

THE BURSAR.

59. The Salary of the said Bursar shall be fixed by the Governor in Council at such amount not exceeding Four Hundred Pounds currency per annum, as to him may seem meet, and the said Bursar shall be allowed by the Governor in Council such assistance in his office as may be found necessary. 16 V. c. 89, s. 47.

Bursar's salary to be fixed by the Governor.

60. The said Bursar shall have a seal of office, and shall have such powers as may from time to time be assigned to him by the Governor in Council, for the management and administration

Bursar to have a seal, &c

ministration of the said property, the leasing the same, or making agreements for the sale thereof, and the receiving of the rents, issues and profits thereof or the proceeds of the sale of any part thereof, or of any moneys in any way arising therefrom, and shall account for and pay over the same in such manner 5 as the Governor from time to time directs. 16 V. c. 89, s. 47.

Bursar to give security to the Crown.

61. The Bursar shall give security to the Crown for the due performance of his duties and the faithful accounting for and paying over all moneys which come into his hands as such Bursar, in such amount, with such securities, and in such 10 manner and form as the Governor in Council may direct. 16 V. c. 89, s. 47.

Who Bursar is to pay money to.

62. The said Bursar shall, as regards his obligation to account for and pay over the moneys which come into his hands as such, be deemed to be an Officer employed in the 15 collection of the Provincial Revenue, and shall, in case of his default, be liable to be dealt with accordingly. 16 V. c. 89, s. 47.

THE BURSAR'S ACCOUNTS.

To transmit annual accounts to the Governor to be laid before Parliament.

63. The said Bursar shall make and transmit to the Governor, at such time in each year as he may appoint, an annual account of the property under his management and of his official receipts and expenditure; and a copy of each account shall be laid before each House of the Provincial Parliament at the then next Session thereof. 16 V. c. 89, s. 47. 20 25

And each such Annual Account shall shew, among other things ;

What such accounts must shew.

1. The number of acres of land originally granted for the endowment of the said University, or of the said Upper Canada College and Royal Grammar School : 30

2. The number of acres sold, and at what rate ;

3. The total amount of sales ;

4. The amount received on account thereof and the amount due ;

5. The amount of Capital invested, and the amount expended to the end of the preceding year ; 35

6. The amount received, and a detailed account of the amount expended for the preceding year, in salaries, contingent expences and buildings, specifying the duties of the persons receiving such salaries, and the purposes of such buildings. 40
16 V. c. 89, s. 47.

64.

DEEDS OF CONVEYANCE.

64. And in order to facilitate the transfer and conveyance of the property so as aforesaid vested in Her Majesty, the Governor may from time to time issue a Commission under the Great Seal, to the Bursar of the University and Colleges aforesaid, authorizing the said Bursar under his hand and seal of office, to transfer and convey any of such property to purchasers and others entitled to receive conveyances thereof; and all such transfers and conveyances may be made according to the form in the Schedule to this Act, or in words to the like effect; and the same shall to all intents and purposes as effectually grant, transfer and convey the lands therein set forth, to the parties therein specified, according to the quality of the estate and the conditions and provisions therein mentioned, in the same manner and with the like effect, as if the same had been directly granted by the Crown under the provisions of this Act; but nothing herein contained shall prevent the Crown from granting such lands directly. 16 V. c. 89, s. 48.

Provision for facilitating the transfer of property sold.

65. All such transfers and conveyances shall be registered in the Registry Office of the County in which the lands are situate, in like manner and subject to the same provisions of law as conveyances from and to private parties. 16 V. c. 89, s. 48.

Transfers to be registered, &c.

GENERAL INCOME FUND.

66. The fees received for tuition, examination, degrees, certificates of honor or otherwise, in the said University of Toronto, in University College, and in Upper Canada College and Royal Grammar School, or such part thereof as may be payable into the general funds thereof, the rents, issues and profits of all such property as aforesaid, and all the interest on the purchase money of any part of such property sold and not wholly paid for, or on moneys arising from the sale of any such property and invested at interest, and all other casual and periodical incomings, including any donations or subscriptions touching which it has not been otherwise ordered by the Donors, shall be deemed Income for the purposes of this Act, and shall form the General Income Fund, and may be expended for the purposes and under the authority of this Act. 16 V. c. 89, s. 49.

General income fund constituted.

67. The purchase money of any such property sold, and the principal of any money invested, shall be deemed permanent property, and shall not (except only in the case hereinafter provided for) be expended or diminished in any way, but shall remain as a Permanent Fund for the support of the said Institutions and the purposes of this Act. 16 V. c. 89, s. 49.

Permanent fund.

68. That part of the said General Income Fund which is derived from property heretofore vested in the Corporation of Upper

Income fund of U. C. college and grammar school.

Upper Canada College and Royal Grammar School, or from other property held for the use of, or from fees received in the said College and Grammar School and payable into the general funds thereof, shall be applied to defray the current expences of the said Institution only, and shall form the special Income Fund thereof, and shall be applied under the direction of the Governor in Council, to defray the current expences of the said College and Grammar School and those to be incurred in the management of the endowment and funds thereof and the maintenance and repairs of property assigned for its use, and the surplus, if any, after defraying all charges thereon, shall form part of the Permanent Fund aforesaid, and shall be invested in such manner as the Governor in Council may direct: and all moneys forming part of the said Permanent Fund and arising from such surplus as aforesaid, or from property heretofore vested in the said Corporation, shall be permanently appropriated to the support of the said Upper Canada College and Royal Grammar School. 16 V. c. 89, s. 50.

Permanent fund of the same.

University income fund and charges payable out of it.

69. Out of the remainder of the General Income Fund, (which remainder shall be called the University Income Fund,) after paying the charges of management as hereinafter mentioned, the Governor in Council may appropriate yearly, such sum as may be required to defray the current expenses of the said University of Toronto, including Scholarships, Rewards and Prizes authorized by this Act, and to defray the current expenses of University College; including in both cases the care, maintenance and ordinary repairs of the property assigned for the use of the said University or College, and with power to the Governor in Council to decide what shall be deemed ordinary repairs as distinguished from permanent improvements. 16 V. c. 89, s. 51.

In what manner appropriations out of the said funds may be made

70. In making such appropriations for the current expenses of the said University, or of University College, or of Upper Canada Royal College and Grammar School, the Governor in Council may either direct the particular purposes to which the whole or any part of the sum appropriated shall be applied, or place the whole or any part of such sum at the disposal of the Senate of the said University or of the Council of the said College, to be applied under the provisions of Statutes in that behalf, approved as aforesaid, and by which the said Senate or Council may place any sums at the disposal of any Committee, or persons, to be applied by them according to the directions of such Statutes, or in their discretion, to purposes to be therein named. 16 V. c. 89, s. 52.

Surplus to be appropriated hereafter.

71. Any surplus of the said University Income Fund remaining at the end of any year after defraying the expenses payable out of the same, shall constitute a Fund to be from time to time appropriated by Parliament for Academical Education in Upper Canada. 16 V. c. 89, s. 54.

CONTINGENT EXPENSES.

72. The expenses of the Bursar's office and the management of the property aforesaid, shall be paid out of the said General Income Fund hereinbefore mentioned, and shall be the first charge thereon, and the Governor in Council shall from time to time determine what share thereof shall be paid out of that portion of the said Fund belonging to Upper Canada College and Royal Grammar School. 16 V. c. 89, s. 55.

Expenses of
bursar's office
how paid.

73. The Governor in Council shall from time to time assign for the use and purposes of the said University, of the said University College, and of Upper Canada College and Royal Grammar School, respectively, such portions of the property vested in the Crown, as aforesaid as may be necessary for the convenient accommodation and business of the said Institutions respectively; and the property so assigned for the use of each shall be deemed to be in the legal possession and under the control of the Senate or Council of such Institution. 16 V. c. 89, s. 56.

Portions of
property to be
assigned for
use of the said
institution.

IMPROVEMENT OF BUILDINGS.

74. The Governor in Council may authorize such permanent improvements or additions to the buildings on the said property as may be necessary for the purposes of the said Institutions respectively, and may direct the cost thereof to be paid out of that part of the Permanent Fund aforesaid hereby made applicable to the support of the Institution for the purposes of which the improvement or addition is made. 16 V. c. 89, s. 57.

Governor in
Council may
authorize im-
provement.

75. For all the purposes of this Act, and of all accounts to be kept and payments or expenditure to be made under it, the fiscal year shall coincide with the calendar year. 16 V. c. 89, s. 58.

Fiscal year.

 SCHEDULE.

To all to whom these presents shall come :

Whereas A. B. of _____ is entitled to receive a conveyance of the lands hereinafter mentioned, which lands are part of certain property vested in Her Majesty, in trust for the purposes of the University of Toronto, University College, and Upper Canada College and Royal Grammar School; And whereas under the provisions of the Statute relating to such University, College and Royal Grammar School, C. D. of _____, the Bursar of the said University of, and Colleges at Toronto, has been authorized by a Commission under the Great Seal of this Province to transfer and convey any of the property _____

perty aforesaid to purchasers and others entitled to receive conveyances thereof: Now these presents witness that the said C. D., as such Bursar, under and by virtue of the said Commission and the Statute, in that behalf and in consideration of the sum of _____ paid therefor by the said A. B., hereby grants, transfers and conveys to the said A. B., his heirs and assigns for ever (*or as the case may be*), all that certain parcel or tract of land, being Lot, &c. (*as the case may be*), which said land is bounded or may be known as follows, &c. (*describe the land by its boundaries, and insert any reservations, conditions or pro-risos*). In witness whereof the said C. D., as Bursar aforesaid, has hereunto set his hand and affixed the seal of his office, this day, &c.

Signed, sealed and delivered } C. D.,
in presence of } *Bursar.* [L.S.]

C A P. L V I.

An Act respecting the public health.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The Health Officers of any Municipality or Police Village
 5 in Upper Canada, or any two of them, may, as often as they think necessary, in the day time, enter into and upon any premises in the place for which they hold office, and examine such premises. 5 W. 4, c. 10, s. 2.

Health Officers may enter upon and examine any premises.
2. If upon such examination they find that the premises are in
 10 an unclean or filthy state, or that any matter or thing is thereon which, in their opinion, may endanger the public health, they or any two of them, may order the proprietor or occupant of the premises to cleanse the same, and to remove what is so found thereon. 5 W. 4, c. 10, s. 2.

If found unclean may order proprietor to cleanse.
- 15 3. In case the proprietor or occupier of the premises neglects or refuses to obey their directions, they may call to their assistance all Constables and any other persons they think fit, and may enter on the premises and cleanse the same, and remove there-
 20 from and destroy what in their opinion it is necessary to remove or destroy for the preservation of the public health. 5 W. 4, c. 10, s. 2.

In case of his neglect or refusal, the Health Officers and constables may enter and cleanse.
4. The Governor in Council may make and declare such
 regulations concerning the entry or departure of boats or vessels at the different ports or places in Upper Canada, and concerning
 25 the landing and receiving of passengers and cargoes from or on the same, as are thought best calculated to preserve the public health. 5 W. 4, c. 10, s. 3.

The Governor may make rules respecting Vessels entering Ports, &c.
3. If any person wilfully disobeys or resists any lawful order
 of the Health Officers, or of any two of them, or wilfully violates any regulation made and declared by the Governor in
 30 Council under this Act, or wilfully resists or obstructs the Health Officers in the execution of their duties, such person, on conviction before two or more of Her Majesty's Justices of the Peace for the locality where the offender resides, or the offence has been committed, shall pay a fine of not less than twenty shillings nor more than twenty pounds; which fine shall be
 35 paid to Her Majesty's Receiver-General for the public uses of the Province. 5 W. 4, c. 10, s. 4,—16 V. c. 178, s. 18.

Penalty for disobedience of Health Officers, &c.
6. Whenever a disease of a malignant and fatal character is
 discovered to exist in any dwelling-house, or out-house temporarily occupied as a dwelling, in a City, Town or Village in
 40 Upper Canada or within a mile thereof, and which house is situated in an unhealthy or a crowded part of the City, Town or
 Village,

Proceedings in case of malignant diseases in crowded or unhealthy places.

Village, or adjoining country, or is in a neglected and filthy state, or is inhabited by too many persons, the Board of Health of the City, Town or Village, or a majority of the members thereof, may, in the exercise of a sound discretion, and at the expense of the Board, compel the inhabitants of such dwelling-house or out-
house to remove therefrom, and may place them in sheds or tents, 5
or other good shelter, in some more salubrious situation, until
measures can be taken, under the direction and at the expense
of the Board, for the immediate cleansing, ventilation, purifica-
tion and disinfection, of such dwelling-house or out-house. 10
5 W. 4, c. 10, s. 6.

C A P.

CAP. LVII.

An Act respecting the Medical Board and Medical Practitioners.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Governor may constitute and appoint, under His Hand and Seal at Arms, five or more persons legally authorized to practice Physic, Surgery or Midwifery, in Upper Canada, to be a Board, whereof any three shall be a quorum, to hear and examine all persons who desire to apply for a License to practice Physic, Surgery and Midwifery, or either of them, within Upper Canada. 59 G. 3, c. 13, s. 2. The governor may appoint a medical board.
2. The Board or a majority of the members composing the same, shall appoint from time to time a fit and proper person to be Secretary of the Board. 59 G. 3, c. 2, s. 2, (4th Session.) The board may appoint a secretary.
3. The Secretary shall attend the meetings of the Board, and keep a record of the proceedings of the same in a book or books to be by him provided for that purpose, together with all such matters and things as to the Board appertains. 59 G. 3, c. 13, s. 2, (4th Session.) His duties.
4. The Board shall meet and be held in the City of Toronto, four times in each year, viz : on the first Monday in January, April, July and October, respectively, and may be continued by adjournment from day to day until the business before the Board is finished : But no quarterly sitting shall be so continued by adjournment beyond the Saturday of the week in which the sitting commences. 59 G. 3, c. 13, s. 3. Board to sit four times a year not exceeding a week at a time.
5. Every person desirous of being examined by the Board, touching his qualifications for the practice of Physic, Surgery and Midwifery, or either of them, shall give due notice thereof to the Secretary of the Board in writing, setting forth the branch or branches of medical practice he wishes to be examined in. 59 G. 3, c. 13, s. 4. Notice of application.
6. If the Board are satisfied by such examination, that any person is duly qualified to practise Physic, Surgery and Midwifery, or either, they shall certify the same under the hands and seals of two or more of such Board. 59 G. 3, c. 13, s. 2. Certificate of the board.
7. If the Governor is satisfied of the loyalty, integrity and good morals of the applicant, he may, on receipt of such certificate, under His Hand and Seal at Arms, grant a license to the applicant to practise Physic, Surgery and Midwifery, or either, conformable to such Certificate. 59 G. 3, c. 3, s. 2. License.

Who shall be authorized to practise physic, surgery or midwifery, and upon what proof of qualification. 8. Upon the application of any person exhibiting a diploma or license from any University in Her Majesty's dominions, or from the Royal College of Physicians or of Surgeons in London, as Physician or Surgeon, or a commission or warrant as Physician or Surgeon in Her Majesty's Naval or Military Services, and producing an affidavit made before any Judge of any County Court in Upper Canada, stating that he is the person named in such diploma, license, commission or warrant, the Governor may grant to such applicant a license to practise Physic, Surgery and Midwifery in Upper Canada. 59 G. 3, c. 3, s. 2.

Affidavit to be left in the office of the governor. 9. Such affidavit shall be left by the applicant, and remain in the Office of the Governor. 59 G. 3, c. 3, s. 2.

May practise in any part thereof. 10. Any person duly licensed or authorized to practise as a Physician, or as a Surgeon, or as both, either in Upper Canada or in Lower Canada, may practise in any part of this Province, for the purpose or purposes for which he might without this Act have practised in one of the aforesaid portions of this Province; but subject to the Laws to which other Practitioners are subject in the portion of this Province in which he practises. 4 & 5 V. c. 41.

Subject to the laws of the place in which they so practise.

Certain medical officers may practise without license. 11. Any person appointed a member of the medical board, and any person while employed on actual service in Her Majesty's Naval or Military Service, as Physician or Surgeon, may practise Physic, Surgery or Midwifery, in Upper Canada, without any licence. 8 G. 4, c. 3, s. 5.

General prohibition to practise without the proper authority. 12. It shall not be lawful for any person, not being a member of the medical board, or not being licensed as aforesaid, or not having been heretofore licensed by any medical board, or not being actually employed as a Physician or Surgeon, in Her Majesty's Naval or Military Service, to practise Physic, Surgery or Midwifery, in Upper Canada, for hire, gain, or hope of reward. 8 G. 4, c. 3, s. 6.

Females may practise midwifery. 13. Nothing in this Act contained shall prevent any female from practising Midwifery in Upper Canada, or require such female to take out a license. 8 G. 4, c. 3, s. 6.

Practising without authority, declared a misdemeanor. 14. If any person not licensed, as aforesaid, or not being actually employed as a Physician or Surgeon in Her Majesty's Naval or Military Service, practises Physic, Surgery or Midwifery, for hire, gain or hope of reward, he shall be guilty of a misdemeanor, and may be prosecuted and punished accordingly. 8 G. 4, c. 3, s. 7.

Proof of authority lies upon the defendant. 15. Upon the trial of any person charged with such misdemeanor, the burthen of proof as to the license or right of the person tried, to practise Physic, Surgery or Midwifery, in Upper Canada, shall lie upon the defendant. 8 G. 4, c. 3, s. 7.

16.

16. No prosecution shall be commenced for such misdemeanor after one year from the offence committed. 8 G. 4, c. 3, s. 7. Limitation of prosecution—
one year.

17. No person convicted of such misdemeanor shall be sentenced therefor to a longer period of imprisonment than six months, or to a greater fine than the sum of twenty-five pounds. 8 G. 4, c. 3, s. 7. Fine and imprisonment
limited.

18. The following fees may be taken under this Act to be paid by the applicant or licentiate, as the case may be. Fees.

SCHEDULE.

The Board for certificate to practice.....	£3	10	0
Private Secretary of the Governor for every license granted.....	1	0	0
County Court Judge for administering affidavit, verifying diploma, &c.....	0	2	6
To the Secretary of the Board for every notice of intention to apply to the Board for examination	0	10	0
For every Certificate of the Board.....	0	10	0

C A P. L V I I I.

An Act respecting Tithes in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts that no Parson, Rector or Vicar shall be entitled to tithes in Upper Canada. 2 Geo. 4, c. 32. No Parson or Rector to be entitled to tithes.

C A P . L I X .

An Act respecting Companies for the establishment of Cemeteries in Upper Canada.

HER Majesty by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Not less than twenty persons may form a cemetery company.

1. Any number of persons, not less than twenty may, in Upper Canada, form themselves into a Company for the purpose of establishing one or more public Cemeteries near to, but without the limits of, any Town or City. 13 & 14 V. c. 76, s. 1.

After certain formalities they shall be a body corporate.

2. When any number of persons, not less than twenty, subscribe stock to an amount adequate to the purchase of the ground required for such a Cemetery, and execute an Instrument according to the form in the next section contained, and pay to the Treasurer of the intended Company, twenty-five per cent. of the capital stock intended to be raised, and register such instrument at full length, together with a receipt from the Treasurer for the first instalment of twenty-five per cent., with the Registrar of the County in which the ground is situate, the Company shall thenceforth become and be a body corporate by the name designated in the Instrument so registered, and may take, hold and convey the land to be used exclusively as a Cemetery or place for the burial of the dead. 13 & 14 V. c. 76, s. 2.

Form of instrument of association.

3. The Instrument referred to may be in the form following : 13 & 14 V. c. 76, s. 19.

Be it remembered, that on this day of in the year of our Lord, one thousand eight hundred and We, 25 the undersigned, Stockholders, met at , in the County of , in the Province of Canada, and resolved to form ourselves into a Cemetery Company, to be called according to the provisions of an Act of Parliament, intituled, *An Act, &c. (insert the title of this Act)* ; And we do hereby agree 30 that the Capital Stock of the said Company shall be pounds, to be divided into shares of pounds each, entitling the holder to one hundred superficial feet ; And we, the undersigned Stockholders, do hereby agree to accept and take the number of shares set by us opposite our respective 35 signatures, and we do hereby agree to pay the calls thereon, according to the provisions of the said Act, and of the Rules, Regulations and By-laws of the Company, to be made in that behalf.

NAME.	NO. OF SHARES.	AMOUNT.

4. The Company shall enclose every part of the Cemetery Cemetery to be enclosed. belonging thereto, by walls or other sufficient fences of the height of eight feet at least. 13 & 14 V. c. 76, s. 12.
- 5 5. The Company shall also keep the Cemetery, and the Cemetery to be kept in good repair. buildings and fences thereof, in complete repair and in good order and condition, out of the moneys to be received by the Company in virtue of this Act. 13 & 14 V. c. 76, s. 13.
6. The Company shall make all proper and necessary sewers Company to make all necessary sewers, &c. and drains in and about the Cemetery for draining it and keeping it dry; and they may from time to time, as occasion requires, cause any such sewer or drain to open into an existing sewer with the consent in writing of the persons having the management of the street or road, and with the like consent of the owner or occupier of the land through which respectively the opening is intended to be made, doing as little damage as possible to the street, road or land wherein the same is made, and restoring it to the same or as good condition as it was in before being disturbed. 13 & 14 V. c. 76, s. 14.
- 20 7. If the Company at any time causes or suffers to be brought or to flow into any river, spring, well, stream, canal, reservoir, aqueduct, pond or watering place, any offensive matter from Penalty on company contaminating any river, &c. the Cemetery, whereby the water is fouled, the Company shall forfeit for every such offence Twelve Pounds Ten Shillings
25 Currency. 13 & 14 V. c. 76, s. 15.
8. This penalty, with full costs of suit, may be recovered by Recovery and application of penalties. any person having a right to use the water, by a civil action in any Court of competent jurisdiction; but the same shall not be recoverable unless sued for during the continuance of the offence,
30 or within six months after it has ceased. 13 & 14 V. c. 76, s. 16.
9. In addition to the penalty of twelve pounds ten shillings Damages may be recovered in addition to penalties. (and whether the same has been recovered or not), any person having a right to use the water may sue the Company in a
35 civil action for any damage specially sustained by him by reason of the water being fouled; or if no special damage is claimed, then, for the sum of two pounds ten shillings for every day during which the offensive matter has continued to be brought or to flow after the expiration of twenty-four hours from
40 the time when notice of the offence was served upon the Company by such person. 13 & 14 V. c. 76, s. 17.
10. No body shall be buried in a vault or otherwise under Where bodies may be buried. any chapel or other building in the Cemetery, nor within fifteen
45 feet of the outer wall of any such chapel or building. 13 & 14 V. c. 76, s. 11.

- Funerals to be decently performed.** **11.** The Company shall make regulations for ensuring that all burials within the Cemetery are conducted in a decent and solemn manner. 13 & 14 V. c. 76, s. 10.
- Graves to be furnished gratis for Strangers and Poor.** **12.** The Company shall furnish graves for strangers and for the poor of all denominations, free of charge, on the certificate in the latter case of a Minister or Clergyman of the denomination to which the deceased belonged, that the relatives of the deceased are poor and cannot afford to purchase a lot in the Cemetery. 13 & 14 V. c. 76, s. 7. 5
- Real Estate of Company exempt from taxation.** **13.** The real estate of the Company and the lots or plots when conveyed by the Company to individual proprietors for burial sites, shall be exempt from taxation of any kind, and shall not be liable to be seized or sold on execution, or attached, or applied to the payment of debts under any bankrupt or insolvent law. 13 & 14 V. c. 76, s. 6. (Part.) 10 15
- Lots conveyed need not be Registered.** **14.** When a lot has been sold by the Company, for a burial site, the conveyance shall not require to be registered for any purpose whatever, and shall not be affected by any Registry Act, nor shall any judgment, mortgage or incumbrance subsist on any lot so conveyed. 13 & 14 V. c. 76, s. 8. 20
- Deed to be in the following form.** **15.** The Deeds from the Company shall be in the following form :
- Know all men by these presents, That the Cemetery, in consideration of Pounds, paid to them by _____, of _____, the receipt whereof is hereby acknowledged, do grant unto the said _____, his heirs and assigns, Lot of Land in the Cemetery of the said Company, called _____, and situate in the County of _____, which Lot is delineated and laid down on the map of the said Cemetery, and which said lot is therein designated by the name of _____, containing by admeasurement superficial feet; to have and to hold the hereinabove named premises, &c. 25 30
- Lots to be indivisible, but may be held in undivided Shares.** **16.** All lots or plots of ground in the Cemetery, when numbered and conveyed by the Company, as burial sites or lots, shall be indivisible, but may afterwards be held and owned in undivided shares. 13 & 14 V. c. 76, s. 6. (Part.) 35
- Application of Proceeds of Sales.** **17.** One half of the proceeds of all sales made by the Company, of burial sites, shall be first applied to the payment of the purchase money of the land acquired by the Company, and the residue to preserving, improving and embellishing the land as a Cemetery or burial ground, and to the incidental expenses of the establishment: and after payment of the purchase money, the proceeds of all future sales shall be applied to the preservation, 40 45
- No dividend allowed.**

tion, improvement and embellishment of the Cemetery, and to the incidental expenses thereof, and to no other purpose whatever; And no dividend or profit of any kind shall be paid by the Company to any member thereof. 13 & 14 V. c. 76, s. 6. (*Pari.*)

5

18. Every proprietor of a lot in the Cemetery, containing not less than one hundred superficial feet, and who has paid twenty-five per cent. or more, of the price of the lot, shall be deemed a shareholder in the Company, and every such lot shall be deemed a share in the Company. 14 & 15 V. c. 76, s. 4.

Lots to be not less than 100 Superficial feet.

10 19. Every shareholder who has paid to the Company, not less than two pounds in all on his share or shares, shall be eligible as a Director. 14 & 15 V. c. 76, s. 4.

Shareholders paying £2 on Shares, eligible as directors.

15 20. The Company may sell a lot of any size, but no proprietor of a lot containing less than one hundred superficial feet shall thereby become a member of the Company or have any vote in the management of the affairs thereof. 14 & 15 V. c. 76, s. 4.

No proprietor of less than 100 superficial feet shall be a member or entitled to vote.

21. The affairs and property of the Company, shall be managed by nine Directors, a majority of whom shall form a quorum. 13, 14 V. c. 76, s. 3.

20

Property to be managed by nine directors; a majority to be a quorum.

22. The first Directors shall be chosen by ballot from among the subscribers to the Registered Instrument, and thereafter the Directors shall be annually elected by the shareholders on the third Monday in January in every year. 13, 14 V. c. 76, s. 3.

Directors to be elected by ballot.

25 23. Upon every election of Directors, including the first, every shareholder shall be entitled to one vote for every share he holds or is possessed of up to ten, and one vote for every five shares above ten; but no shareholder shall vote unless he has paid at least ten shillings upon each share on which he votes. 13, 14 V. c. 76, s. 3.

Number of votes regulated by the shares—no shareholder to vote unless 10s. is paid on each share.

30

24. The Directors, or a majority of them, shall, at their first meeting, elect one of their number to be President of the Company, and the President, if present, (or if he be not present, then some Director chosen for the occasion) shall preside at every meeting of the Directors, and shall not vote except in case of an equality of votes when he shall have a casting vote. 13, 14 V. c. 76, s. 5.

Election of President.

40 25. The Directors may pass By-laws for the laying out, selling, and managing of the ground,—for regulating the erection of tombs, monuments, or grave-stones therein, and for empowering the President to execute conveyances of plots to shareholders. 13, 14 V. c. 76, s. 5.

By-laws.

- 26.** The Directors shall record in a book kept for the purpose, all their By-laws and proceedings, and any person shall have access to such book for the purpose of searching and making extracts therefrom without payment of any fee. 13, 14 V. c. 76, s. 5. 5
- 27.** The Directors may also call for instalments on the sums subscribed for, and may appoint a time for the payment thereof; and if the same are not then paid, the right of the subscriber, and every instalment formerly paid, shall be forfeited, and he shall be held not to have subscribed, unless the Directors think it expedient to remit the forfeiture, which they may do if the instalments are paid with interest within one year after the day when they ought to have been paid. 13, 14 V. c. 76, s. 18. 10
- 28.** The Directors shall be personally liable for any judgment recovered against the Company. 13, 14 V. c. 76, s. 6. 15
- 29.** Any person who, 1—wilfully destroys, mutilates, defaces, injures or removes any tomb, monument, grave-stone or other structure placed in a Cemetery, or any fence, railing or other work for the protection or ornament of a Cemetery or of any tomb, monument, grave-stone or other structure aforesaid or of any Cemetery lot within a Cemetery, or 2—wilfully destroys, cuts, breaks or injures any tree, shrub or plant, in a Cemetery, or 3—plays at any game or sport, or 4—discharges fire arms (save at a military funeral) in a Cemetery, or 5—who wilfully and unlawfully disturbs persons assembled for the purpose of burying a body therein, or 6—who commits a nuisance in a Cemetery, shall be guilty of a misdemeanor, and shall, upon conviction thereof before a Justice of the Peace or other Court of competent jurisdiction, be punished by a fine of not less than one pound nor more than ten pounds, according to the nature of the offence. 13, 14 V. c. 76, s. 11. 20
25
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- 30.** The offender shall also be liable in an action of trespass, in the name of the Company, to pay all damages occasioned by his unlawful act; and the money, when recovered, shall be applied under the direction of the Directors for the reparation and reconstruction of the property destroyed, and members of the Company shall be competent witnesses in the suit. 13, 14 V. c. 76, s. 11. 35

C A P . L X .

An Act respecting Conveyances to Trustees for Burial Places.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Whenever any of the inhabitants of a Township or locality
 5 in Upper Canada, to the number of ten or more, desire to take
 a conveyance of land for a burying ground which shall not
 belong exclusively to any particular denomination of Christians,
 such persons may appoint Trustees, to whom, and their suc-
 cessors to be appointed in such manner as may be specified
 10 in the Deed of conveyance, the land may be conveyed : and
 such Trustees, and their successors in perpetual succession, by
 the name expressed in the Deed, may take hold and possess
 the land, in trust for the uses and purposes limited in the Deed,
 and may maintain and defend suits in law or equity for the
 15 protection thereof, and of their property therein: (13 & 14 V.
 c. 77.)

When lands
for burial
grounds may
be vested in
trustees.

2. But there shall not be held in trust under any such con-
 veyance for the purposes aforesaid, more than ten acres of
 land for the inhabitants of any one township or locality. (13 &
 20 14 V. c. 77.)

Not exceeding
ten acres for
one township
or locality.

CAP. LXI.

An Act respecting the property of Religious Institutions in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

When lands may be vested in trustees for churches, church yards, burial ground, &c.

1. When a Religious Society or Congregation of Christians in Upper Canada, desire to take a conveyance of land for the site of a church, chapel, meeting-house, burial ground or residence for the Minister, or for the support of Public Worship and the propagation of christian knowledge, such Society or Congregation may appoint Trustees to whom and their successors to be appointed in such manner as may be specified in the deed of conveyance, the land requisite for all or any of the purposes aforesaid may be conveyed ; and such Trustees and their successors, in perpetual succession by the name expressed in the deed, may take hold and possess the land, and maintain and defend actions in law or equity for the protection thereof and of their property therein. 9 Geo. 4, c. 2,—3 V. c. 73,—8 V. c. 15.

Conveyances to trustees to be registered within 12 months.

2. But such Trustees shall, within twelve months after the execution of the deed of conveyance, cause the deed to be registered in the office of the Registrar of the county in which the land is situate, or otherwise the same shall be void. 9 Geo. 4, c. 2 & 3,—8 V. c. 15, s. 2.

When trustees may mortgage lands so held.

3. When a debt has been or may be hereafter contracted, for the building, repairing, extending or improving of a church, meeting-house or chapel on land held by Trustees for the benefit of any Religious Society in Upper Canada, or for the purchase of the land on which the same has been or is intended to be erected, the Trustees, or a majority of them, may, from time to time, secure the debt or any part thereof, by a mortgage upon the land, church, meeting-house or chapel ; or may borrow money to pay the debt or part thereof, and may secure the re-payment of the loan and interest by a like mortgage upon such terms as may be agreed upon. 13 & 14 V. c. 78 s. 1.

Trustees may lease lands for 21 years, and renew such leases, &c., or may bind their successors to pay for improvements.

4. The Grantees in Trust named in any Letters Patent from the Crown, or the Survivors or Survivor of them, or the Trustees for the time being appointed in manner prescribed in the Letters Patent, whereby lands are granted for the use of a Congregation or Religious body, and any other Trustees for the time being entitled by law to hold lands in trust for the use of a congregation or religious body, may lease for any term not exceeding twenty-one years, lands so held by them for the use of a congregation or religious body, at such rent and upon such terms as

as the Trustees or a majority of them deem reasonable, and in the lease they may covenant or agree for the renewal thereof at the expiration of any or every term of twenty-one years, for a further term of twenty-one years or a less period, at such rent and on such terms as may then by the trustees for the time being be agreed upon with the lessee, his heirs, executors, administrators or assigns, or may covenant or agree for the payment to the lessee, his executors, administrators or assigns, of the value of any buildings or other improvements which may at the expiration of any term be on the demised premises; and the mode of ascertaining the amount of such rent or the value of such improvements may also be specified in the original lease. 18 V. c. 119, s. 1.

5. But Trustees shall not have power so to lease without the consent of the Congregation or Religious Body for whose use they hold the land in trust, such consent to be signified by the votes of a majority of the Members present at a meeting of the Congregation or Body duly called for the purpose, nor to lease any land which at the time of making the lease is necessary for the purpose of erecting a Church or place of Worship or other Building thereon, or for a Burial Ground, for the Congregation for whose use the land is held. 18 V. c. 119, s. 4.

Land not to be leased without consent of congregation.

6. The Trustees for the time being entitled by law to hold land in trust for a Congregation or Religious Body, may, in their own names or by any name by which they hold the land, sue or distrain for rent in arrear, and take all such means for the recovery thereof as landlords in other cases are entitled to take. 18 V. c. 119, s. 3.

Trustees may sue or distrain for rent in arrear—and in what name.

7. When land held by Trustees for the use of a Congregation or Religious Body, becomes unnecessary to be retained for such use, and it is deemed advantageous to sell the land, the Trustees for the time being may give public notice of an intended sale, specifying the premises to be sold and the time and terms of sale; and after publication of the notice for four successive weeks, in a weekly paper published in or near the place where the lands are situated, may proceed to sell the land at public auction according to the notice, but the Trustees shall not be obliged to complete or carry into effect the sale if in their judgment an adequate price is not offered for the land, and the Trustees may thereafter proceed to sell the land either by public or private sale: But a less sum shall not be accepted at private sale than was offered at public sale: And before a deed is executed in pursuance of a public or private sale, the Congregation or Religious Body for whose use the lands are held, shall be duly notified thereof, and the sanction of the Court of Chancery obtained for the execution of the deed. 18 V. c. 119, s. 5.

How land in trust may be sold when no longer required by the congregation.

Trustees to
prepare and
shew state-
ments annual-
ly.

8. Trustees selling or leasing land under the authority of this Act shall on the first Monday in July in every year, have ready and open for the inspection of the Congregation or Religious Body which they represent, or of any Member thereof, a detailed statement shewing all Rents which accrued during the preceding year, and all sums of money whatever in their hands for the use and benefit of the Congregation or Religious Body, and which were in any manner derived from the lands under their control or subject to their management, and also shewing the application of any portion of the money, which has been expended on behalf of the Congregation or Body. 19 V. c. 119, s. 6. 5 10

Trustees may
be called upon
to account by
court of Chan-
cery.

9. The Court of Chancery may in a summary manner, on complaint upon oath by three Members of a Congregation or Religious Body, of any misfeasance or misconduct on the part of Trustees in the performance of duties authorized by this Act, call upon the Trustees to give in an account; and may enforce the rendering of such account, the discharge of any duties, and the payment of any money, so that the Congregation or Religious Body may have the benefit thereof; and the Court may compel the Trustees, in case of any misconduct, to pay the expense of the application, or may award costs to the Trustees in case the application is made on grounds which the Court considers insufficient or frivolous or vexatious. 18 V. c. 119, s. 7. 15 20 25

C A P . L X I I .

An Act respecting the Building Fund, the Lunatic Asylum and other Public Buildings.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. All moneys which by any Act or Law are directed to be applied or reserved for Upper Canadian purposes, but not otherwise specially appropriated by law, shall be paid into and form part of the Upper Canada Building Fund established under the authority of this Act. 13 & 14 V. c. 68. Certain moneys applied to the U. C. Building fund
2. The moneys aforesaid shall be paid over to the Receiver General and shall be applied by him : 13 & 14 V. c. 68, s. 3.
- Firstly—To the payment of the interest on all Debentures issued on account of the Lunatic Asylum and now outstanding, and also of the interest on any Debentures which may be issued under any Act of Parliament for the purpose of raising money to complete the said Asylum, or to defray the expense of procuring a site for or of erecting any other Public Building in Upper Canada, for any Institution of general importance to the inhabitants of that portion of the Province. 13 & 14 V. c. 68, s. 3. How such fund to be applied. In payment of the interest upon debentures issued to raise moneys for the Lunatic Asylum.
- Secondly—To the formation of a Sinking Fund of not less than one thousand five hundred pounds per annum, towards paying off the principal of such Debentures as aforesaid. 13 & 14 V. c. 68, s. 3. In forming a fund for payment of the principal.
- Thirdly—Towards the support of the Lunatic Asylum and of any other such Institution as aforesaid, in such manner as shall be directed by Parliament. 13 & 14 V. c. 68, s. 3. In supporting the Asylum.
3. All moneys forming part of the said Upper Canada Building Fund, and not required for the Public Service, shall, until so required, be invested by the Receiver General, under instructions from the Governor in Council, in Public Provincial Securities, and the interest on such securities shall form part of the said Fund. 20 V. c. 8, s. 2. How sums not immediately required to be invested.
4. Such securities, or so many of them as may be necessary, may be disposed of by the Receiver General, from time to time, under instructions from the Governor in Council, and the proceeds thereof be applied to meet any payments lawfully to be made out of the said Fund. 20 V. c. 8, s. 2. When and how securities therefor may be reconverted into money.

CAP. LXIII.

An Act respecting Marriages in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Ministers of any denomination may solemnize marriage.

1. The Ministers and Clergymen of every church and religious denomination in Upper Canada, ordained or appointed according to the rites and ceremonies of the Church or denomination to which they belong, may solemnize the ceremony of Marriage according to the rites and usages of such Church or Denomination, between any two persons not under a legal disqualification to contract such marriage. 20 V. c. 66,—11 Geo. 10 5
4 c. 36, s. 3.

No Minister to solemnize marriage unless authorized by license or after publication of Banns.

2. But no Minister or Clergyman shall celebrate the ceremony of marriage between any two persons, unless duly authorized by license, under the hand and seal of the Governor, to celebrate the ceremony between such two persons, or, if not so authorized, then unless the intention of the two persons to intermarry has been proclaimed openly and in an audible voice, in the Church, Chapel, Meeting-house or place of public worship of the Congregation or Religious Community with which the Minister or Clergyman is connected, on three several Sundays, 15 20 immediately before the service began or immediately after it ends, or at some intermediate part of the service, together with the number of such proclamation, as being the first, second or third time of asking.

No valid objection as to a church or chapel, &c. Ministers marrying must give certificate if required.

3. It shall be no valid objection to the legality of a marriage, 25 that the same was not solemnized in a consecrated Church or Chapel, or within any particular hours. 33 Geo. 3, c. 5, s. 6.

Fee for certificate.

4. Every Clergyman or Minister who celebrates a marriage in Upper Canada, shall, if required at the time of the marriage by either of the parties thereto, give a certificate of the 30 marriage under his hand, specifying the names of the persons married, the time of the marriage, and the names of two or more persons who witnessed it, and specifying also whether the marriage was solemnized pursuant to License or after publication of banns ; and the Clergyman or Minister may demand 35 one shilling and three pence for the certificate, from the person requiring it. 20 V. c. 66, s. 2.

Ministers to enter marriages in a book, &c. To make a yearly return to the Registrar.

5. Every Clergyman or Minister shall, immediately after he has solemnized a marriage, enter in a book, to be kept by him for the purpose, a true record of the marriage ; and shall on or 40 before the first day of February in every year, return a certified list of all marriages by him solemnized during the year ending on the thirty-first day of December next preceding, to the Registrar of the County in which the marriages have taken place, and shall, at the time of making the return, pay or transmit to the 45 Registrar five shillings as his fees thereon.

Form of record.

6. Such record and list shall respectively specify all the particulars, and the list shall be in the form, following, namely :

RETURN

Return of Marriages solemnized by _____, a Minister of _____, for the year ending _____
 _____th day of January, A. D. 18 _____

BRIDEGRROOM.				BRIDE.				WITNESS.		DATE OF MARRIAGE.		
His Name.	Age if known.	Residence.	Place of Birth, if known.	Names of Parents, if known.	Her Name.	Age if known.	Residence.	Place of Birth, if known.	Names of Parents, if known.		Name.	Residence.

I do hereby certify that the foregoing is a true and correct statement of all Marriages solemnized before (as the case may be) for the year ending on the 31st day of December next preceding the date hereof.

(Signed,) A. B.
 (Minister or Clerk, as the case may be.)

Registrar's
Fees for
copies.

7. On receipt by the Registrar of any such list, he shall file the same among the papers of his office, and record the same in a book to be kept by him for the purpose ; and in case of the death or absence of the witnesses to a marriage, such register or a certified copy shall be sufficient evidence of the marriage, and the Registrar shall give a certified copy of a marriage record to any person demanding the same, on payment of two shillings and six pence. 20 V. c. 66, s. 3. 5

Minister's
fees.

8. Every Clergyman or Minister before solemnizing a marriage, may demand from either of the parties thereto, the sum of ten shillings, to enable him to pay the sum to be paid or transmitted by him to the Registrar, and to remunerate the Clergyman or Minister, for the trouble and expense attendant on preparing and transmitting such certified list to the Registrar. 20 V. c. 66, s. 3. 10

Parties may
give what
additional
remuneration
they think
fit.

9. But nothing in this Act shall prevent the payment to the Clergyman or Minister of any further remuneration the parties choose to make. 20 V. c. 66, s. 3. 15

In case of
death or removal,
Minister's
Successor to
make return
to the Registrar.

10. In case of the death or removal of a Minister or Clergyman before making his annual return, his successor or any other person having the legal custody of the book referred to in the fifth section, shall return to the Registrar a certified copy of all marriages therein recorded, and the Registrar shall record the same respectively as if the return had been made by the Minister or Clergyman who celebrated the marriages. 20 V. c. 66, s. 4. 20 25

Quakers'
marriages
declared valid.

11. Every marriage duly solemnized according to the rites and usages of the Religious Society of Friends, commonly called Quakers, shall be valid; and the duty imposed by this Act upon a Minister and Clergyman, shall, with regard to such marriage, be performed by the Clerk or Secretary of the Society or of the Meeting at which the marriage was solemnized. 20 V. c. 66, s. 7. 30

Fines for
neglecting to
return certified
list.

12. Every Clergyman, Minister, Clerk, Secretary or other person, who refuses or neglects to return the certified list required of him by this Act, on or before the first day of February, shall forfeit for every day's delay after that day, the sum of one pound, which sum shall be recoverable with costs before any Magistrate of the County in which the person resides, and shall be applied according to law. 20 V. c. 66, s. 3. 35

Clerks of the
Peace to furnish
books and
printed forms
at the expense
of the County.

13. The Clerk of the Peace of every County shall, at the expense of the County, from time to time on demand, furnish all Clergymen or Ministers and others in the County required by this Act to make returns, with the books to be kept, and with printed blank forms for the lists to be returned ; and such books shall have columns and headings printed on every page according 40 45

according to the form given in the sixth section; and the books and forms shall be of such size and form as to admit of the necessary entries being conveniently made therein. 20
V. c. 66, s. 8.

- 5 14. The book by whomsoever furnished shall be the property of the Church or Denomination to which the Clergyman or Minister belongs at the time of the marriage which he first records therein.

Said books &c,
to be property
of the church
to which Cler-
gyman
belongs.

CAP. LXIV.

An Act respecting the appointment of Guardians and the Custody of Infants.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

APPOINTMENT AND DUTIES OF THE GUARDIANS.

When judges of probate and surrogate courts may appoint guardians. 5
 Notice to be given. 10
 1. The Judge of the Court of Probate for Upper Canada, and the Judges of the Surrogate Courts, in their respective Counties, upon the written application of any infant, or the friend or friends of such infant, residing within the jurisdiction of the Judge to whom such application may be made, and not having a father living, nor a legal guardian, and after twenty days' public notice of such application, and after proof of twenty days' notice thereof to the mother of such infant, or proof to the satisfaction of such Judge that such infant has no mother living in Upper Canada, may appoint some suitable and discreet person or persons to be guardian or guardians of such infant. 8 Geo. 4, c. 6, s. 1. 15

Such guardians to give security by bond. 20
 Condition of bond. 25
 Bond to be recorded. 30
 2. Such Judge shall take from the guardian or guardians so appointed a Bond in the name of such infant, in such peral sum and with such securities as the Judge shall direct and approve, having regard to the circumstances of the case, conditioned that the said guardian or guardians will faithfully perform the said trust, and that he or they, the said Guardian or Guardians, or his or their respective executors or administrators, will, when the said ward becomes of the full age of twenty-one years, or whenever the said guardianship shall be determined, or sooner if thereto required by the Judge of the said Court, render to his or their said ward, or to his or her executors or administrators, a true and just account of all goods, moneys, interest, rents, profits or property of such ward, which have come into the hands of such guardian or guardians, and will thereupon without delay deliver and pay over to the said ward, or to his or her executors or administrators, the property or the sum or balance of money, which may be in the hands of the said guardian or guardians belonging to such ward, deducting therefrom and retaining a reasonable sum for the expenses and charges of the said guardian or guardians, and such Bond shall be entered by the Registrar of the Court in the Books of his Office. 8 Geo. 4, c. 6. s. 1. 35

AUTHORITY OF GUARDIANS.

Guardian's authority. 40
 3. The guardian or guardians of any infant so appointed, shall, during the continuance of his or their guardianship, have authority to act for and in behalf of the said ward :

1.

1. And may appear in any Court and prosecute or defend any action in his or her name ; To appear in actions at law.
2. And shall have the charge and management of his or her estate, real and personal, and the care of his or her person and education ; To manage real and personal estate, &c.
3. And may, with the approbation of two of His Majesty's Justices of the Peace, and the consent of such ward, place and bind him or her an apprentice to any lawful trade, profession or employment ; such apprenticeship, in case of males, not to extend beyond the age of twenty-one years, and in case of females, not beyond the age of eighteen years, or the marriage of the ward within that age. 8 Geo. 4, c. 6, s. 2. Bind ward an apprentice. Limitation of apprenticeship.

REMOVAL OF GUARDIANS.

4. The Court which has appointed any guardian of guardians, may upon reasonable complaint made and sustained, or cause shewn to the satisfaction of the said Court, remove such guardian or guardians from his or their said guardianship, and if it is judged necessary, may appoint another guardian or guardians of the said infant. 8 Geo. 4, c. 6, s. 3. How guardians may be removed
5. In all such cases when the estate, real or personal, is situated in one County, the right of appointment of guardians shall belong to the Surrogate Court ; and when such estate, real or personal, is situated in two or more Counties, such appointment shall belong to the Court of Probate. 8 Geo. 4, c. 6, s. 4. In what cases the surrogate Judge shall appoint a guardian ; and in what cases the judge of probate.

APPEALS.

6. The Court of Probate shall be a Court of Appeal, from the decisions of the Surrogate Court. 8 Geo. 4, c. 6, s. 4. Court of probate to be a court of appeal.
7. In case any party is aggrieved by any decision, or appointment of the said Court of Probate, such party may appeal therefrom to the Governor, in Council, who may confirm or reverse any such decision or appointment. 8 Geo. 4, c. 6, s. 4. Appeal from court surrogate to court of probate.

FEES.

8. The Judges and Officers of the Probate and Surrogate Courts may demand and receive the following fees, and no more, for the services required by this Act :

OFFICIAL PRINCIPAL, OR SURROGATE JUDGE.

For the appointment of a guardian, with seals thereto—fifteen shillings,

For

For auditing a guardian's account, when required so to do—
ten shillings ;
For an order for removing a guardian from his guardianship—
three shillings and four pence.

REGISTER.

For entering the appointment of a guardian—two shillings and 5
six pence ;
For entering an order of the Judge—two shillings and six
pence ;
For drawing and recording a bond of guardianship—six shil- 10
lings and eight pence ;
For copies given out of his office—the same as in cases of
Probate. 8 Geo. 4, c. 6, s. 6.

CUSTODY OF INFANTS.

9. Any of the Superior Courts of Law or Equity in Upper
Canada, or any Judge of either of such Courts, upon hearing 15
the petition of the mother of any infant, being in the sole cus-
tody or control of the father thereof, or of any person by his
authority, or of any guardian after the death of the father, may,
if such Court or Judge sees fit, make order for the access
of the petitioner to such infant, at such times and subject to
such regulations as such Court and Judge shall think conve- 20
nient and just, and if such infant is within the age of
twelve years, may make order for the delivery of such infant to
the petitioner, to remain in the care and custody of the peti-
tioner until such infant attains the age of twelve years, 25
subject to such regulations as such Court or Judge may direct,
and may also make order for the maintenance of such infant
by the father thereof, or out of any estate to which such infant
may be entitled, by the payment by such father or out of such
estate, of such sum or sums of money from time to time, as,
according to the pecuniary circumstances of such father or the 30
value of such estate, such Court or Judge thinks just and
reasonable. 18 V. c. 126, s. 1.

Court or judge
may make or-
der for allow-
ing the mo-
ther access
to any infant
in the sole
custody of the
father or other
person or for
its delivery if
under 12
years, and
also order for
its mainte-
nance.

10. Such Court or Judge as aforesaid may enforce
the attendance of any person before such Court or Judge, 35
to testify on oath respecting the matter of such petition by
order or rule to be made for that purpose, on the service of a
copy thereof and the payment of expenses as a witness, in the
same manner as in any proceeding in any suit or action in the
said Courts respectively, or may receive affidavits respecting the
matters in such petition. 18 V. c. 126, s. 2. 40

Court or judge
in any such
case may com-
pel the atten-
dance of wit-
nesses.

11. All orders made by the Court or a Judge by virtue of this
Act, shall be enforceable by process of contempt by the Court or
Judge by which or whom such order has been made. 18 V. c.
126, s. 3.

Orders enfor-
ceable by pro-
cess of con-
tempt.

12. No order shall be made by virtue of this Act, in favor of a mother, against whom adultery has been established by judgment in an action for criminal connection, at the suit of her husband against any person, directing that such mother shall have the custody of or access to an infant. 18 V. c. 126, s. 3.

Order not to be made in favour of mother guilty of adultery.

C A P.

C A P . L X V .

An Act respecting Master and Servant.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. SLAVERY PROHIBITED.

Slavery prohibited.

1. The Governor shall not grant a license for the importation of any Negro or other person to be subjected to the condition of a Slave, or to a bounden involuntary service for life, into any part of Upper Canada; nor shall any Negro, or other person, who shall come or be brought into Upper Canada, be subject to the condition of a Slave, or to such service as aforesaid, within the same. §§ Geo. 3, c. 7, s. 1. 5

No voluntary contract of service or indentures to be binding longer than nine years.

2. No voluntary contract of service or indentures that may be entered into by any parties within Upper Canada, shall be binding on them, or either of them, for a longer time than a term of nine years, from the day of the date of such contract. §§ Geo. 3, c. 7, s. 1. 15

2. MASTER AND SERVANT.

Verbal as well as written agreements between master and servant to be binding

3. All agreements or bargains between Masters and Journeymen, or skilled Labourers, in any Trade, Calling or Craft, and Servants or Labourers, for the performance of any duties or service of whatsoever nature, whether such agreement be verbal or written, shall, upon due proof, be binding on each party for the due fulfilment thereof; But a verbal agreement shall not exceed the term of one year. 10 & 11 V. c. 23, s. 25,—18 V. c. 136, s. 1. 5

Persons leaving the employ of their master, or refusing to work &c. after entering into an engagement and contrary thereto, shall be liable to punishment.

4. If after such an engagement as is contemplated by this Act has been entered into, the person who thereby engaged to perform any service or work, refuses to go to work, during the period of such engagement, and whether such employment has been commenced or not, or (without permission or discharge) leaves the employ of the party whom he has engaged to serve, or refuses to obey the lawful commands of the person under whose direction such services are to be performed, or neglects the service or injures the property of such employer, shall (upon the complaint of such employer, or any person in charge under him) be liable to punishment for every such offence as hereinafter provided. 10 & 11 V. c. 23, s. 2. 15

5. If any tavern keeper, boarding-house keeper or other person, induces or persuades any servants or labourers to confederate for demanding extravagant or high wages, and prevents their hiring, then, upon due proof of the offence, such tavern keeper shall forfeit his license, in addition to any fine, and such boarding-house keeper or other person shall be subject to fine or imprisonment, as hereinafter provided. 10 & 11 V. c. 23, s. 3.

Tavern keepers inducing servants to confederate for demanding higher wages to be allowed subject to fine, &c

6. The wearing apparel of any servant or labourer shall not be kept by any tavern keeper or boarding-house keeper in pledge for any expenses incurred to any greater amount than one pound ten shillings currency, on the payment or tender of which sum, or of any lesser sum due, such wearing apparel shall be immediately given up, whatever be the amount due by such servant or labourer; but this is not to apply to other property of such servant or labourer. 10 & 11 V. c. 23, s. 4.

Tavern keeper &c. not to keep wearing apparel of servant in pledge for any amount above £1 10s.

SUMMARY PROCEEDINGS BEFORE JUSTICES.

7. Any one or more of Her Majesty's Justices of the Peace may receive the complaints upon oath of parties complaining of any contravention of the preceding provisions of this Act, and cause all parties concerned to appear before him or them, and shall hear and determine the same in a summary and expeditious manner, and punish parties found guilty of the offence alleged by fine or imprisonment, allowing such costs as may be legal and just.

Duties of Justices of the Peace on receiving complaints against parties for contravention of this Act.

8. All fines imposed under this Act shall be paid to the Treasurer of the County, Town or City in which the conviction has been had, to be applied to the general uses of such County, Town or City respectively.

How fines to be disposed of.

9. No Justice or Justices shall impose any fine exceeding five pounds, and no imprisonment shall exceed one month, nor be less than one day. 10 & 11 V. c. 23, s. 5.

Limit of fines or Imprisonment.

10. In every case of a summary conviction under this Act where the sum forfeited, or imposed as a penalty by the Justice, is not paid either immediately after the conviction or within such period as the Justice at the time of conviction appoints, the convicting Justice may commit the offender to the Common Jail of the county where such conviction has been had, there to be imprisoned for the time limited by such conviction. 10 & 11 V. c. 23, s. 6.

Justices of the Peace may commit offenders to Jail if the fine imposed be not paid.

Persons contravening the preceding sections may be punished in any district in which they shall be found. **11.** Any person offending against the preceding provisions of this Act may be prosecuted, convicted and punished in any county in which he may be found, and the offence shall be deemed to have been committed in such county, whether such county be or be not that in which his employer resides, or in which the contract of service was entered into. 10 & 11 V. c. 23, s. 7. 5

Justices of the Peace may likewise hear complaints by the servants against the employer for misuse, non payment of wages &c., and may determine the same. **12.** Any one or more of such Justices, upon oath of any such servant or labourer against his master or employer concerning any misuse, refusal of necessary provisions, cruelty, ill-treatment or non-payment of wages, may summon such master or employer to appear before him or them at a reasonable time to be stated in such summons, and he or they or some other Justice or Justices shall, upon proof on oath, of the personal service of such summons, examine into the matter of such complaint, whether such master or employer appears or not, and upon due proof of the cause of complaint, he or they may discharge such servant or labourer from his service or employment, and direct the payment to him of any wages found to be due, not exceeding the sum of ten pounds, and the said Justice or Justices shall make such order for payment of the said wages as to him or them seems just and reasonable, with costs, and in case of non-payment of the same, together with the costs, for the space of twenty-one days after such order has been made, such Justice or Justices shall issue his or their warrant of distress for the levying of such wages, together with the costs of conviction and of such distress. 10 & 11 V. c. 23, s. 8. 10 15 20 25

APPEALS TO QUARTER SESSIONS.

Persons convicted or against whom orders shall be made, may appeal to the General Quarter Sessions. **13.** Any person who thinks himself aggrieved by any such conviction or order for the payment of wages, or order for the dismissal from service or employment, or any order or decision of any justice or justices under this Act, may appeal to the next Court of General Quarter Sessions, holden not less than twelve days after the day of such conviction or order for the County wherein the conviction or order has been had. 30 35

Notice and security to be given. **14.** The appellant shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof within three days after such conviction, and seven clear days at the least before such Sessions, and shall also, in the case of such conviction, either remain in custody until the Sessions, or enter into a recognizance, with two sufficient sureties before a justice of the Peace, and in the case of such order, shall enter into a like recognizance conditioned personally to appear at the said Sessions, and to try such appeal and to abide the judgment of the Court thereupon, and to pay such costs as shall be given by the Court awarded. 40 45

15. Upon such notice being given, and such recogni-
 zance being entered into, the Justice before whom the same
 has been entered into, shall liberate such person if in custody;
 and the Court at such Sessions shall hear and determine the
 5 matters of the appeal, and shall make such order therein with
 or without costs to either party, as to the Court seems
 meet; and in case of the dismissal of the appeal or the
 affirmance of the conviction or order, shall order and ad-
 judge the offender to be punished according to the conviction;
 10 or shall enforce the order for payment of wages or of dismissal
 from service, and the payment of such costs as may be awarded,
 and shall, if necessary, issue process for carrying such judg-
 ment into effect. 10 & 11 V. c. 23, s. 9.

Court of Quor-
 ter Sessions
 empowered to
 hear and de-
 termine on
 such appeal.

C A P . L X V I .

An Act respecting Apprentices and Minors in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Minors may bind themselves to labour in certain cases.

1. When a Minor over the age of sixteen years, who has no parent or legal guardian, or who does not reside with his parent or guardian, enters into an engagement written or verbal to perform any service or work, he shall be liable upon the same and also have the benefit thereof as if he had been of legal age. 14 & 15 V. c. 11, s. 14. 5

Power of parents, &c., to bind minors as apprentices.

2. A parent, guardian or other person having the care or charge of a Minor not under the age of fourteen years, may, with the consent of the Minor, put and bind him as an apprentice, by Indenture, to any master, mechanic, farmer or other person carrying on a trade or calling, for a term not to extend beyond the minority of the Apprentice. 14 & 15 V. c. 11, s. 1. 10 15

The like power given to the mother when the father abandons his infant children.

3. When the father of an infant child abandons and leaves the child with the mother, the mother, with the approbation of two justices of the peace, may bind the child as apprentice to any person mentioned in the last section until the child attains the age of twenty-one years, in the case of a male, and eighteen, in the case of a female ; and an indenture to that effect, under the hand and seal of the mother and countersigned by two justices, shall be valid ; but no child, having attained the age of fourteen years, shall be so apprenticed, unless he, or she, consents. 39 Geo. 3, c. 3, s. 2. 20 25

Power of the mayor or chief magistrate to bind orphans, &c., as apprentices.

4. In a City or Town, the Mayor, Recorder, or Police Magistrate, and in a County, the Chairman of and at the Court of General Quarter Sessions of the Peace in Court, may put and bind for the like period, to any person mentioned in the several sections of this Act, with the consent of such person and of the Minor, any Minor who is an orphan, or has been deserted by his or her parents or guardian, or whose parents or guardian have been for the time committed to a common gaol or house of correction, or any Minor who is dependent upon a public charity for support ; and such Apprentice and the Master of such Apprentice shall be held in the same manner as if the Apprentice had been bound by his or her parent. 14 & 15 V. c. 11, s. 2. 30 35

If the master dies, apprentice to be transferred to his successor in the business.

5. If the Master of the Apprentice dies, the Apprentice shall, by Act of Law, be transferred to the person, (if any), who continues the establishment of the deceased ; and such person shall hold the Apprentice upon the same terms as the deceased if alive would have done. 14 & 15 V. c. 11, s. 3. 40

6.

- 6.** A Master may transfer his Apprentice to any person who is competent to receive or take an Apprentice, and who carries on the same kind of business. 14 & 15 V. c. 11, s. 3. Apprentices may be transferred.
- 7.** Every Master shall provide to his Apprentice during the term of his Apprenticeship, suitable board, lodging and clothing, or such equivalent therefor as is mentioned in the Indenture, and shall also properly teach and instruct him, or cause him to be taught and instructed, in his trade or calling. 14 & 15 V. c. 11, s. 4. Duty of masters towards apprentices.
- 8.** Every Apprentice shall, during the term of his Apprenticeship, faithfully serve his Master, shall obey all his lawful and reasonable commands, and shall not absent himself from his service, day or night, without his consent. 14 & 15 V. c. 11, s. 5. Duty of apprentices.
- 9.** Any Justice of the Peace, Mayor, or Police Magistrate, on complaint made before him on oath by an Apprentice against his Master for refusing him necessary provisions, or for misuse, cruelty or ill-treatment, may summon the Master to appear before him to answer the complaint, and shall have power thereupon, to hear and determine the complaint, and on conviction to levy on the offender a fine not exceeding Five Pounds, and to issue a distress to collect the same and the costs, and in default of satisfaction of the distress, to imprison the offender in any common gaol for a term not exceeding one month. 14 & 15 V. c. 11, s. 6. Justices may hear and determine complaints by apprentices against their masters.
- 10.** Any Justice, Mayor, or Police Magistrate may also, on complaint of a Master against his Apprentice for refusing to obey his commands, or for waste or damage to property, or for any other improper conduct, cause the Apprentice to come before him, and hear and determine the complaint, and on conviction, imprison the Apprentice in a common gaol or house of correction for a term not exceeding one month. 14 & 15 V. c. 11, s. 6. And by masters against their apprentices.
- 11.** In case an Apprentice absents himself from his Master's service or employment before the time of his Apprenticeship has expired, he may at any time thereafter, if found in Upper Canada, be compelled to serve his Master for so long a time as he so absented himself, unless he makes satisfaction to his Master for the loss sustained by such absence. 14 & 15 V. c. 11, s. 7. Liability of apprentice deserting his master's service.
- 12.** In case an Apprentice refuses to serve as above required, or to make such satisfaction to his Master or to obey the lawful commands of his Master, or in any other way refuses or neglects to perform his duty to his Master, and if the Master, or his overseer or agent, complains on oath to a Justice of the Peace, Mayor, or Police Magistrate, either in the County, **City** How complaints may be heard.

City or Town where the Master resides, or in any County, City or Town where the absconding Apprentice is found, such Justice, Mayor, or Police Magistrate may, by Warrant under his hand and seal, cause the Apprentice to be apprehended and brought before him, or before some other Justice of the Peace; and such Justice upon hearing the complaint, may determine what satisfaction shall be made by the Apprentice to his Master: And in case the Apprentice does not give or make such satisfaction immediately, or if the satisfaction be of such a nature as not to admit of immediate performance if he does not give sufficient security to make such satisfaction, then the Justice, Mayor, or Police Magistrate may commit the Apprentice to the common gaol, or House of Correction of the County, City or Town, for any time not exceeding three months; but such imprisonment shall not release the Apprentice from his obligation to make up his lost time to his Master. 14 & 15 V. c. 11, s. 7.

Committal of apprentice in certain cases, &c.

13. But where the Apprentice has not left Upper Canada, or having left it, returns thereto, the Master shall not proceed against him under this Act, except within three years next after the expiration of the term for which the Apprentice contracted to serve, or next after his return, as the case may be. 14 & 15 V. c. 11, s. 7.

Limitation of proceedings against absconding apprentice.

14. Any person who knowingly harbors or employs an absconding Apprentice, shall pay to the Master of the Apprentice the full value of the Apprentice's labor, and such value shall be what the Master would have received from the labor and service of the Apprentice if he had continued faithfully in his Master's service, and may be recovered in any Court having jurisdiction where the Apprentice is employed, or where the Master resides. 14 & 15 V. c. 11, s. 8.

Penalty for employing or harboring absconding apprentices.

15. If an Apprentice becomes insane, or is convicted of a felony, or is sentenced to the Provincial Penitentiary, or absconds, his Master may within one month thereafter, but not later, avoid the Indenture of Apprenticeship, from the time he gives notice in writing of his intention to do so to the other parties to the indenture, either by serving them with the notice or a copy thereof, or by inserting the same in the *Canada Gazette*, or in a newspaper of the County or City where the Master's establishment is situated. 14 & 15 V. c. 11, s. 9.

Indenture may be avoided if apprentice becomes insane.

16. Either party may appeal from the decision of a Justice, Mayor, or Police Magistrate under this Act in manner provided for by the Act, respecting *the right of appeal in certain cases in Upper Canada*. 14 & 15 V. c. 11, s. 10.

Either party may appeal.

17. The Court of Quarter Sessions shall have a concurrent primary jurisdiction over offences committed against this Act. 14 & 15 V. c. 11, s. 11.

Act not to affect jurisdiction of quarter sessions.

18. When that Court is called upon to adjudicate in any matter arising under this Act, in addition to the other powers of the Court, it shall have power, in any case where it appears necessary for the full administration of justice, to annul the 5 Apprenticeship, and compel the parties to the indenture of Apprenticeship to deliver the same up to be cancelled, and the Court may make such further order as the circumstances require. 14 & 15 V. c. 11, s. 11. Additional powers given to that court.

19. All fines imposed and collected under this Act shall be 10 paid to the Chamberlain of the City, or to the Treasurer of the County or Town respectively, where the offence was committed. 14 & 15 V. c. 11, s. 12. Application of fines.

INTERPRETATION.

20. The word "Master," when it occurs in this Act, shall include any person or number of persons, male or female, 15 carrying on business singly or in co-partnership. 14 & 15 V. c. 11, s. 13. Meaning of the word "master."

CAP. LXVII.

An Act respecting the action of seduction, and the support of illegitimate Children.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

SEDUCTION.

- 1.** The father, or in case of his death, the mother of any unmarried female who has been seduced, may maintain an action for the seduction, notwithstanding such unmarried female was, at the time of her seduction, serving or residing with another person, upon hire or otherwise. 7 W. 4, c. 8, s. 1. 5
- 2.** Upon the trial of any action for seduction brought by the father or mother, it shall not be necessary to give proof of any act of service performed by the person seduced, and no proof shall be received to the contrary; but in case the father or mother of the female seduced, before the seduction, had abandoned her, and refused to provide for and retain her as an inmate, then any other person who might, at Common Law, have maintained an action for such seduction, may maintain such action. 7 W. 4, c. 8, s. 2. 10
15
- 3.** Any person, other than the father or mother, who by reason of the relation of master, or otherwise, would have been entitled, at Common Law, to maintain an action for the seduction of an unmarried female, may still maintain such action, if the father or mother is not resident in Upper Canada at the time of the birth of the child which may be born in consequence of such seduction, or being resident therein, does not bring an action for the seduction within six months from the birth of such child. 7 W. 4, c. 8, s. 3. 20
25

SUPPORT OF ILLEGITIMATE CHILDREN.

- 4.** Any person who furnishes food, clothing, lodging, or other necessaries, to any child born not in lawful wedlock, may maintain an action for the value thereof against the father of such child, if such child was a minor at the time such necessaries were found, and was not then residing with his or her reputed father, and maintained by him as a member of his family. 7 W. 4, c. 8, s. 4. 30
- 5.** Where the person suing for the value of such necessaries is the mother of such child, or any person to whom the mother has become accountable for such necessaries, then the fact of the defendant being the father of such child shall be proved by other testimony than that of the mother. 7 W. 4, c. 8, s. 4. 35
- 6.** No action shall be sustained under the two last sections, unless it is shewn upon the trial thereof, that while the mother of the 40

the child, was pregnant, or within six months after the birth of her child, she did voluntarily make an affidavit in writing, before some one of Her Majesty's Justices of the Peace for the County or City in which she resided, declaring that the defendant in such action is really the father of such child, and that she filed such affidavit, within the time aforesaid, in the office of the Clerk of the Peace of the County, or Clerk of the Council of the City, (as the case may be.) 7 W. 4, c. 8, s. 4.

unless the mother makes affidavit before the birth of the child.

7. Such affidavit shall not be evidence of the fact of the defendant being the father of such child.

Such affidavit not to be evidence.

10 8. This Act shall not take away or abridge any right of action or remedy which, without this Act, might have been maintained against the father of an illegitimate child.

Former remedies not to be affected.

CAP. LXVIII.

An Act respecting Limitation of certain actions, and Remedies, for and against executors and administrators.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

RIGHTS AND LIABILITIES OF EXECUTORS, &c.

Executors of any person deceased may maintain actions for injuries done to real estate in testator's life time.

1. In case of an injury committed to the real estate of any person within six months next prior to his decease, his executors or administrators may maintain an action of trespass or trespass on the case therefor, if brought within one year after his decease, and the damages recovered shall be part of his personal estate. 7 W. 4, c. 3, s. 2. 5

To be brought within six calendar months.

2. In case any person within six calendar months next previous to his decease, has committed a wrong to another in respect of such other person's real or personal property, such other person may, according to the circumstances, maintain an action of trespass or of trespass on the case therefore against the executors or administrators of the person who committed the wrong, if such action is brought within six calendar months after such executors or administrators have taken upon themselves the administration of the estate and effects of such person, and the damages to be recovered in such action shall be payable in like order of administration as the simple contract debts of such person. 7 W. 4, c. 3, s. 2. 10 15 20

Executors and administrators of a lessor may distrain for rent.

3. The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for the arrearages of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done if living. 7 W. 4, c. 3, s. 27. 25

Such arrearages of rent may be distrained for within six months after determination of the lease.

4. Such arrearages may be distrained for at any time within six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears have become due: and all and every the powers and provisions in the several Statutes made relating to distresses for rent shall be applicable to the distresses so made as aforesaid. 7 W. 4, c. 3, s. 28. 30

Action maintainable in Court.

5. An action of debt on simple contract shall be maintainable in any Court of common law against any executor or administrator. 35

Representatives of deceased joint contractors liable although

6. In case any joint contractor, obligor or partner, dies, the person interested in the contract, obligation or promise, entered into by joint contractors, obligors or partners, may proceed by action against the representatives of such deceased contractor, 40

contractor, obligor or partner, in the same manner as if the said contract, obligation or promise, had been joint and several, and this notwithstanding there may be another person liable under such contract, obligation or promise, still living, and an action pending against such person. 1 V. c. 7, s. 1.

the other joint contractor be living.

7. Actions of debt for rent, upon an indenture of demise,—actions of covenant or debt, upon any bond or other specialty,—actions of debt, or *scire facias* upon any recognizance,—actions of debt upon any award where the submission is not by specialty, or for an escape, or for money levied on any *feri facias*,—and actions for penalties, damages, or sums of money given to the party grieved by any Statute now or hereafter to be in force, shall be commenced and sued within the time and limitation hereinafter expressed, and not after, that is to say: The said actions of debt for rent, upon an indenture of demise or covenant, or debt upon a bond or other specialty, and actions of debt, or *scire facias* upon a recognizance, within twenty years after the cause of such actions arose; the said actions by the party grieved, within two years after the cause of such actions arose, and the said other actions, within six years after the cause of such actions arose: But nothing herein contained shall extend to any action given by any Statute, where the time for bringing such action is by any Statute specially limited.

25 7 W. 4, c. 3, s. 3.

Limitation of time for commencement of particular actions.

Actions of debt on demise, &c.

Other actions.

8. If any person entitled to any such action, or to such *scire facias*, was or is at the time of any such cause of action accruing, within the age of twenty-one years, *feme covert*, *non compos mentis*, or without the limits of Upper Canada, then he may bring the same actions, so as he commences the same within such times after coming to or being of full age, discover, of sound memory, or returned to Upper Canada, as other persons having no such impediment should, according to the provisions of this Act, have done; and if any person against whom any such cause of action has accrued or does accrue, was or is at the time such cause of action accrued or accrues without the limits of Upper Canada, the person entitled to such cause of action may bring the action within such times as are before limited, after the return of such person to Upper Canada.

40 7 W. 4, c. 3, s. 4.

In case of disabilities.

9. In case any acknowledgment has been or is made, either by writing signed by the party or his agent, liable, by virtue of any indenture, specialty or recognizance, or by part payment, or part satisfaction, on account of any principal or interest being due thereon, the person entitled to such actions may bring his action for the money remaining unpaid and so acknowledged to be due, within twenty years after such acknowledgment by writing, or part payment, or part satisfaction, as aforesaid; or in case the person

or

Written acknowledgment or part payment.

Acknowledgment may be pleaded in replication.

or persons entitled to such action is, at the time of such acknowledgment, under such disability, as aforesaid, or the party making such acknowledgment is, at the time of making the same, without Upper Canada, then within twenty years after such disability has ceased, as aforesaid, or the party has returned as the case may be; and the plaintiff or plaintiffs in any such action, on any indenture, specialty or recognizance, may, by way of replication; in answer to a plea of this Statute, state such acknowledgment, and that such action was brought within the time aforesaid. 7 W. 4, c. 3, s. 4. 5 10

In case judgment be reversed for error, &c.; new action may be commenced within a year.

10. If in any of the said actions judgment having been given for the plaintiff, the same is reversed for error in a Court of Error or Appeal, or if a verdict passes for the plaintiff, and upon matter alleged in arrest of judgment, the judgment is given against the plaintiff, that he take nothing by his plaint, writ or bill, or if in any of the said actions the defendant being outlawed, reverses the outlawry, the plaintiff, his executors or administrators, as the case requires, may commence a new suit or action, from time to time, within a year after such judgment reversed, or such judgment given against the plaintiff, or outlawry reversed, and not after. 7 W. 4, c. 3, s. 5. 15 20

CAP. LXIX.

An Act respecting Mutual Insurance Companies.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Any ten freeholders in any Municipality or Village may at any time call a meeting of the freeholders of such Municipality or Village, to consider whether it is expedient to establish therein a Fire Insurance Company, on the principle of Mutual Insurance. 6 W. 4, c. 18, s. 1; 18 V. c. 120, s. 2; 20 V. c. 74, s. 1. Ten freeholders of any district authorized to call a meeting to establish a Fire Insurance Company.
2. In case the meeting is to be a meeting of the freeholders of the County or Union of Counties, such meeting shall be called by an advertisement mentioning the time, place and object of the meeting, published for three weeks immediately preceding such meeting, in all the public newspapers published in the County or Union of Counties in which the meeting is to be holden, if any is published therein. 6 W. 4, c. 18, s. 1. Meeting to be advertised.
3. In case no newspaper is published in the County or Union of Counties, the advertisement calling the meeting may be posted up in some public place, in three or more Townships of the County or Union of Counties. How if no newspaper published in the county.
4. In case the meeting is to be a meeting of the freeholders of any other Municipality, or of a Village, the advertisement calling the meeting shall be published, in manner and for the time aforesaid, in the newspaper or newspapers in or nearest to such Municipality or Village. 18 V. c. 120, s. 2. Meeting for establishing a town or village Company.
5. Nothing hereinbefore contained shall prevent the establishing of more Mutual Insurance Companies than one in any County or Union of Counties. 18 V. c. 120, s. 1. Nothing to prevent more Companies being established.
6. In case thirty of such freeholders at least are present at such meeting, and a majority of them determine that it is expedient to establish such Company, they may elect three persons from among the then present freeholders of the Municipality or Village (as the case may be) to open and keep a book, in which all freeholders in the Municipality or Village may sign their names and enter the sums for which they respectively bind themselves to effect Insurance with the Company. 6 W. 4, c. 18, s. 2; 18 V. c. 120, s. 3. Subscription book to be opened if the majority be for establishing a Company.
7. Whenever forty or more persons duly qualified have signed their names in the Subscription Book, and bound themselves to effect Insurance amounting together to ten thousand pounds, or upwards, such persons and all other persons thereafter When subscribers amount to forty and the sub-

scriptions to £10,000. Company to be formed. thereafter becoming members of the Company by effecting Insurances therein in the manner hereinafter provided, shall be a body corporate and politic, by and under the name and style of "The Mutual Fire Insurance Company, of the Municipality (naming it) or Village" (naming it), for which the Company has been established; and by that name may mutually insure their respective dwelling Houses, Stores, Shops and other buildings, household furniture, and merchandize, against damage or loss by fire, whether the same happens by accident, lightning, or any other means, excepting that of design in the assured, or by the intrusion of an Enemy or Insurrection. 6 W. 4, c. 18, s. 4; 18 V. c. 120, s. 4. 5 10

Every Mutual Insurance Company may divide its business and Members into two branches. 8. Every Company now established, or established after this Act takes effect, may separate their business into two branches or departments, one for the Insurance of isolated buildings and property not hazardous, and the other for Insuring buildings and property hazardous and not hazardous. 18 V. c. 120, s. 6; 20 V. c. 74. 15

Scale of risks to be made for each branch. 9. The Directors of every such Company shall make a scale of risks for each branch, and direct that the accounts of each shall be kept separate and distinct the one from the other. 18 V. c. 120, s. 7.

Members of one branch not to be liable for losses in the other. 10. Members of any such Company Insuring in one branch shall not be liable for any claims on the other branch. 18 V. c. 120, s. 8. 25

Expenses to be divided between each branch proportionally. 11. All necessary expenses incurred in the conducting and management of such Companies shall be assessed upon and divided between each branch in proportion to the amounts insured in such branches respectively. 18 V. c. 120, s. 8.

First meeting. 12. Any ten members of an Insurance Company formed as hereinbefore mentioned, may call the first meeting of such Company, in the case of a County Insurance Company, at such time and place within the County or Union of Counties, and in the case of any other Municipality or Village Mutual Insurance Company, at such time and place within the Municipality or Village, as they determine upon for holding such meeting, by advertising the same in such of the provincial newspapers printed and published within the County or Union of Counties, Municipality or Village, or nearest thereto, as they think proper, giving at least thirty days' notice of the time, place and design of such meeting, for the purpose of choosing the first Board of Directors, of making and establishing By-Laws, and of transacting any business necessary and proper to carry this Act into effect. 6 W. 4, c. 18, s. 23. 30 35 40 45

No policy to issue until 13. No policy of Insurance shall be issued by the Company until application has been made for insurance on twelve thousand sand 45

sand five hundred pounds at the least, and in the case of a ^{£12,500} Municipality other than a County, or of a Village Insurance ^{been applied} Company, until application has been made for insurance ^{for insurance.} on ten thousand pounds at least. 6 W. 4, c. 18, s. 23; 18 V. c. 120, 5 s. 5.

14. The Company may hold such lands, but such only, ^{Limitation as to lands, &c., to be held by the Company.} as are requisite for the accommodation of the Company in relation to the convenient transaction of their business, or such as have been *bona fide* mortgaged to them by way of security, or 10 conveyed to them in satisfaction of debts previously contracted in the course of their dealings, or purchased at sales upon judgments obtained for such debts. 6 W. 4, c. 18, s. 3.

15. The Company shall not deal or trade in buying or selling ^{Company not to trade, &c.} any goods, merchandize or commodities.

15 16. The Company may (if the Directors thereof for the time ^{Company may insure any property within Upper Canada.} being think fit) admit as a member thereof the owner of, and insure any property, moveable or immoveable, lying within any part of Upper Canada, whether the owner of such property be or be not a freeholder in the Municipality, County or Union of 20 Counties, Town or village, in which the Company is incorporated. 4, 5 V. c. 64, s. 1.

17. Every person who becomes a member of the Company ^{Notes deposited with Company, payable to any officer thereof, &c., and indorsed to the Company.} by effecting insurances therein, shall, before he receives his policy, deposit his promissory note payable to the Com- 25 pany, or some officer thereof, or to some other person for the purpose of being endorsed by such person in favor of, or to the Company, or some officer thereof, for such a sum of money as shall be determined by the Board of Directors. 4, 5 V. c. 64, s. 4.

30 18. A part of the sum secured by such note, to be determined by the Board of Directors, shall be immediately paid to the Treasurer, for the purpose of discharging the incidental expenses of the institution; and the remainder of such note shall be payable in part or the whole at any time when the Board 35 deems the same requisite for the payment of losses or other expenses. 16 V. c. 192, s. 3. ^{Part thereof to be paid to the Treasurer.}

19. At the expiration of the term of insurance, the note, or ^{At the expiration of the insurance, note to be returned.} such part of the same as remains unpaid, after deducting all losses and expenses occurring during the said term, shall be 40 relinquished and given up to the signer thereof. 6 W. 4, c. 18, s. 12.

20. Every person insured by the Company, and the heirs, ^{Insurer to be member of the Company during the term of his policy.} Executors, Administrators and assigns of every such person continuing to be insured therein, as hereinafter provided, shall 45 be members thereof, during the terms specified in their respective

tive policies, and no longer, and shall at all times be subject to the provisions of this Act. 6 W. 4, c. 18, s. 6.

Insurances not to exceed seven years.

21. The Company may make insurance for any term not exceeding seven years.

Policies to be void in certain cases.

22. Any Policy of Insurance issued by the Company, signed by the President and countersigned by the Secretary (but not otherwise) shall be deemed valid and binding on the Company, if the assured has a title in fee simple unincumbered to the building or buildings insured, and to the land covered by the same, but if the assured have a less Estate therein, or if the premises be incumbered, the Policy shall be void, unless the true title of the assured and the incumbrance on the premises be expressed therein and in the application therefor. 6 W. 4, c. 18, s. 17. 5 10

Policy void in case of insurance in any other Company without consent of Directors.

23. If insurance on any house or building subsist in the Company, and in any other office, or by any other person at the same time, the insurance in the Company shall be void, unless the double insurance subsist with the consent of the Directors, signified by endorsement on the back of the Policy, signed by the President and Secretary. 6 W. 4, c. 18, s. 22. 15 20

Policy rendered void on alienation of property insured.

24. When any house or other building is alienated by sale or otherwise, the policy shall thereupon be void and be surrendered to the Directors of the Company to be cancelled, and thereupon the assured shall be entitled to receive his deposit note or deposit notes, upon payment of his proportion of all losses and expenses that have accrued prior to such surrender, but the grantee or alienee having the policy assigned to him may have the same ratified and confirmed to him for his own use and benefit, upon application to the Directors and with their consent within thirty days next after such alienation, on giving proper security to the satisfaction of the Directors for such portion of the deposit or premium note as remains unpaid; and by such ratification and confirmation the party causing the same shall be entitled to all the rights and privileges and be subject to all the liabilities to which the original party insured was entitled and subjected. 6 W. 4, c. 18, s. 19. 25 30 35

But the assignee may have the same confirmed to him by Directors.

Alteration of premises after insurance made.

25. If any alteration is made in any house or building by the proprietor thereof, after an insurance has been made thereon with the Company, whereby it is exposed to greater risk or hazard from fire than it was when insurance was effected, the insurance thereupon shall be void, unless an additional premium and deposit after such alteration has been settled with and paid to the Directors, but no alterations or repairs in buildings not increasing such risk or hazard shall affect the insurance previously made thereon. 6 W. 4, c. 18, s. 20. 40

- 26.** The property, affairs and concerns of the Company shall be managed by a Board of Directors to be chosen annually on the first Monday in June, and to be composed of seven persons (unless on the day appointed for such Election the total amount insured by the Company, exceeds the sum of one hundred thousand pounds, in which latter case the Board shall be composed of eleven persons, to be chosen as aforesaid) one of whom shall be chosen President, and such persons shall hold their offices for one year. 6 W. 4, c. 18, s. 7; 4, 5 V. c. 64, s. 3.
- 27.** The Directors shall be members of the Company, and insurers therein to the amount of two hundred pounds, at least, for the time they hold office, and be elected at such place within the Municipality or Village, and at such time of the day, as a majority of the Board for the time being appoints; and public notice thereof shall be given in such of the provincial Newspapers published within such Municipality, Town or Village, and in such other manner as the Board of Directors, for the time being, orders and directs, and at least thirty days previous to the time of holding the Election. 6 W. 4, c. 18, s. 7.
- 28.** The Election of Directors shall be held and made by such members of the Company as attend for that purpose in their own proper person, or by proxy. 6 W. 4, c. 18, s. 7.
- 29.** The elections for Directors shall be by ballot: and seven persons (or eleven persons when eleven Directors are to be elected), having the greatest number of legal votes thereat shall be the Directors. 6 W. 4, c. 18, s. 7.
- 30.** If at any such election two or more members have an equal number of votes, in such manner that a greater number of persons than seven or eleven (as the case may be) by a plurality of votes appear to be chosen Directors, then the said members of the Company shall proceed to elect by ballot until it is determined which of the persons so having an equal number of votes shall be the Director or Directors, so as to complete the whole number of seven or eleven (as the case may be), and the Directors so chosen, as soon as may be after the election, shall proceed in like manner to elect by ballot one of their own number to be President. 4, 5 V. c. 64, s. 3.
- 31.** If any vacancies happen among the Directors, during the current year of their appointment, by death, resignation or removal from the Municipality or Village, such vacancies shall be filled up for the remainder of the year, by a person or persons to be nominated by a majority of the remaining Directors, and as soon as may be after any such vacancy occurs. 6 W. 4, c. 18, s. 7.

Affairs of the Company to be managed by a Board of seven Directors.

One to be chosen President.

Qualification of Directors.

Directors may be elected personally or by proxy.

Mode of Election.

Election of President.

Vacancies to be supplied.

Number of
votes in pro-
portion to
shares.

32. Each member of the Company shall be entitled to the number of votes proportioned to the amount by him insured at least one month prior to the time of voting, according to the following rates, that is to say :

For any sum amounting to one hundred pounds, one vote ; 5

Four hundred pounds, two votes ;

Nine hundred pounds, three votes ;

And one vote for every six hundred pounds above nine hundred. 6 W. 4, c. 18, s. 8.

Corporation
not dissolved
by non elec-
tion of Direct-
ors on day
specified.

33. In case an election of Directors was not made on the 10 day it ought to have been made, the Corporation shall not for that cause be dissolved, but the election may be held on any subsequent day according as may be required by the by-laws and ordinances of the Corporation, in case such election is held within ten months from the day appointed for holding the 15 annual election. 6 W. 4, c. 18, s. 9.

Directors ap-
pointed at
subsequent
day to have
all the powers
contained in
this Act.

34. The Directors appointed at such subsequent day shall have all the powers contained in this Act, as if elected on the annual day of election, and shall hold office for the remainder of the current year of their election. 6 W. 4, c. 18, s. 9. 20

Directors to
give bonds to
district Treas-
urer.

35. Every Director of the Company shall, before he enters upon the duties of his office, give a bond to the Treasurer of the Municipality or Village in which the Company is formed, in the sum of five hundred pounds currency, (or such further sum as may be fixed by any by-law or ordinance,) together with 25 two sufficient sureties in the sum of two hundred and fifty pounds each, to the satisfaction of such Treasurer, conditioned for the faithful discharge of the duties of his office, agreeable to the provisions of this Act, and the by-laws, regulations, ordinances, requirements and restrictions made in pursuance thereof. 30 6 W. 4, c. 18, s. 24.

Who may in-
stitute suits
thereon.

36. On the complaint of any person injured by the misconduct of any Director, the Treasurer shall institute a suit at law against such Director and his sureties upon the bond given by him, upon receiving security to indemnify the Treasurer against 35 costs, and certify to the Court the name of prosecutor in any such cause, and the Court may on motion of the defendants in such cause order the prosecutor to find sureties to indemnify the defendants for their costs, should he fail to prosecute or recover. 40 6 W. 4, c. 18, s. 24.

What if de-
fendants
plead per-
formance of
bond.

37. If the defendants plead performance of the condition of such bond, the prosecutor may reply as many breaches respecting his interest as he thinks fit. 6 W. 4, c. 18, s. 24.

38.

- 38.** The Jury on trial of such issues as may be put to them, shall assess damages for such breaches as the prosecutor proves, and the Court shall enter up judgment for the whole penalty of the bond, and issue execution in favour of the prosecutor for such a sum as the Jury have found for damages and costs; and the judgment shall remain for the benefit of such other person or persons as may by *scire facias* or Writ of Revivor thereon shew that they have been injured by any breaches of the condition of such bond. 6 W. 4, c. 18, s. 24.
- 39.** If the prosecutor fails to recover in such suit, the Court shall award costs to the defendants, and issue execution for the same against such prosecutor. 6 W. 4, c. 18, s. 24.
- 40.** Every Treasurer and Secretary to any such Company, shall, before he enters upon the duties of his office, give a bond to the Company in the sum of five hundred pounds currency, with two sufficient securities in two hundred and fifty pounds each, to the satisfaction of the Board of Directors, conditioned for the faithful discharge of the duties of his office, agreeable to the provisions of this Act, and of the by-laws, rules and regulations of the Company, made pursuant thereto. 6 W. 4, c. 18, s. 25.
- 41.** The Board of Directors for the time being, shall superintend and have the management of all matters relating to and not otherwise provided for by the Company. 6 W. 4, c. 18, s. 10.
- 42.** The Board may, from time to time,—
1. Appoint a Secretary, Treasurer, and such other Officers as to them seems necessary ;
 2. Prescribe their duties ;
 3. Fix their compensation or allowances ;
 4. Take such security from them as they deem necessary, or as may be required by this Act, for the faithful performance of their respective duties ; and
 5. Remove them at pleasure and appoint others in stead ;
 6. Determine the rates of insurance, the sum to be insured on any building, and the sum to be deposited for the insurance thereof ;
 7. Direct the making and issuing of all policies of insurance ;
 8. Provide books and stationery and other things needful for the office of the Company, and for carrying on the affairs thereof ;

And certify to the Court who is prosecutor.

Judgment to be entered for the whole penalty for the benefit of any other plaintiff.

What if prosecutor fails to recover in such suit.

Treasurer and Secretary to give bond.

Directors to superintend and manage business of Company.

Duties of Board.

9. Draw upon the Treasurer for the payment of all losses by and for expenses incurred in transacting the concerns of the Company ;

10. Hold their meetings monthly, and oftener if necessary, for transacting the business of the Company ; and 5

11. Shall keep a record of their proceedings. 6 W. 4, c. 18, s. 10.

Directors dissenting may record their reasons. 43 Any Director disagreeing with the majority of the Board at any meeting, may enter his dissent with his reasons therefor on record. 6 W. 4, c. 18, s. 10. 10

Directors may issue debentures or promissory notes for losses. 44. The Directors may from time to time issue Debentures or Promissory Notes of the Company, bearing interest, for such sums and to such an amount as may be necessary for the purpose of paying or of raising money by loan for the purpose of paying any loss or losses sustained by the Company : but the whole 15 amount of such Debentures or Promissory Notes at any one time outstanding shall not exceed one fourth part of the amount then unpaid on the Deposit or Premium Notes held by the Company. 16 V. c. 192, s. 1.

Limitation of amount and when to become payable. 45. Such Debentures or Promissory Notes shall not in any 20 instance be drawn so as to become due and payable in more than twelve months after the issuing thereof ; nor shall any such Debenture or note be for a less sum than Twenty-five Pounds. 16 V. c. 192, s. 1.

Out of what funds to be paid. 46. Such Debentures or Notes and the interest thereon 25 shall be paid solely out of moneys to be collected on the Deposit or Premium Notes of Members of the Company, and not by new Debentures or Notes or money raised by the issue of new Debentures or Notes. 16 V. c. 192, s. 1.

Directors of Company may assess the members in order to pay debentures or notes. 47. The Directors of the Company may always assess upon 30 the Members thereof in proportion to the amount of their Deposit or Premium Notes respectively, such sum or sums as may be necessary to pay any such Debentures or Notes then outstanding, and the interest thereon. 16 V. c. 192, s. 1.

Authority to make By-laws, &c. 48. The Board of Directors may make and subscribe such 35 by-laws, ordinances, rules and regulations, and repeal, alter and amend any by-laws, rules, ordinances or regulations previously made, as to them appear needful and proper, touching such matters as appertain to the business of the Company, and not contrary to the laws of Upper Canada. 6 W. 4, c. 18, s. 11. 40

Five Directors to constitute a quorum. 49. Five Directors shall constitute a quorum for the transaction of business ; and the decision of a majority of the quorum present at any sitting of the Board, shall be binding and conclusive on the Board. 6 W. 4, c. 18, s. 11.

- 50.** In case of an equality of votes at any such sitting of the Board, the President shall have a casting vote. 6 W. 4, c. 18, s. 11. President to have a casting vote.
- 51.** The Board may convene at any time a general meeting of the Company upon any urgent occasion. 6 W. 4, c. 18, s. 11. Board may convene meetings.
- 52.** Every member of the Company shall pay his proportion of all losses and expenses accruing to the Company during the continuance of his policy. 6 W. 4, c. 18, s. 13. Every member to pay proportion of losses.
- 53.** All the right and estate, at the time of insurance of the assured, to the buildings insured by the Company, to the lands on which the same stand, and to all other lands thereto adjacent, mentioned and declared liable in the policy of assurance, shall stand pledged to the Company; and the Company may sell, demise or mortgage the same or any part thereof, to meet the liabilities of the assured, for his proportion of any losses or expenses accruing to the Company during the continuance of his policy, which sale, demise or mortgage, shall be made in such manner as is specified in the policy of the assured. 6 W. 4, c. 18, s. 13. Company to have a lien on buildings insured to meet liabilities of insurers.
- 54.** In case of any loss or damage by fire happening to any member upon property insured with the Company, such member shall give notice thereof in writing to the Board of Directors, or some one of them, or to the Secretary of the Company, within thirty days after such loss or damage has happened; and the Directors shall ascertain and determine the amount of such loss or damage. 6 W. 4, c. 18, s. 14. Proceedings in case of loss by fire. Directors to determine amount of losses.
- 55.** If the party is not satisfied with the determination of the Directors, the question shall then either be submitted to three disinterested persons as referees, one of whom shall be named by the Board, and one by the suffering party, and the two referees shall name the third, and the decision or award of a majority of them shall be binding; or the suffering party may bring an action against the Company for the loss or damage sustained. 6 W. 4, c. 18, s. 14. In case of difference amount to be settled by arbitration. Or party suffering may bring an action.
- 56.** If upon the trial of the action a greater sum is recovered than the amount determined upon by the Directors, the party suffering shall have judgment therefor against the Company, with interest thereon from the time such loss or damage happened, and notice given thereof, with costs of suit. 6 W. 4, c. 18, s. 14. If plaintiff recovers more than the Directors determine to recover, the excess and costs.
- 57.** If no more is recovered than the amount so previously determined by the Board, then the plaintiff in such suit shall have judgment for such amount, and shall not be entitled to costs against the defendants, but the defendants shall be entitled to costs.

- tiff to pay costs. costs against the plaintiff as in the case of a verdict for the defendant. 6 W. 4, c. 18, s. 14.
- Execution not to issue against Company until six months after judgment. **58.** No execution shall issue against the Company upon any judgment until after the expiration of six months from the recovery thereof. 6 W. 4, c. 18, s. 14. 5
- Justices of the Peace may swear and examine witnesses, &c. **59.** Any Justice of the Peace may examine on oath, or solemn affirmation, any party or person who comes before him to give evidence touching any loss by fire in which any Mutual Insurance Company is interested, and may administer the requisite oath or affirmation. 12 V. c. 86, s. 2. 10
- Directors to settle the amount which members are to pay on every loss by fire. **60.** The Directors, after receiving notice of any loss or damage by fire sustained by any member, and ascertaining the same, or after the recovery of any judgment against the Company for such loss or damage, shall settle and determine the sums to be paid by the several members thereof, as their respective proportion of such loss, and publish the same in such manner and form as they see fit, or as the by-laws prescribe. 6 W. 4, c. 18, s. 15. 15
- In what proportion members to pay on deposit notes and to whom. **61.** The sum to be paid by each member shall always be in proportion to the original amount of his deposit note or notes, and shall be paid to the Treasurer within thirty days next after the publication of said notice. 6 W. 4, c. 18, s. 15. 20
- In default of payment. Directors may sue for whole amount of deposit notes. **62.** If any member for thirty days after the publication of such notice neglects or refuses to pay the sum assessed upon him, as his proportion of any loss or damage, the Directors may sue for and recover the whole amount of his deposit note or notes, with costs of suit. 6 W. 4, c. 18, s. 15. 25
- Balance to be returned to the party at expiration of insurance. **63.** The money thus collected shall remain in the Treasury of the Company, subject to the payment of such losses and expenses as may thereafter accrue during the continuance of the policy; and the balance, if any remaining, shall, on demand, be returned to the party from whom it was collected, after thirty days from the expiration of the term for which insurance was made. 6 W. 4, c. 18, s. 15. 30
- Losses to be paid within three months. **64.** The Directors shall settle and order the payment of all losses within three months after they have been notified as aforesaid. 6 W. 4, c. 18, s. 15. 35
- No allowance for ornamental work. **65.** No allowance is to be made in any case for gilding, historical or landscape painting, stucco or carved work. 6 W. 4, c. 18, s. 18. 40
- Provision for payment in case losses **66.** If it ever happens that the whole amount of deposit notes is insufficient to pay the loss occasioned by any one fire or fires, the sufferers insured by the Company shall receive towards

towards making good their respective losses a proportionate dividend of the whole amount of such deposit notes, according to the sums by them respectively insured; and in addition thereto a sum to be assessed in the manner as provided by any by-law of the Company on all the members of the Company, not exceeding one per cent on the amount by them respectively insured. 6 W. 4, c. 18, s. 16.

exceed the whole amount of deposit notes.

By assessment on the members.

67. The members respectively shall never be required to pay at any one time for any loss or damage occasioned by fire, more than the one per cent insured in the Company, in addition to the amount of their deposit notes. 6 W. 4, c. 18, s. 16.

Not exceeding one per cent at any one time.

68. Any member upon payment of the whole of his deposit note, and surrendering his policy before any subsequent loss or expense has occurred, shall be discharged from the Company, and no member shall be liable beyond the amount of his premium note. 18 V. c. 120, s. 9,—6 W. 4, c. 18, s. 16.

Members paying deposit notes before loss, discharged from liability.

69. In case any building situated upon leased lands, and insured by the Company, is destroyed by fire, the Directors may retain the amount of the premium note given for insurance thereof until the time for which insurance was made has expired, and at the expiration thereof the assured shall have the right to demand and receive such part of such retained sum as has not been expended in losses and assessments. 6 W. 4, c. 18, s. 21.

Directors may retain premium notes on leased lands until expiration of insurance.

70. The Legislature may at any time hereafter make such additions to this Act, or such alterations in any of its provisions as they think proper. 6 W. 4, c. 18, s. 26.

Alteration of this Act.

C A P . L X X .

An Act respecting Joint Stock Companies, for the construction of Roads and other Works in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Existing Companies continued—how this Act shall apply to them. **1.** All Companies incorporated for such purposes as are in this Act mentioned, under any former Acts, before this Act takes effect, shall subsist and continue, notwithstanding the repeal of such Acts, and such Companies shall be subject to, and may avail themselves of the provisions of this Act and in all cases of doubts or ambiguity this Act shall be deemed and taken to be declaratory of the meaning of the said Acts. 16 V. c. 190, s. 1. 5 10

All actions, &c., to be determined under this Act. **2.** All actions, suits or proceedings now pending under any such former Act, may be proceeded with and determined under this Act. 16 V. c. 190, s. 1. 5

Five persons may form a Company for the construction of plank and other roads. **3.** Any number of persons not less than five may, form themselves into a Company for the purpose of constructing and may construct in, along, or over, any public road or highway, or allowance for road, or in, along, or over any other land a plank, macadamized or gravelled road, not less than two miles in length and also any bridges, piers, or wharves, connected therewith. 16 V. c. 190, s. 2, 16 V. c. 124, s. 1. 15 20

FORMATION OF COMPANIES.

As to taking property. **4.** No such Company shall construct any such road or other such works, through, over, along or upon any private property or property of the Crown, without having first obtained the permission of the owner or occupier thereof, or of the Crown, with the approval of the Governor in Council so to do, except as hereinafter provided. 16 V. c. 190, s. 2. 25

Highest grade. **5.** No such road shall be made of a higher grade than one foot elevation to twenty feet along the road, without the sanction of the County Engineer, of the County where the road or other work is situated or to be constructed, and if there be no such officer, then by some competent Engineer who shall be appointed by the County Council, for that purpose. 16 V. c. 190, s. 2. 30

As to lines for which other Companies have been chartered. **6.** In case under any Statute made before this Act takes effect, any Company has been formed to construct any Roads, or Bridges, Piers or Wharves, connected therewith as aforesaid, and the stock of such Company has been subscribed, and the work in course 35

course of completion within the time limited by the Statute under which the Charter has been obtained; no Company shall be formed under this Act to construct any line of road for which such prior Charter was so obtained, so long as such Charter remains in force, and no private property shall be taken for any road or other work, for which such Company has been constituted, without the consent of the owner, if such owner himself commences the work within one year, and completes the same within two years, from the time of his being notified that a Company had been formed for constructing the same.

7. No such road shall be constructed or pass within the limits of any City, or within the limits of any incorporated Town or Village, except by permission, under a By-law of such City, Town or Village, passed for that purpose: But all bridges in the line of road between the termini of any such road, which are not within the limits of any City, incorporated Town or Village, shall be deemed part of such road unless specially excepted in the Instrument of association of the Company. 16 V. c. 190, s. 2.

As to cities and towns- Bridges on any road.

8. No Company formed under this Act, shall commence any work until thirty days after the Directors have served a written notice upon the Head of the Municipality in the jurisdiction of which such road or other work connected therewith is intended to pass or to be constructed; and if the Municipal Council of such locality passes a By-law prohibiting, varying or altering any such intended line of road, or the plan of any such other work, such By-law shall have the same force and effect, and be as obligatory upon all persons, and upon any such Company if the Company proceed in the construction of the road or other works, as if the provisions thereof had been inserted in the body of this Act. 16 V. c. 190, s. 3.

Thirty days' notice to be served on the Head of the Municipality prior to any Company.

Commencing any work.

9. If no such By-law is passed within thirty days after service of such notice upon the Head of the Municipality, then the Company may proceed with the intended road or other work without being liable to any interruption or opposition from any source whatever. 16 V. c. 190, s. 3.

If no By-law passed within thirty days, company may proceed.

10. When any new road has been opened, or the line of an old road has been changed, the Municipality having jurisdiction as aforesaid, may pass a By-law permitting or directing the old road, or part of a road, to be closed up and embraced within the enclosure of the person from whom ground was taken to form such new road, provided it does not exclude any person residing on or near the line of the old road from a convenient access to the new road. 16 V. c. 160, s. 3.

11. No Company shall be incorporated under this Act;

1. Until the Stockholders have subscribed for stock, an amount sufficient in their judgment to construct the entire work;

2. Nor until they have executed an Instrument according to the form or to the purport of that contained in the Schedule to this Act marked A; 16 V. c. 190, s. 4. 5

Six per cent.
of capital to
be paid up.

3. Nor until the Company, or some one of their number, or the Directors named in the said Instrument, have paid to the Treasurer of the Company six per cent upon the amount of the capital stock mentioned in such instrument, and have registered such instrument, with a Receipt from the Treasurer of the Company for such payment or instalment by leaving the original instrument and receipt with the Registrar of any one County in which such road or other work connected therewith is wholly or partly situated or intended to be made. 15

Registration
of Instrument
of Association
and receipt
how made.

12. Such Registrar shall register the said instrument and receipt in a registry book to be provided by each Registrar for that purpose, (for which registry he shall be entitled to a fee of two shillings and six pence,) and shall afterwards retain the original documents in his custody, and shall produce the same upon all occasions when legally required to do so by the Directors or Treasurer of the Company, or otherwise. 16 V. c. 190, s. 4. 20

General corporate powers
of Company so
formed.

13. When the provisions expressed in the two last sections including the sub-sections have been complied with, the Company shall be a Chartered and Incorporated Company, by the name designated in the instrument registered as aforesaid: and may by their corporate name, purchase, hold and convey, any land, tenements and hereditaments, useful and necessary for the purposes of such Corporation. 16 V. c. 190, s. 5. 25

Powers of
Company to
explore the
country and
to take land
and materials.

14. Any such Company or any other Company heretofore chartered under any Act of the Legislature for a like purpose, may explore the country lying between the termini of any road, or supposed to be adapted for the site of any other work connected with such roads as aforesaid, and may designate, take, and hold the requisite lands upon the line and within the limits of any such road, or for any such other work according to the provisions hereinafter contained, and may take and carry away stone, gravel, sand, earth and other like materials, from any neighbouring lands, and also may cut, make and keep in repair, upon such neighbouring lands, such ditches, drains and water courses, as may be necessary for effectually draining or carrying off the water from any such road or other work; 16 V. c. 190, s. 6. 35 40 45

Drainage.

Cuttings.

15. Whenever any such road passes through or by any wood or standing timber, such Company may cut down the trees

trees and underwood for one hundred feet on each side of the road, making compensation therefor as hereinafter provided; and for the purpose aforesaid, the Company and their agents, servants and workmen, may enter into and upon the lands of any person doing no unnecessary damage. 16 V. c. 190, s. 6.

16. If the owner or occupier of any land, over, through or upon which the Company desire to construct any such road or other work connected therewith, or to take materials therefrom or intend to exercise any of the powers given to them by this Act, neglects or refuses upon demand made by the Directors in that behalf, to agree with them upon the price or amount of damages to be paid for or for passing through or over such land, and appropriating the same to and for the uses of the Company, or for the exercise of any such power as aforesaid, the Company may name one Arbitrator, and the owner or occupier of such land may name another, and the said two Arbitrators may name a third, and the said three Arbitrators shall determine the amount which the Company shall pay to such owner or occupier before taking possession of such land or taking materials therefrom or exercising such power as aforesaid. 16 V. c. 190, s. 7.

In case owner of property refuses to take compensation from the Company, arbitrators to be appointed.

17. If any such owner or occupier neglects to name an Arbitrator for the space of twenty days after having been required so to do by the Company, or if the said two Arbitrators do not, within the space of twenty days after their appointment, name such third Arbitrator, or if any one or more of the Arbitrators, appointed as hereinbefore or hereinafter provided, refuses or neglects within the space of ten days after his or their appointment, to take upon him or them the duties hereby imposed, then, upon the application of the Company, or of the said owner or occupier, the Judge of the County Court of the County within which the land lies may nominate any disinterested competent person, from any Township adjoining the Township in which such land lies, to act as an Arbitrator for the person so neglecting to name an Arbitrator as aforesaid, or to act in the place of the Arbitrator so refusing or neglecting as aforesaid, and any award made by a majority of the said Arbitrators shall be as binding as if the three Arbitrators concurred in and made the same. 16 V. c. 190, s. 7.

If the party neglects to name an arbitrator or arbitrators cannot agree on a third.

County Judge to appoint.

18. In ascertaining the amount of compensation, the Arbitrators shall have due regard to the benefits to accrue to such owner or occupier, by the construction of the said road or other work.

Regard to be had to benefits to accrue to owner.

19. Upon the amount of the compensation to be paid being determined by the award of the Arbitrators, the Company may tender the amount to such owner or occupier and he shall thereupon execute a conveyance of such land to the Company, or other such document as may be requisite.

When determined the Company may tender the amount.

- 20.** The Company may after such tender, and whether such conveyance or other document has been executed or not, enter upon and take possession of such land, for the use of the Company, and hold the same, or exercise such power as aforesaid in like manner as if the conveyance thereof or other document had been executed. 5
- 21.** No road, or other such work shall encroach upon any building or pass through or upon any pleasure ground, garden, yard or orchard, nor shall any materials be taken therefrom, nor shall any timber be taken from any inclosed land, without the consent of the owner. 16 V. c. 190, s. 7. 10
- 22.** After a survey of such road has been made, the owner or occupier of land through or along which the road is intended to pass, shall not, by erecting any building or inclosing any part of such surveyed land as a yard, or by planting fruit trees or forming an orchard thereon, prevent the Company taking possession of such land. 16 V. c. 190, s. 7. 15
- 23.** In case any lands or ground, required by the Company for the purpose of any road or other such work or with regard to which any such power is to be exercised as aforesaid, are held or owned by any persons, bodies politic, corporate or collegiate, whose residence is not within this Province or is unknown to the Company, or in case the titles to any such lands or ground are in dispute, or such lands are mortgaged, or in case the owners of such lands or grounds are unknown or unable to treat with the Company for the sale thereof, or for the exercise of any such power by the Company, or to appoint Arbitrators as aforesaid, the Company may name one disinterested competent person, and the Judge of the County Court of the County within which such lands lie on the application of the said Company, may name another person, from any Township adjoining the Township in which such lands lie which persons, together with one other such person to be chosen by them, before proceeding to arbitrate or, (in the event of their disagreeing as to the choice of such other person) by such Judge, shall be Arbitrators to determine what amount the Company shall pay for such lands, grounds, or damages and by whom the costs of the arbitration are to be paid, and the decision of a majority of such Arbitrators shall be binding. 16 V. c. 190, s. 8. 20 25 30 35
- 24.** A record shall be made and signed by the said Arbitrators, or a majority of them, specifying the amount awarded and such costs; which record shall be deposited in the Registry Office of the County in or along which such lands or grounds are situated, and the Company may thereupon enter upon and take possession of such lands for the use of the Company, and proceed with the construction of their road or other work in, along or over the same. 16 V. c. 190, s. 8. 40 45

25. In any case of arbitration under this Act, if the Company, before the appointment of their Arbitrator, have tendered a sum equal to or greater than that awarded by the Arbitrators, the costs of arbitration shall be paid by the opposite party, and may be deducted by the Company from the amount of the award, before payment thereof. 16 V. c. 190, s. 8.

If the Company previously have offered a sum.

26. The Company shall on demand pay to the several parties entitled to the same the amount so awarded. 16 V. c. 190, s. 8.

Award to be paid on demand.

27. If any such road passes through any tract of land or property belonging to or in possession of any tribe of Indians, or if any property belonging to them is taken, or any acts done occasioning damage to their properties or possessions under authority of this Act, compensation shall be made to them therefor, in the same manner as provided with respect to the property, of other individuals, and whenever it is necessary that Arbitrators should be chosen by the parties for settling the amount of such compensation, the Chief Officer of the Indian Department within this Province shall name an Arbitrator on behalf of the said Indians; and where the said lands belong to any tribe or body of Indians, the amount awarded shall be paid to the said Chief Officer, for the use of such tribe or body. 16 V. c. 190, s. 9.

Cases of lands belonging to Indians provided for.

28. In every case of arbitration under this Act the Arbitrators so appointed shall fix a convenient day for hearing the respective parties, and shall give them eight days' notice at least of the day and place; and having heard the parties or otherwise examined into the merits of the matter so brought before them, the Arbitrators or a majority of them shall, within thirty days of their appointment, make their award or arbitrament thereupon in writing, which award or arbitrament shall be final as to the amount so in dispute. 16 V. c. 190, s. 10.

Meetings and proceedings of the arbitrators.

29. All lands or ground taken by any such Company, for the purpose of any road or other work as aforesaid, and which have been purchased and paid for by any such Company, in the manner hereinbefore provided, shall be the property of the Company, free from all mortgages, incumbrances and other charges. 16 V. c. 190, s. 8.

Lands taken to be free of incumbrance.

30. If at any time after the formation of any such Company the Directors are of opinion that it is desirable to widen, extend or alter the projected line of road, or to construct any side-roads to intersect the original main road, or to improve or repair any road by substituting stone, gravel, plank or other suitable material, or that the original capital subscribed is not sufficient to complete the work, the Directors, under a Resolution passed by them for that purpose, may either issue debentures,

If the Directors think it desirable to widen, &c., their works, they may raise a certain amount by loan or the issue of new stock.

tures, signed by the President and countersigned by the Treasurer of the Company, for sums not less in amount than Twenty-five Pounds each, and not exceeding in the whole one half of their paid up Capital Stock, or may borrow upon security of the Company, by bond or mortgage of the road and tolls to be collected thereon, a sufficient sum of money to complete the same, or may authorize the subscription of such number of additional shares as are named in their Resolution, a copy whereof, under the hand of the President and seal of the Company, shall be engrossed at the head of the Subscription List. (16 V. c. 190, s. 11.)

List of holders of new stock to be registered.

31. When such a number of new shares have been subscribed as the Directors deem it desirable to have registered, the President shall deliver such new list of subscribers to the Registrar having the custody of the original Instrument, who shall attach such new list of subscribers thereto, and such list shall thenceforth be deemed part and parcel of such Instrument. (16 V. c. 190, s. 11.)

Its effect and obligations and right of such holders of new stock.

32. The subscribers to the list, and those who may thereafter enter their names as subscribers thereon, with the consent of such Directors; (signified by a Resolution of the Board under the hand of the President and seal of the Company,) shall be subject to all the liabilities and entitled to all the rights, benefits, privileges and advantages to which the original subscribers are entitled, and as well to the first line of road as to any widening, extension or alteration thereof. (16 V. c. 190, s. 11.)

Stock may be called in.

33. Such additional shares or stock may be called in, demanded and recovered, in the same manner and under the same penalties as provided or authorized in respect of the original shares or stock of the Company. (16 V. c. 190, s. 11.)

Share £5 each how transferable.

34. Each share in any such Company, shall be five pounds, and shall be personal property, transferable upon the books of such Company, in the manner provided by any By-law made by the Directors in that behalf. (16 V. c. 190, s. 12.)

Affairs of the Company to be managed by five Directors.

35. The affairs, stock, property and concerns of any Company formed as hereinbefore mentioned or provided, shall for the first year be managed and conducted by five Directors, who shall be named in the Instrument to be registered, and thereafter the Directors shall annually, on the second Monday of December, be elected by the Stockholders, according to the provisions of a By-law to be passed by the Directors for that purpose. (16 V. c. 190, s. 13.)

Provisions of By-laws touching their election.

36. Every such By-law shall regulate—

1. The manner of voting ;
2. The place and hour of meeting for the election ; and
- 3.

3. Any other matters, except the day of election, which the Directors deem necessary to carry out the provisions of this Section. (16 V. c. 190, s. 13.)

37. Every such By-law shall for three successive weeks be inserted in the newspaper, or one of the newspapers published nearest the place where the Directors usually meet for conducting the business of the Company, and the Directors may alter, change or amend such By-law, and shall publish the same in the manner above provided, and a majority of such Directors shall be a *quorum* for the transaction of business. (16 V. c. 190, s. 13.)

Notice of By-law to be published.

38. If the Annual Election of Directors does not take place at the time appointed, the Directors for the last preceding year, shall continue to serve until another Election of Directors has been held, which other Election shall be held at such time within one month after such appointed time as may be provided for by any By-law passed for that purpose. 16 V. c. 190, s. 13.

As to failure to elect Director at annual election.

39. At any Election of Directors, each Stockholder shall be entitled to one vote for every share of stock he holds in the Company, and in respect of which he is not in arrear for any call thereon. 16 V. c. 190, s. 13.

One vote for each share.

40. Any Stockholder, who has paid all calls made, shall be eligible as a Director. (16 V. c. 190, s. 13.)

Any stockholder not in arrears may be a Director.

41. The Directors may elect one of their number to be President, and may appoint such officers and servants as they deem necessary; and in their discretion may take security from such officers or servants, for the due performance of their duties, and that they will duly account for all moneys coming into their hands for the use of the Company. (16 V. c. 190, s. 14.)

President to be appointed; officers and servants.

42. If any vacancy happens amongst the Directors during the year for which they have been appointed, such vacancy shall be filled for the remainder of the year, by a person who shall be nominated by a majority of the remaining Directors, unless some By-law or Regulation of the Company otherwise provides. (16 V. c. 190, s. 15.)

Vacancies occurring among Directors, how to be filled up.

43. The Directors at such time and in such payments or instalments (not exceeding ten per cent. at any one time,) as they deem proper, and after a notice requiring such payment has been for four successive weeks inserted in the newspaper, or one of the newspapers published nearest the place where the Directors of the Company usually meet for conducting the business of the Company, may call in and demand from the Stockholders thereof, all sums of money by them respectively subscribed. (16 V. c. 190, s. 16.)

Directors to make calls on shares.

- Shares forfeited if calls be not paid within a certain time.** **44.** Any Shareholder neglecting or refusing to pay a rateable share of calls so made for three calendar months after the time appointed for payment thereof, shall forfeit his shares in the undertaking, and all the profit and benefit thereof, all which forfeitures shall go to the Company for the benefit thereof. 5
16 V. c. 190, s. 16.
- How forfeiture must be declared.** **45.** No advantage shall be taken of any such forfeiture unless the stock is declared to be forfeited at a General Meeting of the Company, assembled at any time after such forfeiture has been incurred. 10
16 V. c. 190, s. 16.
- Forfeiture to be an indemnification, &c.** **46.** Any such forfeiture shall be an indemnification to any Shareholder so forfeiting, against all actions, suits or prosecutions for any breach of contract or other agreement between such Shareholder and the other shareholders with regard to carrying on the undertaking. 15
16 V. c. 190, s. 16.
- Sal. of forfeited shares** **47.** The Directors of the Company may sell to any Shareholder or to any other person either by public auction or private sale, and in such manner and on such terms as to them seems meet, any shares so declared to be forfeited, or may pledge such shares for the payment of loans or advances thereon, or of any 20
sums of money borrowed or advanced by or to the Company.
16 V. c. 190, s. 16.
- Transfer to purchaser.** **48.** A certificate of the Treasurer of the Company that the forfeiture of the shares was declared, shall be sufficient evidence thereof, and if sold, such certificate expressing therein the 25
fact of sale and the name of the purchaser together with the receipt of the Treasurer for the price of the shares sold, shall constitute a good title to the purchaser of the shares sold. 16 V. c. 190, s. 16.
- Certificate to be registered, &c.** **49.** Such certificate shall be by the Treasurer enregistered in the name and with the place of abode and occupation of the 30
purchaser, and shall be entered in the books required to be kept by the By-laws of the Company. 16 V. c. 190, s. 16.
- Purchaser not to see to the application of purchase money.** **50.** The purchaser of the shares so sold shall not be bound to see to the application of the purchase money, nor shall his 35
title to such shares be affected by any irregularity in the proceedings in reference to the sale. 16 V. c. 190, s. 16.
- Company may sue for calls instead of forfeiting stock.** **51.** Any such Company may, in any Court having to the amount demanded jurisdiction in matters of simple contract, 40
sue any stockholder in the Company for any call which such stockholder neglects to pay, after notice of such call having been made has been inserted for two weeks in the newspaper, or one of the newspapers published nearest the place where the Directors of the Company usually meet for conducting the business of the Company. 16 V. c. 190, s. 17.

52. In any action or suit brought by the Company against any Stockholder, to recover any money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the Company to aver that the defendant is the holder of one share or more (stating the number of shares) in the Stock of the Company, and that he is indebted to the Company in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more (stating the number and amount of each of such calls) whereby an action hath accrued to the Company, by virtue of this Act. 16 V. c. 190, s. 17.

Allegations in such suit.

53. On the trial or hearing of any such action, it shall be sufficient for the Company to prove that the defendant, at the time of making such call, was a holder of one share or more in the undertaking (and when there has been no transfer of the shares, then the proof of subscription to the original agreement to take stock, shall be sufficient evidence of holding stock to the amount subscribed,) and that such call was in fact made, and such notice thereof given as is required; and the Company need not prove the appointment of the Directors who made such call, or any other matter whatever; and thereupon the Company shall be entitled to recover what shall be due upon such call, with interest thereon, unless it appears that due notice of such call was not given. 16 V. c. 190, s. 18.

Proof in such suit.

54. Any two or more Companies, formed for the construction or purchase of Roads which may intersect or be contiguous to each other, may, with the consent of the Stockholders representing or holding at least two thirds of the Capital Stock of such Companies respectively, (such consent to be expressed by a resolution to that effect, to be adopted at a General Meeting of the Stockholders of each Company, to be called for that purpose,) unite and form one Consolidated Company, by such name and on such terms as to them seems meet. 16 V. c. 190, s. 19.

Two or more Companies may, in certain cases, unite as one Company, and how

55. Upon the adoption of such resolutions, the Presidents of such Companies may execute under the seals of such Companies, an Instrument in the form of the Schedule to this Act annexed, marked B., and deliver the same to the Registrar of any one County in which such Roads are wholly or partly situated or intended to be made, who shall register the same, in the manner prescribed by the eleventh Section of this Act, and from thenceforth such Companies shall form one Consolidated Incorporated Company, by the name designated in such Instrument, with all the powers and subject to all the liabilities of other Companies formed under this Act. 16 V. c. 190, s. 19.

Registry of Instrument.

56. All the roads, estate, property and effects with the rights and privileges of such two or more Companies shall, after such consolidation, be vested in and be used and enforced by the Consolidated

Rights and liabilities of Company

formed by such union. Consolidated Incorporated Company, which shall also be subject to and responsible for all debts, contracts and liabilities of the former Companies, in the same manner and to the same extent as if the Consolidated Incorporated Company had been originally composed of one Company, and not by the union of two or more Companies. 16 V. c. 190, s. 19. 5

Roads or other works and materials for the same vested in Companies and their successors. 57. Every road or other work connected therewith, and all materials which are from time to time provided for constructing, maintaining, widening, extending or repairing the same, and all toll-houses, gates, and other buildings, constructed and acquired by or at the expense of any Company acting under this Act, and used for their benefit and convenience, shall be vested in such Company, and their successors. 16 V. c. 190, s. 20. 10

Companies may search for and take materials for making or repairing roads. 58. Any Municipal Corporation or Company which has already acquired or made, or which hereafter acquires or makes, any such Macadamized, Plank or other Road, shall have the same power to search for and take materials for making and keeping such roads in repair, as is given by this Act to Road Companies for the construction of roads, and the price or damage to be paid to any person for such materials, or for any thing done in pursuance of the powers given hereby, shall, if not agreed upon by the parties concerned, be settled by arbitration in the manner provided by this Act, in the case of lands or materials taken or required for the original construction of any such road or other work. 16 V. c. 190, s. 21. 15 20 25

Of what materials roads may be made. 59. Any Company formed for the construction of any turnpike road under this Act, or under any Act passed before this Act takes effect, may in their discretion form the same in part or the whole, either of metal, gravel, timber, charcoal or any other suitable material, for constructing a firm, substantial and smooth surface, whether the material be mentioned in the registered Instrument of Incorporation or not. 16 V. c. 190, s. 22. 30

Municipalities may acquire stock in such Companies. 60. Any Municipal body corporate, having jurisdiction within the locality through or along the boundary of which any such road passes, or in which any such work is constructed, may subscribe for, hold, sell and transfer stock in any Company formed under this, or any former Act passed for the like purpose, and may from time to time direct the Mayor, Reeve, Warden or other Chief Officer of the Municipality on behalf thereof, to subscribe for such stock in the name of the Municipality, and to act for and on behalf of the Municipality, in all matters relative to such stock, and the exercise of the rights of the Municipality as a Stockholder, and the Mayor, Reeve, Warden or other Chief Officer, shall, whether otherwise qualified or not, be deemed a stockholder in the Company, and may vote and act as such, subject to such rules and orders in relation to his authority 35 40 45

authority, as are made in that behalf by the By-laws of the Municipal Council or otherwise, and may vote according to his discretion in cases not provided for by the Municipality. 16 V. c. 190, s. 23.

Who shall vote on such stock.

5 **61.** Such Municipality may pay all instalments upon the stock they shall subscribe for, and acquire, out of any moneys belonging to the Municipality and which are not specially appropriated to any other purpose, and apply the moneys arising from the dividends or profits on the said stock or from the sale thereof, to any purpose to which unappropriated moneys belonging to the Municipality may lawfully be applied. 16 V. c. 190, s. 23.

Municipalities may raise money to pay for such stock.

15 **62.** The Municipality of any locality, through or along the boundary of which any such road passes, or within which any such work connected therewith is constructed, may, out of any moneys belonging to the Municipality and not appropriated to any other purpose, lend money to the Company authorized to make such road or construct such work, or to any Company heretofore chartered by Act of the Legislature for a like purpose, and upon such terms and conditions as may be agreed on between such Company and the Municipality. 16 V. c. 190, s. 24.

Municipalities may loan money to Companies.

25 **63.** The Municipality may issue debentures for the payment of any loan they think proper to negotiate with any such Company, in the same manner and subject to the same conditions as required by law with regard to the issuing of other debentures, and may recover the money so loaned and appropriate the money so recovered to the purposes of such Municipality. 16 V. c. 190, s. 24.

And issue debentures.

30 **64.** The provisions of the last four preceding sections, shall in so far as respects the Municipal Bodies Corporate of Cities and Towns, apply to all cases of Companies formed under this Act, or heretofore chartered by any Act of the Legislature, for the formation of Roads, or the construction of Bridges within or without such Cities and Towns respectively. 18 V. c. 139, s. 1.

The provisions of the last four sections to apply to certain Companies as regards the Municipalities.

40 **65.** Any Company formed under this or any former Act, may sell to any Municipal authority representing the interests of the locality through or along the boundary of which any such road passes or in which the work is situate, and such Municipal authority may purchase the stock of such Company or any part of the road belonging to such Company, at the value that may be agreed on between the Company and the Municipality, and may hold the same for the use and benefit of such locality; and such Municipal authority shall, after such purchase, stand 45 in the place and stead of the Company, and possess all such powers and authority as the Company theretofore possessed and exercised in respect to such road or part of road, or other work purchased. 16 V. c. 190, s. 25.

Companies may sell their works and rights to Municipalities.

Municipalities may sell roads, &c. **66.** Any Municipality may sell any work or Macadamized, Plank or other Toll-road which they have constructed or purchased, or any stock held in any road or other Company, and apply the proceeds of such sale to the payment of existing debts contracted for the construction of the same, or for such stock, or if no debt exists for such work, road or stock, then to the general purposes of the Municipality, or otherwise, as they may determine. 16 V. c. 190, s. 26. 5

Roads, &c., to be completed within a certain period after incorporation of Companies. **67.** Every Company shall, within two years from the day of their becoming incorporated under this Act, complete every road or extension thereof, not more than five miles in length, and any other work undertaken by them, and for the completion whereof they have become incorporated, and in default thereof they shall forfeit all the corporate and other powers and authority which they have acquired, and all their corporate powers shall thenceforth cease and determine, unless further time be granted by a By-law of the County in which such road or the greatest portion thereof is situated. 16 V. c. 190, s. 27. 15

Penalty for default.

Periods for completion in different cases. **68.** If such road or extension thereof exceeds five miles in length, then such Company shall complete in each and every year after the expiration of the first two years as aforesaid, not less than five miles of such road until the same is entirely finished under pain (unless further time be granted as aforesaid) of forfeiture of their charter and of the corporate powers and authority thereby acquired, so far as concerns the portion of such road which remains unfinished, and not otherwise. 16 V. c. 190, s. 27. 25

TOLLS ON ROADS, &c.

Tolls how to be fixed, paid and levied. **69.** The President and Directors of any Company may from time to time fix, regulate and receive the tolls and charges to be paid by persons passing and repassing with horses, carts, carriages and other vehicles, and for cattle, swine, sheep or other animals, driven upon, over and along any such road, or by persons passing over any bridge with any such carriages or animals or using any work constructed, made or owned by the Company. 16 V. c. 190, s. 28. 30

When tolls may be collected. **70.** Whenever two or more miles of any such road or extension thereof have been completed, tolls may be taken therefore, but tolls shall not be taken on any other work until the same has been completed. 16 V. c. 190, s. 26. 40

Limitation of tolls. **71.** Toll may be taken by any Company at each time of passing each gate upon the road constructed or owned by the Company, for any portion of such road on either side or on both sides of the said gate (not being more than five miles) to the next gate or gates on the same road, if any, and not exceeding five 45

five miles in the whole, or for the whole of such road, if the length thereof does not exceed five miles, and there is only one gate thereon, at the following rates, per mile that is to say; 16 V. c. 190, s. 29.

5 1. For every vehicle, whether loaded or otherwise, and for the horse or other beast, or one of the horses or other beasts drawing the same, one penny; and for every additional horse or other beast drawing any such vehicle, one half penny;

2. For every horse with or without a rider, one half penny;

10 3. For each head of neat cattle, one half penny;

4. For every score or number less than a score, of sheep or swine, one half penny; and

5. In addition to the above rates, one half penny for every one hundred pounds, over and above four thousand, which a
15 loaded vehicle weighs;

72. Every vehicle loaded with masts, spars, hewn or round timber or otherwise, exceeding in weight two tons, shall, at each time of passing each gate, pay for each ton over and above two tons, the sum of two shillings and six pence currency, and all vehicles with wheels, used for the above purpose,
20 shall have not less than five inch tires, under penalty of paying double the amount of toll above provided. 16 V. c. 190, s. 29. Extra tolls.

73. Whenever any road constructed under this or any former Act, intersects a road constructed or owned by another
25 chartered Company, no higher rate of toll shall be demanded from the persons travelling along the last mentioned road, for the distance travelled between such intersection and either of its termini, than the rate per mile charged by the said Company for travelling along the entire length of their road so
30 intersected; but it shall be incumbent on such persons to produce a ticket from the last Toll-gate on the intersecting road as evidence of their having travelled only from such intersection. 16 V. c. 190, s. 29. When any such road intersects another.

74. Any Company formed under this or any former Act may,
35 with the sanction of the Council of the County having jurisdiction in the locality, charge a higher rate of toll than is hereby authorized, at any toll gate erected at any bridge upon or connected with any road constructed by such Company; and the Council, in sanctioning such additional toll, may take into
40 account the cost of such bridge, and may calculate the toll as if for so many additional miles of road as might have been constructed by the like expenditure. 16 V. c. 190, s. 30. Tolls at bridges may, with consent of Municipal Council, exceed the said rates.

- Collection of extra tolls.** **75.** Such last mentioned tolls shall be collected in the same manner, and persons evading the same shall be liable to the same penalties as is herein provided with respect to other tolls. 16 V. c. 190, s. 30.
- Companies authorized to erect toll and check-gates, &c.** **76.** Every such Company may erect such number of toll-gates, check-gates, and side-bars in, along or across the said roads, and upon any other such work respectively, and fix, regulate and collect such tolls not exceeding the rates herein-before provided, to be collected at each gate, check-gate, or side-bar, as they deem expedient, and may from time to time alter such tolls, toll-gates, check-gates and side-bars, and may erect and maintain such toll-houses, toll-gates, check-gates, side-bars and other buildings and erections as are necessary and convenient for the due management of the business of the Company. 16 V. c. 190, s. 31.
- As to vehicles merely crossing a road.** **77.** No tolls shall be taken for merely crossing any road, or for travelling thereon in crossing from one transverse road to another, when the distance between such transverse roads does not exceed one hundred yards. 16 V. c. 190, s. 31.
- Tickets to be given at check-gates to pass principal gate and vice versa.** **78.** In case any Company deems it necessary or convenient to erect a check-gate on any part of their road, they shall not demand toll at both the check-gate and the gate to which it acts as a check; but tickets shall be issued at the check-gate, on payment of the toll demanded, clearing the principal gate and *vice versa*; and the distance regulating the rates of toll shall not be calculated between any of the check-gates and the principal gates on such road, but only between the principal gates themselves. 16 V. c. 190, s. 32.
- Directors may commute for tolls.** **79.** The Directors of any Road Company may, from time to time, commute with any person whose place of abode adjoins or is within half a mile of the gate nearest to his place of abode on such road. 16 V. c. 190, s. 33.
- Company to keep road in repair.** **80.** After any road or portion of a road, bridge or other such work, constructed or acquired by any Company or Municipality under this or any former Act, has been completed and tolls established thereon, the Company or Municipality shall keep the same in repair. 16 V. c. 190, s. 34.
- Engineer to examine the** **81.** If any such Company or Municipality suffers any portion of their road, on which tolls have been taken, to get out of re-

82. The engineer, so appointed shall, upon receiving such directions, immediately inspect and examine the road, and if upon examination it is found so much out of repair as to impede or endanger Her Majesty's Subjects and others travelling thereon, as stated in the requisition, he shall notify the President of the Company or Head of the Municipality to whom the road belongs by leaving a written notice with any of the keepers of the toll-gates belonging to such Company or Municipality, stating, that in pursuance of directions from the Judge of the County Court, he has inspected their road and found it to be out of repair, and requiring them to take notice thereof, and to cause the same to be repaired within a certain time to be named in such notice, which time shall be such as in the opinion of the engineer will be sufficient for making the required repairs. 16 V. c. 190, s. 34.

Notice to Company if the road be out of repair.

83. If the Directors of the Company or Municipal Council, after the service of such notice, refuse or neglect to repair the road, in a good and efficient manner, within the period limited in the notice, then, from and after the expiration of such period, and until such repairs are completed, neither the Directors or Council, nor any person authorized by them, shall demand or take any toll from any person with or without any beast or vehicle travelling, passing through the nearest toll-gates on either side of the portion or portions of road so reported to be out of repair. 16 V. c. 190, s. 35.

Toll not to be collected after a certain period until repairs are made.

84. If any person acting as a Keeper of any such toll-gate, after the expiration of the period limited in the notice before mentioned, and before the required repairs have been completed, demands or takes any such toll, or refuses to allow any person travelling as aforesaid to pass through such toll-gates, without payment thereof, he shall, upon conviction before any Justice of the peace for the County in which such toll-gate is situated, upon the oath of one credible witness, forfeit and pay a sum of not less than five shillings, nor more than one pound, for every such offence, to be collected or enforced in the manner prescribed for the collection or enforcement of other penalties under this Act. 16 V. c. 190, s. 36.

Penalty for taking toll when the road is out of repair.

How collected.

85. If any person, being either the renter or collector of tolls at any gate on any road, takes a greater toll than is authorized by law, he shall for every such offence forfeit and pay the sum of five pounds, to be recovered in the same manner as other penalties imposed by this Act. 16 V. c. 19, s. 37.

Penalty for taking more than the proper toll.

86. No Gate Keeper shall be bound to give change for a larger amount than five shillings. 16 V. c. 190, s. 38.

As to money change.

87. The following persons shall be exempted from the payment of any duties or tolls on embarking or disembarking from

Exemption from toll.

from or upon any pier, wharf, quay or landing place, or passing any turnpike roads or bridges, or passing any toll-gate or road made or improved under this or any former Act.

1. Her Majesty's officers and soldiers being in proper staff, or regimental, or military uniform, dress or undress, and their horses, (but not when passing in any hired or private vehicle); 5

2. Recruits marching by route ;

3. Prisoners under military escort ;

4. Enrolled pensioners in uniform, when called out for training or in aid of the civil power ; 10

5. Carriages and horses belonging to Her Majesty or employed in Her service when conveying such persons or their baggage, or returning therefrom, shall be exempted from payment of any tolls ; 15

6. Persons, horses or carriages going to or returning from any funeral ;

7. Any person with horse or carriage going to or returning from his usual place of religious Worship on the Lord's Day ;

8. Any farmer residing on the line of any such road passing any Toll-Gate opposite to and immediately adjoining his farm, when going to or returning from his work on such farm. 16 V. c. 190, s. 39. 20

SS. Tolls may be charged on vehicles carrying the Mails upon any road or bridge constructed under this or any former Act, or under any special or private Act of Incorporation, but as regards all roads and bridges constructed by the Provincial Government or Board of Works, and transferred to any Company on condition that the Mail should pass free over the same, an exemption from toll shall continue in favor of the Mails: and in the case of any such last mentioned road or bridge, there shall be no such exemption in favor of any Mail Stage or other Vehicle drawn by two horses and carrying the Mail and containing or having more than four passengers travelling thereby, or in favor of any Mail Stage or other Vehicle drawn by four horses and carrying the Mail and containing or having more than eight passengers travelling thereby. 16 V. c. 190, s. 40. 25 30 35

Tolls may be charged on mail carriages, &c.

Exception as to certain roads.

Exception limited on the roads last mentioned.

S9. But every such Mail Stage or Vehicle drawn by two horses and containing more than four passengers, and every such Mail Stage or Vehicle drawn by four horses and containing or having more than eight passengers travelling thereby, shall for every extra passenger beyond four or eight respectively, 40

Rate of Toll if Mail Carriage had more than 4 or 8 passengers respectively.

respectively, be liable at each gate to a toll of one penny. 16
V. c. 190, s. 40.

90. Nothing herein contained shall affect the rate of toll which any party is entitled to collect under any lease or con-
5 tract executed before the 14th June 1853. 16 V. c. 100, s. 40.

As to roads now under lease.

91. If any person not exempted by law from paying toll, wilfully passes or attempts to pass any toll-gate, check-gate or side-bar lawfully established, without first paying the legal toll, he shall forfeit a sum not exceeding five pounds and costs,
10 to be recovered in the same manner as other fines and forfeitures may be levied under this Act, and in case no sufficient distress can be found to satisfy a Warrant issued against the and goods chattels of the offender, such offender shall then be committed to the Common Gaol of the County for any
15 period not exceeding one month. 16 V. c. 190, s. 41.

Penalty for passing or attempting to pass gates, &c., without payment of toll.

92. In case the offender after conviction neglects or refuses to pay the amount of the fine and costs, and it is made to appear to the satisfaction of the acting Justice, by affidavit, that the offender has no goods or chattels within the jurisdic-
20 tion of such Justice, a Warrant of Commitment may issue, and the party convicted may be imprisoned thereon in the first instance upon any conviction under the last preceding Section of this Act, without issuing any Warrant of Distress against goods and chattels. 16 V. c. 190, s. 41.

Imprisonment in first instance in certain cases.

93. If any person subject or liable to the payment of any toll by virtue of this or any former Act neglects or refuses after demand thereof, to pay the same, the person authorized to collect such toll, may by himself, or taking such assistance as he thinks necessary, seize or distrain any horse, cattle,
30 carriage or other thing in respect of which any such toll is imposed, together with their respective bridles, saddles, gears, harness or accoutrements (except the bridle or reins of any horse or other beast separate from such horse or beast) or any carriage in respect of the horses or cattle drawing the carriage on which such toll is imposed, or any of the goods and chattels
35 of the person so required to pay. 16 V. c. 190, s. 42.

Mode of enforcing payment of tolls in case of refusal to pay.

94. If the toll so neglected or refused to be paid, and the reasonable charges of such seizure and distress are not paid within the space of four days next after such seizure and distress made, the person so seizing and dis-
40 training, after giving four days' public notice thereof, may sell the horse, beast, cattle, carriage and things so seized and distrained, or a sufficient part thereof, returning the overplus of the money to arise by such sale (if any) and what shall remain unsold, upon demand, to the owner thereof after such tolls
45 and the reasonable charges occasioned by such seizure, distress and sale are deducted. 16 V. c. 190, s. 42.

If toll not paid within four days after seizure, sale to take place.

Penalty on persons using a road and turning off the same in order to avoid payment of toll.

95. If any person after proceeding on such road with any waggon, carriage or other vehicle or animal liable to pay toll, turns out of such road into any other road or field or piece of land, for the purpose of avoiding the payment of toll, and enters upon the said road beyond any of the said gates or check-gates by crossing the road or otherwise without paying toll, whereby such payment of toll is evaded, such person or the owner of such vehicle or animal, shall, for every such offence forfeit and pay the sum of ten shillings and costs: and any one Justice of the Peace for the County in which such part of the road is situated, shall, on conviction of such offender, fine such offender in the said penalty and costs, and shall cause the same to be levied as aforesaid. 16 V. c. 190, s. 43. 5

Penalty on persons allowing others to pass through their lands to avoid payment of toll.

96. If any person permits or suffers any other person to pass through any lands occupied by such first mentioned person, or through any gate, passage or way thereon, with any carriage, sleigh, horse, mare, gelding or any other animal liable to the payment of toll, such other person before or after passing through such lands, having travelled more than one hundred yards upon the road, whereby payment of the toll is avoided, the person so offending, and also the person riding or driving, or the owner of animal or carriage the payment whereon is so avoided, shall on conviction before any one Justice as aforesaid, incur a penalty not exceeding twenty shillings and not less than five shillings, to be levied as aforesaid, with costs. 16 V. c. 190, s. 44. 15 20 25

Penalty on persons leaving horses, &c., on the road so as to avoid payment of toll.

97. If any person leaves upon a Toll road any horse, cattle, or carriage by reason whereof the payment of any toll or duty is avoided or lessened; or takes off any horse or cattle from any vehicle, either before or after having passed through any toll-gate, or, after having passed through any toll-gate, adds or puts any horse or other beast to any such carriage and draws therewith upon any part of any such road, so as to increase the number of horses or other beasts drawing the vehicle after the same has passed through any toll-gate, whereby the payment of all or any of the tolls has been evaded, he shall, forfeit and pay a sum not exceeding twenty shillings, to be levied as aforesaid, with costs. 16 V. c. 190, s. 45. 30 35

Penalty on persons falsely claiming exemption from toll.

98. In case any person falsely represents himself to any toll-gatherer or gate-keeper, as being entitled to any exemption mentioned in this or any other Act, or evades the payment of toll by any false representation or other fraudulent act, he shall forfeit to the Company or Municipality owning the road, the sum of one pound and costs, to be recovered summarily before any Justice of the Peace in the manner provided by this Act for the recovery of other penalties. 16 V. c. 190, s. 46. 40 45

Penalty on persons injuring

99. If any person wilfully and maliciously burns, breaks down, injures, cuts, removes or destroys in whole, or in part, any toll-house,

house, turnpike-gate, wall, lock, chain, or other fastening, rail, post, bar, or other fence, belonging to any toll-house, set up, erected or used for the purpose of preventing the passing by such gate of persons, carriages or other property liable to the payment of toll, at such gate, or any house, building, engine or weighing machine erected or used for the better ascertainment or security of any such toll, he shall be guilty of a misdemeanor, and on conviction thereof, shall be punished either by imprisonment in the Provincial Penitentiary, for a term not exceeding three years, nor less than two years, or by fine and imprisonment in the Common Gaol for any term less than two years, at the discretion of the Court before whom the offender is convicted. 16 V. c. 190, s. 47. -

100. In case any person ;

- | | | |
|----|---|--|
| 15 | 1. Removes any earth, stone, plank, timber or other materials used or intended to be used in or upon any road for the construction, maintenance and repair thereof; or | ing roads or other works of any Company.

Penalty on persons removing materials used in constructing road. |
| 20 | 2. Drives any loaded wheel carriage or other loaded vehicle, upon that part of any road constructed under this or any former Act, between the stones, plank or hard road and the ditch, further than may be necessary in passing any other vehicle, or in turning off or upon such road; or | Or driving off the metal and on the soft part of the road. |
| | 3. Causes any injury or dammage to be done to the bridges, culverts, posts, rails or fences; or | Damaging bridges, &c. |
| 25 | 4. Hauls or draws upon any part of any such road, any timber, stone or other thing which is carried principally or in part upon wheeled carriages or upon sleighs, so as to drag or trail upon such road to the prejudice thereof; or | Or hauling timber, &c., so as to injure road. |
| 30 | 5. Leaves any waggon, cart or other carriage whatsoever upon such road without some proper person in the custody or care thereof, longer than may be necessary to load and unload the same, except in case of accident, and in cases of accident for any longer time than may be necessary to remove the same; or | Or leaving any carriages on the road. |
| 35 | 6. Lays any timber, stones, rubbish or other thing whatsoever upon the road to the prejudice, interruption and danger of any person travelling thereon; or | Laying timber, stones, rubbish. |
| 40 | 7. Having blocked or stopped any cart, waggon or other carriage in going up a hill or rising ground, causes or suffers to remain on such road any stone or other thing with which such cart or carriage had been blocked or stopped; or | Blocking or stopping any vehicle. |
| | 8. Pulls down, damages, injures or destroys any lamp or lamp posts put up, erected or placed in or near the side of such | Or injuring lamp posts, &c. |

such road or any toll-house erected thereon, or wilfully extinguishes the light of any such lamp ; or

Damaging table of tolls, &c. 9. Wilfully pulls down, breaks, injures or damages any table of tolls put or fixed at any gate, check-gate or bar, on any part of such road, or any sign-board erected by any Company upon any road or bridge constructed by them ; or 5

Defacing Mile post, &c. 10. Wilfully or designedly defaces or obliterates any of the letters, figures or marks thereon, or on any finger post or mile post or stone ; or

Throwing rubbish into drains. 11. Throws any earth, rubbish or any other matter or thing into any drain, ditch, culvert or other water course made for draining any such road ; or 10

Carrying away any stones, gravel, &c. 12. Without permission carries away any stones, gravel, sand or other materials, dirt or soil from any part of any such road, or digs any holes or ditches on the allowance for the same ; or 15

Allowing swine to run at large. 13. Allows any swine to run at large to the injury of the road,—every such person shall, upon conviction thereof in a summary way before any Justice of the Peace in or near the place where the injury has been done, be sentenced to pay all damages sustained by such Company, which damages shall be ascertained by such Justice on hearing the complaint ; and also to pay a fine of not more than fifty shillings nor less than five shillings, together with all costs ; which damages, fines and costs shall be paid within a time to be limited by such Justice, and in default thereof the same shall be levied as hereinafter provided. 16 V. c. 190, s. 43. 20 25

Company and their servants not to impede the free use of the whole graded portion of the road. 101. No Company or Municipality, or Contractor, Sub-Contractor, or person employed by such Company or Municipality, Contractor or Sub-Contractor, shall leave or place upon the graded part of any road constructed or acquired by such Company or Municipality under this Act or any former Act, whether such part of the road is or is not macadamised, gravelled or planked, any stone, gravel, plank, timber, or other materials whatsoever, so as to prevent the public from using or to impede the free use of the whole of such graded portion of road ; and for any offence against this Section, such Company, Municipality, Contractor, or Sub-Contractor, or other person shall be responsible for all damages arising from the offence ; and such Contractor, Sub-Contractor, or other person shall also incur a penalty of not less than five shillings, nor more than five pounds, to be recovered summarily before any Justice of the Peace in the manner provided by this Act for the recovery of other penalties. 16 V. c. 190, s. 49. 30 35 40

Penalties. 102. For offences against the last preceding section in the case of roads owned by Companies, the penalty shall be paid 45

paid to the Municipality within which such road is situate; and in the case of roads owned by Municipalities, one half of the fine shall be paid to the complainant, and the residue to the Receiver-General for the public uses of this Province. 16 V. c. 190, s. 49.

103. The fines and forfeitures authorized to be summarily imposed by this Act, may be recovered upon information and complaint before any Justice of the Peace of the County within which the same have been incurred, and may be levied and 10 collected by distress and sale of the offender's goods and chattels, under the authority of any Warrant of Distress for that purpose, to be issued by the Justice before whom the conviction is had, and in case there are no goods or chattels to satisfy such Warrant, such offender may be committed to the 15 Common Gaol of the County for any period not exceeding one month; but nothing in this Section contained shall interfere with the provisions made in the 92nd Section of this Act, for issuing a Warrant of Commitment in the first instance (upon conviction for any offence therein mentioned.) 16 V. c. 190, s. 50.

Recovery of fines and forfeitures under this Act.

104. In any proceeding or prosecution, before any Justice 20 of the Peace under this Act, the Justice may summon the party complained against to appear at a time and place to be named in the Summons, and if he does not appear then upon proof of the due service of the Summons upon such party either personally or by leaving a copy thereof at his usual place 25 of abode, the Justice may proceed either to hear and determine the case *ex parte* or issue his Warrant for apprehending and bringing such party before himself or some other Justice of the Peace, or the Justice may, if he thinks fit, without previous Summons, issue such Warrant, and the Justice before whom 30 such party appears or is brought, shall hear and determine the case. 16 V. c. 190, s. 51.

Party not appearing on summons may be arrested or the case may be heard *ex parte*.

105. All fines and forfeitures collected under this Act, unless otherwise provided shall be paid to the Treasurer of the Company or Municipality owning the road, or other work 35 in respect of which such fines and forfeitures are imposed, for the use of such Company or Municipality. 16 V. c. 190, s. 52.

Application of fines, &c., when not otherwise provided.

106. No action or suit shall be brought for any matter or thing done in pursuance of this Act, unless such action or suit is brought within six calendar months next after the fact com- 40 mitted, and the defendant in any such action or suit may plead the general issue only, and on the trial give this Act and the special matter in evidence. 16 V. c. 190, s. 53.

Suits to be brought within six calendar months.

107. In any action or suit brought by or against any such Company, upon any contract or for any matter or thing what- 45 soever, any Stockholder, or any officer or servant of the Company,

Officers and stockholders may be witnesses.

pany, shall be competent as a witness; and his testimony shall not be deemed inadmissible on the ground of interest, or of his being such servant or officer. 16 V. c. 190, s. 54.

Companies formed *bond fide* under former Acts confirmed notwithstanding any informality in their formation, &c.

108. Notwithstanding any irregularity which had occurred in the formation, registration or management of any Company for the construction or purchase of any road or other work annexed therewith under the provisions of any Act passed before the 14th June, 1853, and notwithstanding all the requirements of any such Act had not been strictly complied with, all such Companies which had theretofore *bond fide* proceeded in the construction or purchase of any road or other work, shall be held to be duly organized, formed, registered, constituted and managed under such Act; But nothing in this clause contained shall be construed to confirm the establishment or management of any such Company, when any irregularity had occurred in the formation registration or management of the same, unless such Company, had *bond fide* proceeded with the construction of or had purchased such road or work before the said fourteenth day of June, one thousand eight hundred and fifty-three. 16 V. c. 190, s. 55.

Must have proceeded with their work.

As to pending cases.

109. Nothing in this Act contained shall affect the rights of any party in any proceeding, action or suit in any Court of Law or Equity pending at the time this Act takes effect. 16 V. c. 190, s. 55.

Directors to report annually to the proper Municipality.

110. The Directors of every Company incorporated under this or any former Act, shall, in the month of January in each year, report to the Municipal Council of the County having jurisdiction within the locality through or along the boundary of which such road passes or wherein such other work has been constructed: 16 V. c. 190, s. 56.

1. The state and nature of the work ;
2. The cost of the work ;
3. The amount of all money expended ;
4. The amount of the Capital Stock, and how much paid in ;
5. The whole amount of tolls expended on such work ;
6. The amount received during the year from tolls and all other sources, stating each separately ;
7. The amount of dividends paid ;
8. The amount expended for repairs ; and
9. The amount of debts due by such Company, specifying the object for which such debts respectively were incurred ; and which

which Report shall be verified by the oath of the Treasurer of the Company.

111. Every Company formed under this Act shall keep regular books of account, in which shall be entered a correct statement of the assets, receipts and disbursements of such Company.

Company to keep regular books.

112. Such Books shall be at all times open to the inspection of any person or persons who may for that purpose be appointed by the Municipality having jurisdiction as aforesaid.

Open to the inspection of the Municipality.

10 113. Every such Inspector may take copies or extracts from the same, and require and receive from the Keeper of such books, and also from the President and each of the Directors of the Company, and all the other officers and servants thereof, all such information as to such books, and the affairs of the Company generally, as such Inspector deems necessary for the full and satisfactory investigation into and report upon the state of the affairs of the Company. 16 V. c. 190, s. 56.

And afford the officers of the Municipality all information required.

114. After twenty-one years from the time of completing any such road or any other work authorized to be constructed by any Company under this or any former Act, any Municipal authority representing the interests of the locality through or along the boundary of which any such road passes or in which the work is situated, may purchase the stock of the Company at the current value thereof at the time of purchase, and hold the same for the use and benefit of the said locality. 16 V. c. 190, s. 57.

After 21 years from the completion of the work, the proper Municipality may purchase the stock of the Company at its current value.

115. If the Company and the Municipality cannot agree upon such value, the same shall be ascertained by Arbitrators to be appointed and to act in the manner hereinbefore provided in other cases, if the Company and the Municipality cannot agree upon such value; and such Municipal authority shall thenceforth stand in the place and stead of the Company, and shall possess all such powers and authority as the Company had theretofore possessed and exercised. 16 V. c. 190, s. 57.

Value of stock to be determined by arbitrators.

116. Notwithstanding the privileges conferred by this Act, the Legislature may at any time hereafter, in their discretion, make any such additions to this Act, or such alterations in any of its provisions, as they think proper for affording just protection to the public, or to any person or persons, body corporate or politic, in respect to their estate, property, or right or interest therein, or any advantage, privilege or convenience connected therewith, or in respect to the same. 16 V. c. 190, s. 58.

Legislature may amend this Act.

117. The provisions contained in the 8th, 14th to the 34th, 45 441st, 49d to 66th, 69th to 115th sections of this Act, all inclusive

Certain sections of this

Act to extend
to all Turn-
pike Roads
whether con-
structed un-
der.

sive shall extend to and regulate all Turnpike Road Companies in Upper Canada in the collection of Tolls or otherwise, whether constructed under this or any Act in the first section of this Act referred to, or under an Act passed in the Session held in the twelfth year of Her Majesty's Reign, chapter five, and intituled, *An Act for the better management of the Public Debt, Accounts, Revenue and Property*, or constructed by or belonging to the Municipality of any County, Town or Village, authorized to construct or acquire a road under any Act of the Parliament of this Province; But lower rates of toll upon any road here- 10
after transferred to any Company by the last mentioned Act, may be fixed or established in the order of the Governor in Council, transferring the same to any such Company: And the provisions contained in the 14th to 34th, 54th to 66th, 69th and 70th, 76th to 86th, 88th to 106th, 114th to 116th, all 15
inclusive, together with this proviso, shall also extend to Road Companies having private Acts of Incorporation, but no other Sections of this Act shall apply to such Companies. 16 V. c. 190, s. 59.

Road Compa-
nies to lay
down in grass
all cleared
lands belong-
ing to them
and adjoining
their roads.

118. Every Company incorporated under this Act or any of 20
the Acts in the first section of this Act referred to, shall, when-
ever it may be necessary, sow with grass seed all cleared land
or ground belonging to such Company and adjoining their road
or roads, and cause the same, so far as may be, to be covered
with grass or turf, if not already so covered, and cause all 25
thistles and other weeds growing on such land or ground, to be
cut down and kept constantly cut down, or to be rooted out of
the same; and if any such Company fails so to do, such Com-
pany shall thereby incur a penalty of ten shillings for each day
on which they fail to comply with any of the requirements of 30
this section, within eight days after having been required to
comply with the same by a notice to be served on such Company
on the part of the Reeve of the Municipality of the Township
within which such land or ground lies. 16 V. c. 190, s. 60.

Penalty for
default.

If after 8 days
the Company
does not com-
ply with no-
tice, Reeve
may, &c.

119. If the Company has not, after the expiration of such 35
eight days, complied with such notice, the Reeve may cause
all such things to be done as the Company were by the
notice lawfully required to do, and the Municipality may
recover to and for the use and purposes of the Municipality,
the expense of so doing, together with such penalty, and all 40
costs and charges, from the Company by action of debt, in
any Court having jurisdiction in civil cases to the amount
sought to be recovered. 16 V. c. 190, s. 60.

SCHEDULE A.

Be it remembered, that on this day of
in the year of our Lord, one thousand eight hundred and

, we,

we, the undersigned Stockholders, met at
 in the County of _____, in the Province of
 Canada, and resolved to form ourselves into a Company, to be
 called (*here insert the corporate name intended to be taken by the
 Company*) according to the provisions of a certain Act of the
 Parliament of the Province, intituled, *An Act, &c.*, (*insert the
 title of this Act*) for the purpose of constructing a road from
 (*the commencement of the intended road*) to (*the termination thereof*)
 (*describing the line of intended road, or other such work as
 aforesaid*); And we do hereby declare that the Capital Stock of
 the said Company shall be _____ Pounds, to be divided
 into _____ shares, at the price or sum of five pounds each;
 And we, the undersigned Stockholders, do hereby agree to take
 and accept the number of shares set by us opposite to our res-
 pective signatures, and we do hereby agree to pay the calls
 thereon, according to the provisions of the said in part recited
 Act, and of the Rules, Regulations and By-laws of the said
 Company, to be made or passed in that behalf; and we do
 hereby nominate (*the name to be here inserted*) to be the first
 Directors of the said Company.

Name.	Number of Shares.	Amount.

B.

Be it remembered that on the _____ day of _____, in the
 year of our Lord, one thousand eight hundred and _____
 the Stockholders of the "Township of _____ Road Company,"
 (*as the case may be*) and the Stockholders of the "Town or
 Municipality of _____ Road Company,"
 (*as the case may be*) met at _____, in the County of _____,
 and then and there by a majority of the Stock-
 holders holding or representing at least two thirds of the
 Capital Stock of each of the said Companies respectively, re-
 solved to unite the said Companies into one Consolidated
 Incorporated Company, to be called the
 _____ Consolidated Road Company, according
 to the provisions of the nineteenth Section of a certain Act of
 Parliament of this Province, intituled, *An Act, (here insert
 title of this Act.)* upon the terms following that is to say;

(*here set out the terms upon which the Companies agree to unite.*) And we do hereby declare that the Capital Stock of the said uni ed Company is (as the case may be) divided into _____ shares of five pounds each.

In testimony whereof, we have hereunto set our Hands and affixed the Seals of the said respective Companies, this day of _____ one thousand eight hundred and _____ .

A. B. President, &c. [L. s.]
 C. D. President, &c. [L. s.]

C A P . L X X I .

An Act respecting Joint Stock Companies for the construction of Piers, Wharves, Dry Docks and Harbours.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- 5 **1.** Any number of persons not less than five, respectively, may form themselves into a Company for the purpose of constructing any Piers or Wharves, or for dredging or deepening or making any Harbour, or for the erection of Dry Docks and Marine Railways connected therewith. How Companies may be formed.
- 10 **2.** When a Company has been formed under this Act, and a sufficient amount of Stock has been taken, adequate in their judgment to complete the work, they shall execute an Instrument according to the Schedule to this Act annexed, and register such Instrument with the Registrar of the County in which such work is situated. Company to register articles of Association with Registrar of County.
- 15 **3.** When the requirements contained in the preceding Section have been complied with, the Company shall thenceforth become and be a chartered and incorporated Company, by the name as designated in the Instrument so to be registered; and by such name, they and their successors may acquire any Company to be a Corporation on certain requirements being complied with.
- 20 **4.** Before any such Company proceeds with their work, they shall obtain the consent of the Municipality within which such work is proposed to be made, and such Municipality may fix the limit and boundary of the proposed Harbour. 16 V. c. 124, s. 1. Consent of Municipality to be obtained.
- 30 **5.** No Company so formed shall take any private property without the consent of the owner, or take or interfere with any property belonging to the Crown, without the approval of the Governor in Council, or obstruct any Harbour now in use, or interfere with any Company already chartered or Board of Commissioners incorporated for the construction of a Harbour. 16 V. c. 124, s. 1. Company not to take private or Crown property, without consent; nor interfere with Companies previously chartered.
- 35 **6.** The affairs, stock, property and concerns of every such Company shall, for the first year, be managed by five Directors, to be named in the Instrument so to be registered, and thereafter to be annually elected by the Stockholders, on the second Monday of December in each year, according to the provisions Affairs to be managed by five Directors.
- 40 of a By-law to be passed by the Directors for that purpose.

- When, by whom and how Directors elected. Requirements of By Law. **7.** Such By-law shall regulate—
1. The manner of voting ;
 2. The place and hour of meeting for the election ;
 3. The qualification of voters and of Candidates for the Direction ; and 5
 4. Any other matters, except the day of election, which the Directors deem necessary to carry out the foregoing provisions.
- By-law, how published, &c. **8.** Such By-law shall be published for three successive weeks in the newspaper, or one of the newspapers, published nearest the place where the Directors of the Company usually meet for conducting the business of the Company. 10
- Directors may amend By-law. **9.** The Directors may alter, change or amend such By-law, whenever they see proper, they being always bound to publish the amended By-law in the manner above provided.
- Majority of Directors to be a quorum. **10.** A majority of the Directors shall be a *quorum* for the transaction of business. 16 V. c. 124, s. 4. 15
- Directors to elect President and take security from officers. **11.** The Directors may elect one of their number to be the President, and may appoint such officers and servants as they deem necessary, and may in their discretion, take security from any of them for the due performance of his duty, and that he will duly account for all moneys coming into his hands to the use of the Company. 16 V. c. 124, s. 7. 20
- Failure to elect Directors not to dissolve Company. **12.** If the annual Election of Directors for any cause did not take place at the time appointed, the Company shall not thereby be dissolved, but the Directors for the time being shall, in that case, continue to serve until another election of Directors has been held, and such other election shall in such case be held at such time within one month thereafter, as has been provided by any By-law passed by the Directors of the Company for that purpose. 25
- Stockholders not in arrear entitled to one vote for every share held by him ; **13.** At any election of Directors, each Stockholder shall be entitled to one vote for every share of Stock he holds or is possessed of in the Company, and upon which such Stockholder is not in arrear for or upon any call in respect thereof. 80
- And eligible as Director. **14.** Any Stockholder who has paid all calls made, shall be eligible as a Director. 16 V. c. 124, s. 4 ; 18 V. c. 22. 35
- Shares to be £5 each—to be personal property and transferable. **15.** Each share in every Company shall be Five Pounds, and shall be regarded as personal property, and shall be transferable upon the books of the Company, in such manner as provided by any By-law to be made by the Directors in that behalf. 16 V. c. 124, s. 5. 40

16. The Company may sue any Stockholder in such Company for the amount of any call or calls of Stock which such Stockholder neglects to pay after public notice thereof for two weeks in the newspaper, or one of the newspapers, published nearest the place where the Directors of the Company usually meet for conducting the business of the Company, or after a personal demand for payment has been made from such defaulting Stockholder by the Treasurer of the Company. After two weeks' notice of call, stockholders may be sued.

17. The oath of the Treasurer shall be deemed sufficient proof of such notice or of such demand, a copy whereof shall be filed in the office of the Clerk of the Court where the suit is heard or decided or where the trial takes place. 16 V. c. 124, s. 6. Treasurers on the evidence of demand.

18. If any vacancy happens amongst the Directors during the current year of their appointment, by death, resignation, or permanent residence without the County in which the work is situated, or by any other cause, such vacancy shall, unless otherwise provided by some By-law or Regulation of the Company, be filled up for the remainder of the year in which it so happens by a person or persons to be nominated by a majority of the remaining Directors. 16 V. c. 124, s. 8. Vacancies amongst Directors, how filled up, &c.

19. The Directors of every Company shall annually, in the month of January, report to the Municipality within which such work is situate, under the oath of the Treasurer of the Company— Directors to make annual report to Municipality.

1. The state and nature of their work ;
2. The amount of all money expended ;
3. The amount of their Capital Stock, and how much is paid in ;
4. The amount of dividends paid and the amount expended for repairs ; and
5. The amount of debts due by the Company.

20. Every Company shall keep regular books of account, in which shall be entered a correct statement of the assets, receipts and disbursements of the Company, which shall be at all times open for the inspection of any person for that purpose appointed by the Municipality. 16 V. c. 124, s. 13. Company to keep books of account, &c.

21. The Directors of any Company may increase the Capital Stock of the Company, when they find the Stock already subscribed insufficient to finish the contemplated Work. 16 V. c. 124, s. 14. Directors may increase capital stock.

22. The President and Directors of the Company shall, subject to the approval of the Governor, fix and regulate, from time to time, the tolls, rates, dues or wharfage to be received from all vessels entering such Harbour or lying at such Pier or Wharf, and for loading and unloading all goods, wares or merchandize in such Harbour, as to them seems meet; but such tolls, rates, dues or wharfage shall not in any case exceed the amount herein specified. 16 V. c. 124, s. 9. 5

23. Any such Company or their Agent, Officers or Servants, may detain any goods, wares or merchandize, or any vessel, boat or craft, until the legal tolls or charges thereon are paid, and may sell any vessel or boat for the charges for repairs of any such vessel or boat when such charges remain unpaid for the space of thirty days, and in cases where the charges for wharfage or storage dues on goods, wares or merchandize remain unpaid for the space of one year, such Companies, their Agents, Officers or Servants, may sell such goods, wares or merchandize, or such part thereof as may be necessary to pay such dues, by public auction, giving ten days' notice of such sale, and returning the overplus if any, to the owner or owners thereof. 16 V. c. 124, s. 10. 10 15 20

24. Any Municipal Corporation having jurisdiction in the locality in which any such work is to be constructed, may subscribe for, obtain, hold, or depart with, and transfer Stock in any such Company, and may from time to time direct the Mayor, Reeve, Warden or other Chief Officer of such Municipality, to subscribe for such Stock in the name of the Municipality, and to act for the Municipality in all matters relative to such Stock and the exercise of the rights of the Municipality as a Stockholder, and such Chief Officer shall, whether otherwise qualified or not, be deemed a Stockholder in the company, and may vote and act as such, subject to the rules and orders in relation to his authority, which may be made in that behalf by the Municipality, but voting according to his discretion in cases not provided for by the Municipality. 16 V. c. 124, s. 11. 25 30 35

25. Any Municipality so taking Stock may pay for the same out of any moneys belonging to the Municipality, and not specially appropriated to any other purpose, and may apply the moneys arising from the dividends or profits on the stock or from the sale thereof, to any purpose to which unappropriated moneys belonging to such Municipality may lawfully be applied. 16 V. c. 124, s. 11. 40

26. Any Company may sell to any Municipality representing the interest of the locality in which the work is situate, and any such Municipality may purchase the Stock of such Company at the value agreed on between them, and such municipality shall hold the same for the use and benefit of the locality; 45

locality; and shall, in all respects thereafter, stand in the place of the Company, and shall possess all such powers and authority as the Company had theretofore possessed and exercised.

5 **27.** Any Municipality desirous of purchasing any such work, may borrow money or raise the means of paying therefor, by By-law to be passed under the provisions of the Act respecting the *Consolidated Municipal Loan Fund*. 16 V. c. 124, s. 12. Municipality may borrow money to purchase work under Municipal Loan Fund Act.

10 **28.** Any such Company may borrow money on the security of such work, not exceeding one half the value thereof. 16 V. c. 124, s. 15. Company may borrow money on security of work.

15 **29.** So soon as any such Pier, Wharf or Harbour has been so far completed as to be capable of receiving and sheltering vessels, and of safely loading and unloading the same, such Company may demand and take as toll or wharfage to and for their own use and benefit, on all goods, wares and merchandize shipped on board or landed out of any vessel, boat or other craft from or upon any such Pier or Wharf within the bounds of every such Harbour, not exceeding the following, that is to say: 16 V. c. 124, s. 16. Company may demand tolls, when and amount, &c.

	£	s.	d.
Pot or Pearl Ashes.....per barrel	0	0	4
Pork, Whiskey, Beef, Salt, Lard or Butter, “	0	0	3
Flour..... “	0	0	2
25 Lard or Butter.....per firkin or keg	0	0	1
Grain of all kinds.....per bushel	0	0	1
Horned Cattle or Horses.....each	0	0	4
Calves, Sheep or Swine..... “	0	0	1
Merchandize.....per ton	0	3	0
30 Sawed Lumber, per 1,000 feet board measure.	0	1	3
Square or round Timber...per 100 cubic feet.	0	0	9
Saw-logs.....	0	0	1½
Pipe Staves.....per M.,	0	2	0
West India Pipe Staves..... “	0	0	6
35 Unenumerated Articles.....per ton	0	2	0
Boats of 12 tons or under.....each	0	1	0
“ over 12 tons and not over 50..... “	0	2	0
“ over 50 tons..... “	0	3	0

40 **30.** Any Municipal authority representing the interests of the locality in which the work is situate, may, after twenty-one years from the time of such work being so far completed as that tolls were and have been collected thereon, purchase the Stock of such Company at the current value thereof at the time of purchase, and shall hold the same for the use and benefit of such locality; and such Municipal authority shall thenceforth stand in the place of the Company, and shall possess all such powers and authority. Municipality, after 21 years, may purchase the stock of Company.

authority as the Company had theretofore possessed and exercised. 16 V. c. 124, s. 17.

Legislature
may alter and
amend this
Act.

31. Notwithstanding the privileges conferred by this Act, the Legislature may at any time hereafter, in their discretion, make any such additions to this Act, or such alterations of any of its provisions, as they think proper, for affording just protection to the public, or to any person or persons, body corporate or politic, in respect to their estate or property, or right or interest therein, or any advantage, privilege or convenience connected therewith, or in respect to any right, public or private, that may be affected by any of the powers given to any such corporation. 16 V. c. 124, s. 18. 5
10

SCHEDULE.

Be it remembered, that on this _____ day of _____, in the year of our Lord one thousand eight hundred and _____, We, the undersigned Stockholders, met at _____, in the County of _____, in the Province of Canada, and resolved to form ourselves into a Company, to be called (*insert the name intended to be taken by the Company,*) according to the provisions of a certain Act of the Parliament of this Province, intituled, *An Act, &c, (insert the title of this Act,*) for the purpose of constructing a Pier (*or Piers,*) Wharf (*or Wharves,*) and making (*or dredging*) a Harbour (*or constructing a Dry Dock,* at (*name of the place.*) And we do hereby declare that the capital Stock of the said Company shall be _____ pounds, to be divided into _____ Shares, at the price or sum of Five Pounds each. And we, the undersigned Stockholders, do hereby agree to take and accept the number of Shares set by us opposite to our respective signatures; and we do hereby agree to pay the calls thereon, according to the provisions of the said in part recited Act, and of the Rules and Regulations, Resolutions and By-laws of the said Company to be made or passed in that behalf; and we do hereby nominate (*the names to be here inserted*) to be the first Directors of the said Company.

Name.	Number of Shares.	Amount.

CAP. LXXII.

An Act respecting Building Societies.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. So soon as any twenty or more persons, in Upper Canada, have agreed to constitute themselves a Building Society, and have executed, under their respective hands and seals, a declaration to that effect, and have deposited the same with the Clerk of the Peace in the County in which they reside, (who for receiving such deposit shall be entitled to receive a fee of two shillings and six pence,) such persons, and such other persons as may afterwards become members of the Society, and their several and respective executors, administrators and assigns, shall be a corporation, body corporate and politic, as a Building Society, by the name and style mentioned in such declaration for raising by monthly or other periodical subscriptions of the several members of the Society, and in shares not exceeding the value of one hundred pounds for each share, (such subscriptions not to exceed twenty shillings per month for each share,) a stock or fund for the purpose of enabling each member to receive out of the funds of the Society the amount or value of his shares therein to erect or purchase one or more dwelling house or houses, or other freehold or leasehold estate, or for any other purpose whatsoever, to be secured to the Society by mortgage or otherwise on any real estate belonging to any such member at the time of his borrowing money from the Society, or on any real estate to be acquired by such member for any other purpose, until the amount or value of his shares with the interest thereon, are fully paid together with all fines or liabilities incurred in respect thereof. 9 V. c. 90, s. 1, 13, 14 V. c. 79, s. 4.

Societies how incorporated.

Powers of Society.

2. The several members of the Society may from time to time assemble together and make such proper rules for the government of the same as the majority of members so assembled deem meet, so as such rules are not repugnant to the provisions of this Act, or any other law in force in Upper Canada ; and may impose and inflict such reasonable fines, penalties and forfeitures upon the several members of the Society infringing such rules as the majority of the members may think fit, to be respectively paid to such uses, for the benefit of the Society, as the Society by such rules direct ; and may also from time to time amend or rescind such rules, and make new rules in lieu thereof, under such restrictions as are in this Act contained.

Members of Society may make rules, &c., impose fines, &c.

3. Except in the case of the withdrawal of a member, according to the rules of the Society then in force, no member shall receive or be entitled to receive from the funds of the Society

Except in cases of withdrawal, members not to

- receive profits on share, till value of same realized. ciety any interest or dividend by way of annual or other periodical profit upon any share in the Society until the amount or value of his share has been realized.
- Society may receive bonus in addition to interest. 4. Every such Society may besides interest receive from any member a *Bonus* on any share, for the privilege of receiving the same in advance prior to the same being realized, without becoming thereby liable to any forfeitures or penalties imposed by any Laws in force in Upper Canada, relating to Usury. 9 V. c. 90, s. 2. 5
- Society from time to time to elect Directors. 5. Every such Society shall, from time to time, elect and appoint any number of the members of the Society to be a Board of Directors, (who shall choose a President and Vice-President,) the number and qualification thereof to be declared in the rules of the Society, and shall delegate to such Directors all or any of the powers given by this Act to be executed. 9 V. c. 90, s. 3. 10
- Powers of Director to be declared by rules. 6. Such Directors shall continue to act during the time appointed by the rules of the Society, the powers of such Directors being first declared by such rules. 9 V. c. 90, s. 3. 15
- Powers of Directors in certain cases to be recorded in books of Society. 7. In case Directors are appointed for any particular purpose, the powers delegated to them shall be reduced to writing and entered in a book by the Secretary or Clerk of the Society. 9 V. c. 90, s. 3. 20
- Concurrence of majority of Directors necessary. 8. The concurrence of a majority of the Directors present at any meeting shall at all times be necessary in any act of the Directors, and they shall in all things delegated to them act for and in the name of such Society. 9 V. c. 90, s. 3. 25
- Acts of Directors to be binding. 9. All acts and orders of such Directors, under the powers delegated to them, shall have the like force and effect as the acts and orders of such Society at any General Meeting. 9 V. c. 90, s. 3. 30
- Proceedings of Directors to be entered in books of Society. 10. The transactions of the Directors shall be entered in a book belonging to the Society, and shall at all times be subject and liable to the review, allowance and disallowance of the Society, in such manner and form as the Society by their general rules direct and appoint. 9 V. c. 90, s. 3. 35
- Society by rule to declare objects of Society and declare how moneys to be applied. 11. Every such Society shall, in or by one or more of their Rules, declare the objects for which the Society is intended to be established, and thereby direct the purposes to which the money from time to time subscribed to, received by and belonging to the Society, shall be appropriated, and in what shares or proportions and under what circumstances any member of the Society, or other person, may become entitled to the same, or any part thereof. 9 V. c. 90, s. 4. 40

12. All such Rules shall be complied with and enforced; and the moneys so subscribed to, received by or belonging to the Society shall not be diverted or misapplied either by the Treasurer or Directors, or any other officer or member of the Society entrusted therewith, under such penalty or forfeiture as the Society by any Rule inflicts for such offence. 9 V. c. 90, s. 4.

Moneys to be misapplied under penalties.

13. The Rules for the management of every such Society shall be recorded in a book to be kept for that purpose, to be open at all seasonable times for the inspection of the members. 9 V. c. 90, s. 5.

Rules to be recorded in book.

14. The Rules so recorded shall be binding on the several members and officers of the Society, and the several contributors thereto, and their representatives, who shall be deemed to have full notice thereof by such record. (9 V. c. 90, s. 6.)

Entry of rules in book, notice to members.

15. The entry of the Rules in the books of the Society or a true copy of the same, examined with the original and proved to be a true copy, shall be received as evidence thereof. 9 V. c. 90, s. 6.

Examined copy of rules entered in book to be evidence.

16. Such Rules shall not by *Certiorari*, or other legal Process be removed into any of Her Majesty's Courts of Record. 9 V. c. 90, s. 6.

Rules not to be removed into Court.

17. No Rule so recorded shall be altered or rescinded, unless at a General Meeting of the Members, convened by public notice written or printed, signed by the Secretary or President of the Society in pursuance of a requisition for that purpose made by not less than fifteen of the Members, stating the objects for which the meeting is called, addressed to the President and Directors and made within fifteen days after such requisition, each member being notified through the Post Office, of the proposed alterations; and such general meeting shall consist of not less than one-third of the shareholders, three-fourths of whom must concur in the proposed alterations or repeal. 9 V. c. 90, s. 7.

Rules entered in book not to be altered except at general meeting.

18. The Rules of the Society shall specify the place or places at which it is intended that the Society shall hold its meetings, and shall contain provisions with respect to the powers and duties of the members at large, and of the officers appointed for the management of the affairs of the society. 9 V. c. 90, s. 8.

Rules to specify time and place for holding meeting.

19. The Directors shall from time to time, at any of their usual meetings, appoint such persons as they think proper, to be officers of the Society, grant such salaries and emoluments as they deem fit, and pay the necessary expenses attending the management of the Society; and shall from time to time when necessary

Directors to appoint officers of Society.

necessary elect such persons as may be necessary for the purposes of the Society, for the time and for the purpose expressed in the Rules of the Society, and may from time to time discharge such persons, and appoint others in the room of those who vacate or are discharged. 9 V. c. 90, s. 9. 5

Officers appointed to receive moneys to give security.

20. Every such officer or other person appointed to any office in any wise concerning the receipt of money, before entering upon the duties of his Office, shall execute a bond in such form and for such amount as the Directors determine, with two sufficient sureties, for the just and faithful execution of his office, 10 according to the Rules of the Society. 9 V. c. 90, s. 9.

Society may take and hold real estate mortgaged by Society for certain purposes;

21. Every such Society may take and hold any real estate, or securities thereon, *bonâ fide* mortgaged, or assigned to the Society, either to secure the payment of the shares subscribed for by its members, or to secure the payment of any loans or 15 advances made by, or debts due to the Society, and may proceed on such mortgages, assignments or other securities, for the recovery of the moneys thereby secured, either at law or in equity or otherwise, and generally may pursue the same course, exercise the same powers and take and use the same remedies 20 to enforce the payment of any debt or demand due to such Society as any person, Body Corporate or Politic may by Law take or use for such purpose, and may in the names of the President and Treasurer for the time being; invest any surplus 25 funds in the stocks of any of the Chartered Banks or other public securities of the Province, and all dividends, interest and proceeds arising therefrom shall be brought to account and applied to the use of the Society, according to the Rules thereof. 9 V. c. 90, s. 10.

May invest surplus funds.

May forfeit shares;

22. Every such Society may forfeit and declare forfeited to 30 the Society the shares of any member who is in default or who neglects to pay such number of instalments or monthly subscriptions as are fixed by any Stipulation or By-law, and may expel such member from the Society, and the Secretary shall make a minute of such forfeiture and expulsion in the Books of the 35 Society; or instead of such forfeiture and expulsion, the Society may recover the same by an action of debt. 13, 14 V. c. 79, s. 3.

May expel Member;

May sue for amount of shares.

May sue in Division Court.

23. If the amount in arrear does not exceed ten pounds such action may be brought in the Division Court of the Division wherein the office of the Society is kept. 13, 14 V. c. 79, s. 3. 40

Society may sell real estate mortgaged in certain cases.

24. Whenever any such Society has received from any Shareholder an assignment, mortgage or transfer of any real estate to secure the payment of any advances, and containing 45 an authority to such Society to sell such real estate in case of non-payment of any stipulated number of instalments or sum of

of money, and to apply the proceeds of such sale to the payment of the advances, interest and other charges due to such Society, such stipulations and agreements shall be valid and binding, and such Society may cause the same to be enforced
 5 either by foreclosure or by an action or proceeding in either of Her Majesty's Superior Courts of Common Law, in which action the venue shall be laid in the County in which the lands lie, and may be brought in the names of the President and Treasurer of such Society, describing them as such, or in
 10 the corporate name of the Society. 13, 14 V. c. 79, s. 12.

25. If any person appointed to any office by the Society, and being entrusted with and having in his possession by virtue of his office, any moneys or effects belonging to the Society, or any deeds or securities relating thereto, dies or be-
 15 comes bankrupt or insolvent, his legal Representative, or other person having a legal right, shall, within fifteen days after demand made by the order of the Directors of the Society, or the major part of them assembled at any meeting thereof, deliver over all things belonging to the Society, to such persons as the
 20 Directors appoint. 9 V. c. 90, s. 11.

Representatives of officers of Society to deliver over papers and moneys after demand.

26. All real and personal estate, property and effects, and all titles, securities, instruments and evidences, and all rights and claims of or belonging to the Society, shall be vested in the President and Treasurer and their Successors in office for the time
 25 being for the use of the Society and the respective members thereof, according to their respective claims and interests, and shall, for all purposes of bringing or defending actions or suits civil or criminal, be deemed to be, and shall be stated to be, the property of the President and Treasurer, in the proper names of the Presi-
 30 dent and Treasurer for the time being, and such President and Treasurer may bring or defend any action suit or prosecution, criminal or civil, respecting any property, right or claim aforesaid, and may sue and be sued, plead and be impleaded in their proper names as President and Treasurer of the Society without
 35 other description; No such suit, action or prosecution shall be discontinued or abated by the death or removal from office of the President or Treasurer but shall continue in their names; and the succeeding President and Treasurer shall have the same rights and liabilities, and shall pay or receive like costs as if
 40 the action, suit or prosecution had been commenced or defended in their names, for the benefit of or to be satisfied out of the funds of the Society. 9 V. c. 90, s. 12.

Property of Society vested in President and Treasurer.

27. In all suits and prosecutions, the Secretary of the Society shall be a competent witness, notwithstanding he may
 45 also be Treasurer of the Society, and his name used in the suit or prosecution as such Treasurer. 9 V. c. 90, s. 13.

Secretary of Society a competent witness.

28. The President, Vice-President and Directors of the Society, in their private capacity, are exonerated from all respon-
 sibility

President and Directors re-

liability in relation to the liabilities of the Society. 9 V. c. 90, s. 14.

Rules to provide that Secretary shall furnish annual statement of funds.

29. The rules of the Society shall provide that the Treasurer or other principal Officer thereof shall, once at least in every year, prepare a general statement of the funds and effects of or belonging to the Society, specifying in whose custody or possession such funds or effects are then remaining, together with an account of all sums of money received or expended by or on account of the Society since the publication of the preceding periodical statement. 9 V. c. 90, s. 15.

Secretary's statement to be attested by Auditors.

30. Every such periodical statement shall be attested by two or more members of the Society not being Directors, appointed Auditors for that purpose, and shall be countersigned by the Secretary or Clerk of the Society, and every member shall be entitled to receive from the Society without charge a copy of 15 such periodical statement.

Act extends to aliens, females and bodies corporate.

31. This Act shall for all purposes extend to aliens, denizens and females; and co-partners and corporate bodies may hold shares in any Society incorporated under the provisions of this Act, in the same manner as single individuals; and this Act shall be construed in the most beneficial manner for promoting the ends thereby intended. 13, 14 V. c. 79, s. 4.

Interpretation clause.

32. The word "Society" in this Act shall be understood to include and to mean Building Society and Institution established under the provisions and authority of this Act; the word "Rules" to include Rules, Orders, By-laws and Regulations; the words "Real Estate" shall extend and apply to immoveable estate and property generally; and the word "securities" shall extend and apply to privileges, mortgages, (equitable as well as legal,) and incumbrances upon real and immoveable estate, as well as to other rights and privileges upon personal estate and property. 9 V. c. 90, s. 16.

CAP. LXXIII.

An Act respecting the Sale and purchase of Claims due to Government for moneys advanced to Public Works in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Governor may, by Order in Council assign, transfer
5 and convey to any Municipal Corporation, in or through whose
Municipality any public work or improvement hereinafter
mentioned may lie or pass, or to any Incorporated Company
or other party, who may agree to purchase the same, the
claim of the Province for any sum of money due from any Com-
10 pany or party, arising out of any advance or payment which
may have been made by the Government of the Province, or of
Upper Canada, under any Act of the Legislature of Upper Ca-
nada, to or for any Companies incorporated, for the purpose or of
constructing canals, rails-roads, harbors, roads or other works
15 and improvements of a public nature in Upper Canada, on the
conditions and with the provisions and limitations that may be
mentioned in the Order in Council. 13, 14 V. c. 71, s. 1.
- The Governor in Council may assign certain claims against certain Companies, and to whom and how.
2. The Order in Council may also include the undertak-
ing of any third person who becomes surety for the due pay-
20 ment of the consideration money, and the faithful performance
of any conditions therein mentioned ; and such Order in Council
shall transfer to and vest in the purchaser, all the rights of the
Crown in and to the debt or claim thereby intended to be
transferred, and shall have effect according to the tenor thereof,
25 as if the clauses, conditions and provisions thereof were inserted
in this Act. 13, 14 V. c. 71, s. 1.
- The order in Council may include the undertaking of sureties.
3. A copy of the *Canada Gazette* containing any such Order
in Council, or any copy of such Order certified by the Provin-
cial Secretary, shall be evidence thereof, and the consent and
30 agreement of all the parties named therein shall be presumed,
unless disputed by such parties, and if disputed, may be proved
by any copy of such Order in Council on which the consent of
the parties is written and attested by such signature or seal,
as would be sufficient to make any deed or agreement the deed
35 or agreement of such parties. 13, 14 V. c. 71, s. 1.
- What to be sufficient evidence of transfer.
4. Any Municipal Corporation purchasing any such claim
as aforesaid, may raise by assessment the sum necessary to pay
the consideration agreed upon. 13, 14 V. c. 71, s. 1.
- Municipal Corporations may raise purchase money by assessment.

CAP. LXXIV.

An Act respecting Light Houses.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- Governor to appoint Light-House Keeper.** 1. The Governor may appoint proper Light-House Keepers, and may remove them and appoint others in their stead; and such keepers shall be allowed such salaries respectively, as the Governor in Council may authorize 3 W. 4, c. 34, s. 2. 5
- Salary of keeper forfeited if light not kept up.** 2. No Light-House Keeper shall be entitled to receive any portion of his salary during any half year in which he neglects to keep the lamps under his charge lighted throughout the whole night of every night during the period for which the Inspector-General directs the same to be lighted. 3 W. 4, c. 34, s. 3. 10
- A sum granted sufficient to pay Light House Keeper.** 3. The whole, or a portion of the expense of Light-House keepers at Pier Harbours, as the Governor in Council may direct, shall be sustained by such Harbours respectively, whether they are in the possession of public or private companies. 7 W. 4, c. 96, s. 23. 15
- Inspector General to advertise for tenders for supplies necessary for lighting and maintaining Light Houses.** 4. The Inspector General shall make the necessary arrangements for causing the Light-Houses to be kept properly lighted during the continuance of the Navigation in each year, and shall advertise annually for tenders for supplying the Light-Houses with oil, wicks, lamps, glass tubes, and all other necessaries, for maintaining the lights therein, and shall enter into contracts with any person or persons for furnishing such supplies, to any or all of the said Light-Houses; and a sum of money sufficient to defray the necessary expenditure for such supplies, shall be annually granted for that purpose. 7 W. 4, c. 96, s. 4. 25
- Moneys to be paid by Receiver General.** 5. All sums of money that may from time to time be necessary for the purposes aforesaid, shall be paid from and out of the Consolidated Revenue Fund, remaining unappropriated in the hands of the Receiver General, in discharge of such warrant or warrants as may be issued for that purpose by the Governor, and shall be accounted for in like manner as other public moneys. 3 W. 4, c. 34, s. 6. 30 35
- Accounts of expenditure to be rendered.** 6. Accounts in detail with vouchers, of the expenditure of all sums expended under this Act, shall be annually laid before both Branches of the Legislature. 3 W. 4, c. 34, s. 5.

CAP. LXXV.

An Act respecting Lights upon, and the Navigation of Vessels and Rafts.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Every Steamboat, whether propelled wholly or in part by steam while navigating the waters of Upper Canada, shall be provided during the night with Lights, to be exhibited and affixed as follows : 14, 15 V. c. 126, s. 1. All vessels to carry lights.

When under weigh, a white light on flag staff aft, a bright white light on the foremast head, a green light on the starboard bow, and a red light on the port bow, to be fitted with inboard screens ; 14, 15 V. c. 126, s. 1.

When at anchor, a common bright light, at foremast head ;

As illustrated and explained in the Schedule A.

Every Schooner and other sailing Vessel shall be provided during the night with lights to be exhibited and affixed as follows :

When sailing before the wind, a pale light,	}	On the Pawl
When sailing on the starboard tack, a red light,		Bit or
When sailing on the larboard tack, a green light,		Knight head.

20 When at anchor, a pale light in the foremast rigging.

Every Sailing Vessel running before the wind, or with the wind free, and making a Steamer's light dead a head, shall pass on the starboard side, but if to avoid jibing her mainsail, or for any other good reason, she wishes to pass on the larboard side, she shall shew a green light, indicating that she is on the larboard tack, in which case the Steamer shall pass under the Vessel's stem.

30 In case of two sailing Vessels approaching one another on opposite tacks, the Vessel on the starboard tack shall keep the wind, and the one on the larboard tack keep away, always when tacking ship at night, shifting the light.

A Vessel in distress shall shew both the red and green lights.

- All vessels to have fog horns or bells and to sound them when in a fog. **2.** Every such Steamboat, Schooner or Vessel shall be provided with a Fog Horn, or a Bell of a weight not less than twenty pounds, which Horn or Bell the Master or person commanding any such Steamboat, Schooner or Vessel, shall during the time that such Steamboat, Schooner or Vessel is in a fog, cause to be sounded or rung for not less than two minutes at a time without intermission, at regular intervals of not more than five minutes between each such ringings. 14, 15 V. c. 126, s. 2. 5
- Rafts to have lights. **3.** Every Raft navigated upon or at anchor in the said waters during the night, shall have a Light affixed upon some conspicuous part of the Raft during such time. 10
- Night to be construed to extend from one hour after sun-set to one hour before sun-rise. **4.** For the purposes of this Act, the night shall be deemed to extend from one hour after sun-set, till one hour before sun-rise, at all seasons of the year. 7 W. 4, c. 22, s. 2. 15
- Steamboats or vessels carrying passengers to be provided with a gang-board. **5.** Every such steamboat or vessel carrying passengers, shall be provided with good and sufficient gang-boards with substantial hand-rails; and the Master of such boat or vessel shall, on stopping at any wharf or landing place, cause a gang-board to be firmly secured to the vessel and wharf or landing place, for the safe and convenient transit of passengers; and he shall cause to be affixed to the gangway (in the night time) good and sufficient lights. 20
- 6.** The Owners or Occupiers of every such wharf or landing place, shall also (in the night time) cause to be shewn conspicuously, on such wharf or landing place, and at every angle or turn thereof, a good and sufficient light. 7 W. 4, c. 22, s. 3. 25
- All vessels to take the star-board side of any channel. **7.** All vessels navigating, as aforesaid, shall be bound to take the starboard or right hand side of every Channel in proceeding up, or down the Lakes, Rivers or Waters navigated, so as to enable all vessels meeting each other to pass in safety. 7 W. 4, c. 22, s. 4. 30
- No vessel passing ahead of another or of a raft to approach nearer in passing than twenty yards. **8.** When any steamboat, schooner or other vessel, or any raft, as aforesaid, is going in the same direction as another steamboat, schooner or other vessel, or as any raft ahead of it, the first mentioned boat, schooner, vessel or raft shall be so navigated as not to approach or pass the other boat, vessel or raft, so being ahead, or being passed, nearer than within the distance of twenty yards; and the boat, schooner, vessel or raft, so being ahead, or being passed, shall be so navigated as not to bring it within twenty yards of the steamboat, schooner, vessel or raft, following or passing it. 7 W. 4, c. 22, s. 5. 35 40
- Persons offending liable to a penalty of five pounds. **9.** Any person commanding or having charge of any steamboat, schooner or other vessel navigating the said waters who offends against this Act, shall be liable to a penalty of five pounds 45

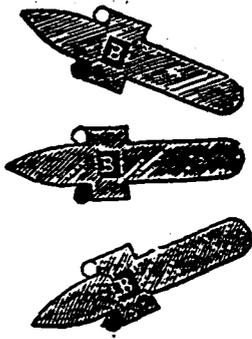
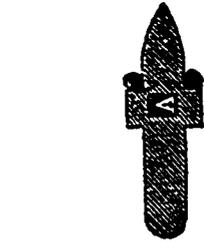
pounds and costs, to be recovered on conviction upon the oath of one credible witness before any two Justices of the Peace.

10. In default of payment of such penalty and the costs of and incident to such conviction, such Justices or one of them How penalties enforced.
 5 shall commit such person to the Gaol of the County in which the conviction is had, for a period of not more than thirty days, unless such penalty and costs are sooner paid. 7 W. 4, c. 22, s. 7.

11. If damage is sustained by any person or property in consequence of the non-observance of any of the provisions of this Act, the same shall in all Courts, in the absence of proof to the contrary, be deemed to have been caused by the wilful default of the Master or other person having charge of such steamboat, schooner or other vessel or raft; And the owner thereof in all Liability of masters and owners contravening this Act.
 10 civil proceedings, and the Master or other person in charge thereof as aforesaid in all proceedings, whether Civil or Criminal, shall be subject to the legal consequences of such default.
 15 14, 15 V. c. 126, s. 11.

SCHEDULE A.

The following Diagrams are intended to illustrate the working of the Plan prescribed by this Act.



FIRST SITUATION.
In this situation, the Steamer A will only see the red light of the Vessel B, in whichever of the three positions the latter may happen to be, because the green light will be hid from view. A will be assured that the *starboard* side of B is towards him, and that the latter is therefore crossing the bows of A in *some direction to port*. A will therefore (if so close as to fear collision) *port* his helm with confidence, and pass clear. On the other hand, the Vessel B, in either of the three positions, will see the *red, green, and mast-head* lights of A appear in a triangular form, by which the former will know that a Steamer is approaching *directly* towards him;—B will act accordingly. It is scarcely necessary to remark that the *mast-head* light will always be visible in every situation till abast the beam.

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SECOND SITUATION.
Here A will see B's green light only, which will clearly indicate to the former that B is crossing to *starboard*. Again, A's *three* lights being visible to B, will apprise the latter that a Steamer is steering *directly* towards him.

THIRD



THIRD SITUATION.
A and B will see each other's red light only, the screens preventing the green lights being seen. Both Vessels are evidently passing to *port*.



FOURTH SITUATION.
Here a green light only will be visible to each; the screens preventing the red lights being seen. They are therefore passing to *starboard*.



FIFTH SITUATION.
This is a situation requiring caution;—the red light in view to A, and green to B, will inform both that they are approaching each other in an oblique direction. A should put his helm to *port*, according to the standing rule mentioned in the next situation.



SIXTH SITUATION.
Here the two colored lights, visible to each, will indicate their *direct* approach towards each other. In this situation it ought to be a *standing* rule that both should put their helms to *port*.

CAP.

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CAP. LXXVI.

An Act respecting the Harbour of Toronto.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- 1.** The Municipal Council of the City of Toronto shall appoint two persons to be Commissioners for the management of the Harbour of Toronto, and the Toronto Board of Trade shall appoint two other persons to be Commissioners, and the majority of such Commissioners shall recommend another person to be a Commissioner, who shall upon such recommendation be appointed by the Governor, but if such majority reports that they cannot agree on such person, then the Governor shall appoint such fifth Commissioner without such recommendation. 5 10
- 2.** The four first mentioned Commissioners shall hold office respectively during the pleasure of the authority by which they have been appointed and by which they may be removed, re-appointed, or others appointed in their stead; and the fifth Commissioner shall be removeable by the Governor, and in case of such removal, another shall be appointed in the manner aforesaid. 13, 14 V. c. 80, s. 2. 20
- 3.** The Commissioners shall be a body corporate, by the name of *The Commissioners of the Harbour of Toronto*, and shall by that name have and may exercise the powers vested in bodies corporate by the Interpretation Act, and all such powers as may be necessary for carrying this Act into effect, according to its true intent and meaning; and such powers may be exercised by any three of the said Commissioners as effectually as by all of them; and if any three of them execute any deed, and affix the corporate seal of the Commissioners to the same, it shall be held to be the deed of the Commissioners. 13, 14 V. c. 80, s. 3. 25 30
- 4.** The works and property constructed and acquired by any former Commissioners are hereby vested in the Commissioners under this Act, as well as all such works and property as may be constructed or purchased by them under this Act for the purposes thereof, or which may be assigned and conveyed to them for the said purposes by the Common Council of the City of Toronto, and when not otherwise provided by Statute all the improvements made or to be made in the Harbour shall be under the control and management of the Commissioners. 13, 14 V. c. 80, s. 4. 40
- 5.** The Municipal Council of the City of Toronto shall have power to take any property which may be required by the Commissioners 45

Commissioner to be appointed, and by whom.

To hold office during, and to be removeable at pleasure.

Commissioners to be a body corporate.

What property shall be vested in the Commissioners.

Municipal Council may

missioners for the improvement of the Harbour: in like manner and under like conditions as they are empowered to take property for the opening of any street in the said City, and upon
 5 the conveyance of such property to the said Commissioners, the sum which the Municipal Corporation has paid for the same (or such less sum as the Common Council and the Commissioners may agree upon) may be paid by the Commissioners out of the moneys they are hereby empowered to borrow:
 10 or the Municipal Corporation may place any property under the control of the said Commissioners for any period without absolutely conveying it to them.

take property acquired by the Commissioners.

6. The Commissioners shall with such assistance as they find necessary, prepare plans and estimates for the improvement of the Harbour, and the Commissioners may acquire
 15 such property as may be requisite to enable them to execute such improvements, and may do all lawful things necessary in the execution of such work. 13, 14 V. c. 80, s. 5.

Commissioners to prepare plans and estimates.

7. The Commissioners may at any time after their appointment, make By-laws for the following purposes:

Commissioners may make By-laws for certain purposes.

1. For regulating the use of the works and property vested in them or placed under their control;

2. For the government of all parties using the same, and of all vessels and floats coming into or using the Harbour;

25 3. For imposing tolls to be paid upon such vessels and upon goods landed from or shipped on board of the same, and upon such floats; which tolls they may, if they think fit, levy according to the use which may be made of such Harbour and works and the period during which such use is continued in
 30 any case;

4. For directing in what manner, at what time, and to what persons the said tolls shall be paid;

5. For imposing fines not exceeding five pounds in any case, for the contravention of any such By-law, to be recovered
 35 by the said Commissioners, and for their use for the purposes of this Act, in any manner in which fines imposed by By-laws of the Municipal Corporation of the said City can be recovered; and the By-laws of such Commissioners may from time to time be repealed or amended by other By-laws to be made by them.
 40 13, 14 V. c. 80, s. 6.

8. The Commissioners may detain at the cost and risk of the owner thereof, any vessel, float or goods on which any tolls may be due, until the same are paid, and if they
 45 are not paid within one month after they have accrued, such vessel, float or goods may be sold by the Commissioners by public

Commissioners may detain any vessel, &c., for tolls due.

public auction to the highest bidder, and the Commissioners shall retain out of the proceeds the amount of the tolls due and of the expenses of detention and sale, and shall pay the surplus to the owner on demand; or the said Commissioners may recover such tolls from the master, owner, consignee or person in charge of the vessels, goods or floats on which the same may be due, in the usual course of law, as a debt due to them. 13, 14 V. c. 80, s. 6. 5

Persons employed by the Commissioners. 9. The Commissioners may employ such persons to assist them as may be necessary, and assign to them such powers and duties as they may deem expedient. 13, 14 V. c. 80, s. 7.

Commissioners empowered to borrow a sum of money. 10. For defraying the expenses of improving the Harbour and carrying the provisions of this Act into effect, the Commissioners may borrow, including sums, already borrowed either in this Province or elsewhere, such sums of money, not exceeding in the whole fifty thousand pounds currency, and at such rate of interest not exceeding eight per centum per annum, as they may find necessary, and the interest on the sums so borrowed shall be payable half-yearly, on days to be named in the debentures, and the principal at such period or periods as may be agreed upon, and such interest and principal may be made payable at such places within or without this Province, and in such currency or money whether of this Province or of any other country, as the Commissioners find expedient; and the debentures to be issued by the said Commissioners for the sums so borrowed may be in such form as they think proper, and shall be signed by at least three of them, and shall bear the seal of the Corporation; and the principal and interest of the sums so borrowed as aforesaid shall be secured upon and payable out of the tolls and other revenues to be received by the said Commissioners under this Act, but shall not be guaranteed by this Province, or payable out of any Provincial Funds. 13, 14 V. c. 80, s. 8. 15 20 25 30

How proceeds, &c., to be applied. 11. The proceeds of the tolls and revenues to be received by the Commissioners under this Act shall be applied by them: 35

Management. 1. To the payment of all reasonable expenses of collecting the same and of managing the said Harbour and works, and keeping the same in efficient repair;

Interest. 2. To the payment of the interest of the sums borrowed as aforesaid and of the principal thereof, at the periods when the same respectively become due;

Sinking Fund. 3. To the payment of not less than two per centum per annum on the sums so borrowed, for the purpose of forming a Sinking Fund towards paying off the principal of such sums and the amount to be so paid the officer to whom it shall be paid, and the mode of paying, managing and investing the same 45

same, shall be from time to time determined by the Governor in Council.

4. If the proceeds of the said tolls and revenues are not at any time sufficient to meet the charges imposed thereon by this section, the Commissioners shall increase the tolls aforesaid, to such extent as will in their opinion produce a sufficient revenue to meet the said charges. 13, 14 V. c. 80, s. 9. If tolls insufficient they may be raised.

12. The Commissioners shall keep detailed accounts of all moneys borrowed, received and expended by them under this Act, and shall account for the same to the Governor in such manner and form and at such periods as he may from time to time direct, and such accounts shall be accompanied by a full and particular statement of the proceedings of the Commissioners under this Act. 13, 14, V. c. 80, s. 10. Accounting clause.

13. The word "vessels" in this Act shall include ships, boats, vessels and water-craft of all kinds, whether impelled by sails or steam, or both, or in any other way whatever, and the word "floats" shall include all rafts, cribs, or timber afloat, and all other things floated in the water and not being vessels; and the word "goods" shall include goods, wares, merchandize, animals, articles and things of any description whatever not being vessels or floats. 13, 14 V. c. 80, s. 11. Interpretation clause.

CAP. LXXVII.

An Act relating to Ferries.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

No license to be granted, &c.

1. No license of Ferry in Upper Canada shall in future be granted to any person or body corporate beyond the limits thereof, and all grants of Ferry on the Frontier line of Upper Canada, shall be issued to the Municipality within the limits of which such Ferry exists, and in case of the establishment of any additional Ferry on such Frontier, then to the Municipality in which such additional Ferry shall be established. 20 V. c. 7, s. 5. 10

Governor may grant a license to have a steam ferry communication between two Municipalities.

2. In all cases where a ferry is required over any stream or other water within Upper Canada, and the two shores of such stream or other water are in different Municipalities such Municipalities not being in the same County, the Governor in Council may grant a license to either of such Municipalities exclusively, or to both conjointly, as may be most conducive to the public interest. 20 V. c. 7, s. 1. 15

License to confer a right, &c.

3. Such license shall confer a right on the Municipality or Municipalities to establish a ferry from shore to shore on such stream or other water, and with such limit and extent as may appear advisable to the Governor in Council, and be expressed in such license. 20 V. c. 7, s. 1. 20

Condition of license.

4. Such license shall be upon condition that the craft to be used for the purpose of such ferry shall be propelled by steam, and be of such dimensions, and the engine thereof be of such power as the Governor in Council may direct; and upon such further conditions as the Governor in Council may think fit and express in such license. 20 V. c. 7, s. 1. 25

License to be issued by the Governor under the Great Seal.

5. Every grant or license of Ferry shall be issued by the Governor under the Great Seal, and may be granted for any period not exceeding fifty years; but nothing herein contained shall invalidate or infringe upon any existing grant or right of Ferry. 20 V. c. 7, s. 1,—8 V. c. 50, s. 3. 30

Municipalities may sub-let ferries.

6. The Municipality to which any such license is issued may pass By-laws, not contravening the terms of the license, declaring their determination to sub-let the said ferry, and may sub-let the same for such price, and upon such terms, and to such parties, and on such conditions, and as to the rates of ferriage to be paid, as the said Municipality may deem best. 20 V. c. 7, s. 3. 40

7. In all cases where the one shore of such stream or other water is within the limits of a City, Town, or incorporated Village, and the other shore thereof in a Township or rural Municipality, the license shall be issued to the City, Town, or incorporated Village: But in case the Rural Municipality opposite to any such City, Town, or incorporated Village, is an Island, then the license shall be granted to the Island Municipality. 8 V. c. 7, s. 4.

Incorporated Cities, Towns and Villages to have the preference as to such license.

8. In every case, except in the case of Municipalities as aforesaid, where the limits to which the exclusive privilege of any Ferry extends are not already defined, such exclusive privilege shall not be granted for any greater distance than one mile and a half on each side of the point at which the Ferry is usually kept. 8 V. c. 50, s. 5.

Limits of ferries.

9. No Ferry in Upper Canada shall hereafter be leased by the Crown, nor shall the Lease thereof be renewed, or any License by the Crown to act as a Ferryman thereat be granted, except by public competition, and after notice of the time and place at which tenders will be received for the Lease or License for such Ferry, inserted at least four times in the course of four weeks in the *Canada Gazette*, and in one or more of the newspapers published in the County in which such Ferry may be situate, and to parties giving such security as the Governor in Council may require; nor shall any such Ferry be leased or the License thereof granted for a longer term than seven years at any one time. 9 V. c. 9, s. 2.

Moneys to be leased by public competition and only for alimited time.

10. If any person unlawfully interferes with the rights of any licensed Ferryman, by taking, carrying, and conveying, at any such Ferry, across the river or stream on which the same is situate, any person, cattle, carriage, or wares, in any boat, vessel, or other craft, for hire, gain, reward, profit, or hope thereof, or unlawfully does any other act or thing to lessen the tolls and profits of any Lessee of the Crown of any such Ferry, such offender, upon conviction thereof before a Justice of the Peace, shall forfeit and pay such sum of money not exceeding five pounds, as the Justice may direct, which sum shall be paid to the party aggrieved, except where he has been examined in proof of the offence, in which case the money shall be applied and accounted for in the same manner as any penalty imposed for a breach of the peace. 8 V. c. 50, s. 1.

Penalty for interfering with licensed ferryman.

11. Any person may keep at any such Ferry a boat, vessel, or other craft, for his own private use, or may use, for the accommodation of himself or of his employer, his own or his employer's boat, vessel or craft, to cross the river or stream on which such Ferry is situate; but such privilege shall in no wise be used to take, carry or convey any other persons or property for hire, gain, reward or profit, or hope thereof, or directly or indirectly to enable any such persons to evade the payment of tolls at such Ferry. 9 V. c. 9, s. 1,—8 V. c. 50, s. 1.

Parties may keep boats for their own use.

Offender to be committed if the penalty be not paid. **12.** In case the sum forfeited is not paid immediately after conviction, the convicting Justice may commit the offender to the Common Gaol of the County, there to be imprisoned for a term not exceeding two calendar months, unless the forfeiture, and the costs, are sooner paid. 8 V. c. 50, s. 2. 5

Aggrieved party may appeal.

13. In case any person thinks himself aggrieved by any conviction or decision under this Act, he may appeal to the first Court of Quarter Sessions holden for the County wherein the cause of complaint arose, not less than twelve days next after the day of such conviction; and in the prosecution, 10 hearing, and determination of the appeal, the same proceedings and forms shall be had, taken, and observed, as are required by the Statute regulating appeals in cases of summary conviction. 8 V. c. 50, s. 4.

License to be *prima facie* evidence.

14. On the trial of any offender against this Act, every 15 license heretofore issued or issued under this Act, shall be *prima facie* evidence of title to the Ferry. 8 V. c. 50, s. 3.

CAP. LXXVIII.

An Act respecting Rivers and Creeks.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Except in the case of round or squared timber, or of trees, 5 masts, staves, deals, boards or other sawed or manufactured lumber or saw logs, prepared for transportation to a market, every person and every employer of such person, who cuts and fells any trees into the Grand River, the River Thames, Smith's Creek or River Nith, Erbs Creek or River Speed, Otter Creek, 10 the River Credit, the River Otonabee from Sturgeon Lake to Rice lake; the River Scugog, the River Trent from Rice Lake to the Bay of Quinte, Crow River; the Rivers Gananoque, Rideau, Petite Nation, Tay, Mississipi, Bonnechere, Madawaska and Goodwood in Upper Canada, or upon such parts 15 of the banks thereof as are usually overflowed in the autumn or spring of the year by the rising of the water of the said Rivers or Creeks, and who does not lop off the branches of such trees and cut up the trunks thereof into lengths of not more than eighteen feet, before they are allowed to be floated or cast into the said 20 Rivers, or Creeks shall for every such offence forfeit and pay a penalty not exceeding fifty shillings. S W. 4, c. 28, s. 4,—2 V. c. 16, s. 1.

Conditions on which timber may be cut on the banks of rivers and floated thereon.

2. In case any person throws, or in case any owner or occupier of a mill suffers or permits to be thrown, into any 25 River, Rivulet or water-course in Upper Canada, excepting those hereinafter mentioned, any slabs, bark, waste stuff or other refuse of any saw-mill (except saw dust,) or any stumps, roots, shrubs, tan-bark or waste wood, or leached ashes; or in case any person fells, or causes to be felled, in or across any 30 such river, rivulet or water-course, any timber or growing or standing trees, and allows the same to remain in or across such river, rivulet or water-course, he shall incur a penalty not exceeding five pounds and not less than one shilling for each day during which such obstruction remains in, over, or 35 across such river, rivulet or water-course, over and above all damages arising therefrom. 10, 11 V. c. 20, s. 1,—7 V. c. 36.

Penalty on persons obstructing rivers and rivulets.

3. This Act shall not apply to any dam, weir or bridge 40 erected in or over any such river, rivulet or water-course, or to any thing done *bonâ fide* in or for erecting the same, or to any tree cut down or felled across any such river, rivulet or water-course, for the purpose of being used as a bridge from one side thereof to the other; provided such tree does not impede the flow of water or the passing of rafts. 10, 11 V. c. 20, s. 1.

Act not to extend to dams, weirs or trees used as bridges.

4.

- Rivers where salmon, pickerel, black bass or perch do not abound not included. **4.** This Act shall not extend to the River St. Lawrence, nor to the River Ottawa, nor to any River or Rivulet wherein Salmon, Pickerel, Black Bass, or Perch do not abound. 14, 15 V. c. 123. 14
- As to obstructions not wilful. **5.** No such obstruction happening without the wilful default of, or in the *bonâ fide* exercise by any party of his rights, shall subject the party to any fine or forfeiture unless upon default to remove such obstruction after notice and reasonable time afforded for that purpose. 10, 11 V. c. 20, s. 1. 5
- How fines to be recovered. **6.** All fines, penalties, forfeitures, and damages under this Act when not together exceeding five pounds, may respectively upon the oath of one credible witness be recovered with costs, in a summary way, before any one or more of the Justices of the Peace for the County, in which the offence has been committed in the manner provided by the Act relative to malicious injuries to property, and unless the conviction is appealed from if the fine or penalty and damages (*as the case may be*) together with the costs, are not paid at the time stated in the conviction, the convicting Justice or Justices, or one of them when more than one, shall issue his or their warrant of distress to levy the same out of the goods and chattels of the offender; and in case there are not sufficient goods and chattels found to satisfy the same, and in case the offender does not otherwise satisfy the same within three days after conviction, then such Justice or Justices (*as the case may be*) shall by warrant under hand and seal commit the offender to the common Gaol of the County in which he has been convicted, for the term of ten days, unless the fine penalty or forfeiture and damages (*as the case may be,*) and costs are sooner paid. 3 W. 4, c. 28, s. 2,—10, 11 V. c. 20, s. 1, *sec* 4, 5 V. c. 26, s. 30. 15 20 25 30
- Party aggrieved may appeal. **7.** Any party aggrieved by any conviction or decision under this Act, may appeal to the Court of General Quarter Sessions of the County, in the manner and under the conditions and provisions of the Act respecting appeals from summary convictions and decisions. 7 V. c. 36, s. 2. 35
- Appropriation of penalties. **8.** Of pecuniary penalties levied under this Act, one third shall go to the informer, and the other two thirds shall be paid to the Treasurer of the Municipality in which the offence was committed, and shall be expended in improving the Public Highways therein. 3 W. 4, c. 28, s. 3. 40
- Assessed damages how to be applied. **9.** In case of damages to private property arising out of a violation of this Act, such damages may at the request of the party aggrieved, be assessed by the convicting Justice or Justices and included in the conviction, when such damages, together with the fine or penalty imposed, do not together exceed five pounds, and in case damages are so assessed the same shall be paid to the party aggrieved, except in cases where 45

where he has been examined in proof of the offence, in which case the same shall be applied to the improvement of the public highways in the Municipality as above provided. 7 V. c. 36, s. 3.

- 5 10. This Act shall be continued till the first day of January, in the year of Our Lord, one thousand eight hundred and , and from thence to the end of the then next ensuing Session of the Provincial Parliament, and no longer. 20 V. c. 16, s. 1.
- How long this Act to continue in force.
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C A P .

CAP. LXXIX.

An Act respecting Mills and Mill-Dams.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

TOLLS.

No greater proportion to be taken for grinding and bolting grain than one twelfth.

1. No owner or occupier of a Mill, nor any person employed by him, shall demand or take as toll a greater proportion of any grain brought to him to be ground and bolted than one twelfth part thereof, for grinding and bolting the same under a penalty of ten pounds for every such offence; one moiety thereof to be paid to Her Majesty, for the public uses of the Province, and the other moiety to any person who may sue for the same in any Court of Record. 32 G. 3, c. 7, s. 1. 5

BAGS TO BE MARKED.

Bags must be marked.

2. No owner or occupier of a Mill shall be bound to receive or be chargeable with the loss of any bag of grain or flour, unless such bag is marked with the initial letters of the Christian and Surname of the owner of the grain, or with some mark distinguishing the bag, which mark of distinction shall be previously communicated and made known to the said owner or occupier of the Mill, or his servant usually attending the same. 32 G. 3, c. 7, s. 3. 15

MILL-DAMS.

Owners or occupiers of mills to construct aprons to their dams.

Penalty and its appropriation.

3. In case a Mill-dam is legally erected on any stream, down which stream lumber is usually brought, or in which stream salmon or pickerel abound, the owner or occupier of such Dam shall construct and maintain a good and sufficient apron thereto not less than eighteen feet wide, by an inclined plane of twenty-four feet eight inches to a perpendicular of six feet, and so in proportion to the height where the width of the stream will admit of it; and where such stream or dam is less than fifteen feet wide, the whole Dam shall be aproned in like manner with the same inclined plane; and every such owner or occupant who neglects to construct or maintain such apron, shall for such offence yearly and every year forfeit and pay the sum of twenty-five pounds; one moiety thereof to Her Majesty, for the public uses of the Province, and the other moiety to any person who may sue for the same in any Court of Record. 9 G. 4, c. 4, s. 1. 20 25 30 35

MILL-DAMS IN SPECIFIED TOWNSHIPS.

Provisions respecting

4. The owner or occupier of every Dam or Weir erected on any river or stream in the Townships of Williams, McGillivray, Stephens,

- Stephen, Hay, Stanley, Goderich, Colborne, Hullet, McKillop, Tuckersmith, Hibbert, Logan, Fullarton, Osborne, Biddulph, Blanchard, Downie, Ellice, North-East Hope, and South-East Hope, shall, if the same has not been already done, construct
 5 and maintain, and, if constructed, shall maintain and keep in repair a good and sufficient apron to such Dam or Weir, at least twenty-eight feet wide (if the Dam or Weir be of greater width, and if not, then of the same width as the Dam or Weir) and at least eight feet in length for every foot rise of such Dam or
 10 Weir, under a penalty of five shillings currency for each day during which the requirements of this Act are not complied with ; and which penalty shall be recoverable before any two Justices of the Peace for the County in which the offence has been committed, on the oath of one credible witness ; and if not
 15 paid, may be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such Justices or either of them ; one moiety of which penalty shall belong to Her Majesty, for the public uses of the Province, and the other moiety to the prosecutor. 4 W. 4, s. 1,—8 V. c. 66,—
 20 1 V. c. 26.

dams and weirs in the County of Huron.

MILL-DAMS ON THE RIVER MOIRA.

5. The owner or occupier of any Dam on the River Moira or its tributaries, in the County of Hastings, on which lumber is floated to market, shall construct and maintain, and if constructed, shall maintain and keep in repair a good and sufficient
 25 apron to such Dam, at least thirty-two feet in width (if the Dam be of that or of greater width, and if not, then of the width of the Dam) and at least five feet in length for every foot rise of such Dam ; and the height of the Dam at the place where the apron is constructed, shall be at least two feet lower than the
 30 top of the said Dam at any other place (unless it occupy the whole width thereof as aforesaid) ; but if the rise of the Dam is less than four feet, the height of the Dam at the place where the apron is constructed shall not exceed one half its height at any other place. 11 V. c. 10, s. 2.
- 35 6. Every such apron shall be constructed on the main channel of the stream, and shall have its highest part one foot below the level of the Dam at the place where it joins the same, under a penalty of one shilling and three pence for each day the requirements of this Act are not complied with. 11 V. c.
 40 10, s. 2.

Aprons of a certain size to be constructed to dams on the River Moira and its tributaries.

Penalty for contravention.

7. The said penalty, on the complaint of any person engaged in the lumber trade upon the said River or any tributary thereof, may be recovered before any two Justices of the Peace for the County in which the offence has been committed,
 45 upon the oath of one credible witness other than the informer, one half of which penalty shall belong to Her Majesty, for the public uses of the Province, and the other moiety to the prosecutor ;
 41 and

How such penalty shall be recovered and enforced.

and if upon conviction such penalty is not forthwith paid, it shall be levied by distress and sale of the goods of the offender, by warrant under the hand and seal of such Justices, or of one of them. 11 V. c. 10, s. 2.

Owner not obliged to alter the apron if constructed before a certain period.

8. This Act shall not oblige the owner or occupier of any Dam on the River Moira to alter the apron thereof, if constructed before the twenty-third day of March, one thousand eight hundred and forty-eight, until the renewal of such apron. 11 V. c. 10, s. 2. 5

MILL-DAMS ON THE RIVER OTONABEE.

Special provisions with regard to the River Otonabee.

9. No apron to any Mill-dam on the River Otonabee shall be less than thirty-two feet wide by an inclined plane of five feet to a perpendicular of one foot, and so in proportion to the height of the Dam; and side pieces of at least one foot in height shall be fixed on the outside of every such apron, to confine the water and prevent the timber from falling off at the sides. 12 V. c. 87, s. 2. 10 15

CONSTRUCTION OF MILL-DAMS AND PASSAGE OF LUMBER, SAW-LOGS, &C.

Apron or slide to admit passing of logs, &c.

10. Every owner or occupier of a Mill-dam at which an apron or slide is required to be constructed shall, if necessary, alter, or if not already built, shall construct such apron or slide so as to afford depth of water sufficient to admit of the passage over such apron or slide of such saw-logs, lumber and timber as are usually floated down the streams or rivers whereon such Dams are erected; but any owner or occupier of any such Dam may construct a waste-gate or put up brackets and slash-boards in, upon and across the apron, for the purpose of preventing any unnecessary waste of water therefrom, and may keep the same closed when no person is ready and requires to pass or float any craft, lumber or saw-logs over such apron or slide. 12 V. c. 87, s. 1. 20 25

Waste-gates, slash-boards.

Owner not obliged to remove brackets, &c.

11. The owner or occupier of any such Dam shall not remove the brackets or slash-boards across the apron thereof until the logs, lumber and timber required to be passed are ready to pass and have gained the main channel of the stream. 12 V. c. 87, s. 1. 30

STREAMS NOT INCLUDED IN THIS ACT.

As to certain small streams.

12. No person shall be required to build such aprons or slides as mentioned in the tenth section on small streams, unless required for the purposes of rafting or floating down lumber and saw-logs as aforesaid. 12 V. c. 87, s. 1. 35

PENALTIES.

PENALTIES.

13. Every owner or occupier of any Dam mentioned in the tenth section of this Act who, if not already made and constructed, neglects or refuses to make and construct and keep in repair an apron of such description as aforesaid, shall pay a penalty of ten shillings per day for every day of such neglect, and such penalty shall be recoverable before any two Justices of the Peace for the County in which the offence has been committed, on the oath of two credible witnesses, and if not paid, shall be levied by distress and sale of the goods and chattels of the offender, by a warrant under the hand and seal of such Justices, or one of them, and shall be paid to the Treasurer of the Municipal Corporation having jurisdiction in the locality where such Dam is erected, for the general uses of the Municipality. 12 V. c. 87, s. 3.
- Penalty on owner of dams refusing to comply with the requirements of this Act.

DAMS INJURED BY FLOODS TO BE REPAIRED.

14. In case any apron constructed or to be constructed is carried away, destroyed or damaged by flood or otherwise, the owner or occupier of the Dam to which the same was attached shall not be liable to such penalty as aforesaid if such apron is repaired or re-constructed in conformity to this Act, as soon as the state of the stream safely permits. 12 V. c. 87, s. 4.
- Apron to be reconstructed in conformity to this Act.

SAW-LOGS AND TIMBER, &C. MAY BE FLOATED DOWN ALL STREAMS AT CERTAIN SEASONS.

15. All persons may float saw-logs and other timber, rafts and craft down all streams in Upper Canada during the spring, summer and autumn freshets, and no person shall, by felling trees or placing any other obstruction in or across any such stream, prevent the passage thereof. 12 V. c. 87, s. 5.
- All persons may float saw logs, &c. down streams.

16. In case there is a convenient apron, slide gate, lock or opening in any such Dam or other structure made for the passage of saw-logs and other timber, rafts and crafts authorized to be floated down such stream as aforesaid, no person using any such stream in manner and for the purposes aforesaid, shall alter, injure or destroy any such Dam or other useful erection in or upon the bed of or across such stream, or do any unnecessary damage thereto or on the banks thereof. 13, 14 V. c. 75, s. 1.
- Not to injure any dam, &c

PROTECTION OF PURCHASERS OF CROWN LANDS WHICH CAUSE THE OVERFLOW OF ADJACENT LANDS.

17. In case, in any action brought against the proprietor or occupier of a Mill, for the overflowing of or injury to land, caused by the erection or continuation of a Dam for the purposes of such Mill, it appears that the overflowing or other injury was caused
- Grantee of Crown not to recover damages for injury caused

caused to lands
by dam erect-
ed before pa-
tent issues.

caused by the erection or continuation of a Dam which was built before the purchase by and grant thereof to the Grantee of the Crown of such land, and that such purchaser obtained a reduction in the price of such land, or was otherwise indemnified in consequence of its being so overflowed or otherwise injured, then the Jury on the trial of such action may take such facts into their consideration, and, if they think it just and equitable, may, in consequence thereof, find a verdict for the Defendant. 13 & 14 V. c. 75, s. 2. 5

Defendant
may plead ge-
neral issue,
&c.

18. In any such action the Defendant may plead the general issue, and under such plea, on entering a note of this Act in the margin thereof, may avail himself of this Act and of the matters of defence herein given. 13, 14 V. c. 75, s. 2. 10

CAP. LXXX.

An Act to prevent Accidents from Machinery.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The owners of every steam-boat, steam-car and steam-carriage, mill or building, in which machinery is used, shall erect good and substantial guards round such machinery so as to prevent passengers and other persons on board of, or entering or being in the same, respectively, from coming in contact with the machinery used therein or attached thereto. 1 V. c. 18, s. 1.

Guards, &c., to be erected about machinery of steam-boats, mills, &c., to prevent accidents to passengers and others.

2. The Collector of Customs of every Port in Upper Canada, or his Deputy, shall enter into or upon every steam-boat, steam-car and steam-carriage, arriving at his port or station, and carefully examine whether there are proper guards round the machinery of the same, so as to secure the safety of persons when such machinery is in operation, and if there are not proper guards or if they are not properly and substantially erected, he or his Deputy shall notify the same to the master or person in charge of such steam-boat, steam-car or steam-carriage, and direct him to make such proper guards or to make them in a proper and substantial manner. 1 V. c. 18, s. 2.

Collectors of Customs authorized to examine steam-boats, steam-cars and steam-carriages, and to require the erection of necessary guards.

3. It shall be the duty of every Justice of the Peace in the County or City in which he resides and usually acts as a Justice of the Peace, to enter into or upon all buildings wherein machinery is erected, and to inspect and examine the machinery thereof or attached thereto ; and if upon such examination it is found that there are not proper guards erected or that the guards used in and about such machinery are insufficient, such Justice shall notify the same to the owner or occupier of such building, and shall direct the necessary guards to be erected. 1 V. c. 18, s. 3.

Justices of the Peace, &c., to enter mills, &c., and to examine, &c.

4. In case upon the inspection of any steam-boat, steam-car or carriage, and of any building wherein or whereto machinery is used or attached, as aforesaid, it appears to the Collector or Justice respectively, inspecting the same, that the guards erected or to be erected in compliance with this Act are sufficiently safe and substantial, such Collector or Justice, respectively, shall deliver to the person in charge of such steam-boat, steam-carriage or car, and to the proprietor or occupier of such building, as aforesaid, a certificate to that effect ; and if such safe guards are at all times kept in good and sufficient repair, such certificate shall for six calendar months from the date thereof, be a good and sufficient protection to the masters and owners and occupiers of such steam-boat, steam-carriage or car, and building,

Collector or Justice to deliver certificate of sufficiency of guards, &c.

Certificate to afford protection for six months.

ing, respectively, as aforesaid, against any penalty to be incurred under the provisions of this Act. 1 V. c. 18, s. 5.

Penalty in
case of neglect
to erect
guards by
owners or
masters, &c

5. In case the master, or person in charge of any steam-boat, steam-car or steam-carriage, or the owner or occupier of any building wherein machinery is erected, as aforesaid, neglects or refuses to comply with the directions of such Collector or Deputy-Collector, or Justice of the Peace, (as the case may be,) and is convicted before one Justice of the Peace, he shall forfeit and pay for every such offence a sum not exceeding one pound and the costs of conviction ; and in default of payment of such sum and costs the offender shall, by a warrant under the hand and seal of such Justice, be sent to the Common Gaol of the County or City within which the offence was committed, for any period not exceeding thirty days. 1 V. c. 18, s. 4. 15

CAP. LXXXI.

An Act respecting the Inspection of Fish.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The Governor may appoint one or more Inspectors of Fish 5 in each County and City in Upper Canada. 3 V. c. 25, s. 1. Inspectors of fish may be appointed.

2. Every such Inspector shall, before entering upon the duties of his office, take the following oath or affirmation: Inspectors to take this oath.

“ I do solemnly swear, or affirm (as the case may be,) that I
 “ will faithfully, truly and impartially, according to the best of
 10 “ my judgment, skill and understanding, execute, do and per-
 “ form, the duty and office of an Inspector of fish, according to
 “ the true intent and meaning of the Act, intituled, *An Act*
 “ *respecting the Inspection of Fish.*”

(Which oath any Justice of the Peace for the County or City 15 for which such appointment is made may administer;) he shall also enter into bonds of Her Majesty, with two sufficient sureties, in the penal sum of one hundred pounds; which bond shall be approved of by the Clerk of the Peace for such County, or the Clerk of the Council of such City, and be deposited with 20 the Treasurer or Chamberlain thereof. 3 V. c. 24, s. 2. Justice may administer.
Inspector to give security to be approved by Clerk of the Peace.

3. Every Inspector of fish shall annually, in the month of January, make a return to the Clerk of the Peace in the County, or to the Clerk of the Council of the City in which he resides, of the quantity of fish inspected by him during the year preceding 25 the first day of January, and in such return he shall specify the quantity of each quality so inspected. 3 V. c. 24, s. 3. Inspector to make return to clerk of the Peace.

4. Every Barrel shall contain Two Hundred Pounds, and every half Barrel One Hundred Pounds of Fish, and every Barrel and half Barrel shall be filled with Fish of one and the same 30 kind. 3 V. c. 24, s. 4. Contents of barrels and half barrels.

5. Every Inspector shall inspect every Barrel or half Barrel of Fish submitted for his inspection by opening one of the heads of each barrel or half barrel, and if the same is found to contain sound and merchantable fish, with a sufficient quantity of salt 35 to preserve the same, shall then brand the head of such barrel or half barrel; and if the fish are found unsound or not merchantable, he shall destroy the same; and if the barrel or half barrel is not full, or not salted with a sufficient quantity of salt, he shall fill the same, or order it forthwith to be filled with 40 sound or merchantable fish, or he shall add or order forthwith to be added such quantity of salt as he may deem requisite, as the case Duty of Inspectors of fish.

case may be ; and unless such barrel is so filled or added to, he shall not pass or brand the same. 3 V. c. 24, s. 4.

Inspectors' duty when part of the fish in a barrel is unsound.

6. If part of the fish in any barrel or half barrel is sound and part unsound, the Inspector may separate the sound from the unsound, and may re-pack the sound fish, and add such salt or pickle as he may judge necessary, and brand the barrels as aforesaid, and such Inspector shall condemn as bad such fish as he may judge not capable of preservation. 3 V. c. 24, s. 11. 5

How barrels to be filled and branded.

7. The Inspector shall brand, in plain legible letters, on 10 the head of each barrel or half barrel of fish inspected and passed, by him the species of the fish, the initials of the Christian name, and the whole of the Surname of the Inspector, the name of the County or City in which the fish has been inspected, the words "Upper Canada" and No. 1 or No. 2, as representing the quality 15 the fish. 3 V. c. 24, s. 5.

Penalty on mixing, &c., fish branded or inspected or changing the brand.

8. If any person intermixes, takes out or shifts, any fish of any barrel or half barrel inspected and branded as by this Act required, or puts into any barrel or half barrel inspected and branded, any other fish for sale or exportation, or alters 20 the face of or changes the brand or mark of any Inspector, contrary to this Act, he shall for every such offence, forfeit and pay the sum of five pounds, on conviction before any two of Her Majesty's Justices of the Peace, upon the oath of one witness, and such fine or penalty, if not paid in three days 25 after conviction, may be levied of the goods and chattels of the person so convicted. 3 V. c. 24, s. 8.

Fish inspected in one district not liable to inspection in another.

9. Pickled fish duly inspected in any County or City shall not be subject to re-inspection in any other County or City in Upper Canada, and may be exported to any foreign part. 3 V. c. 24, s. 7. 30

Material of barrels for packing fish prescribed.

10. Every barrel and half barrel used for packing or re-packing pickled fish in Upper Canada, shall be manufactured therein, and shall be made in a workmanlike manner of sound well seasoned white, red, or black oak, white ash, or white 35 pine timber ; and shall be well hooped with at least ten good hoops. 3 V. c. 24, s. 8.

Hoops.

Fees for inspecting, for re-packing, &c.

11. The Fees for inspecting and branding shall be for each Barrel Six-pence, and for each half Barrel Four-pence ; and for overhauling, re-packing, inspecting and branding, for each 40 Barrel One Shilling, and for each half Barrel Seven pence Half penny, exclusive of cooperage ; and for every Bushel of Salt or part thereof so consumed as aforesaid, the value of such Salt according to the Market price thereof, at the time and place of such Inspection, and the said Fees and Charges shall be paid 45 by the person employing the Inspector. 3 V. c. 24, s. 8.

Salt.

- 12.** In case any Inspector is guilty of any fraud or neglect in inspecting any Fish, or of offering any fee or reward to owners of Fish, or their agents, or to any other person, to obtain the profits of inspecting or repacking the same, on any
 5 pretence whatever, or in case any Inspector brands any Barrel or half Barrel containing Fish contrary to the true intent and meaning of this Act, or which has not been actually inspected agreeably to this Act, or permits any other person to use his brand in violation or evasion of this Act, such Inspector shall,
 10 on conviction thereof before any two Justices of the Peace residing within the County or City where the offence has been committed, upon the oath of one credible Witness, forfeit and pay the sum of Ten Pounds, and in default of such payment within
 15 six days after conviction, the said Justices or one of them, shall issue a warrant to levy the same of the Goods and Chattels of the Inspector so convicted. § V. c. 24, s. 9.
- If Inspector guilty of fraud, &c., in office;
 And convicted before two Justices;
 He shall forfeit £10.
 Execution may issue to levy same.

- 13.** This Act shall not apply to any fish packed out of Upper Canada, and imported into the same. § V. c. 24, s. 12.
- Act not to apply to fish packed out of the Province.

CAP. LXXXII.

An Act to protect the White-Fish Fisheries in the Rivers Niagara, Detroit and Saint Clair.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- Penalty of £125 imposed on persons using seines in certain rivers. 1. If any person uses, or employs, or causes to be used or employed, any seine or other nets of a greater length than fifty fathoms, for the taking of White-Fish in any of the Rivers Detroit, Saint Clair or Niagara, within Upper Canada, he, for every such offence, shall forfeit the sum of one hundred and twenty-five pounds. § W. 4, c. 29, s. 1. 5
- Penalty for fishing on Sunday. 2. Any person found fishing for White-Fish in either of the said Rivers within Upper Canada, with seines, gill-nets or other nets, on the first day of the week, called Sunday, shall forfeit for every such offence the sum of fifty pounds. § W. 4, c. 29, s. 2. 10
- £125 penalty for diverting the progress of fish from their accustomed channel. 3. If any person attempts to divert the natural progress or running of the White-Fish within Upper Canada, by shingling or other device, he shall forfeit for every such offence the sum of one hundred and twenty-five pounds, or be imprisoned, not exceeding three months, at the discretion of the Court. § W. 4, c. 29, s. 3. 20
- Persons not to fish fronting lands of individuals under a penalty of £50. 4. If any person fishes in the said Rivers fronting the farm or land of any person, except in the channel of the said Rivers, after notice given to desist by the owner or occupant of such farm or land, he shall forfeit for every such offence the sum of fifty pounds. § W. 4, c. 29, s. 4. 25
- Penalty how to be recovered and applied. 5. All forfeitures incurred under the provisions of this Act may be recovered by action of debt, with costs of suit, before any Court having competent jurisdiction; one moiety thereof to the person who sues for the same, and the other moiety to be paid into the hands of the Receiver General. § W. 4, c. 29, s. 5. 30

CAP. LXXXIII.

An Act to protect the Fishery within Burlington Bay.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. No person shall at any time draw any seine or other net
5 in Burlington Bay, except within the distance of half a mile
from the land at the outlet thereof. 6 W. 4, c. 15, s. 2. Seines not to be used within half a mile of Burlington Bay.
2. No person shall at any time set nets, commonly called
gill-nets, in the waters of Burlington Bay, nor shall any person
set any net or other device whatsoever, so as to prevent the free
10 passage of the fish to and from the said Bay. 6 W. 4, c. 15,
s. 3. Seines, &c., not to be used in Burlington Bay.
3. If any person offends against the provisions of this Act,
the person so offending shall forfeit and pay a sum not exceed-
ing five pounds, nor less than ten shillings, with costs, on con-
15 viction before any one or more of Her Majesty's Justices of the
Peace for the County of Wentworth, on the oath of one or
more credible witnesses; and in default of payment shall be
committed to the Common Goal of the County for a term not
exceeding thirty days nor less than two days, unless the penalty
20 and costs be sooner paid; of which penalty one half shall be
paid to the informer, and the other half to the Receiver Ge-
neral of the Province. 6 W. 4, c. 15, s. 4. Penalty; How recoverable. Commitment.
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CAP. LXXXIV.

An Act respecting Game Laws of Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- Time for killing deer.** **1.** No Deer, Moose, Elk, Reindeer or Carriboo, shall be hunted, taken or killed, between the first of February and the first of August in any year. 19 V. c. 94, s. 1. 5
- Turkey, grouse, &c.** **2.** No wild Turkey, Grouse, Partridge or Pheasant, shall be hunted, taken or killed, between the first of March and the first of September in any year. 19 V. c. 94, s. 2.
- Quail.** **3.** No Quail shall be hunted, taken or killed, between the first of March and the first of October in any year. 19 V. c. 94, s. 3. 10
- Woodcock.** **4.** No Woodcock shall be hunted, taken or killed, between the first of March and the first of July in any year. 19 V. c. 94, s. 4. 15
- Water-fowl.** **5.** No wild Swan, Goose or Duck of the kinds known as the Mallard, Grey Duck, Black Duck, Wood Duck, or any of the kinds of Duck known as Teal, shall be hunted, taken or killed, between the fifteenth of April and the first of August in any year. 19 V. c. 94, s. 5. 20
- Certain birds to be killed only with a gun.** **6.** No wild Turkey, Grouse, Partridge or Pheasant, Quail or Woodcock, shall be trapped or taken by means of traps, nets, springes or other means of taking such birds other than by shooting, at any time whatever; nor shall any trap, net or snare be made, erected or set, either wholly or in part for the purpose of such trapping or taking. 19 V. c. 94, s. 6. 25
- No persons to have possession of said animals or birds without lawful excuse.** **7.** No person shall have in possession any of the animals or birds hereinbefore mentioned, within the periods above respectively prohibited, without lawful excuse, the proof whereof to be on the party charged. 19 V. c. 94, s. 7. 30
- Prosecution and recovery of penalties.** **8.** Any offence against any provision of this Act shall be punished, on conviction before a Justice of the Peace, by a fine not exceeding five pounds nor less than five shillings in the discretion of such Justice, with costs, or in default of payment, by imprisonment for a term not exceeding one month; one half of such fine to go to the Municipality, and half to the informer. 19 V. c. 94, s. 8. 35
- Exemption.** **9.** This Act shall not apply to Indians. 19 V. c. 94, s. 10.

CAP. LXXXV.

An Act to encourage the destroying of Wolves.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. If any person produces the head of a wolf with the ears on, before any Justice of the Peace acting for any County in Upper Canada, and makes oath or affirmation, *as the case may be*, or otherwise proves to the satisfaction of such Justice, that the wolf was killed within that County, or within one mile of an actual settlement in the County, he shall be entitled to receive from the Treasurer of the County the sum of one pound ten shillings as a bounty for the same. 6 W. 4, c. 29, s. 2.
- Any person producing a wolf with the ears on before any Justice upon oath made, entitled to £1 10s. 0d.
2. The Justice of the Peace before whom the head of the wolf is produced, having first cut off the ears thereof, shall give the person a certificate that the fact has been proved to his satisfaction, and such certificate shall authorize the person holding the same to demand and receive from the Treasurer of the County the said bounty of one pound ten shillings. 6 W. 4, c. 29, s. 3.
- Justice to give his certificate.
3. The Treasurer of the County shall forthwith pay such bounty to the person presenting the certificate, provided the County funds in his hands enable him so to do; and if the said funds do not enable him to satisfy the same forthwith, then the Treasurer shall pay the same out of the moneys of the County which next thereafter come into his hands. 6 W. 4, c. 29, s. 4.
- Treasurer of County to pay the bounty from funds in hands.
4. The Treasurer of a County shall not pay the bounty to which any such certificate entitles the person presenting the same, until he has paid the annual expenses of the County, arising from the building of a Court House and Gaol, and keeping the same in repair, the fees of the Clerk of the Peace, the salary of the Gaoler, and the maintenance of the prisoners. 6 W. 4, c. 29, s. 5.
- Other bounty expenses to be first paid.
5. When the funds of any County do not enable the Treasurer thereof to pay any such bounty, each such certificate shall be a lawful tender to the full value and amount therein specified, for and towards the discharge of any County rate or assessment to be collected from any person within the County in which the wolf was destroyed, and shall be accepted and taken by the Collector of any Township within the County as equivalent to so much of the current money of Upper Canada, and be by him paid and delivered over to the County Treasurer, by whom the same shall in like manner be taken and accepted as
- Certificates to be in certain cases a lawful tender in discharge of rates or assessment.

as equivalent to so much of the current money aforesaid. 6 W.
4, c. 29, s. 6.

Continuance
of Act.

6. This Act shall continue and be in force to the end of the
next ensuing Session of Parliament, and no longer. 20 V.
c. 16.

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C A P .

C A P . L X X X V I .

An Act respecting claims to Lands in Upper Canada for which no Patents have issued.

HER Majesty, by and with the advice and consent the Legislative Council and Assembly of Canada, enacts as follows :

1. The present Heir, Devisee and Assignee Commission shall
5 continue subject to the provisions of this Act, and the Governor
may from time to time, issue Commissions under the Great
Seal, to the Chief Justice of Her Majesty's Court of Queen's
Bench for Upper Canada, the Chancellor of Upper Canada,
the Chief Justice of the Court of Common Pleas, the Puisné
10 Justices of the said Court of Queen's Bench and Common
Pleas, and the Vice-Chancellors, and to such and so many
other persons as he may think fit. 8 V. c. 8, s. 2, and 14 &
15 V. c. 12. Commissioners to be appointed for the purposes of this Act.
2. Any three of such Commissioners, the said Chief Justice
15 of the Court of Queen's Bench, the Chancellor for Upper Canada,
the Chief Justice of the said Court of Common Pleas,
or one of the said Puisné Justices of the said Court of Queen's
Bench or Common Pleas, or one of the said Vice-Chancellors,
being one, shall be a quorum. 14 & 15 V. c. 12. Quorum fixed.
- 20 3. Such Commissioners or any three of them constituting
a quorum as aforesaid, may ascertain, determine and declare,
in all cases brought before them under this Act, who is the
party to whom the Patent ought to issue for the Lands to which
such claims respectively relate. 8 V. c. 8, s. 2. Power of Commissioners.
- 25 4. The sittings of the said Commissioners shall be holden
annually at the City of Toronto, on the first Monday in January
and the first Monday in July, and on the thirteen days next
ensuing the said days respectively, Sundays and Holidays
excepted. 8 V. c. 8, s. 2. Sittings when and where to be holden.
- 30 5. When the said Commissioners have good reason to
believe that there will not be sufficient business to require
their daily attendance throughout the term appointed for their
sittings. they may adjourn for any time within such term that
may be consistent with the despatch of such business as may
35 be brought before them. 8 V. c. 8, s. 2. Adjournment in case of want of business.
6. Any Act herein authorized or directed to be performed
by one Commissioner may be so performed either in or out of
the period appointed for the sittings of the Commissioners. 8
V. c. 8, s. 2. Acts of single Commissioner, how performed.
- 40 7. The said Commissioners shall have power to appoint
some fit person to be their Clerk. 8 V. c. 8, s. 2. Clerk to be appointed.

What claims may be brought before the Commissioners. 8. Every person claiming any Lands within Upper Canada for which no Patent hath issued, as being the Heir, Devisee or Assignee, of the original nominee of the Crown, or as having derived a title or claim to such Lands from or through any such Heir, Devisee or Assignee, may bring his claim 5 before the said Commissioners at their sittings, either personally or by his agent or attorney, and produce before the said Commissioners all such documents, proofs and evidence as he may have to adduce in support of such claim; and such evidence may be given *viva voce* before the said Commissioners, 10 at their sittings, or by written affidavits or affirmations, sworn or affirmed before any one of the said Commissioners, or before any person specially appointed to receive the same by the said Commissioners, or before the Judge of any County Court, or any Clerk of the Peace or any Commissioner for 15 taking affidavits in the Courts of Queen's Bench or Common Pleas in Upper Canada, each of whom may receive and administer the same. S V. c. 8, s. 3.

Certified copies of certain documents. 9. All certificates of the Surveyor General or of the Clerk of the Executive Council, or copies certified by them respectively, of documents in their custody, shall be received in evidence before the said Commissioners. S V. c. 8, s. 3. 20

Power to command the attendance of witness, parties, &c, for examination. 10. The said Commissioners may summon before them, by summons under the hand of any one of them, either the claimant or any party interested in the case, or any other person whom 25 they deem it expedient to examine as a witness, or whom they have reason to believe to be in possession of any document by the production of which the ends of Justice may be better attained; and may require such claimant or party, or such witness to submit to such oral examination upon oath, or to 30 answer on oath and to sign his answers to interrogatories or cross-interrogatories in writing, or to produce such books, papers or documents in his possession, as to the said Commissioners appear requisite. S V. c. 8, s. 4.

Commissions may be issued to examine witnesses not in Upper Canada. 11. The said Commissioners may cause such interrogatories 35 or cross-interrogatories as they deem requisite to be served upon and answered by any such claimant, party or witness, or any witness whose deposition may be produced in evidence before them, and may cause Commissions to be issued for the examination of any witness not resident in Upper Canada, and 40 for requiring such witness to produce such books, papers or other documents as he may have in his possession, and may at their discretion delay the proceedings in the case until such evidence and answers have been adduced and given. S V. c. 8, s. 4. 45

Penalty on any party or witness neglecting to 12. If any claimant, party or person duly summoned to give evidence, or to produce any book, paper or document, or to answer any interrogatories or cross-interrogatories before the said 50

said Commissioners, or before any person commissioned by them to receive the same within this Province, wilfully neglects to appear at the time and place appointed in the summons, or appearing, refuses to answer any lawful question, or to produce any document in his possession, he shall forfeit the sum of twenty-five pounds to the party at whose instance he has been so summoned or required to answer or to produce such document; and if the claimant, or any party interested in the case makes default in answering any interrogatory or cross-interrogatory which he has been duly required to answer, such default shall be taken *pro confessis* as if his answer had been such as would be most adverse to his own claim or interest.

8 V. c. 8, s. 4.

appear or to answer, &c.

Interrogatories not answered by a party to be taken *pro confessis*.

13. No claim shall be received or proceeded upon by the said Commissioners, until the party by whom, or on whose behalf the same is made (or if such party consist of more than one person, then until some one of such persons) has made and produced before the said Commissioners, an affidavit or affirmation in writing signed by him, that such claim is just and well founded to the best of his knowledge and belief, and that he is not aware of any adverse claim, or if he be aware of any adverse claim, that he has caused to be served on the party having or supposed to have such adverse claim, at least one month before the date of such affidavit or affirmation, notice in writing of his claim and of his intention to bring the same before the said Commissioners at the time when it shall be actually so brought and a copy of such notice shall be annexed to the affidavit or affirmation. 8 V. c. 8, s. 5.

Affidavit to be made by any claimant before his claim shall be received.

14. The said Commissioners shall not proceed upon any such claim as aforesaid, unless a notice specifying such claim and the name or names of the party claiming, together with the number of the lot of which the lands claimed consists or forms part, and of the concession and the name of the Township in which the same lies, has been put up in some conspicuous place in the office of the Clerk of the Peace of the County in which such lands are situate, during at least thirty days before such claim comes to be heard before the said Commissioners, nor unless a certificate to that effect from such Clerk of the Peace is produced to the said Commissioners. 8 V. c. 8, s. 6.

Certain public notice to be given before a claim is made and received.

15. The Clerk of the Peace of each County in Upper Canada, once in every three months, shall make a list of the claims so put up, in his office, specifying therein the particulars of such claims in the manner in which they are hereinbefore required to be specified in the notice to be put up, and shall affix such list in some conspicuous part of the Court House or place in which the Courts of General Quarter Sessions are held for the County, and shall cause the said list to be publicly read and proclaimed at each such Session by the Crier in open Court, immediately after the delivery of the charge to the Grand Jury; and for each such

Duty of the Clerk of the Peace with regard to such notices.

Fee to him.

such certificate the Clerk of the Peace may demand and receive the sum of two shillings and six pence, and no more. 8 V. c. 8, s. 6.

Delay may be granted by the Commissioners.

16. The said Commissioners may defer, delay, or adjourn the proceedings on any claim brought before them, and may give such further or enlarged time for the production of evidence, or for any other purpose relative to such claim, and for the decision thereon, as they may deem expedient for the attainment of the ends of justice. 8 V. c. 8, s. 7. 5

Commissioners to decide on the claim and report to the Governor in Council.

17. After the said Commissioners have fully examined any such claim as aforesaid, they shall either reject or allow the same as in their judgment the justice and equity of the case requires without regard to legal forms or to the strict letter of the law or legal rules of evidence, and shall report their decision to the Governor in Council and such report shall be final and conclusive (except in the case hereinafter mentioned,) and the Governor in Council, shall direct Her Majesty's Letters Patent under the Great Seal of the Province to issue, for granting the lands in question to the party who has been determined by the decision of the Commissioners to be entitled to the same as representing the original Nominee of the Crown. 8 V. c. 8, s. 8. 10 15 20

Patent to issue on such report.

The effect of the patent with regard to charges or incumbrances on the lands.

18. Such Letters Patent shall have the same and no other effect or operation with regard to any charge, incumbrance, lien, matter or thing, upon or affecting the lands so granted, as Letters Patent issuing for the same in favor of the original Nominee of the Crown would have had, save only as establishing the claim of the party in whose favor they may be granted, to the lands to which they relate, as the Heir, Devisee or Assignee of, or as otherwise representing the original Nominee. 8 V. c. 8, s. 8. 25 30

Report and patent not to affect any claim to any lands but those mentioned therein.

19. Neither the decision of the Commissioners on any claim, nor the issuing of the Letters Patent on such decision, shall extend to or in any way affect any claim of the said party, or of any other party, to any lands other than those to which such decision expressly relates and which are mentioned and described in the report and Letters Patent, but such claim to other lands shall continue and remain as if such decision and report had not been made. 8 V. c. 8, s. 8. 35

Patent not to issue for one month after the report is received.

20. No Letters Patent shall issue on any decision and report of the said Commissioners until after the expiration of one Calendar month, from the time such report has been transmitted to and marked as received by the Clerk of the Executive Council. 8 V. c. 8, s. 9. 40

Patent may be staid if the report have

21. If, before the expiration of such Calendar month, any *Quorum* of the said Commissioners, from any representation made to them, find reason to believe that such decision and report 45
report

report were obtained by surprise or erroneously made in any respect, and that justice requires that the issuing of the Letters Patent be staid, then such *Quorum* of the said Commissioners may, although it be not then the regular period of their sitting, report accordingly to the Governor in Council, and the issuing of the Letters Patent shall be thereupon staid, until the Commissioners shall again report upon the case, and the said Commissioners may then rehear the case, or let in any new claim and receive or insist upon any new evidence as to them may appear expedient to enable them to do justice in the case, and may thereafter decide and report thereon as if no prior decision and report had been made, and with like effect. 8 V. c. 8, s. 9.

been obtained by surprise. &c.

Commissioners may rehear the case.

22. If under the circumstances of the case it appears to the said Commissioners fair and right so to do, they may allow to the party in whose favor the first decision and report was made, such costs against the party at whose instance the case has been again taken into consideration as they may deem just and reasonable, or they may, in case of fraud or wilful wrong in the conduct of such party, award costs in like manner against him to the party in whose favor the subsequent decision and report may be made. 8 V. c. 8, s. 9.

The costs occasioned by such re-hearing to be in the discretion of the Commissioners.

23. In case any lands for which no Letters Patent had issued, having been at any time described as granted in any Schedule furnished by the Surveyor General to the Treasurer of any County in Upper Canada, under the provisions of any law concerning the collection of local taxes or assessments, have been afterwards sold by the Sheriff for arrears of such local taxes or assessments, and in case the period allowed by Law for the redemption of such lands has expired, the purchaser, or the Heir, Devisee or Assignee of the purchaser may claim the same before the Commissioners aforesaid, and such purchaser shall thereupon, for all the purposes of this Act, be considered as an Assignee of the original Nominee of the Crown, and his claim shall be acted on and dealt with accordingly. 8 V. c. 8, s. 10.

Purchasers of unpatented lands sold for taxes may file their claims for a patent before the Commissioners.

24. In case the original Nominee of the Crown, or any party through whom the party obtaining Letters Patent for any Lands under this Act has been declared by the Commissioners to have derived his claim thereto, had before the issuing of such Letters Patent, granted any mortgage, incumbrance or lien on such Lands, by any instrument by which the same would have been validly granted, if the Letters Patent had issued in favor of the Grantor before the date of such instrument, the same may be registered in the Office of the Register for the County in which the lands lie, subject to the same conditions, and with the same effect and no other, and shall in law and equity have the same force and effect and no other, as if Letters Patent for the said Land, had, before the execution of such

Effect of mortgages, &c., granted before the issue of the Letters Patent.

such instrument, issued in favor of such Grantor. 8 V. c. 8, s. 11.

Unfinished proceedings before the former Commissioners may be continued before those appointed under this Act, and the documents, &c., shall be transferred into the hands of their Clerk

25. All proceedings commenced or pending in any case before the said Commissioners under any former Act may be continued and completed by and before the said Commissioners under this Act and with the like effect, and any decision and report of the said Commissioners given and made before this Act takes effect, shall remain good and valid, and may be acted upon as to the issuing of Letters Patent, as if it had been given and made under the authority of this Act, and in like manner shall be subject to the provisions hereof in case it appears to any *Quorum* of the Commissioners under this Act, that it was erroneous or was obtained by surprise, and they shall so report before the expiration of thirty days from the time the report of the Commissioners under such former Act was made. 8 V. c. 8, s. 12.

Rules and forms of proceedings to be established by the Commissioners.

26. The said Commissioners may from time to time make and establish such rules and forms, with regard to any proceedings to be had before them, and such notices, papers and other documents as may be required in the conduct of such proceedings, as to them appear expedient for the better attainment of the purposes of justice. 8 V. c. 8, s. 14.

Costs may be allowed to witness.

27. In all cases in which any witness duly appears to give evidence before the said Commissioners, or before any person appointed by them to examine or to receive the testimony or deposition of such witness, the said Commissioners may order and direct the party at whose instance such witness was summoned, or his testimony or depositions taken, to allow to such witness for his loss of time and expences, such sum as the said Commissioners may deem equitable, which order such party shall obey, or in default, such sum shall be recoverable from such party by action in any Court having jurisdiction in civil cases to a like amount, due regard being had to the limits of the local jurisdiction of such Court. 8 V. c. 8, s. 15.

Recovery of such costs.

Fees on proceedings under this Act, to the Clerk of the Commissioners.

28. The Clerk of the said Commissioners shall be entitled to demand and recover for the following services respectively, the fees hereinafter mentioned, from the persons requiring such services, that is to say :

1. For filing each petition, one shilling ;
2. For setting down for hearing any claim, two shillings 40 and six pence ;
3. On the hearing of any claim, five shillings ;
4. For making up a report on the same, ten shillings ;

5. For each certificate of the allowance of any claim, one shilling and three pence ;
6. For a copy of the order respecting any claim, one shilling and three pence ;
- 5 7. For each summons for the attendance of any witness or witnesses, two shillings ;
8. For each commission for the examination of witnesses, ten shillings ;
9. For any certified copy of any paper or document in his
10 custody, one shilling and three pence for the certificate, and at the rate of six pence, currency for each one hundred words in such copy ;
10. And such reasonable fees for any service not herein specially mentioned or included therein, as the said Commis-
15 sioners may from time to time allow him, as a fair and just compensation for the labour by him performed, and no more ; and the person, not being one of the Commissioners who takes any affidavit or affirmation under this Act, shall be entitled to demand and recover from the party requiring him to take the
20 same, the sum of one shilling and three pence, and no more ; and all such fees as aforesaid may be required to be paid before the service for which they are granted is performed, or if not so required, may be recovered in the manner hereinbefore appointed with regard to the sum allowed to a
25 witness. 8 V. c. 8, s. 16.
29. The copy of any order, report or decision, made by the said Commissioners under this Act, certified by their Clerk and countersigned by one of the said Commissioners, shall be received in any civil suit or action in any Court in this
30 Province, as evidence of the making of such order, report or decision, in the manner and form and according to the tenor thereof as set forth in such copy ; and it shall not be necessary in such suit or action to prove the signatures of such Clerk or Commissioner, unless, after the party intending to produce the
35 same, has given due notice of such intention to any adverse party according to the course and practice of the Court, such adverse party has in like manner signified his intention to dispute such signatures, or either of them, in which case it shall be requisite to prove the same, and the costs attending such
40 proof may, in the discretion of the Court, be allowed to the party making such proof, whatever be the result of the suit or action. 8 V. c. 8, s. 17.
30. In the construction of this Act, the said Commissioner or Commissioners shall be styled and known as the Heir Devi-
45 see and Assignee Commissioner or Commissioners as the case may

Unenumerated services.

Fees to persons appointed to receive affidavits.

Recovery of such fees.

Certified copies of proceedings and orders of the Commissioners to be received in evidence.

In what cases only it shall be necessary to prove the certificate.

Costs.

Interpretation clause.

may be and whenever such Commissioners are empowered or directed to do or perform any act, such act may be done or performed by a *Quorum* of such Commissioners; the words "Heir, Devisee, or Assignee," shall be understood to include the Heirs, Devisees, or Assignees of any Heir, Devisee, or Assignee, to any degree; and the word "Lands," shall be understood to mean any lot or lots, piece or parcel of Lands, of what extent soever, to which any claim may be made under this Act, unless it is otherwise specially provided, or there is something in the subject or context repugnant to or inconsistent with such construction. S V. c. 8, s. 18.

Quorum.

Their Devisee.

Assignee.

Lands.

Rights to obtain a patent declared assignable in certain cases.

31. Any person whose right to obtain a Patent for Lands has been established by any Commission under this or any former "Heir and Devisee Act," may, by an instrument in writing, assign, transfer and convey his right and interest to, or in such land, and such assignment, as well as all subsequent assignments, may be registered, agreeably to the provisions of the *Act for the disposal of Public Lands*; and the last Assignee shall be entitled to a Patent upon proving compliance with all the conditions to which the original location was subject. 14, 20 15 V. c. 56, s. 4.

Proof may be required by Commissioner of Crown Lands in case of application by the representatives.

32. In any application for a Patent by the Heir, Assignee or Devisee of the original Nominee of the Crown, the Commissioner of Crown Lands may receive proof in such manner as he may direct and require in support of any claim for a Patent when the original Nominee is dead, and upon being satisfied that the claim has been equitably and justly established, he may report the same to the Governor in Council, and if approved, the Patent may issue to the party named in the Order in Council founded on such report, or to his assignee; without the intervention of the said Commissioners, but nothing in this clause contained shall limit the right of the party claiming a Patent, to make application at any time to the said Commissioners. 6 V. c. 159, s. 26.

Patents may have for lands located to certain privileged persons without being confirmed by special order in Council.

33. Persons located for lands under Certificates of the Adjutant General of Militia, under the Honorable Colonel Talbot, under the land Boards instituted in the year one thousand eight hundred and nineteen, and under the Military Settling Department, their Assignees, Devisees or Heirs, upon furnishing proof to the Department of the Commissioner of Crown Lands, in the form required, that the conditions, which attach to such locations, have been complied with, and upon payment of such Patent fees on such locations as are chargeable thereon, shall receive Patents without their locations being necessarily confirmed by order in Council, except in cases where there are conflicting claims, in which cases such claims shall be decided upon by the Governor in Council. 14, 15 V. c. 56, s. 5.

CAP. LXXXVII.

An Act to prevent trespasses to Public and Indian Lands.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

CROWN LANDS.

1. No body corporate now or hereafter created within this Province, or servant or agent of such body, shall at any time hereafter enter into or upon, have, hold, use or enjoy, for any purpose whatever, any land belonging to Her Majesty, without having the license of Her Majesty, for such purpose, signified under the hand of the Governor or person administering the Government of this Province. 6 W. 4, c. 3.

Entry on Crown Lands not to be made without special license.

2. The Governor may from time to time appoint two or more Commissioners, under the Great Seal of this Province, to inquire into any complaint made to them, or any one of them, against any person for illegally possessing himself of any land in Upper Canada, surveyed or unsurveyed, for which no grant, lease, ticket, either of location or purchase, or letter of license of occupation, has been issued, either under the Great Seal or by or from the proper Department of the Provincial Government in that behalf, whether such land be Crown or Clergy Reserve, School or Indian Land, or however otherwise denominated, or whether held in trust or in the nature of a trust for the Indians or any other party whomsoever; and also to inquire into any complaint made to them, or any one of them, against any person for having unlawfully cut down or removed any timber trees, stone or soil, on such land, or for having done any other wilful and unlawful injury thereon. 2 V. c. 15, s. 1, and 12 V. c. 9, s. 1.

Commissioners may be appointed to enquire concerning trespasses committed upon Crown Lands.

3. If the Commissioners, or any one or more of them, upon investigation of the complaint so made before them or him, find and determine that the person complained against is unlawfully in possession of such lands, they or he may give notice to that person to remove from the occupation thereof within not less than thirty days from service of the notice, and if that person neglects so to remove within the time specified in the notice, the said Commissioners, or any one or more of them, may issue a warrant, signed and sealed by them or him, directed to the Sheriff of the County, commanding him to eject and remove that person from the lands, which warrant the said Sheriff is hereby authorized to execute and carry into effect in like manner as a writ of *habere possessionem* issued by Her Majesty's Courts of Law. 2 V. c. 15, s. 2.

Commissioners on finding illegal possession—

To give notice to intruder to remove within thirty days.

On neglecting to remove, Warrant of Ejectment may be directed to and executed by the Sheriff.

4. And if upon the investigation it appears to the Commissioners or Commissioner that any person has been actually in possession

Commissioners may, in possession

case of doubt,
issue a general
notice to quit

possession of such lands or a part thereof, or has within twelve calendar months next before, claimed to be in possession, or claimed or pretended to have a right to such possession but it nevertheless appears uncertain who is then in actual possession, or whether the person in possession claims to be in possession of his own right or merely on behalf of another, then the said Commissioners or Commissioner may give a notice similar to that in the last section, but directed generally to all persons having or claiming possession of the lands, their tenants, bailiffs and servants, and all others whom it may concern; and if all persons whomsoever who have not written authority from the Commissioners, or one of them, to remain upon such lands, do not quit and remove from the same within the time specified in such notice, the said Commissioners, or one of them, may issue a warrant of removal, signed and sealed by him or them, directed to the Sheriff of the County, commanding him to eject and remove all persons whomsoever from such lands, which warrant the Sheriff is hereby authorized to execute and carry into effect as in the preceding section is provided. 12 V. c. 9, s. 2. 5
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Persons dis-
obeying the no-
tice may be
removed on an
order of the
Commission-
ers directed to
the proper
Sheriff.

As to the des-
cription of the
lands in any
summons un-
der the said
Act.

5. Every summons, notice to quit, and warrant of removal, shall describe the lands with the same certainty as would be necessary in a deed of conveyance between parties. 12 V. c. 9, s. 3.

How summons
and notice to
be served.

6. Neither the summons nor notice to quit need be personally served; it shall be sufficient to deliver the same to the person in actual possession of the land, and the notice to quit may also be served by leaving the same with the wife of such person on the premises, or with any grown person found thereon, and putting up in the last case a duplicate notice in some conspicuous place on the premises; and where no grown person is found on the premises, then by putting up one such notice in each of four conspicuous places on the premises; but no fine shall be imposed on any person except upon personal service of the summons or service on his wife. 12 V. c. 9, s. 3. 25
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If the party
removed, re-
turns or is
expected by
the Sheriff to
return, a Writ
of Removal by
Continuance
may be ob-
tained from
the Court of
Queen's
Bench.

7. If after the execution of any special or general Warrant of Removal, the person removed, or any other person returns, or enters into, or upon the same lands, or if the Sheriff has reason to believe that such person, or any other person will so return and enter upon the same lands, unless they be protected by process for the prevention thereof, the Sheriff shall with the Warrant certify the same into the Court of Queen's Bench or Common Pleas at Toronto, setting forth such return, entry or intrusion, or his belief that such will take place unless the lands be protected by process for the prevention thereof, and thereupon the Court may issue a Writ of Removal by continuance, as nearly as may be in the form in Schedule A annexed, and upon a similar return thereto an alias, and afterwards upon similar returns Pluries writs of a like description, 40
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as

as often as may be necessary for the protection of the lands against intrusion. 12 V. c. 9, s. 4.

8. If any person who has been so removed, returns and resumes occupation of the same lands, or any part thereof, the Commissioners, or any one of them, may, upon complaint and satisfactory proof of such fact, order that he be committed to the Common Gaol of the County, for a term not exceeding thirty days, and that he pay a fine to the Queen, not exceeding Twenty Pounds. 2 V. c. 15, s. 3.

Penalty for resuming possession after having been removed by virtue of this Act.

9. Any person concerned in the proceedings, or showing an interest intitling him to be heard in that behalf, may obtain a rule to show cause which shall be served personally on one or more of the Commissioners, and thereupon the said Court of Queen's Bench or Common Pleas may order a super-sedeas to any such Writ, Alias or Pluries Writs, whereupon no further proceedings shall be had upon such writ, or the proceedings of the Commissioners whereon it was founded, but if it be deemed necessary to proceed against such party, or any other for intrusion or trespass, upon any such lands, the like proceedings of Notice to quit and Warrant of Removal may be had as at first. 12 V. c. 9, s. 5.

Writ of Removal by Continuance may be superseded upon causes shewn.

Proceedings if the party again intrude.

10. If upon investigation of any complaint made against a person for having unlawfully cut down or removed any timber or trees, or quarried or removed any stone, or other materials from the lands aforesaid, the Commissioners, or any one or more of them, find him guilty thereof, the said Commissioners, or any one or more of them may order him to pay a fine to the Queen not exceeding Twenty Pounds, and in default thereof to be committed to the Gaol of the County, for a period not exceeding three months. 2 V. c. 15, s. 5.

Penalty not exceeding £20 for unlawfully cutting and removing trees, quarrying, &c.

Imprisonment for default of payment.

11. In all cases of Summary conviction under this Act, the same may as of course be removed by certiorari into the Court of Queen's Bench or Common Pleas, and thereupon such Court shall for the satisfaction of the fine issue, as in the case of other Crown debts one or more Writs of *Fieri Facias* and *Capias ad Satisfaciendum*, in the nature of the Exchequer Long Writ, as nearly as may be in the form in Schedule B with an *Alias*, and as many *Pluries* and *Testatum* Writs of the like description as may be necessary, till the amount has been made, and if at the time the conviction is so removed, the person convicted is in Custody under the Warrant of the Commissioners, or any one of them, for non-payment of the fine, he shall not be discharged from imprisonment at the end of the time prescribed in such Warrant, if the Sheriff then has a Writ of *Fieri Facias* and *Capias ad Satisfaciendum*, for the levying of such fine and has been unable to make the same out of the goods and chattels or lands and tenements of the party, but he shall remain charged in Custody upon such Writ until the fine has been fully paid.

Conviction before the Commissioners may be removed as of course by certiorari.

And proceedings had for the satisfaction of any fine imposed by such conviction.

If the party convicted be imprisoned for non-payment of such fine when the Writ of Execution issues.

paid as in the case of other Crown debtors similarly charged. 12 V. c. 9, s. 6.

Timber, &c., cut but not removed may be seized and sold.

12. The Commissioners or any one of them may order and cause to be seized and detained all timber and trees unlawfully cut down and stone quarried upon the lands aforesaid, and not removed therefrom, and may afterwards sell and dispose thereof as instructed from time to time by the Governor in that behalf. 2 V. c. 15, s. 5. 5

Commissioners authorized to summon witness and examine upon oath.

13. The Commissioners or any one of them may summon before them any person as a witness to give evidence on any matter they are authorized to investigate, and may administer to him an oath that he will true answer make to all such questions as shall be put to him in reference to the matter under investigation. 2 V. c. 15, s. 6. 10

Appropriation of moneys levied under this Act.

14. All moneys and fines collected under this Act shall, after deducting the expenses of collecting, be paid into the hands of the Receiver-General, and accounted for as part of the hereditary revenues of the Crown in this Province, in such manner as the Governor in Council may direct. 2 V. c. 15, s. 7. 15

Person accused to be summoned previous to investigation of charge.

15. The Commissioner or Commissioners shall before entering on the investigation summon the party charged to appear before him or them at a place named in the summons, and if such party does not appear, the Commissioner or Commissioners may upon proof of personal service of the summons, proceed to hear and determine the complaint *ex parte*. 2 V. c. 15, s. 9. 20 25

On default of appearance, complaint may be determined *ex parte*.

16. The Commissioner or Commissioners acting under this Act, may issue any warrant or warrants under their hands and seals, to any Sheriff, Gaoler or Peace Officer of the County wherein the proceeding is had commanding such Sheriff, Gaoler or Peace Officer, to carry into effect any order by them made within their jurisdiction; and such warrants shall be executed by the Sheriff, Gaoler or Peace Officer, as warrants issued by Justices of the Peace are. 2 V. c. 15, s. 9. 30

Commissioners empowered to issue and Sheriffs and other officers bound to execute their warrants.

Commissioners entitled to same protection as Justices of the Peace, &c.

17. The Commissioners and all acting under their authority shall have the same privilege and protection in respect of any action or suit brought against them for any act by them done that Justices of the Peace, Sheriffs Gaolers or Peace Officers have, and shall and each of them shall have when engaged in the execution of their office, the same power to commit for contempt that Justices of the Peace have. 12 V. c. 9, s. 7,—2 V. c. 15, s. 10. 35 40

Appeal lies against judgment of Commissioners to

18. Any person dissatisfied with the judgment or decision of the Commissioners in the foregoing cases, may within three months from the date thereof, appeal to the Court of Chancery having given fourteen days' notice to the Commissioners who shall 45 shall

shall thereupon transmit to the proper officer of the Court a copy of their judgment and the evidence, and the Court may revise, alter, affirm or annul such decision or order further inquiry or direct an issue at law, and make such order respecting costs and other matters as seems reasonable and just; and the decree of the Court on the appeal, shall bind the party appealing and the Commissioners. 2 V. c. 15, s. 11.

the Vice-Chancellor.

Decision in Chancery to be final.

19. The said Commissioners and each of them, and the different Superintendents of the Indian Department, either now in office or who may hereafter be appointed to either of such offices shall, by virtue of their office and appointment, be Justices of the Peace within the County, or United Counties, within which, for the time being, they or any or either of them, may be resident or employed as such Commissioners or Superintendents, without any other qualification. 13, 14 V. c. 174, s. 9.

Commissioners and Superintendents of Indians to be Justices of the Peace.

INDIAN LANDS.

20. No persons other than Indians, and those inter-married with Indians, may settle, reside upon or occupy any lands or roads or allowances for roads running through any lands belonging to or occupied by any portion or Tribe of Indians within Upper Canada, and all leases, contracts and agreements made or to be made, or purporting to have been or to be made, by any Indians, or any persons inter-married with Indians whereby persons other than Indians are permitted to reside upon such lands, shall be absolutely void; and if any persons other than Indians, or those inter-married with Indians do without the license of the said Commissioners or any or either of them, (which license, however, the said Commissioners or any of them, may at any time revoke,) settle, reside upon or occupy any such lands, roads or allowances for roads, the Commissioners or any or either of them, shall on complaint made to them or any of them, and on due proof of the fact issue their or his warrant signed and sealed, directed to the Sheriff of the County, or if the said lands are not situated within any County or Union of Counties, then directed to any literate person willing to act in the premises, commanding him forthwith to remove all such persons settling, residing upon or occupying such lands, with their families, from the said lands or roads or allowances for roads, and the Sheriff, or other person accordingly, shall remove such persons, and for that purpose shall have the same powers as in the execution of criminal process: But the provisions in this and the two following sections, shall extend and be construed to extend to such Indian lands only as the Governor of this Province for the time being from time to time, by Proclamation under the Great Seal thereof, declares and makes subject to the same, and so long only as such Proclamation remains in force. 13, 14 c. 174, s. 10.

None but Indians or the inter-married with them to reside on Indian Lands.

Provision for the removal of persons contravening this section.

To what lands this section shall extend.

Proceedings if persons so removed return to such lands.

Arrest of such person.

No *certiorari* allowed.

Punishment of persons cutting timber on and doing damage to Indian Lands.

Penalties.

Imprisonment if the penalty cannot be levied.

21. If any person or persons after having been removed as aforesaid, returns to, settles, resides upon, or occupies, any of the said lands or roads or allowances for roads, the said Commissioners, or any or either of them, upon their or his view, or upon proof on oath, made before the Commissioners or any or either of them, and upon their or his being satisfied that the said person or persons has or have returned to, settled or resided upon or occupied any of the said lands or roads or allowances for roads, shall direct and send their or his warrant signed and sealed, to the Sheriff of the County or Union of Counties, or to any literate person therein, and if the said lands are not situated within any County of Union of Counties, then to any literate person, commanding him forthwith to arrest such person or persons, and to commit him, her or them to the Common Gaol of the said County or Union of Counties, or to the Common Gaol of the nearest County or United Counties to the said lands, if the said lands are not within any County or United Counties, there to remain for the time ordered by the Commissioners or by any or either of them, not exceeding thirty days; and the Sheriff or other person shall accordingly arrest the said party or parties, and deliver him, her or them to the Gaoler or Sheriff of the said County or United Counties as aforesaid, who are hereby required to receive such person or persons, and the said person or persons to imprison in the said Common Gaol for the term aforesaid, there to remain without bail and without being entitled to the liberties of limits of the said Gaol; and such Commissioners or any of them shall cause the judgment or order against such person or persons to be drawn up, and no such judgment shall be removed by *Certiorari* or otherwise, or be appealed from, but shall be final. 13, 14 V. c. 74, s. 11.

22. If any person without the license in writing of the Commissioners or of any or either of them, trespasses upon any of the said lands or roads or allowances for roads, by cutting any trees, saplings, shrubs, underwood or timber thereon, or by carrying away or removing any of the trees, saplings, shrubs, underwood or timber therefrom, or by removing any of the stone or soil of the said lands, roads or allowances for roads, each person so trespassing shall for every tree he cuts, carries away or removes, forfeit and pay the sum of five pounds, and for cutting, carrying or removing any of the saplings, shrubs, underwood or timber, if under the value of five shillings, the sum of one pound, but if over the value of five shillings, the sum of five pounds, and for removing any of the stone or soil aforesaid, the sum of five pounds, such fine to be recovered by the said Commissioners or any or either of them, by distress and sale of the goods and chattels of the party or parties fined, or the said Commissioners may, without proceeding by distress and sale as aforesaid, upon the non-payment of the said fine, order the party or parties to be imprisoned in the Common Gaol as aforesaid, for a period not exceeding

ceeding thirty days, when the fine does not exceed five pounds, or for a period not exceeding three calendar months, when the fine does exceed the sum of five pounds; and upon the return of any warrant for distress or sale, if the amount thereof has not been made, or if any part of it remains unpaid, the said Commissioners or any or either of them, may commit the party or parties in default upon such warrant or warrants to the Common Gaol as aforesaid, for a period not exceeding thirty days if the sum claimed by the said Commissioners upon the said warrant does not exceed five pounds, or for a time not exceeding three calendar months, if the sum claimed does exceed five pounds; all which fines shall be paid to Her Majesty, Her Heirs or Successors, or to some officer acting under Her authority, to be disposed of for the use and benefit of the Indians, as the Governor of this Province may direct. 13, 14 V. c. 74, s. 12.

Application of penalties.

23. In all orders, writs, warrants, summonses and proceedings whatsoever made, issued or taken by the Commissioners or any or either of them, it shall only be necessary for the Commissioners or such of them as are acting, to express the name or names of the person or persons summoned, arrested, distrained upon, imprisoned or otherwise proceeded against therein, when the name or names of such person or persons are truly given to or known by the said Commissioners, or such of them as are acting, and if the name or names be not truly given to or known by the Commissioners, then the Commissioners or such of them as are acting, may name or describe the person or persons by any part of the name or names of such person or persons given to or known by them, or such of them as are so acting; and if no part of the name or names be given to or known by the said Commissioners, or such of them as are so acting, they or such of them as are acting may describe the person or persons proceeded against in any manner by which he, she or they may be capable of being indentified; and all such proceedings containing the name or description, or purporting to give the name or description of any such person as aforesaid, shall *prima facie* be sufficient.

Provision where the name of any person to be proceeded against under this Act cannot be ascertained.

24. All Sheriffs, Gaolers and Peace Officers, to whom any such process is so directed by the Commissioners or any or either of them, are hereby required to obey the same, and all other Officers upon reasonable requisition to assist in the execution thereof. 13, 14 V. c. 74, s. 13.

Sheriff to obey process.

SCHEDULE

SCHEDULE A.

WRIT OF REMOVAL BY CONTINUANCE.

Upper Canada.

Victoria, by the Grace of God, &c.

To the Sheriff of

—Greeting :

Whereas by a certain Warrant of Removal made by one (or two, as the case may be) of the Commissioners appointed under the Great Seal of Our Province of Canada, for the receiving information and enquiry into complaints against persons for illegally possessing themselves of lands of Our Crown ungranted and not under location, and lands not ceded to Us or Our Predecessors by the Indian Tribes occupying the same, you were formerly commanded that (*here recite Commissioners' Warrant of Removal*) which said Warrant you lately returned to Us into Our Court of Queen's Bench (*or Common Pleas*) at Toronto, and thereupon certified to Us that (*here insert the Sheriff's Return, setting forth the return of the party or parties, or his belief that he or they would return unless the land be protected by the issue of process for the protection thereof*) according to the form of the Statute in such case made and provided : Therefore, We command you, that immediately after receipt hereof you proceed to the said lands and premises, and remove or cause to be removed all and singular such person and persons, if any, whom you shall find in or upon the same, from the possession thereof, and give and cause to be given to such person or persons as shall for that purpose be appointed by Our said Commissioners, or any one of them, under their or his hand and seal, the full, quiet and peaceable possession of the said premises and every part and parcel thereof, and that such person or persons, and all others having from time to time a similar Warrant from Our said Commissioners, or any one of them, in such quiet and peaceable possession of the said premises, that you support, help and maintain from time to time, as often as occasion shall and may require ; and what you shall do in the premises you certify to Us in Our said Court of Queen's Bench, before Us, at Toronto, on the day of
Term next, together with this Writ ; and herein fail not at your peril.

Witness the Honorable _____, Chief Justice, &c.,
(as in other Writs issued out of the said Court.)

SCHEDULE

SCHEDULE B.

WRIT OF FIERI FACIAS AND CAPIAS AD SATISFACIENDUM.

Upper Canada.

Victoria by the Grace of God, &c.

To the Sheriff of

—Greeting :

Whereas by a certain conviction had before two of Our Commissioners appointed under the Great Seal of Our Province of Canada, for receiving informations and enquiring into complaint against persons illegally possessing themselves of Lands of Our Crown, ungranted and not under location, and Lands not ceded to Us or Our Predecessors by the Indian Tribes occupying the same, it was considered by the said Commissioners (*here set out the conviction*) which said conviction for certain reasons We caused to be certified to Us in Our Court of Qu'een's Bench (*or Common Pleas*) at Toronto, according to the form of the Statute in such case made and provided: We, therefore, being willing to be satisfied the said fine so by the said Commissioners set and imposed upon the said

do hereby command you that you levy of the goods and chattels of the said in your Bailiwick, the amount of the said fine so set and imposed upon him as aforesaid, so that you may have that money in Our said Court of Queen's Bench before Us at Toronto, on the day of next: and if it shall happen that sufficient goods and chattels of the said shall not be found in your Bailiwick for payment of the said fine, then, We command you that you levy of the Lands and Tenements of the said in your Bailiwick, the amount of the said fine so set and imposed on him as aforesaid, and have that money in Our said Court before Us on the day and at the place aforesaid; and if it shall happen that sufficient neither of goods or chattels, Lands or Tenements of the said shall be found in your Bailiwick for payment of the said fine, then, We command you that you take the Body of the said wheresoever he shall be found in your Bailiwick, and him safely keep in your prison until he hath fully satisfied Us the said fine so set and imposed upon him as aforesaid: and in what manner you shall have executed this Our Command, make appear to Us in Our said Court before Us, on the day and at the place aforesaid, and have then there this Writ.

Witness the Honorable , Chief Justice (*as in other Writs issued out of the same Court.*)

C A P .

CAP. LXXXVIII.

An Act respecting Real Property.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

DESCENTS SINCE THE 1ST. JULY, 1834.

Relation of
the Act.

1. This Act shall not extend to any descent which took place on the death of any person who died before the first day of July, one thousand eight hundred and thirty-four. 4 W. 4, c. 1, s. 11. 5

How the first
eleven sec-
tions are to
apply.

2. The first eleven sections of this Act shall apply retrospectively to the first day of July one thousand eight hundred and thirty-four, and also prospectively (as the case may be), and shall be construed as if the same had been passed on the said first day of July, one thousand eight hundred and thirty-four. 4 W. 4, c. 1, s. 11. 10

Descent shall
always be tra-
ced from the
purchaser, &c.

3. In every case, on and after the said first day of July, one thousand eight hundred and thirty-four, descent shall be traced from the purchaser; and to the intent that the pedigree may never be carried farther back than the circumstances of the case and the nature of the title require, the person last entitled to the land shall for the purposes of this Act be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case, the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same; and, in like manner, the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same. 4 W. 4, c. 1, s. 1. 15 20 25

Heir entitled
under a Will
shall take as
devisee and a
limitation to
the grantor or
his heir shall
create an es-
tate by pur-
chase.

4. When any land shall have been devised by any testator, who shall die after the first day of July, one thousand eight hundred and thirty-four, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee and not by descent; and when any land shall have been limited by any assurance, executed after the said first day of July, one thousand eight hundred and thirty-four, to the person or to the heirs of the person who shall thereby have conveyed the same land, such person shall be considered to have acquired the same as a purchaser, by virtue of such assurance, and shall not be considered to be entitled thereto, as of his former estate or part thereof. 4 W. 4, c. 1, s. 2. 30 35 40

5. When any person has acquired any land by purchase, under a limitation to the heirs, or to the heirs of the body of any of his ancestors, contained in an assurance executed since the said first day of July, one thousand eight hundred and thirty-four, or under a limitation to the heirs, or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who has departed this life since the said first day of July, one thousand eight hundred and thirty-four, then and in any of such cases, such land shall descend, and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land. 4 W. 4, c. 1, s. 3.

When heirs take by purchase under limitations to the heirs of their ancestor, the land shall descend as if the ancestor had been the purchaser.

6. When the person from whom the descent of any land is to be traced had any relation who having been attained, died before such descent took place, then such attainer shall not prevent any person from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attained, unless such land escheated in consequence of such attainer before the first day of July, one thousand eight hundred and thirty-four. 4 W. 4, c. 1, s. 9.

After the death of a person attained his descendants may inherit.

7. Proof of entry by the heir after the death of the ancestor shall in no case be necessary in order to prove title in such heir, or in any person claiming by or through him. 4 W. 4, c. 1, s. 10.

Heir-at-law need not prove entry.

8. Where any assurance executed before the said first day of July, one thousand eight hundred and thirty-four, or the will of any person who died before that day, contains any limitation or gift to the heir or heirs of any person under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir if this Act had not been made, shall be entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living on or after the said first day of July, one thousand eight hundred and thirty-four. 4 W. 4; c. 1, s. 12.

Limitations made before 1st July, 1834, to the heirs of a person then living, shall take effect as if this Act had not been made.

9. Whenever by any letters patent, assurance or will, made and executed after the first day of July one thousand eight hundred and thirty-four, land has been or shall be granted; conveyed or devised to two or more persons other than executors or trustees, in fee simple, or for any less estate; it shall be considered that such persons took or take as tenants in common, and not as joint tenants, unless an intention sufficiently appears on the face of such letters patent, assurance or will, that they shall take as joint tenants. 4 W. 4, c. 1, s. 48.

Grantees, devisees, &c., shall not take as joint-tenants unless such intention be expressed.

10. When the will of any person who has died since the first day of July, one thousand eight hundred and thirty-four, or who

Estates acquired after shall

the making of a Will may pass by the Will where such intention was expressed. shall die hereafter contains a devise in any form of words, of all such real estate as the testator shall die seized or possessed of, or of any part or proportion thereof, such will shall be valid and effectual to pass any land that may have been or may be acquired by the devisor after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof. 4 W. 4, c. 1, s. 49. 5

A devisee of land shall be taken to carry as large an estate as the testator had in the land unless a contrary intention be expressed. 11. Whenever land has been or shall be devised in a will made by any person who has died since the first day of July, one thousand eight hundred and thirty-four, or who shall die hereafter, it shall be considered that the devisor intended to devise all such estate as he was seized of in the same land, whether fee simple or otherwise, unless it appears upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seized of at the time of making the will containing such devise. 4 W. 4, c. 1, s. 50. 10

Witnesses need not subscribe in the presence of the testator. 12. Any will affecting land executed since the sixth day of March, one thousand eight hundred and thirty-four, or hereafter executed in the presence of and attested by two or more witnesses, shall have the same validity and effect as if executed in the presence of and attested by three witnesses, any former law to the contrary notwithstanding; and it shall be sufficient if such witnesses subscribe their names in presence of each other, although their names may not be subscribed in presence of the testator. 4 W. 4, c. 1, s. 51. 25

INTERPRETATION CLAUSE.

Meaning of words in this Act. 13. The words and expressions in the foregoing sections and in the next seven sections numbered from fourteen to twenty, inclusive, which in their ordinary signification have a more confined or a different meaning, shall, in all such sections, except where the nature of the provision or the context thereof shall exclude such construction, be interpreted as follows, that is to say: the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the purchase of land, (and to chattels and other personal property transmissible to heirs,) and also to any share of the same hereditaments and properties, or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder or contingency; and the words "the purchaser" shall mean the person who last acquired the land otherwise than by descent or than by any partition, by the effect of which the land shall have become part of or descendible, in the same manner as other land acquired by descent; and the word "descent" shall mean the title to inherit. 30 35 40 45

Land.

Purchaser.

Descent.

- inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue; and the expression "descendants of any ancestor" shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "assurance" shall mean any deed or instrument (other than a will) by which any land shall be conveyed or transferred at law or in equity; and the word "rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any land; and the "person through whom another person is said to claim," shall mean any person by, through or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise; and every word importing the singular number only, shall extend and be applied to several persons or things, as well as one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female, as well as a male. 4 W. 4, c. 1, s. 59.
- Descendants.
Persons last entitled.
Assurance.
Rent.
Number and gender.

DESCENTS BETWEEN 1ST. JULY, 1834, AND 1ST. JANUARY, 1852.

14. The foregoing sections of this Act shall not have operation retrospectively to a period of time anterior to the sixth March one thousand eight hundred and thirty-four, so as, by force of any of their provisions, to render any title valid, which in regard to any particular estate had prior to that day been adjudged, or has been or may be in any suit which was depending on that day adjudged invalid, on account of any defect, imperfection, matter or thing, which is by this Act altered, supplied or remedied; but in every such case the law in regard to any such defect, imperfection, matter or thing, shall, as applied to such title, be deemed and taken to be as if this Act had not been passed. 4 W. 4, c. 1, s. 60.
- This Act not to operate retrospectively in certain cases.

15. As respects every descent between the first day of July, one thousand eight hundred and thirty-four, and the thirty-first day of December, one thousand eight hundred and fifty-one, both days included, and as respects any descent not included or provided for in the sections of this Act, numbered from twenty-two to forty-five, both included, the following sections numbered from sixteen, to twenty, both included, shall apply retrospectively to the first day of July, one thousand eight hundred and thirty-four, and also prospectively, as the case may be, and shall be construed as if the same had been passed on the said first day of July, one thousand eight hundred and thirty-four.
- Relation of this Act as to descents between the 1st July, 1834, and 31st December, 1851.

Brothers and sisters shall trace descent through parents.

16. No brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent. 4 W. 4, c. 1, s. 4.

Lineal ancestor may be heir in preference to collateral persons claiming through him.

17. Every lineal ancestor shall be capable of being heir to any of his issue, and in any case where there is no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor of his issue. 4 W. 4, c. 1, s. 5.

The male line to be preferred.

18. None of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants have failed; and no female paternal ancestor of such person, nor any of her descendants shall be capable of inheriting, until all his male paternal ancestors and their descendants have failed, and no female maternal ancestor of such person, nor any of her descendants shall be capable of inheriting, until all his male maternal ancestors and their descendants have failed. 4 W. 4, c. 1, s. 6.

The mother of the more remote male ancestor to be preferred to the mother of the less remote male ancestor.

19. Where there is a failure of male paternal ancestors of the person from whom the descent is to be traced, and their descendants, the mother of his more remote male paternal ancestor, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and when there is a failure of male paternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male maternal ancestor and her descendants. 4 W. 4, c. 1, s. 7.

Half blood if on the part of a male ancestor to inherit after the whole blood of the same degree if on the part of a female ancestor after her.

20. Any person related to the person from whom the descent is to be traced by the half blood, shall be capable of being his heir, and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be entitled to inherit, shall be next after any relation in the same degree of the whole blood and his issue, where the common ancestor shall be a male, and next after the common ancestor when such common ancestor shall be a female, so that the brother of the half blood on the part of the father, shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the

the part of the mother, shall inherit next after the mother. 4 W. 4, c. 1, s. 8.

DESCENTS FROM AND AFTER FIRST OF JANUARY, 1852.

21. The following sections numbered from twenty-two to forty-five, both included, shall apply retrospectively to the first day of January one thousand eight hundred and fifty-two, and also prospectively as the case may be, and shall be construed as if the same had been passed on the said first day of January one thousand eight hundred and fifty-two. 14, 15 V. c. 6, s. 1.

Descents since the 1st January 1852.

10 22. Whenever on or after the first day of January which was in the year of our Lord one thousand eight hundred and fifty-two, any person has died or dies, seized in fee simple or for the life of another of any real estate in Upper Canada, without having lawfully devised the same, such real estate shall have descended or passed, or shall descend or pass by way of succession in manner following, that is to say: 14, 15 V. c. 6, s. 1.

How real estate of an intestate dying after 1st January, 1852, shall descend.

Firstly—To his lineal descendants, and those claiming by or under them, *per stirpes* ;

Secondly.—To his father ;

20 *Thirdly*—To his mother ; and

Fourthly—To his collateral relatives ;

Subject in all cases to the rules and regulations hereinafter prescribed.

25 23. If the intestate left or leaves several descendants in the direct line of lineal descent, and all of equal degree of consanguinity to such intestate, the inheritance shall descend to such persons in equal parts, however remote from the intestate the common degree of consanguinity may be. 14, 15 V. c. 6, s. 2.

As to descendants in equal degrees of consanguinity.

30 24. If any of the children of such intestate be living, and any be dead, the inheritance shall descend to the children living, and to the descendants of such children as have died, so that each child who shall be living shall inherit such share as would have descended to him if all the children of the intestate who have died leaving issue, had been living; and so that the descendants of each child who shall be dead shall inherit the share which their parent would have received if living, in equal shares. 14, 15 V. c. 6, s. 3.

If some children be living and others dead leaving issue.

40 25. The rule of descent prescribed in the last section shall apply in every case where the descendants of the intestate, entitled

Same rule as to other descendants in entitled

unequal degrees of consanguinity.

entitled to share in the inheritance, are of unequal degrees of consanguinity to the intestate, so that those who are in the nearest degree of consanguinity take the shares which would have descended to them, had all the descendants in the same degree of consanguinity who have died leaving issue, been living, and so that the issue of the descendants who have died, shall respectively take the shares which their parents if living would have received. 14, 15 V. c. 6, s. 4. 5

If the intestate leave no descendants' rights of father, mother, &c.

26. In case the intestate dies without lawful descendants, and leaving a father, then the inheritance shall go to such father,—unless the inheritance came to the intestate on the part of his mother, and such mother be living; and if such mother be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; and if there be no such brothers or sisters, or their descendants, living, such inheritance shall descend to the father. 14, 15 V. c. 6, s. 5. 10 15 20

If there be no father entitled to inherit.

27. If the intestate dies without descendants and leaving no father, or leaving a father not entitled to take the inheritance under the last preceding section, and leaving a mother and a brother or sister, or the descendant of a brother or sister, then the inheritance shall descend to the mother during her life, and the reversion to such brother or sister of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided; and if the intestate in such case leaves no brother or sister, nor any descendant of any brother or sister, the inheritance shall descend to the mother. 14, 15 V. c. 6, s. 6. 25 30

And if there be neither father or mother.

28. If there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there be several of such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from the intestate the common degree of consanguinity may be. 14, 15 V. c. 6, s. 7. 35

Succession of brothers and sisters and their descendants.

29. If all the brothers and sisters of the intestate be living, the inheritance shall descend to such brothers and sisters; and if any of them be living and any be dead, then to the brothers and sisters and every of them who are living, and to the descendants of such brothers and sisters as have died, so that each brother or sister who may be living, shall inherit such share as would have descended to him or her, if all the brothers or sisters of the intestate who have died leaving issue had been living, and so that such descendants shall inherit 40 45

rit the share which their parent would have received, if living, in equal shares. 14, 15 V. c. 6, s. 8.

30. The same law of inheritance prescribed in the last section shall prevail as to the other direct lineal descendants of every brother and sister of the intestate, to the remotest degree, whenever such descendants are of unequal degrees. 14, 15 V. c. 6, s. 9.

As to such descendants in unequal degrees.

31. If there be no heir entitled to take under any of the preceding sections, the inheritance, if the same came to the intestate on the part of his father, shall descend: 14, 15 V. c. 6, s. 10.

If there be no heir under the preceding sections.

Firstly.—To the brothers and sisters of the father of the intestate in equal shares, if all be living.

Secondly.—If any be living, and any have died leaving issue, then to such brothers and sisters as are living, and to the descendants of such of the said brothers and sisters as have died, in equal shares.

Thirdly.—If all such brothers and sisters have died, then to their descendants; and in all such cases the inheritance shall descend in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate.

32. If there be no brothers or sisters, or any of them, of the father of the intestate, and no descendants of such brothers and sisters, then the inheritance shall descend to the brothers and sisters of the mother of the intestate, and to the descendants of such of the said brothers and sisters as have died, or if all have died, then to their descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of the father. 14, 15 V. c. 6, s. 11.

Further provision.

33. In all cases not provided for by the preceding sections, where the inheritance came to the intestate on the part of his mother, the same, instead of descending to the brothers and sisters of the intestate's father, and their descendants, as prescribed in the preceding thirty-first section, shall descend to the brothers and sisters of the intestate's mother, and to their descendants, as directed in the next preceding section; and if there be no such brothers and sisters or descendants of them, then such inheritance shall descend to the brothers and sisters, and their descendants, of the intestate's father, as before prescribed. 14, 15 V. c. 6, s. 12.

Further provision if the estate came by the mother side.

34. In cases where the inheritance has not come to the intestate on the part of either the father or the mother, the inheritance shall descend to the brothers and sisters both to the father

If it came neither on father's nor mother's side.

father and mother of the intestate in equal shares, and to their descendants, in the same manner as if all such brothers and sisters had been the brothers and sisters of the intestate. 14, 15 V. c. 6, s. 13.

Half blood to succeed with whole blood.

35. Relatives of the half blood shall inherit equally with those of the whole blood in the same degree, and the descendants of such relatives shall inherit in the same manner as the descendants of the whole blood, unless the inheritance came to the intestate by descent, devise or gift of some one of his ancestors; in which case all those who are not of the blood of such ancestors shall be excluded from such inheritance. 14, 15 V. c. 6, s. 14.

If there be failure of heirs.

36. On failure of heirs under the preceding rules, the inheritance shall descend to the remaining next of kin of the intestate, according to the rules in the English Statute of distribution of the personal estate. 14, 15 V. c. 6, s. 15.

Co-heirs to take as tenants in common.

37. Whenever there is but one person entitled to inherit according to the provisions of this Act, he shall take and hold the inheritance solely; and wherever an inheritance, or a share of an inheritance, descends to several persons under the provisions of this Act, they shall take as tenants in common, in proportion to their respective rights. 14, 15 V. c. 6, s. 16.

Descendants, &c. born after death of intestate, to inherit.

38. Descendants and relatives of the intestate begotten before his death, but born thereafter, shall in all cases inherit in the same manner as if they had been born in the lifetime of the intestate and had survived him. 14, 15 V. c. 6, s. 17.

Illegitimate relations.

39. Children and relatives who are illegitimate shall not be entitled to inherit under any of the provisions of this Act. 14, 15 V. c. 6, s. 18.

Courtesy, dower and estates by Deed or Will, excepted.

40. The estate of the husband as tenant by the courtesy, or of a widow as tenant in dower, shall not be affected by any of the provisions of this Act, nor shall the same affect any limitation of any estate by deed or will, or any estate which, although held in fee simple or for the life of another, is so held in trust for any other person, but all such estates shall remain, pass and descend, as if this Act had not been passed. 14, 15 V. c. 6, s. 19.

Case of children who have been advanced by settlement, &c.

41. If any child of an intestate has been advanced by the intestate by settlement, or portion of real or personal estate, or of both of them, and the same has been so expressed by the intestate in writing, or so acknowledged in writing by the child, the value thereof shall be reckoned, for the purposes of this section only, as part of the real and personal estate of such intestate descendable to his heirs, and to be distributed to his next of kin according to law; and if such advancement

advancement be equal or superior to the amount of the share which such child would be entitled to receive of the real and personal estate of the deceased, as above reckoned, then such child and his descendants shall be excluded from any share in the real and personal estate of the intestate. 14, 15 V. c. 6, s. 20.

42. If such advancement be not equal to such share, such child and his descendants shall be entitled to receive so much only of the personal estate, and to inherit so much only of the real estate of the intestate, as shall be sufficient to make all the shares of the children in such real and personal estate and advancement to be equal, as near as can be estimated. 13, 14 V. c. 6, s. 21.

If such advancement be not equal.

43. The value of any real or personal estate so advanced shall be deemed to be that, if any, which may have been acknowledged by the child by an instrument in writing, otherwise such value shall be estimated according to the value of the property when given. 13, 14 V. c. 6, s. 22.

Value of property advanced, how estimated.

44. The maintaining or educating, or the giving of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement within the meaning of this Act. 13, 14 V. c. 6, s. 23.

Education, &c., not advancement.

45. It shall be lawful and competent for the parties authorized to make partition of any such real estate according to law, and they are hereby required to receive from any of the persons entitled to a share of such real estate, an offer or proposition to purchase the share or shares of the other parties interested therein, giving the preference, however, to the person who would have been the heir-at-law thereto, had this Act not been passed; and after such heir-at-law, then giving such preference to the several persons successively who would have been such heirs-at-law, had this Act not been passed, and after such heir-at-law, then giving such preference to the several persons successively who would have been such heirs-at-law had this Act not been passed, and had those persons preceding them respectively in the series of such preference been dead at the time of the death of the intestate; and the parties so authorized to make such partition, shall certify particularly to the Court in which proceedings for such partition may be commenced or pending, the particulars of such offer or proposition for purchase, the nature, quantity and value of the estate or share proposed to be purchased, and whether they advise such offer or proposition to be accepted or rejected, and their reasons therefor: Provided always, nevertheless, firstly, that it shall be competent to any Court authorized to make partition of real estate, to direct a sale of the same if they think it right so to do, upon the application of any of the parties beneficially interested therein, giving however the preference at all times to the person who would have been the heir-at-law to such real estate had this Act

As to the purchaser by any of the parties interested of real estate, subject to partition.

Act not been passed, and after such heir-at-law, then giving such preference to the several persons successively who would have been such heirs-at-law, had this Act not been passed, and had those persons preceding them respectively in the series of such preference, been dead at the time of the death of the intestate: And provided also, secondly, that every such preference shall be upon and subject to such terms, security and conditions as such Court may think it right to direct. 13, 14 V. c. 6, s. 24. 5

Interpretation.

46. In the last twenty-four sections of this Act numbered 10 from twenty-two to forty-five both inclusive, the term "real estate" shall be construed to include every estate, interest and right, legal and equitable, held in fee simple or for the life of another (except as in the fortieth section is before excepted) in lands, tenements and hereditaments in Upper Canada, but not 15 to such as are determined or extinguished by the death of the intestate seized or possessed thereof, or so otherwise entitled thereto, nor to leases for years; and the term "inheritance," as therein used, shall be understood to mean real estate as herein defined, descended or succeeded to, according to the provisions 20 thereof. 13, 14 V. c. 6, s. 25.

Interpretation.

47. Whenever, in the last twenty-five preceding sections, numbered from twenty-two to forty-six both included, any person is described as living, it shall be understood that he was living at the time of the death of the intestate from 25 whom the descent or succession came, and whenever any person is described as having died, it shall be understood that he died before such intestate. 13, 14 V. c. 6, s. 26.

Interpretation.

48. Whenever in any of the said twenty-five sections the expressions "where the estate shall have come to the 30 intestate on the part 'of the father,' or 'mother,'" as the case may be, are used the same shall be construed to include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent. 13, 14 V. c. 6, 35 s. 27.

CAP. LXXXIX.

An Act respecting the titles of British Subjects to Real Estates derived through Aliens.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. No person shall be disturbed in the possession, or precluded from the recovery of any lands, tenements or hereditaments in Upper Canada, on the ground that any person from or through whom he may claim by title acquired or derived before the twenty-eighth day of January, one thousand eight hundred and thirty two, was an alien. 2 W. 4, c. 7, s. 1.
2. In all cases where any person claiming to hold as next entitled, on the ground that the person nearer in that line of descent was an alien, did, in virtue of such claim, take actual possession of any real estate before the twenty-eighth day of January, one thousand eight hundred and thirty-two, and has made improvements thereon ; and in all cases where any person claiming to hold as next entitled, on the ground that the person nearer in the line of descent was an alien, had actually sold or departed with, or had actually contracted to sell or depart with his real estate, before the said twenty-eighth day of January, one thousand eight hundred and thirty-two, (no person being at the time in adverse possession thereof,) the provisions of this Act shall not extend to render invalid any right or title to such estate so claimed on the ground aforesaid, but such right or title shall be taken and adjudged to be as if this Act had not been passed. 2 W. 4, c. 7, s. 2.

Titles to estates not to be disturbed by reason of their being derived from aliens.

Provided that no actual possession or sale shall be affected hereby.

CAP. CX.

An Act respecting the Assurance of Estates Tail.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Interpretation
of words.

1. In the construction of this Act, the word "lands," shall extend to advowsons, rectories, messuages, lands, tenements, rents and hereditaments of any tenure, and whether corporeal or incorporeal, and any undivided share thereof; and the word "estate," shall extend to an estate in equity as well as at law, and shall also extend to any interest, charge, lien, or incumbrance in, upon, or affecting lands, either at law or in equity, and shall also extend to any interest, charge, lien or incumbrance in, upon, or affecting money subject to be invested in the purchase of lands; and the expression "base fee," shall mean exclusively that estate in fee simple into which an estate tail is converted where the issue in tail are barred, but persons claiming estates by way of remainder or otherwise are not barred; and the expression "estate tail," in addition to its usual meaning, shall mean a base fee into which an estate tail has been converted; and the expression "actual tenant in tail," shall mean exclusively the tenant of an estate tail which shall not have been barred, and such tenant shall be deemed an actual tenant in tail, although the estate tail may have been divested or turned to a right; and the expression "tenant in tail," shall mean, not only an actual tenant in tail, but also a person who, where an estate tail has been barred and converted into a base fee, would have been tenant of such estate tail if the same had not been barred; and the expression "tenant in tail entitled to a base fee," shall mean a person entitled to a base fee, or to the ultimate beneficial interest in a base fee, and who, if the base fee had not been created, would have been actual tenant in tail; and the expression "money subject to be invested in the purchase of lands," shall include money, whether raised or to be raised, and whether the amount thereof be or be not ascertained, and shall extend to stocks and funds, and real and other securities, the produce of which is directed to be invested in the purchase of lands, and the lands to be purchased with such money or produce shall extend to lands of any tenure out of Upper Canada, where such lands or any of them are within the scope or meaning of the trust or power directing or authorizing the purchase; and every assurance already made or hereafter to be made whether by deed, will, private Act of Parliament, or otherwise, by which lands are or shall be entailed, or agreed or directed to be entailed, shall be deemed a settlement; and every appointment made in exercise of any power contained in any settlement, or of any other power arising out of the power contained in any settlement, shall be considered as a part of such settlement, and the estate created

- created by such appointment shall be considered as having been created by such settlement; and, where any such settlement is or shall be made by will, the time of the death of the testator shall be considered the time when such settlement was made; but those words and expressions occurring in this clause, to which more than one meaning is to be attached, shall not have the different meanings given to them by this clause in those cases in which there is any thing in the subject or context repugnant to such construction. 9 V. c. 11, s. 1.
- 10 **2.** This Act shall operate and apply retrospectively to the eighteenth day of May, one thousand eight hundred and forty-six, as well as prospectively, and shall be construed as if it had been passed on the said eighteenth day of May, one thousand eight hundred and forty-six. This Act to relate to and from the 18th May, 1846.
- 15 **3.** All warranties of lands made or entered into by any tenant in tail thereof, shall be absolutely void against the issue in tail, and all persons whose estates are to take effect after the determination or in defeasance of the estate tail. 9 V. c. 11, s. 2. Estates tail and estates expectant thereon, no longer barable by warranty.
- 20 **4.** Every actual tenant in tail, whether in possession, remainder, contingency, or otherwise, shall have full power to dispose of, for an estate in fee simple absolute, or for any less estate, the lands entailed, as against all persons claiming the lands entailed by force of any estate tail which shall be vested in or might be claimed by, or which, but for some previous act would have been vested in, or might have been claimed by the person making the deposition, at the time of his making the same, and also as against all persons, including Her Majesty, Her Heirs and Successors, whose estates are to take effect after the determination, or in defeasance of any such estate tail; saving always the rights of all persons in respect of estates prior to the estate tail in respect of which such disposition shall be made, and the rights of all other persons except those against whom such disposition is by this Act authorized to be made. 9 V. c. 11, s. 3. Power to dispose of lands in fee simple or for a less estate, &c.
- 35 **5.** Where, under any settlement made before the eighteenth of May, one thousand eight hundred and forty-six, any woman shall be tenant in tail of lands within the provisions of an Act passed in the eleventh year of the Reign of His Majesty King Henry the Seventh, intituled, *Certain alienations made by the wife, of the lands of her deceased husband shall be void*, the power of disposition hereinbefore contained as to such lands, shall not be exercised by her, except with such assent, as if this Act had not been passed, would, under the provisions of the said Act of King Henry the Seventh, have rendered valid a fine or common recovery levied or suffered by her of such lands. 9 V. c. 11, s. 4. Power of disposition not to be exercised by women tenants in tail, ex provisione viri, &c.

Except, &c.,
11 H. 7, c. 20,
to have no
force.

6. Except as to lands comprised in any settlement made before the eighteenth day of May, one thousand eight hundred and forty-six, the said Act of the eleventh year of the Reign of His Majesty King Henry the Seventh, shall be of no force in that part of this Province to which this Act extends. 9 V. c. 11, s. 5.

Power of dis-
position not to
extend to cer-
tain tenants
in tail.

7. The power of disposition hereinafore contained shall not extend to tenants of estates tail, who, by an Act passed in the thirty-fourth and thirty-fifth years of the Reign of His Majesty King Henry the Eighth, intituled, *An Act to imbar feigned recovery of lands wherein the King is in reversion*, or by any other Act, are restrained from barring their estates tail, or to tenants in tail after possibility of issue extinct. 9 V. c. 11, s. 6.

Power to en-
large base fees
saving the
rights of cer-
tain persons.

8. In every case in which an estate tail in any lands has been barred and converted into a base fee, the person who if such estate tail had not been barred, would have been actual tenant in tail of the same lands, shall have full power to dispose of such lands as against all persons, including the Queen's Most Excellent Majesty, Her Heirs and Successors, whose estates are to take effect after the determination, or in de'easeance of the base fee into which the estate tail has been converted, so as to enlarge the base fee into a fee simple absolute; saving always the rights of all persons, in respect of estates prior to the estate tail which has been converted into a base fee, and the rights of all other persons, except those against whom such disposition is by this Act authorized to be made. 9 V. c. 11, s. 7.

Issue inheri-
table not to
bar expectan-
cies.

9. Nothing in this Act contained shall enable any person to dispose of any lands entailed in respect of any expectant interest which he may have as issue inheritable to any estate tail therein. 9 V. c. 11, s. 8.

Extent of es-
tate created
by a tenant in
tail by way of
mortgage or
for any other
limited pur-
pose.

10. If a tenant in tail of lands makes a disposition of the same, under this Act, by way of mortgage, or for any other limited purpose, then such disposition shall, to the extent of the estate thereby created, be an absolute bar in equity, as well as at law, to all persons as against whom such disposition is by this Act authorized to be made, notwithstanding any intention to the contrary may be expressed or implied in the deed by which the disposition may be effected; but if the estate created by such disposition shall be only an estate *per autre vie*, or for years, absolute or determinable; or if, by a disposition under this Act by a tenant in tail of lands, an interest, charge, lien or incumbrance, shall be created without a term of years, absolute or determinable, or any greater estate, for securing or raising the same, then such disposition shall, in equity, be a bar only so far as may be necessary to give full effect to the mortgage, or to such other limited purpose or to such interests, lien, charge or incumbrance, notwithstanding any intention to the contrary.

contrary may be expressed or implied in the deed by which the disposition may be effected. 9 V. c. 11, s. 9.

11. If at the time when there is a tenant in tail of lands under a settlement, there is subsisting in the same lands, or any of them, under the same settlement, any estate for years, determinable on the dropping of a life or lives, or any greater estate (not being an estate for years) prior to the estate tail, then the person who is the owner of the prior estate, or the first of such prior estates, if more than one, then subsisting under the same settlement, or who would have been so if no absolute disposition thereof had been made (the first of such prior estates, if more than one, being, for all the purposes of this Act, deemed the prior estate), shall be the protector of the settlement, so far as regards the lands in which such prior estate is subsisting, and shall, for all the purposes of this Act, be deemed the owner of such prior estate, although the same may have been charged or incumbered, either by the owner thereof or by the settler, or otherwise howsoever, and although the whole of the rents and profits be exhausted, or required for the payment of the charges and incumbrances on such prior estate, and although such prior estate may have been absolutely disposed of by the owner thereof, or by or in consequence of the bankruptcy or insolvency of such owner, or by any other act or default of such owner; and an estate by the curtesy or in dower, in respect of the estate tail, or of any prior estate created by the same settlement, shall be deemed a prior estate under the same settlement, within the meaning of this clause; and an estate by way of resulting use or trust to or for the settler, shall be deemed an estate under the same settlement, within the meaning of this clause. 9 V. c. 11, s. 10.

The owner of the first existing estate under settlement prior to an estate tail under the same settlement to be the protector of the settlement.

12. Where two or more persons are owners, under a settlement within the meaning of this Act, of a prior estate, the sole owner of which estate, if there had been only one, would, in respect thereof, have been the protector of such settlement, each of such persons, in respect of such undivided share as he could dispose of, shall, for all the purposes of this Act, be deemed the owner of a prior estate, and shall, in exclusion of the other or others of them, be the sole protector of such settlement, to the extent of such undivided share. 9 V. c. 11, s. 11.

Each of two or more owners of a prior estate to be the sole protector as to his share.

13. Where a married woman would, if single, be the protector of a settlement in respect of a prior estate, which is not thereby settled or agreed, or directed to be settled to her separate use, she and her husband together shall, in respect of such estate, be the protector of such settlement, and shall be deemed one owner; but, if such prior estate has by such settlement been settled or agreed, or directed to be settled to her separate use, then, she alone shall, in respect of such estate, be the protector of such settlement. 9 V. c. 11, s. 12.

Where a married woman alone shall be the protector and where she and her husband together shall be protectors.

14.

14. Except in the case of a lease hereinafter provided for, where an estate is limited by a settlement, by way of confirmation, or where the settlement merely has the effect of restoring an estate; in either of those cases, such estates shall, for the purposes of this Act, so far as regards the protector of the settlement, be deemed an estate subsisting under such settlement. 9 V. c. 11, s. 13. 5

15. Where a lease at a rent is created or confirmed by a settlement, the person in whose favour such lease is created or confirmed, shall not, in respect thereof, be the protector of such settlement. 9 V. c. 11, s. 14. 10

16. No woman in respect of her dower, and (except in the case hereinafter provided for, of a bare trustee under a settlement made on or before the first day of July, one thousand eight hundred and forty-six) no bare trustee, heir, executor, administrator, or assign, in respect of any estate taken by him as such bare trustee, heir, executor, administrator or assign, shall be the protector of a settlement. 9 V. c. 11, s. 15. 15

17. Where, under any settlement, there shall be more than one estate prior to an estate tail, and the person who is the owner, within the meaning of this Act, of any such prior estate, in respect of which, but for the two last preceding clauses, or either of them, he would have been the protector of the settlement, shall, by virtue of such clauses, or either of them, be excluded from being the protector; then, and in such case, the person (if any) who, if such estate did not exist, would be the protector of the settlement, shall be such protector. 9 V. c. 11, s. 16. 20 25

18. Where on or before the first day of July, one thousand eight hundred and forty-six, an estate under a settlement had been disposed of, either absolutely or otherwise, and either for valuable consideration or not, the person who in respect of such estate would, before the first day of January, one thousand eight hundred and thirty-four, have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of the lands entailed by such settlement, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement. 9 V. c. 11, s. 17. 30 35 40

19. Where any person having, on or before the first day of July, one thousand eight hundred and forty-six, either for valuable consideration or not, disposed of, either absolutely or otherwise, a remainder or reversion in fee in any lands, or created any estate out of such remainder or reversion, would, under this Act, if this clause had not been inserted, have been the protector of the settlement by which the lands were entailed. 45

tailed in which such remainder or reversion may be subsisting, and thereby be enabled to concur in the barring of such remainder or reversion, which he could not have done if he had not become such protector; then, and in every such case, the person who, before the first day of January, one thousand eight hundred and thirty-four, would have been the proper person to have made the tenant to the writ of entry or other writ for suffering a common recovery of such lands, shall, during the continuance of the estate which conferred the right to make the tenant to such writ of entry or other writ, be the protector of such settlement. 9 V. c. 11, s. 18.

Writ of Entry
in a recovery
shall be the
protector.

20. Where, under any settlement of lands made before the first day of January, one thousand eight hundred and thirty-four, the person who, if this Act had not been passed, would have been the proper person to make the tenant to the writ of entry or other writ for suffering a common recovery of such lands, for the purpose of barring any estate tail or other estate under such settlement, is a bare trustee, such trustee shall, during the continuance of the estate conferring on him the right to make the tenant to such writ of entry or other writ, be the protector of such settlement. 9 V. c. 11, s. 19.

Where a bare
trustee, &c.

21. Any settlor entailing lands may appoint, by the settlement by which the lands are entailed, any number of persons in esse, not exceeding three, and not being aliens, to be protector of the settlement, in lieu of the person who would have been the protector if this clause had not been inserted, and either for the whole or any part of the period for which such person might have continued protector; and, by means of a power to be inserted in such settlement, to perpetuate, during the whole or any part of such period, the protectorship of the settlement in any one person or number of persons in esse, and not being an alien or aliens, whom the donee of the power thinks proper, by deed, to appoint protector of the settlement, in the place of any one person, or number of persons, who may die, or by deed relinquish his or their office of protector; and the person or persons so appointed shall, in case of there being no other person then protector of the settlement, be the protector, and shall, in case of there being any other person then protector of the settlement, be protector jointly with such other person: But the number of the persons to compose the protector by virtue or means of any such appointment, shall never exceed three; and every deed by which a protector shall be appointed under a power in a settlement, and every deed by which a protector shall relinquish his office, shall be void unless registered in the Registry Office of the County or Counties wherein the lands referred to lie, within six calendar months after the execution thereof; and the person who, but for this clause, would have been sole protector of the settlement, may be one of the persons to be appointed protector under this clause, if the settlor thinks fit, and shall, unless otherwise

Power to any
settlor to ap-
point to pro-
tector.

wise directed by the settlor, act as sole protector, if the other persons constituting the protector have ceased to be so by death or relinquishment of the office by deed, and no other person has been appointed in their place. 9 V. c. 11, s. 20.

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Chancellor,
 &c., to
 be the protec-
 tor of lunatic,
 &c.

22. If any person, protector of a settlement, shall be lunatic, idiot, or of unsound mind, and whether he shall have been found such by inquisition or not, then the Chancellor of Upper Canada for the time being, or other the person or persons for the time being entrusted by the Crown with the care and commitment of the custody of the persons and estates of persons found lunatic, idiot, and of unsound mind, shall be the protector of such settlement, in lieu of the person who shall be such lunatic or idiot, or of unsound mind, as aforesaid; or, if any person, protector of a settlement, shall be convicted of treason or felony; or, if any person not being the owner of a prior estate under a settlement, shall be protector of such settlement, and shall be an infant; or, if it shall be uncertain whether such last mentioned person be living or dead; then the Court of Chancery shall be the protector of such settlement, in lieu of the person convicted as aforesaid, or of the person who shall be an infant, or whose existence cannot be ascertained as aforesaid; or, if any settlor entailing lands, shall, in the settlement by which the lands shall be entailed, declare that the person who, as owner of a prior estate under such settlement, would be entitled to be protector of the settlement, shall not be such protector, and shall not appoint any person to be protector in his stead; then, the said Court of Chancery shall, as to the lands in which such prior estate shall be subsisting, be the protector of the settlement during the continuance of such estate; or if, in any other case where there shall be subsisting under a settlement an estate prior to an estate tail under the same settlement, and such prior estate shall be sufficient to qualify the owner thereof to be protector of the settlement, and there shall happen at any time to be no protector of the settlement as to the lands in which the prior estate shall be subsisting, the said Court of Chancery shall, while there shall be no such protector, and the prior estate shall be subsisting, be the protector of the settlement as to such lands. 9 V. c. 11, s. 21.

Where there is a protector, his consent requisite to enable an actual tenant in tail to create a larger estate than a base fee.

23. If at the time when any person, actual tenant in tail of lands under a settlement, but not entitled to the remainder or reversion in fee immediately expectant on the determination of his estate tail, shall be desirous of making under this Act a disposition of the lands entailed, there shall be a protector of such settlement, then the consent of such protector shall be requisite to enable such actual tenant in tail to dispose of the lands entailed to the full extent to which he is hereinbefore authorized to dispose of the same; but such actual tenant in tail may, without such consent, make a disposition under this Act of the lands entailed, which shall be good against all persons

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sons who, by force of any estate tail which shall be vested in or might be claimed by, or which but for some previous act or default would have been vested in or might have been claimed by, the person making the disposition at the time of his making the same, shall claim the lands entailed. 9 V. c. 11, s. 22.

24. Where an estate tail shall have been converted into a base fee, in such case, so long as there shall be a protector of the settlement by which the estate tail was created, the consent of such protector shall be requisite to enable the person who would have been tenant of the estate tail if the same had not been barred, to exercise, as to the lands in respect of which there shall be such protector, the power of disposition hereinbefore contained. 9 V. c. 11, s. 23.

Where a base fee and a protector, his consent requisite to the exercising of a power of disposition.

25. Any device, shift, or contrivance by which it shall be attempted to control the protector of a settlement in giving his consent, or to prevent him in any way from using his absolute discretion in regard to his consent, and also any agreement entered into by the protector of a settlement to withhold his consent, shall be void; and the protector of a settlement shall not be deemed to be a trustee in respect of his power of consent; and a Court of Equity shall not control or interfere to restrain the exercise of his power of consent, nor treat his giving consent as a breach of trust. 9 V. c. 11, s. 24.

The protector to be subject to no control in the exercise of his power of consenting.

26. The rules of equity in relation to dealings and transactions between the donee of a power and any object of the power in whose favour the same may be exercised, shall not be held to apply to dealings and transactions between the protector of a settlement and a tenant in tail under the same settlement, upon the occasion of the protector giving his consent to a disposition by a tenant in tail under this Act. 9 V. c. 11, s. 25.

Certain rules of equity not to apply between the protector and a tenant in tail.

27. When a tenant in tail of lands under a settlement shall have already created or shall hereafter create in such lands, or any of them, a voidable estate in favour of a purchaser for valuable consideration, and shall afterwards, under this Act, by any assurance other than a lease not requiring enrolment, made a disposition of the lands in which such voidable estate shall be created, or any of them, such disposition, whatever its object may be, and whatever may be the extent of the estate intended to be thereby created, shall, if made by the tenant in tail with the consent of the protector (if any) of the settlement, or by the tenant in tail alone, if there shall be no such protector, have the effect of confirming such voidable estate in the lands thereby disposed of to its full extent as against all persons except those whose rights are saved by this Act; but if, at the time of making the disposition, there shall be a protector of the settlement, and such protector shall not consent to the disposition, and the tenant in tail shall not without such consent be capable under this Act of confirming the voidable estate to its full

A voidable estate by a tenant in tail in favor of a purchaser confirmed by a subsequent disposition of such tenant in tail under this Act, but not against a purchaser without notice.

full extent, then such disposition shall have the effect of confirming such voidable estate so far as such tenant in tail would then be capable under this Act of confirming the same without such consent: But if such disposition shall be made to a purchaser for valuable consideration, who shall not have express notice of the voidable estate, then and in such case the voidable estate shall not be confirmed as against such purchaser and the persons claiming under him. 9 V. c. 11, s. 26. 5

28. If a base fee in any lands, and the remainder or reversion in fee in the same lands, shall, at the time of the passing of this Act, or at any time afterwards, be united in the same person, and at any time after the passing of this Act there shall be no intermediate estate between the base fee and the remainder or reversion, then the base fee shall not merge, but shall be *ipso facto* enlarged into as large an estate as the tenant in tail, with the consent of the protector, if any, might have created by any disposition under this Act if such remainder or reversion had been vested in any other person. 9 V. c. 11, s. 27. 10 15

29. Every disposition of lands under this Act by a tenant in tail thereof shall be effected by some one of the assurances (not being a will) by which such tenant in tail could have made the disposition if his state were an estate at law in fee simple absolute: but no disposition by a tenant in tail shall be of any force, either at law or in equity, under this Act, unless made or evidenced by deed; and no disposition by a tenant in tail resting only in contract, either express or implied, or otherwise, and whether supported by a valuable or meritorious consideration or not, shall be of any force at law or in equity under this Act, notwithstanding such disposition shall be made or evidenced by deed; and, if the tenant in tail making the disposition shall be a married woman, the concurrence of her husband shall be necessary to give effect to the same; and any deed which may be executed by her for effecting the disposition shall be acknowledged by her as hereinafter directed. 9 V. c. 11, s. 28. 20 25 30 35

30. No assurance by which any disposition of lands shall be effected under this Act by a tenant in tail thereof (except a lease for any term not exceeding twenty-one years, to commence from the date of such lease, or from any time not exceeding twelve calendar months from the date of such lease, where a rent shall be thereby reserved, which, at the time of granting such a lease, shall be rack-rent, or not less than five sixths parts of a rack-rent,) shall have any operation under this Act unless it be registered in the Registry Office of the county or counties wherein the lands referred to shall lie, within six calendar months after the execution thereof. 9 V. c. 11, s. 29. 40 45

31. The consent of the protector of a settlement to the disposition under this Act of a tenant in tail, shall be given either by the same assurance by which the disposition shall be effected, or by a deed distinct from the assurance, and to be executed either on or after any time before the day on which the assurance shall be made, otherwise the consent shall be void. 9 V. c. 11, s. 30.

Consent of protector by the same or a distinct Deed.

32. If the protector of a settlement shall, by a distinct deed give his consent to the disposition of a tenant in tail, it shall be considered that such protector has given an absolute and unqualified consent, unless in such deed he shall refer to the particular assurance by which the disposition shall be effected, and shall confine his consent to the disposition thereby made. 9 V. c. 11, s. 31.

If by distinct Deed.

33. It shall not be lawful for the protector of a settlement, who, under this Act, shall have given his consent to the disposition of a tenant in tail, to revoke such consent. 9 V. c. 11, s. 32.

Protector not to revoke his consent.

34. Any married woman, being either alone or jointly with her husband, protector of a settlement, may, under this Act, in the same manner as if she were a feme-sole, give her consent to the disposition of a tenant in tail. 9 V. c. 11, s. 33.

A married woman protector.

35. The consent of a protector to the disposition of a tenant in tail shall, if given by a deed distinct from the assurance by which the disposition shall be effected by the tenant in tail, be void, unless such deed be registered in the Registry Office of the county or counties wherein the lands referred to shall lie, either at or before the time when the assurance shall be registered. 9 V. c. 11, s. 34.

Consent by distinct Deed void, unless registered with or before assurance.

36. In cases of dispositions of lands under this Act by tenants in tail thereof, and also in cases of consents by protectors of settlements to dispositions of lands under this Act by tenants in tail thereof, the jurisdiction of Courts of Equity shall be altogether excluded, either on the behalf of a person claiming for a valuable or meritorious consideration, or not, in regard to the specific performance of contracts and the supplying of defects in the execution either of the powers of disposition given by this Act to tenants in tail, or of the powers of consent given by this Act to protectors of settlements, and the supplying under any circumstances of the want of execution of such powers of disposition and consent respectively, and in regard to giving effect in any other manner to any act or deed by a tenant in tail or protector of a settlement, which, in a court of law, would not be an effectual disposition or consent under this Act; and no disposition of lands under this Act by a tenant in tail thereof, in equity, and no consent by a protector of a settlement to a disposition of lands under this Act, by a tenant in tail thereof, in equity, shall be of any force, unless such disposition or consent

Courts of Equity excluded from giving any effect to dispositions in tail, &c.

sent would, in case of an estate tail at law, be an effectual disposition or consent under this Act in a Court of Law. 9 V. c. 11, s. 35.

Court of Chancery to have power to consent to a disposition by a tenant in tail, and to make such orders as shall be thought necessary

37. In every case in which the Court of Chancery shall be the protector of a settlement, such Court while, protector of such settlement, shall, on the motion or petition in a summary way, by a tenant in tail under such settlement, have full power to consent to a disposition, under this Act, by such tenant in tail; and the disposition to be made by such tenant in tail upon such motion or petition as aforesaid, shall be such as shall be approved of by the said Court, the said Court may make such orders in the matter as shall be thought necessary; and if such Court shall, in lieu of any such person as aforesaid, be the protector of a settlement, and there shall be any other person protector of the same settlement jointly with such person as aforesaid, then and in every such case the disposition by the tenant in tail, though approved of as aforesaid, shall not be valid, unless such other person, being protector as aforesaid, shall consent thereto in the manner in which the consent of the protector is by this Act required to be given. 9 V. c. 11, s. 36.

Order of the Court of Chancery to be evidence of consent.

38. In every case in which the said Court of Chancery shall be the protector of a settlement, no document or instrument, as evidence of the consent of such protector to the disposition of a tenant in tail under such settlement, shall be requisite beyond the order in obedience to which the disposition shall have been made. 9 V. c. 11, s. 37.

The purchase money of lands of any tenure sold, if to be entailed, how to be invested.

39. Lands to be sold, whether freehold or leasehold, or of any other tenure, where the money arising from the sale thereof shall be subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, and also money subject to be invested in the purchase of lands to be settled, so that any person, if the lands were purchased, would have an estate tail therein, shall, for all the purposes of this Act, be treated as the lands to be purchased, and be considered subject to the same estates as the lands to be purchased would, if purchased, have been actually subject to; and all the previous clauses in this Act, so far as circumstances will admit, shall, in the case of the lands to be sold as aforesaid being either freehold or leasehold, or of any other tenure, apply to such lands in the same manner as if the lands to be purchased with the money to arise from the sale thereof were directed to be freehold, and were actually purchased and settled; and shall in the case of money subject to be invested in the purchase of lands to be so settled as aforesaid apply to such money in the same manner as if such money were directed to be laid out in the purchase of freehold lands, and such lands were actually purchased and settled; save and except that in every case, were under this clause a disposition shall be to be made of leasehold lands for years absolute or determinable,

terminable, so circumstanced as aforesaid, or of money : so circumstanced as aforesaid, such leasehold lands or money shall, as to the person in whose favor or for whose benefit the disposition is to be made, be treated as personal estate, the assurance by which the disposition of such leasehold lands or money shall be effected shall be an assignment by deed, which shall have no operation under this Act unless registered in the Registry Office of the county or counties wherein the lands therein referred to shall lie, within six calendar months after the execution thereof. 9 V. c. 11, s. 49.

40. A married woman may in every case, except that of being tenant in tail, for which provision is already made by this Act, by deed, release or extinguish any power which may be vested in, or limited or reserved to her in regard of any lands of any tenure, or any such money as aforesaid, or in regard to any estate in any lands of any tenure, or in any such money as aforesaid, as fully and effectually as she could do if she were a feme-sole ; save and except that no such disposition, release, surrender or extinguishment, shall be valid and effectual, unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as hereinafter directed. 9 V. c. 11, s. 50.

A married woman with her husband's concurrence, to release and extinguish powers as a feme-sole.

41. The powers of disposition given to a married woman by this Act shall not interfere with any power which, independently of this Act, may be vested in or limited or reserved to her, so as to prevent her from exercising such power in any case, except so far as by any disposition made by her under this Act she may be prevented from so doing in consequence of such power having been suspended or extinguished by such disposition. 9 V. c. 11, s. 51.

Powers of disposition given to a married woman by this Act, not to interfere with any other powers.

42. Every deed to be executed by a married woman for any of the purposes of this Act, except such as may be executed by her in the character of protector, for the sole purpose of giving her consent to the disposition of a tenant in tail, shall be executed, produced and acknowledged by her as her act and deed in manner and form prescribed by the Act enabling women to convey their real estate. 9 V. c. 11, s. 52.

Every Deed by a married woman not executed by her as protector, to be acknowledged by her as prescribed by law.

43. If a husband shall, in consequence of being a lunatic, idiot or of unsound mind, and whether he shall have been found such by inquisition or not, or shall from any other cause be incapable of executing a deed, or if his residence shall not be known, or he shall be in prison, or shall be living apart from his wife, either by mutual consent or by sentence of divorce, or in consequence of his being transported beyond the seas, or from any other cause whatsoever ; the Court of Queen's Bench for Upper Canada, or the Court of Common Pleas therein, may by an order to be made in a summary way upon the application of the wife, and upon such evidence as to the Court shall seem meet,

In the case of a husband being lunatic.

meet, dispense with the concurrence of the husband in any case in which his concurrence is required by this Act or otherwise; and all acts, deeds or surrenders to be done, executed or made by the wife in pursuance of such order, in regard to lands of any tenure, or in regard to money subject to be invested 5 in the purchase of lands, shall be done, executed or made by her in the same manner as if she were a feme-sole, and when done, executed or made by her, shall (but without prejudice to the rights of the husband as then existing independently of this act) be as good and valid as they would have been if the hus- 10 band had concurred; but this clause shall not extend to the case of a married woman where under this Act, the Court of Chancery, shall be the protector of a settlement in lieu of her husband. 9 V. c. 11, s. 53.

CAP. CXI.

An Act respecting Dower.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

WIDOWS TO BE ENTITLED TO DOWER IN CERTAIN CASES.

1. When a husband dies beneficially entitled to any land for an interest which does not entitle his widow to dower out of the same at law, and such interest whether wholly equitable or partly legal and partly equitable, is an estate of inheritance in possession, or equal to an estate of inheritance in possession, (other than an estate in-joint tenancy,) then his widow shall be entitled in equity to dower out of the same land. 4 W. 4, c. 1. ss. 13, 14, 15. Dower out of equitable estates.

2. When a husband hath been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same although her husband did not recover possession thereof; but such dower shall be sued for or obtained within the period during which such right of entry or action might be enforced. 37 Geo. 3, c. 7, s. 2,—4 W. 4, c. 1, s. 14. Dower where husband had a right of entry.

DOWER ABOLISHED IN CERTAIN CASES.

3. No widow shall be entitled to dower *ad ostium ecclesie*, or dower *ex assensu patris*. 4 W. 4, c. 1, s. 15. Certain dower abolished.

HOW DOWER MAY BE BARRED.

4. A married woman may bar her dower in any lands or hereditaments in Upper Canada, by joining with her husband in a deed or conveyance thereof in which a release of dower is contained. 2 V. c. 6, s. 3. Dower may be barred by joint Deed of husband and wife.

5. A married woman may also bar her dower in any lands or hereditaments by executing either or alone, or jointly with other persons, a deed or conveyance to which her husband is not a party, containing a release of such dower. 37 Geo. 3, c. 7, s. 1. May be barred by separate Deed of wife if duly acknowledged.

6. A married woman barring her dower by a deed or conveyance to which her husband is not a party, shall be examined by one of the Judges of the Courts of Queen's Bench or Common Pleas in Upper Canada, or the Judge of the County Court or two Justices of the Peace for the County in which she resides, touching her consent to be barred of her dower. 37 Geo. 3, c. 7, s. 1. To be barred.

7. If such married woman upon being so examined gives such consent, and the same appears to the Judge or Justices examining Certificate of consent.

examining her to be voluntary and not the effect of coercion on the part of her husband or any other person, such Judge or Justices shall certify on the back of the deed to the following effect: 5

Form.

We, A. B. and C. D., of the County of _____, in the Province of Canada, Esquires, two of Her Majesty's Justices of the Peace, in and for the said County, or, I (a Judge, &c., 10 *as the case may be,*) do certify that E. F., wife of G. F., personally appeared before us (*or me, as the case may be*), and being duly examined by us (*or me*), touching her consent to be barred of her right of dower of and in the lands in the within deed mentioned, it did appear to us (*or me*) that the 15 said E. F., did give her consent thereto freely and voluntarily without coercion or fear of coercion on the part of her husband or of any other person.

Signed,

Dated at

3 W. 4, c. 9. 20

Who to certify out of Upper Canada.

8. A married woman being within the United Kingdom of Great Britain and Ireland, or any of Her Majesty's Colonies, or the United States of America, and there barring her dower by any deed or conveyance to which her husband is not a party, shall be examined as mentioned in the sixth section of this Act, 25 by the Mayor or Chief Magistrate of a City or Town if in the United Kingdom, or if in a Colony or in one of the United States, by a Judge of the Supreme Court of the Colony or State, and if she gives such consent and the same appears to the Person so examining to be free and voluntary and not the effect of any 30 coercion as aforesaid, such person shall certify on the back of the deed to the effect prescribed by the seventh section of this Act. 48 Geo. 3, c. 7, s. 1.

Certificate, how verified.

9. Any certificate under the last section of this Act, shall, if granted by a Mayor or Chief Magistrate, be under the com- 35 mon seal of the City or Town over which such Mayor or Chief Magistrate presides, or under the seal of office of such Mayor or Chief Magistrate, and if granted by a Judge, such certificate shall be verified by the seal of the person administering the government of the Colony or State of which the person certify- 40 ing is a Judge. 48 Geo. 3, c. 7, s. 2.

Unless the husband is a party, dower not barred without acknowledgment.

10. No deed or conveyance of a married woman to which her husband is not a party, shall be effectual to bar her dower unless the directions contained in the sixth, seventh, eighth and ninth sections of this Act, *as the case may be*, are complied with. 45 37 Geo. 3, c. 7, s. 1.

Fee for certificate.

11. The fee of five shillings may be demanded for any certificate under this Act. 50 Geo. 3, c. 10, s. 2.

C A P .

Magistrate, Chief Justice or Judge (as the case may be) shall examine such married woman, apart from her husband, touching her consent in manner and form and to the effect specified in the second section of this Act, and if she thereupon gives such consent, such Mayor or Chief Magistrate, under his hand and the seal of the City, Town or Borough, or such Chief Justice or Judge under his hand, shall on the day of the execution of such Deed, certify on the back thereof to the effect hereinbefore mentioned in the said second section. 43 G. 3, c. 5—59 G. 3, c. 5, s. 2,—1 W. 4, c. 2, s. 1,—2 V. c. 6,—14, 15 V. c. 115. 10

How in foreign States 4. In case any such married woman resides either temporarily or permanently in any State or Country not owing allegiance to the Crown of Great Britain, and there executes any such Deed, she shall execute the same in the presence of the Governor or other Chief Executive Officer of such State or Country, or in the presence of the British Consul resident in such State or Country, or in the presence of a Judge of a Court of Record of such State or Country, and such Governor, Chief Executive Officer, Consul or Judge (*as the case may be*) shall examine such married woman apart from her husband, touching her consent in manner and form and to the effect specified in the second section of this Act; and if she thereupon gives such consent, such Governor or Chief Executive Officer, under his Hand and the Seal of such State or Country, or such Consul under his Hand, or such Judge under his hand and the Seal of his Court, shall certify to the effect hereinbefore mentioned in the said second section. 43 G. 3, c. 5,—59 G. 3, c. 3, s. 2,—1 W. 4, c. 2, s. 1,—2 V. c. 6,—14, 15 V. c. 115. 15 20 25

Certificate to be evidence *prima facie* 5. Every certificate given under this Act, shall be *prima facie* evidence of the facts therein stated. 14, 15 V. c. 115, s. 2. 30

Officer certify need not attest as a witness. 6. It shall not be necessary for any Judge or other Officer who may certify in any of the foregoing cases, to attest as a subscribing witness, the execution of any Deed upon the back of which he may so certify. 14, 15 V. c. 115, s. 1. 35

If not duly executed the Deed shall not be valid. 7. If any such Deed of any such married woman is not executed, acknowledged and certified as aforesaid, the same shall not be valid or have any effect. 14, 15 V. c. 116, s. 2. 40

No Deed not to have greater effect than if she was sole. 8. No Deed of a married woman executed according to the provisions of this Act shall have any greater effect than the same would have had if such married woman had been sole. 43 G. 3, c. 5, s. 4,—1 W. 4, c. 2, s. 2. 45

Fee for certificate. 9. The sum of five shillings may be demanded for every such certificate. 43 G. 3, c. 5,—59 G. 3, c. 3, s. 2,—1 W. 4, c. 2, s. 4. 45

CAP. XCIII.

An Act respecting the Partition and Sale of Real Estate.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. "Land" and "lands," in this Act, shall mean and include
5 *lands, tenements and hereditaments*, and all *estates and interests* therein.
2. The Judge of the Surrogate Court in each County in
Upper Canada shall be the "Real Representative" for all real
property within such County in respect of or to which any per-
10 son, being seized of or entitled to an estate in fee simple there-
in, dies intestate, and for all other purposes hereinafter men-
tioned. 20 V. c. 65, s. 1.
3. Every partition of lands voluntarily made by the parties
thereto shall be made by deed—otherwise the same shall be
15 void. 2 W. 4, c. 35, s. 1.
4. All joint tenants and tenants in common of any lands
within Upper Canada, and all co-parceners of lands des-
cended before the first day of January, in the year one thou-
sand eight hundred and fifty-two, may be compelled to make
20 or suffer partition or sale of lands as hereinafter provided. 14,
15 V. c. 6, s. 1.
5. When such lands are situate in two or more Counties,
the proceedings shall be carried on in the Court of Queen's
Bench, or Common Pleas, or in the Court of Chancery; and
25 when the lands are situate in one County only, the proceedings
may be carried on in the County Court of such County, or in
any of the Superior Courts of Law or Equity. 3 W. 4, c. 35,
s. 1.
6. Any joint tenant, tenant in common, or co-parcener as
30 aforesaid, of any land, being of full age and entitled to the im-
mediate possession thereof, or the agent of any such person, or
the guardian of any minor, may file a petition in any of the
Courts as aforesaid, praying that partition or sale of such lands
may be made. 2 W. 4, c. 35, s. 2,—20 V. c. 65, s. 2,—2 W.
35 4, c. 35, s. 2.
7. All proceedings in petition shall be intitled in the
Court in which the same are had; and—In the matter of Parti-
tion between A. B. (*naming the Petitioner, if there is only one,*
40 *and adding "and others," if there be more than one*) and X. Y.
(*naming the person intended to be made a party to such petition,*
if

if only one, and adding "and others," if there be more than one,
20 V. c. 65, s. 24.

Parties to application.

What the application for partition or sale must set forth.

It must be verified on oath.

Notice to minors and appointment of guardians to them.

Guardians to give security.

Condition.

Their powers thereafter.

Provision as to creditors having a lien on the property or any part thereof.

8. Every person having an interest as aforesaid, may be made a party to such petition, and the petition shall particularly describe the premises sought to be divided or sold, and shall set forth the interest of the petitioner and the rights and titles of all persons interested therein, so far as the same are known to the petitioner, including the interest of any tenant for years, for life, by the curtesy or in dower, or in case any one or more of such parties, or the share or quantity of interest of any of the parties, is unknown to the petitioner, he shall set forth the same in such petition; and the truth of such petition and the matters contained therein shall be verified by the oath or affirmation of the petitioner, to be taken before any Commissioner for taking affidavits, or before a Judge of any of the said Courts. 20 V. c. 65, s. 3.

9. In case any of the parties so interested, other than the petitioner, is a minor, and in case it is satisfactorily proved to the Court that at least fourteen days' notice has been served on such minors as reside in this Province, of an intention to apply to the Court for an order for partition or sale, such Court shall thereupon appoint a suitable and disinterested person to be guardian for one or more of such minors, whether the said minors reside within or without this Province, for the special purpose of taking charge of the interests of such minors in the proceedings upon such petition. 20 V. c. 65, s. 4.

10. Every guardian so appointed, shall, before entering upon his duties, execute a bond, in such penalty and with such surety as the Court directs, to the "Real Representative" of the County or Union of Counties where such estate is situate, by his name of office, conditioned for the faithful discharge of the trust committed to him, and to render a just and true account of his guardianship, when thereto required by the Court, and no proceedings shall be taken upon the petition until such bond has been filed in the office of the Court; and after the execution and filing of such bond, such guardian shall represent his minor in the proceedings upon the said petition, and his acts in relation thereto shall be binding on such minor, and shall be as valid as if done by such minor after having arrived at full age. 20 V. c. 65, s. 5.

11. It shall not be necessary in the first instance to make any creditor having a lien on such estate or any part thereof, by judgment, decree, mortgage or otherwise, a party to the proceedings, nor shall the partition or sale of the estate alter, affect or impair the lien of such creditor, but the petitioner may make such creditor a party, and in such case the petition shall set forth the nature of any such lien or incumbrance, and if such lien or incumbrance is on the undivided interest or estate of any

any of the parties to the petition, it shall be a lien only on the share of such party, and such share shall be first charged with its just proportion of the costs of the proceedings in partition, in preference to any such lien. 20 V. c. 65, s. 6.

5 **12.** A copy of such Petition, with notice that the same will be presented to the Court on some certain day in term, shall be personally served thirty days inclusive, previous to such term, on all the parties interested in such estate who have not joined in such petition and are resident in this Province, and
10 on the guardians of such as are minors, who have been appointed such guardians as aforesaid; and every such notice shall be addressed to all the parties interested who are known, and generally to all others unknown, having or claiming any interest in such estate. 20 V. c. 65, s. 7.

Service of copy of petition on parties interested not joining therein and resident in Canada

15 **13.** If any parties having such interest are unknown, or if known, reside out of this Province or cannot be found therein, and have no known Attorney or Agent residing therein, the petition and notice may be served on such unknown or absent party, by publishing the same three months previous to
20 the presentation of such Petition, once in each week successively, in the *Canada Gazette*, and in a paper printed and published in the County or Union of Counties where the estate is situate, and if there be none, then in the *Canada Gazette* alone, which shall be equivalent to a personal service on such unknown
25 or absent parties, or such petition and notice may be served personally on any known absent party or upon his Attorney or Agent if he has one residing in Upper Canada, forty days previous to its presentation, without publishing the same. 20 V. c. 65, s. 8.

Notice to absent and unknown parties.

30 **14.** Upon the presentation of such petition, and satisfactory proof of the service or publication thereof with the notice as aforesaid, and of the facts justifying the mode of publication, the Court shall, by rule, allow such Petition, and thereupon the parties interested in the estate shall appear and shew title
35 to the proportions which they claim of the premises set forth in the petition, within the time for pleading according to the practice of the said Court. 20 V. c. 65, s. 9.

On proper proof, petition to be allowed and parties to shew title.

15. Notice of the rule of allowance, and all other notices in any subsequent proceedings, unless otherwise specially directed, may be served by affixing the same in the office of the Clerk of the Court, which shall be equivalent to personal service on the party to be affected thereby. 20 V. c. 65, s. 10.
40

Service of notice of allowance and subsequent notices

16. In case, at any time after filing the petition, and before a final order, decree, rule or judgment has been made or
45 pronounced thereon, the parties of whom partition or against whom a sale is demanded, shall appear in person or by Guardian or Attorney, as the case may be, and pay their proportion of

Parties consenting to partition may appoint arbitrators to make partition, and of

if they do not agree on the persons to be named, the Court may name them. of the costs then incurred, and shall consent to a partition or sale of such land, then a partition or sale shall be made thereof by such person or persons as the parties may agree upon ; and in case they do not agree upon any person or persons before the end of the term or before such day as the Court may appoint, then such partition or sale shall be made as in other cases under this Act. 2 W. 4, c. 35, s. 5.

17. Any party appearing may plead, either separately or jointly with one or more of his co-defendants, that the petitioners or any of them, at the time of presenting the petition, were not entitled to or in possession of the premises or any part thereof, or that the defendants or any of them had no interest in the premises or did not hold the same together with the petitioners at the time of the commencement of the proceedings, as alleged in the petition ; and such pleas shall form a complete issue, and any matters to support the claim or defence of either party may be given in evidence thereunder ; and the issue thereon may be tried at the same time as the other issues on the petition. 20 V. c. 65, s. 11.

18. All issues so joined shall be tried on a record made up of the said petition and the defence made in pleading thereto, and the like proceedings had thereupon in every respect as in personal actions, as to new trials, amendments and any other particulars. 20 V. c. 65, s. 13.

19. If judgment is entered against any of the defendants by default for want of a plea, the Court shall still require the petitioners to exhibit proof of their title, and from such proofs, or from the confession by plea of the parties, if they appeared, or from the verdict of a jury by which any issue of fact has been tried, the Court shall declare the rights, title and interest of the parties to such proceedings, plaintiffs as well as defendants, and shall determine the rights of the parties in such estate, and give judgment that such partition be made between such of them as have any rights therein, according to such rights, but not so as to affect any parties whose rights have not been ascertained. 20 V. c. 65, s. 14.

20. Whenever any judgment of partition has been rendered, the Court shall, by rule, order the " Real Representative " to make the partition so adjudged, according to the respective rights and interests of the parties, as the same were ascertained and determined by such Court ; and in such rule the Court shall designate the part or shares which remain undivided for the owners whose interests may be unknown and not ascertained ; and the " Real Representative " shall forthwith proceed to make such partition according to the judgment of the Court, unless it appears to him that partition cannot be made without prejudice to the owners of the estate, in which case he shall make a return of such fact to the Court in writing under his hand. 20 V. c. 65, s. 15.

21. In making partition, the "Real Representative" shall divide the said real estate, and allot the several portions and shares thereof to the respective parties, as adjudged by the Court, designating the several shares by posts, stones or other permanent monuments, and he may employ a Surveyor to assist him therein: and he shall make a true and accurate plan or map and field book of such land, and shall describe particularly the metes and bounds of the same, and he shall return to the Court having cognizance of the proceedings the said plan or map field book and description, and shall report to the said Court in writing, the manner in which he has divided the said estate, and the share allotted to each party, with the quantity, and courses and distances of the boundaries of each share, and a description of the posts, stones or other monuments, together with an account of his fees, which, together with any charges for surveyors, shall be ascertained and allowed by the Court, and the amount shall be paid by the petitioners, and shall be allowed to them as part of the costs to be taxed. 20 V. c. 65, s. 16.

How the partition shall be made.

Survey.

Report.

Costs.

22. The said report shall be proved by affidavit before any Commissioner for taking affidavits, and shall be filed in the said Court, and a copy thereof, after the report is confirmed by the Court, certified under the hand of the Clerk and seal of the said Court, shall be registered in the County Register, on the production thereof to the Registrar of the County or Union of Counties where such estate is situate. 20 V. c. 65, s. 17.

Proof filing and registration of the report of partition.

23. Upon the return of such report, the Court shall confirm the same, or in its discretion, remit the same back to the "Real Representative" for amendment in any particular or particulars in which there is manifest error; and upon any final confirmation, judgment shall thereupon be given that such report is confirmed, and such judgment shall be binding and conclusive on all known parties named in the said petition, and when such publication as aforesaid has been made, then, also upon all unknown and absent parties and all persons claiming from or through them; but such judgment shall not affect any person having claims as tenants in dower, or by the curtesy, to the premises which form the subject of such partition, nor any person not named in the petition either originally or by amendment, nor any unknown person when there has been no such publication as aforesaid: 20 V. c. 65, s. 18.

Confirmation of report after amendment if required.

Effect of such confirmation.

Certain parties not to be affected.

24. Upon the report of the "Real Representative," the Court may order a sale of the estate, if deemed prudent so to do, and by a rule to be made on filing such report, the Court may order the "Real Representative" to sell the estate at public auction to the highest bidder; and in such order the Court shall direct the terms of credit which may be allowed for any portions of the purchase money of which it thinks proper to direct the investment, and for such portions of the purchase money as

Sale may be ordered by Court and how to be made, credit for part of purchase money in certain cases: how secured.

are required, by the provisions hereinafter contained, to be invested for the benefit of any unknown owners, infants, parties out of the Province, or any tenants for life, in dower or by courtesy ; such portions of the purchase money for which credit is so allowed, to be secured at interest by a mortgage of the premises sold, by a bond of the purchaser, and by such other security as the Court may prescribe. 20 V. c. 65, s. 19. 5

25. The "Real Representative" may take separate mortgages and other securities, for such convenient shares or portions of the purchase money as are directed by the Court to be invested as aforesaid, in his own name of office, as Surrogate Judge and "Real Representative" for such County or Union of Counties, and his successors in office, and for such shares as any known owner of full age shall desire to be invested, in the name of such owner ; and upon such sales being confirmed, the "Real Representative" shall deliver such mortgages to the Clerk of the Court, or to the known owners whose shares were so invested. 20 V. c. 65, s. 20. 10 15

26. Before making any order for sale, where the creditors having specific liens have not been made parties, the Court, on motion of either party, shall direct the Petitioner to amend his Petition by making every creditor having a specific lien on the whole estate, or on the undivided interest or estate of any of the parties, by mortgage, judgment or otherwise, a party to the proceedings, and shall direct the Clerk of the Court to ascertain and report whether the shares or interests in the premises of the parties in such suit, or any of them, are subject to any general lien or incumbrance by judgment or decree, and such clerk shall forthwith cause a notice to be published once a week for four weeks in the *Canada Gazette*, and also in a newspaper, if there be one, in the County or Union of Counties in which such estate is situate, requiring all persons having any general lien or incumbrance on the estate or on any undivided interest or share therein, by mortgage, judgment, decree, or otherwise, to produce to the said Clerk on or before a certain day to be named in such notice, proofs of all such liens and incumbrances, together with satisfactory evidence of the amount due thereon, and the Clerk shall report with all convenient speed, the names of the creditors, the nature of the incumbrances, the dates thereof, and the several amounts appearing to be due thereon, and thereupon the Court shall order the "Real Representative" to bring into Court and pay to the Clerk the whole purchase money, if the lien be on the whole estate, or the portion thereof arising from the sale of the part, charged with the lien, after deducting the portion of the costs, charges and expenses to which it may be liable. 20 V. c. 65, s. 21. 20 25 30 35 40 45

27. Any party entitled to a share of the estate, may apply to the Court to order such part of the purchase money which he 5

Real representative may take mortgages for moneys to be invested.

How creditors having specific liens on the property and not made parties to the petition shall be called in, and their liens dealt with.

Application of party entitled

he claims, to be paid to him, on affidavit shewing the amount truly due on each incumbrance, if any, the owner of such incumbrance, and his residence as far as known to such party, and also on proof of the due service of a notice on each incumbrancer, of the intention to make such application, at least ten days previous thereto, such service to be personal, or on a grown up person at the residence of such incumbrancer, if residing in this Province, and if residing out of this Province, by personal service thirty days previously, or by publishing the notice once a week for four weeks in the *Canada Gazette* 20 V. c. 65, s. 22.

to a share
the estate for
payment.

28. Upon such application, and proof of notice being given, the Court shall proceed to hear the allegations and proofs of the parties, and after the amount of incumbrances has been ascertained, shall order a distribution of the moneys so brought into and remaining in Court, among the several parties having such incumbrances, according to the priority thereof respectively, and the Clerk of the Court shall procure satisfaction thereof to be acknowledged, in the form required by law, and shall cause the incumbrances to be duly satisfied or discharged of record, defraying the expenses out of the moneys payable on the share or shares which were so incumbered; but such proceedings to ascertain and value the amount of incumbrances, shall not affect or delay the paying over or investing of money to or for any party upon whose estate in the premises there does not appear to be any existing incumbrance. 20 V. c. 65, s. 23.

Hearing and
proof ascertain-
ing amount of in-
cumbrances
and payment
thereof.

29. Whenever the estate of any tenant in dower to the whole or part of such estate, or of any tenant by the curtesy or for life to any part of the estate, has been admitted by the parties, or ascertained by the Court to be existing at the time of the order for such sale, and the person entitled to such estate has been made a party to the proceedings, the Court shall first determine whether such estate ought to be exempted from the sale, or whether the same shall be sold; and in making such determination, regard shall be had to the interests of all the parties, and if a sale be ordered including such estate, all the estate and interest of every such tenant shall pass thereby, and the purchaser, his heirs and assigns, shall hold such premises free and discharged from all claims by virtue of the estate or interest of any such tenant, whether the same be to any undivided share, or to the whole or any part of the premises sold; and the Court shall direct the payment of such sum in gross out of the purchase money, to the person entitled to such dower or estate by curtesy or for life, as may be deemed, upon the principles applicable to life annuities, a reasonable satisfaction for such estate. 20 V. c. 65, s. 24.

Case of tenant
in dower by
curtesy or for
life if sale be
made such ten-
ant shall be
satisfied out
of proceeds,
and how.

30. When any married woman shall be a party to such proceedings, the petition shall be by her and her husband, and the service or notice of such petition shall be upon her and her husband,

When a mar-
ried woman is
a party, her

husband to be joined.

If her claims be for an inchoate right of dower.

husband, and judgment or decree shall be binding in such case upon her and her husband, and all claiming through her or them; and if her claim be an inchoate right of dower, in any case of sale, the Court shall determine the value of such right according to the principles applicable to deferred annuities and survivorships, and shall order the amount of such value to be paid to her and her husband on their joint release under seal; and such order and the payment and release thereon shall be a valid and effectual bar to any right or claim of dower. 20 V. c. 65, s. 25. 5 10

Notice of sale and report thereof.

Deed to be made and registered if the sale be approved.

31. The "Real Representative" shall give notice of any sale to be made by him, for the same time and in the same manner as is required by law on sales of real estate by sheriffs on execution, and the terms of such sale shall be made known at the time of the sale, and after the completion thereof he shall report the same in writing to the Court, with a description of the different parcels of land sold to each purchaser, and the price paid by him; and on the filing such report, if such sales be approved and confirmed by the Court, an order shall be made directing the "Real Representative" to execute deeds pursuant to such sales, and such deeds so executed shall be recorded in the County where the lands lie, on a memorial thereof, in the same manner as other deeds, and shall be a bar both in law and equity, against all parties interested in the premises, who shall have been named in such proceedings as parties, and against all unknown parties where notice was published as aforesaid, and against all persons claiming under or through them, and also against all incumbrancers, where the notice hereinbefore mentioned has been given to them. 20 V. c. 65, s. 26. 15 20 25

Division of proceeds and payment or investment of shares thereof; Court may require security to be given.

32. The proceeds of such sale, after deducting all costs, shall be divided among the parties whose rights and interests shall have been sold, in proportion to their respective rights in the premises, and the shares of such as are of full age shall be paid to them by order of Court, and in the case of infants, unknown or absent parties, shall be invested for them, in the name of the "Real Representative" and his successors in office, until lawfully claimed by them or their legal representatives; and the Court may in its discretion require all or any of the parties, before they shall receive any share of the moneys arising from such sale, to give security to the satisfaction of such Court, to refund the said shares, with interest thereon, in case it shall thereafter appear that such party was not entitled thereto. 20 V. c. 65, s. 27. 30 35 40 45

Securities to be deposited with Clerk of Court who shall receive and apply the money under order of Court.

33. All securities shall be taken in the name of the "Real Representative" and his successors in office except when directed to be taken in the name of any known party, and shall be delivered to and kept by the Clerk of the Court, who shall receive the interest and principal thereon, and apply or invest the same as the Court shall direct, and shall in each term render to 45 50

to the Court an account in writing under oath, of all moneys received by him and of the application thereof, and upon any refusal to render such account, or any misapplication of the funds, he shall be liable to be proceeded against and punished 5 for embezzling the moneys of the "Real Representative" as in ordinary cases of embezzlement of a clerk or servant. 20 V. c. 65, s. 28.

34. All investments of moneys arising from sales shall Investments to be in certain debentures only.
 10 Debentures. 20 V. c. 65, s. 29.

35. The Court shall apportion the costs of the proceedings on the petition according to the respective shares and interests of the parties known or unknown, and shall direct the same to be paid to the petitioners, and such order shall operate 15 as a judgment for such costs, and on a copy thereof being filed in the County Registry Office where the lands lie, shall be a charge for such proportion, against the shares representing such proportion, and execution may issue thereon as in ordinary cases of costs, and such share or interest may be sold thereon 20 and a valid title on such sale given to the purchaser thereof, as in the cases of sales by sheriffs in execution; and if judgment be rendered against the petitioners for any cause, the Court shall adjudge costs against them, to be recovered as in cases of personal actions. 20 V. c. 65, s. 30.

25 36. The proceedings upon petition, if commenced in a County Court, may be removed into either of the Superior Courts of Law or Equity by *certiorari* at any time before judgment, to be allowed by any judge of such Court, on security being given by the party applying for the *certiorari*, for the 30 costs of the proceedings on petition, to the satisfaction of such judge; and upon any final judgment, decree or order, an appeal may be had by any of the parties interested, in the same manner and with the same consequences as in other cases of appeal, from the decision of any Court rendering such judgment, decree or order. 20 V. c. 65, s. 31.

37. Where the interests in such estate are equitable fees simple, the Court of Chancery alone shall have the same powers, upon petition or bill filed in that Court, to act thereupon, as are hereby given to the Courts of Law and Equity in 40 other cases, and the same notices shall be given, served, published and verified, guardians of minors appointed, and the same rules apply as to parties, and the like proceedings be had, as hereinbefore directed. 20 V. c. 65, s. 32.

38. In the month of January of every year after the passing of this Act, the Clerk of the Court having the custody of any 45 bonds, mortgages or investments arising from sales of such estates, for the benefit of any unknown, absent, infant or lunatic parties, Statement to be published yearly by Clerks of Courts of mo-

neys in their hands and unclaimed.

parties, where no claim has been made on their behalf for any interest or principal of such investments during the preceding year, shall cause to be published in the *Canada Gazette*, and in one newspaper in the County or Union of Counties in which such lands are situate, weekly, for the period of four weeks, a statement of the securities or investments remaining unclaimed, showing the name of the intestate party, the amount unclaimed, and the property from which the claim has arisen, and such statement shall be verified by the Clerk, and a copy thereof filed among the records of the Court. 20 V. c. 65, s. 33. 5 10

The Court of Chancery to possess like powers as the Court of Chancery in England.

39. In all cases of partition and sale of estates of joint tenants, tenants in common and coparceners, the Court of Chancery shall also possess the same jurisdiction as by the laws of England on the tenth of August, eighteen hundred and fifty, were possessed by the Court of Chancery in England. 20 V. 15 c. 65, s. 33.

Partition or sale by the Court of Chancery to be as valid as if by the parties.

40. Any partition or sale made by the Court of Chancery, shall be as effectual for the apportioning or conveying away of the estate or interest of any married woman, infant or lunatic, party to the proceedings by which the sale or partition is made or declared, as of any person competent to act for himself, and an office copy of any Decree, Order or Report for any partition or sale shall be sufficient evidence in all Courts of the partition declared thereby and of the several holdings by the parties of the shares thereby allotted to them. 20 V. c. 65, s. 33. 20 25

Courts to make tariffs, rules.

41. The Judges of the Superior Courts of Common Law and the Court of Chancery shall make such tariff of fees and rules and orders, for the proceedings on petitions at Law and in Equity, respectively, as they shall deem expedient and advisable. 20 V. c. 65, s. 34. 30

CAP. XCIV.

An Act respecting Mortgages of Real Estate, and the sale of equities of Redemption under Execution.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Any mortgagee of freehold or leasehold property, or any Assignee of such Mortgagee, may take and receive from the Mortgagor or his Assignee, a release of the equity of redemption in such property, or may purchase the same under any power of sale in his Mortgage, or any judgment or decree, without thereby merging the Mortgage debt as against any subsequent Mortgagee or registered judgment Creditor having a charge on the same property. 14, 15 V. c. 45, s. 1.

Mortgages of freehold property, &c., may receive release, &c., without merger or debt.
2. In case any such prior Mortgagee or his Assignee, takes a release of the equity of redemption of the Mortgagor or his Assignee in such Mortgaged property, or purchases the same under any power of sale in his Mortgage, or any judgment or decree, no subsequent Mortgagee or his Assignee, or registered judgment Creditor, shall be entitled to foreclose or sell such property without redeeming or selling subject to the rights of such prior Mortgagee or his Assignee, in the same manner as if such prior Mortgagee or his Assignee had not acquired such equity of redemption. 14, 15 V. c. 45, s. 2.

When prior mortgage shall take release of equity of redemption, &c., subsequent mortgage, &c., not entitled to foreclose or sell property without redeeming, &c.
3. This Act shall not affect any priority or claim which any Mortgagee or judgment Creditor may have under the registry laws. 14, 15 V. c. 45, s. 3.

Priority of any mortgage not to be affected by this Act.
4. On any proceeding for foreclosure by, or redemption against an Assignee of a Mortgagee, the statement of the Mortgage account, under the oath of such Assignee, shall be sufficient *prima facie* evidence of the state of such account, and no affidavit or oath shall be required from the Mortgagee or any intermediate Assignee denying any payment to such Mortgagee or intermediate Assignee, unless the Mortgagor or his Assignee, or the party proceeding to redeem, shall deny the correctness of such statement of account by oath or affidavit. 14, 15 V. c. 45, s. 4.

In proceedings for foreclosure, &c., state of mortgage account may be proved *prima facie* by statement on oath of assignee of mortgage.
5. When any person entitled to any freehold or leasehold land by way of Mortgage, has departed this life, and his executor or administrator is entitled to the money secured by the Mortgage, or has assented to a bequest thereof, or has assigned the Mortgage debt, such executor or administrator, if the Mortgage money was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the said Mortgage, may convey, release and discharge the said Mortgage

Executor of deceased mortgages may convey or release to the land's mortgages in certain cases.

Mortgage debt, and the legal estate in the land; and such executor or administrator may have the same power as to any portion of the lands, on payment of some part of the Mortgage debt, or on any arrangement for exonerating the whole or any part of the Mortgaged lands without payment of money, and such conveyance, release or discharge shall be as effectual as if the same had been made by the person having the legal estate. 14; 15 V. c. 7, s. 8.

Sheriff may seize all interests in lands of mortgagor.

6. The Sheriff or other officer to whom any Writ of *Fieri Facias* against the lands and tenements of any Mortgagor of Real Estate, is directed may seize or take in execution, sell and convey, (in like manner as any other Real Estate might be seized or taken in execution, sold and conveyed,) all the legal and equitable interest of such Mortgagor in the Mortgaged lands and tenements. 12 V. c. 73; s. 1.

Effect of seizure and of the sale and conveyance to be made under it by the Sheriff; obligation of the purchaser.

7. The effect of such seizure or taking in execution, sale and conveyance, of any such Mortgaged lands and tenements, shall be to vest in the purchaser, his heirs and assigns, all the legal and equitable interest, of such Mortgagor therein at the time the Writ was placed in the hands of the Sheriff or other Officer to whom the same is directed as well as at the time of such sale, and to vest in such purchaser, his heirs and assigns, the same rights as such Mortgagor would have had, if such sale had not taken place; and such purchaser, his heirs or assigns, may pay, remove or satisfy, any Mortgage charge or lien, which at the time of such sale existed upon the lands or tenements so sold, in like manner as such Mortgagor might have done, and thereupon such purchaser, his heirs and assigns shall acquire the same estate, right and title, as such Mortgagor would have acquired, in case such payment, removal or satisfaction had been effected by such Mortgagor, and on payment of the Mortgage money to the Mortgagee by the purchaser, his heirs or assigns; the Mortgagee, his heirs, or assigns shall, if required, give to such purchaser his heirs or assigns, at his or their charge, a certificate of payment or satisfaction of such mortgage, which certificate may be in the following form, that is to say: 12 V. c. 73, s. 2.

Rights of the purchaser.

To be Registrar of the County of

I, A. B. of , do certify that C. D. of who hath become the purchaser of the interest of E. F. of hath satisfied all money due upon a certain Mortgage made by the said E. F. to me, bearing date the day of , one thousand eight hundred and and registered at of the clock in the forenoon (as the case may be) of the day of in the same year (or as the case may be) and that such mortgage is therefore

fore discharged. As witness my hand this, day of
18

(Signed,) A. B.

E. H. of } Witnesses.
G. H. of }

5 And such certificate shall be of the like effect, and shall be acted upon by Registrars and others to the same extent as if the same had been given to the Mortgagor, his heirs, executors, administrators or assigns.

10 S. Any Mortgagee of lands and tenements so sold, or the heirs or assigns of such Mortgagee, (whether plaintiff or defendant in the judgment whereon the Writ of *Fieri Facias* under which such sale took place was issued) may be the purchaser at such sale, and shall acquire the same estate interest and rights thereby as any other purchaser; but if in the event of the Mortgagee becoming such purchaser he shall give to the Mortgagor a release of the mortgage debt, and if any other person becomes such purchaser, and if the Mortgagee enforces payment of the Mortgage debt against the Mortgagor, then such purchaser shall repay the amount of such debt and interest to the Mortgagor, and in default of payment thereof within one calendar month after demand, the Mortgagor may recover from such purchaser the amount of such debt and interest, in an action for money had and received, and until such debt and interest are repaid to the Mortgagor, he shall have a charge therefor upon
25 the mortgaged lands. 12 V. c. 73, s. 3.

Mortgagee may purchase the lands mortgaged to him.

CAP. XCV.

An Act respecting the limitation of Actions and Suits relating to Real Property, and the time of prescription in certain cases.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

No land or rent to be recovered but within twenty years after the right of action accrued to the claimant or some person whose estate he claims. 1. No person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same. 4 W. 4, c. 1, s. 16. 5 10

When the right shall be deemed to have accrued. 2. In the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned: 4 W. 4, c. 1, s. 17. 15

On dispossession. 1. When the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in the receipt of the profits of such land, or in receipt of such rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received; 4 W. 4, c. 1, s. 17. 20 25

On abatement or death. 2. When the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; 4 W. 4, c. 1, s. 17. 30 35

Alienation. 3. When the person claiming such land or rent shall claim in respect of an estate or interest in possession, granted, appointed, or otherwise assured by any instrument other than a will, to him or some person through whom he claims, by a person being in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the 40 the

the rent, and no person entitled under such instrument shall have been in possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming, as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; 4 W. 4, c. 1, s. 17.

4. When the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land, or the receipt of such rent, in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; 4 W. 4, c. 1, s. 17.

In case of future estates.

5. When the person claiming such land or rent, or the person through whom he claims, shall have become entitled, by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition broken; 4 W. 4, c. 1, s. 17.

Forfeiture or breach of condition.

3. In the case of lands granted by the Crown of which the grantee his heirs or assigns by themselves their servants or agents have not taken actual possession by residing upon or cultivating some portion thereof, and in case some other person not claiming to hold under such grantee has been in possession of such land then unless it can be shewn that such grantee or such person claiming under him while entitled to the lands had knowledge of the same being in the actual possession of such other person the lapse of twenty years shall not bar the right of such grantee or any person claiming under him to bring an action for the recovery of such land. 4 W. 4, c. 1, s. 17.

Lands granted by the Crown, and not yet cultivated or improved.

4. When any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not have been recovered by virtue of such right, the right to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened. 4 W. 4, c. 1, s. 17.

Where advantage of forfeiture is not taken by remainder man, he shall have a new right when his estate comes into possession.

5. A right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued in respect of an estate or interest in reversion, at the time at which the same shall have become an estate or interest

Reversioner to have a new right.

interest in possession, by the determination of any estate or estates in respect of which such land shall have been held or the profits thereof, or such rent shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall, at any time previously to the 5 creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land, or in receipt of such rent. 4 W. 4, c. 1, s. 17.

6. For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose chattels 10 he shall be appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. 4 W. 4, c. 1, s. 18.

7. When any person shall be in possession or in receipt of 15 the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such 20 tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined. 4 W. 4, c. 1, s. 19.

8. No mortgagor or cestui que trust shall be deemed to be a tenant at will within the meaning of the last clause of this 25 Act to his mortgagee or trustee. 4 W. 4, c. 1, s. 19.

9. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the 30 right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent 35 payable in respect of such tenancy shall have been received, (which shall last happen.) 4 W. 4, c. 1, s. 20.

10. When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly 40 sum of twenty shillings or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion, immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by 45 such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom 50

An administrator to claim as if he obtained the estate without interval after death of deceased.

In the case of a tenant at Will, the right shall be deemed to have accrued at the end of one year.

Case of mortgagor or cestui que trust.

No person after a tenancy from year to year to have any right but from the end of the first year or last payment of rent.

When rent amounting to twenty shillings reserved by a lease in writing shall have been wrongfully received, no right to accrue on the determination of the lease but at the time the

whom he claims to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming, as aforesaid, and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled. 4 W. 4, c. 1, s. 21.

rent was wrongfully received.

11. No person shall be deemed to have been in possession of any land within the meaning of this Act, merely by reason of having made an entry thereon.

A mere entry not to be deemed possession.

12. No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action. 4 W. 4, c. 1, s. 22.

No right to be preserved by continual claim.

13. When any one or more of several persons entitled to any land or rent as coparceners, joint tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them. 4 W. 4, c. 1, s. 24.

Possession of one coparcener, &c., not to be the possession of the others.

14. When a younger brother or other relation of the person entitled, as heir to the possession, or receipt of the profits of any land, or to the receipt of any rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir. 4 W. 4, c. 1, s. 25.

Possession of a younger brother, &c., not to be the possession of the heir.

15. When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or to his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, such possession or receipt of or by the person by whom such acknowledgment shall have been given, shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last mentioned person, or any person claiming through him, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. 4 W. 4, c. 1, s. 26.

Acknowledgment in writing given to the person entitled, or his agent, to be equivalent to possession or receipt of rent.

16. At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action

At the end of the period of action

Limitation the right of the party out of possession to be extinguished. action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, action or suit respectively, might have been made or brought within such period, shall be extinguished. 4 W. 4, c. 1, s. 37.

Receipt of rent to be deemed receipt of profits.

17. The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act. 4 W. 4, c. 1, s. 38.

ARREARS OF DOWER, RENT AND INTEREST.

No arrears of dower to be recorded for more than six years.

18. No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit. 4 W. 4, c. 1, s. 44.

No arrears of rent or interest to be recovered for more than six years.

19. No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action or suit, but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent. 4 W. 4, c. 1, s. 45.

Exception in favor of subsequent mortgagee when a prior mortgagee has been in possession.

20. Where any prior mortgagee or other incumbrancer has been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit has been brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which has become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt, as aforesaid, although such time may have exceeded the said term of six years. 4 W. 4, c. 1, s. 45.

MORTGAGES.

Mortgagor to be barred at the end of twenty years from the time when the mortgagee took possession, or from the last written acknowledgment.

21. When a mortgagee has obtained the possession or receipt of the profits of any land, or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt, unless in the mean time an acknowledgment of the title of the mortgagor, or of his right of redemption, shall have been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, in writing, signed by the mortgagee.

mortgagee or the person claiming through him, and in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. 4 W. 4, c. 1, s. 36.

22. When there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, the acknowledgment mentioned in the last section, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons. 4 W. 4, c. 1, s. 36.

Such acknowledgment to one of several mortgagors to be sufficient.

23. When there is more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, the acknowledgment mentioned in the twenty-first section, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money, or land or rent, by, from or under, him or them, and any person or persons entitled to any estate or interest, to take effect after or in defeasance of his or their estate or interest and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money, or land or rent; and when such of the mortgagees or persons aforesaid as have given such acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent, on payment with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage. 4 W. 4, c. 1, s. 36.

If more than one mortgagee, the acknowledgment to bind only the one who gives it.

24. No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land or rent at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the mean time some part of the principal money or some interest thereon shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit or proceeding shall be brought, but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was given. 4 W. 4, c. 1, s. 43.

Money charged upon land and legacies, to be deemed satisfied at the end of 20 years if there shall be no interest paid or acknowledgment in writing in the mean time.

25. Any person entitled to or claiming under a mortgage of land, may make an entry or bring an action at law or suit in equity to recover such land; at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twenty years may have elapsed since the time at which the right to make such entry, or bring such action or suit in equity, shall have first accrued. 15 V. c. 121, s. 1. 5

26. This Act shall not be held to affect any title, possession, interest or case which was in litigation, on the twenty-third day of May, one thousand eight hundred and fifty-three. 16 V. c. 121, s. 1. 10

BAR OF ESTATES TAIL BY WANT OF ENTRY.

27. When the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same, shall have been barred by reason of the same not having been made or brought within the period limited by this Act, no such entry, distress or action shall be made or brought by any person claiming any estate, interest or right which such tenant in tail might lawfully have barred. 10, 11 V. c. 5, s. 9. 15 20

28. When a tenant in tail of any land or rent entitled to recover the same shall have died before the expiration of the period limited by this Act, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred, shall make an entry or distress or bring an action to recover such land or rent, but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action. 10, 11 V. c. 5, s. 10. 25

29. When a tenant in tail of any land or rent has made an assurance thereof, which shall not operate to bar an estate to take effect after or in defeasance of his estate tail and any person shall by virtue of such assurance at the time of the execution thereof or at any time afterwards, be in possession or in receipt of the profits of such land or in the receipt of such rent, and the same person or any other person whatsoever, (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail,) shall continue or be in such possession or receipt for the period of twenty years next after the commencement of the time at which such assurance if it had been executed by such tenant in tail or the person who would have been entitled to his estate tail, if such assurance had not been executed, would without the consent of any other person have operated to bar such estate or estates as aforesaid, then at the expiration of such period of twenty years, such assurance shall be 30 35 40 45 be

Mortgagee may make entry or bring suit at any time within 20 years from the last payment.

As to existing suits, &c.

Prescription under Act against the tenant in tail to be in certain cases valid against those whose rights he could have barred.

Term elapsed in such cases during the life of the tenant to be computed against those whose rights he could have barred.

Effect of an assurance by a tenant in tail and possession for 20 years in certain cases.

be and be deemed to have been effectual, as against any person claiming any estate, interest or right to take effect after or in defeasance of such estate tail. 10, 11 V. c. 5, s. 11.

LIMITATION OF SUITS IN EQUITY.

30. No person claiming any land or rent in equity shall
5 bring any suit to recover the same but within the period
during which by virtue of the provisions hereinbefore contained
he might have made an entry or distress, or brought an action
to recover the same, respectively, if he had been entitled at law
to such estate, interest or right, in or to the same as he shall
10 claim therein in equity. 4 W. 4, c. 1, s. 32.

No suit in equity to be brought after the time when the plaintiff, if entitled at law, might have brought an action.

31. When any land or rent shall be vested in a trustee
upon any express trust, the right of the Cestui que trust, or any
person claiming through him, to bring a suit against the trustee,
or any person claiming through him, to recover such land or
15 rent, shall be deemed to have first accrued, according to the
meaning of this Act, at, and not before, the time at which such
land or rent shall have been conveyed to a purchaser for a
valuable consideration, and shall then be deemed to have
accrued only as against such purchaser and any person claim-
20 ing through him. 4 W. 4, c. 1, s. 33.

In cases of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser.

32. In every case of a concealed fraud, the right of any
person to bring a suit in equity for the recovery of any land or
rent of which he, or any person through whom he claims, may
have been deprived by such fraud, shall be deemed to have
25 first accrued at, and not before the time at which such fraud
shall, or with reasonable diligence might have been first known
or discovered. 4 W. 4, c. 1, s. 34.

In cases of fraud no time shall run whilst the fraud remains concealed.

33. Nothing in the last clause contained shall enable any
owner of lands or rents to have a suit in equity for the re-
30 covery of such lands or rents, or for setting aside any convey-
ance of such lands or rents, on account of fraud against any
bona fide purchaser for valuable consideration, who has not
assisted in the commission of such fraud, and who, at the time
that he made the purchase did not know and had no reason
35 to believe that any such fraud had been committed. 4 W. 4,
c. 1, s. 34.

Unless in the case of *bona fide* purchaser for value without notice.

34. Nothing in this Act contained shall be deemed to
interfere with any rule or jurisdiction of Courts of Equity in
refusing relief on the ground of acquiescence, or otherwise,
40 to any person whose right to bring a suit may not be barred by
virtue of this Act. 4 W. 4, c. 1, s. 35.

Saving the jurisdiction of Courts of Equity on the ground of acquiescence or otherwise.

PRESCRIPTION IN CASES OF EASEMENTS.

35. No claim which may be lawfully made at the Com-
mon Law by custom, prescription or grant to any profit or
46 benefit

Certain claims not to be de-

feated by
shewing only
that the enjoy-
ment began
more than 30
years ago.

benefit to be taken and enjoyed from or upon any land of Our Sovereign Lady the Queen, Her Heirs or Successors, or of any Ecclesiastical or Lay person or body corporate, except such matters or things as are herein specially provided for, and except rent and services, shall, where such profit or benefit shall have been actually taken and enjoyed by any person claiming right thereto, without interruption for the full period of thirty years, be defeated or destroyed by shewing only that such profit or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such profit or benefit shall have been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. 10, 11 V. c. 5, s. 1.

Indefeasible if
enjoyed over
60 years.

Right of way
or water not
to be defeated
by shewing
only that it
began more
than 20 years
ago.

36. No claim which may lawfully be made at the Common Law by custom, prescription or grant to any way or other easement, or to any water-course, or the use of any water to be enjoyed or derived upon, over or from any land or water of Our said Lady the Queen, Her Heirs or Successors, or being the property of any Ecclesiastical or lay person or body corporate when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by shewing only that such way or other matter was first enjoyed at any time prior to the period of twenty years, but nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated, and where such way or other matter as herein last before mentioned shall have been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible unless it shall appear that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. 10, 11 V. c. 5, s. 2.

Access and use
of light enjoy-
ed for 20 years
indefeasible.

37. When the access and use of light to or for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. 10, 11 V. c. 5, s. 3.

Exception.

How the
terms shall be
calculated and
what acts only
shall be an in-
terruption to

38. Each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate, shall have been or shall be brought into question; and no act or other matter shall be deemed

deemed an interruption within the meaning of this Statute, unless the same shall have been, or shall be, submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorizing the same to be made. 10, 11 V. c. 5, s. 4.

39. In all actions upon the case and other pleadings wherein the party claiming may now by law allege his right generally without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient, and if the same shall be denied, all and every the matters in this Act mentioned and provided which shall be applicable to the case shall be admissible in evidence to sustain or rebut such allegation; and in all pleadings to actions of trespass, and in all other pleadings wherein before the passing of this Act it would have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed for and during such of the periods mentioned in this Act as may be applicable to the case, and without claiming in the name or right of the owner of the fee as is now usually done: and if the other party shall intend to rely on any proviso, exception, incapacity, disability, contract, agreement or other matter hereinbefore mentioned, or on any cause or matter of fact or of law, not inconsistent with the simple fact of enjoyment, the same shall be specially alleged and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general traverse or denial of such allegation. 10, 11 V. c. 5, s. 5.

What allegation by the party claiming shall be sufficient.

What proof admitted for or against such allegation.

40. In the several cases mentioned in and provided for by this Act, of claims to lights, ways, water courses or other easements, no presumption shall be allowed or made in favor or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as may be applicable to the case and to the nature of the claim. 10, 11 V. c. 5, s. 6.

No presumption admissible on proof of enjoyment for a greater period than that required prescription.

DISABILITIES AND EXCEPTIONS.

41. If at the time at which the right of any person to make an entry or distress, or bring an action to recover any land or rent, shall have first accrued, as aforesaid, such person shall have been an infant under coverture, an idiot, lunatic, of unsound mind or absent from this Province, then such person, or the person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent, at any time within ten years next after the time at which the person to whom such right shall have first accrued,

Persons under disability of infancy, lunacy, coverture or absence from the Province, and their representatives, to be allowed ten years from the termination of

their disability or death. as aforesaid, shall have ceased to be under any such disability, or shall have died, (which shall have first happened.) 4 W. 4, c. 1, s. 26.

But no action &c., shall be brought forty years after the right of action accrued.

42. But no entry, distress or action, shall be made or brought by any person who, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years, or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired. 4 W. 4, c. 1, s. 29.

No further time to be allowed for a succession of disabilities.

43. When any person shall be under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the said period of twenty years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person. 4 W. 4, c. 1, s. 30.

When the right to an estate in possession is barred the right of the same persons to future estates shall also be barred.

44. When the right of any person to make an entry or distress, or bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession shall have been barred by the determination of the period hereinbefore limited, which shall be applicable in such case, and such person shall, at any time during the said period, have been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action, shall be made or brought by such person, or any person claiming through him, to recover such land or rent in respect of such other estate, interest, right or possibility, unless in the mean time such land or rent shall have been recovered by some person entitled to an estate, interest or right, which shall have been limited or taken effect after or in defeasance of such estate or interest in possession. 4 W. 4, c. 1, s. 30.

Time during which a party could not act not to be computed against him.

45. The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in the preceding section of this Act, may be an infant, idiot, *non compos mentis*, *feme-covert*, or tenant for life, or during which any action or suit may be pending, and which shall be diligently

gently prosecuted until abated by the death of any party or parties thereto, shall be excluded in the computation of the period hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and inde-
5 feasible. 10, 11 V. c. 5, s. 6.

46. When any land or water upon, over or from which any such way or other easement water-course or run of water may be enjoyed or derived, or may be held under or by virtue of any term of life or any term of years exceeding three years from
10 the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned during the continuance of such term shall be excluded in the computation of the said period of forty years, in case the claim shall within three years next after the end, or sooner determination of such
15 term, be resisted by any person entitled to any reversion expectant on the determination thereof. 10, 11 V. c. 5, s. 7.

47. Nothing in this Act shall support or maintain any claim to any profit or benefit to be taken or enjoyed from or upon any land of Our Sovereign Lady the Queen, Her Heirs
20 and Successors, or to any way or other easement, or to any water-course or the use of any water to be enjoyed or derived upon, over or from any land or water of Our said Lady the Queen, Her Heirs and Successors, unless such land, way, easement or water-course or other matter shall lie and be situate
25 within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by proper authority. 10, 11 V. c. 5, s. 8.

INTERPRETATION CLAUSE.

48. The words and expressions in this Act mentioned, which in their ordinary signification have a more confined or a
30 different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, that is to say: the word "land," shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in
53 the purchase of land, (and to chattels and other personal property transmissible to heirs,) and also to any share of the same hereditaments and properties, or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry
40 or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, shall be in possession, reversion, remainder or contingency; and the words "the purchaser," shall mean the person who last acquired the land otherwise than by
45 descent or than by any partition, by the effect of which the land shall have become part of or descendible, in the same manner as other land acquired by descent; and the expression "the person

person last entitled to land," shall extend to the last person
 who had a right thereto, whether he did or did not obtain the
 possession or the receipt of the rents and profits thereof;
 and the word "assurance," shall mean any deed or instrument
 (other than a will) by which any land shall be conveyed or 5
 transferred at law or in equity; and the word "rent," shall ex-
 tend to all annuities and periodical sums of money charged
 upon or payable out of any land; and "the person through
 whom another person is said to claim," shall mean any person
 by, through or under, or by the act of whom the person so 10
 claiming became entitled to the estate or interest claimed, as
 heir, issue, in tail, tenant by the courtesy of England, tenant
 in dower, successor, special or general occupant, executor, ad-
 ministrator, legatee, husband, assignee, appointee, devisee or
 otherwise. 4 W. 4, c. 1, s. 59. 15

CAP. XCVI.

An Act respecting the Registration of Deeds, Wills, Judgments and Decrees in Chancery.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. In the construction of this Act, the word "Instrument," shall include every deed, conveyance, assurance and other instrument whereby lands or real estate may be transferred, disposed of, or affected, the word "Land" shall include lands, tenements, hereditaments and real estate, and the word "Will" shall include every devise whereby lands are disposed of, or affected, and the word "Affidavit" shall include Affirmation. 9 V. c. 34, s. 10.

Interpretation clause.

2. There shall be a separate Registry Office in every County and Union of Counties in Upper Canada, wherein at present a separate Registry Office is established and whenever any County is separated from a Union of Counties, or a new County is formed there shall be a separate Registry Office established therein. 9 V. c. 34, s. 3—16 V. c. 187, s. 4—12 V. c. 78, s. 19.

A Registry Office to be kept in each County in Upper Canada.

3. Every Registry Office shall be kept by a Registrar appointed by the Governor, under the Great Seal of the Province, and the Governor shall in like manner fill up any vacancy occurring by the death, resignation, removal or forfeiture of any Registrar.

A Registrar to be appointed by the Governor under the Great Seal.

REGISTRAR.

4. Every Registrar in Office when this Act takes effect, is hereby continued in his Office, subject to the laws respecting the same.

Registrar continued in office.

5. In the Commission of every Registrar a convenient place shall be named where the Registry Office is to be held, until otherwise ordered. 9 V. c. 34, s. 3.

Place where office kept to be named in the commission.

6. Whenever any Registry Office appears to the Governor, to be inconveniently situated he may by Proclamation order the same to be removed to any other place in the County. 9 V. c. 34, s. 30.

If office inconveniently situated, Governor may remove it.

7. Until the establishment of additional Registry Offices, all Deeds, Wills and Memorials, Instruments, Judgments, Decrees and proceedings, for the Registry of which provision is by law made, may be Registered in the present Offices, and with the same effect as at present. 16 V. c. 187, s. 4.

In what Offices Deeds, &c., to be registered

8.

Fire proof
offices and
vaults to be
provided for
Registry Offi-
ces.

8. Safe and proper Fire proof Offices and Vaults, shall be provided by the County Council in each and every County in Upper Canada, at the place where the Registry Office is to be kept, for the the keeping of all books, records and other papers belonging to the Office of Registrar, at the expence of 5 the County, not exceeding two hundred and fifty pounds, and the Registry Office shall from thenceforth be kept there. 9 V. c. 34, s. 19.

Registrar to
take an oath
of office.

9. Every Registrar, before he enters upon the execution of his office, shall be sworn before any two or more of the 10 Justices of the Peace for the County, in these words : 9 V. c. 34, s. 25.

Form.

" You swear that you will well, truly and faithfully perform
" and execute the office and duty that is directed and required
" by any Act of the Legislature of this Province, in registering 15
" Deeds, Memorials of Deeds, Conveyances, Wills and Judg-
" ments, within the County of so long as you
" continue in the said office, and that you have not given or
" promised, directly nor indirectly, nor authorized any person
" to give any money, gratuity or reward whatsoever, for pro- 20
" curing or obtaining the said office for you. So help you God."

Registrars to
enter into a
recognizance
with sureties.

10. Before any Registrar is sworn into Office, such Regis-
trar and two or more sufficient sureties shall inter into a Re-
cognizance in writing under their hands and seals to Her Ma-
jesty, in the penal sum of one thousand pounds, which sureties 25
shall be approved of by two or more Justices of the Peace for
the County, and such Recognizance shall be taken by the
same Justices, and shall be conditioned for the true and faith-
ful performance by the said Registrar of his duty in the execu-
tion of his office, in all things directed and required by law, 30
and shall by the said Justices within six months after the date
thereof, be transmitted into the Court of Queen's Bench for
Upper Canada, to remain amongst the Records of the said
Court. 9 V. c. 34, s. 26.

Provisions in
case of death
of Registrar.

11. In case of the death or resignation of a Registrar, and 35
in case within the space of one year thereafter no mis-conduct
appears to have been committed by him in his Office, then at
the end of such year the Official recognizance hereinbefore re-
quired shall be void. 9 V. c. 34, s. 28.

Registrar may
nominate a
Deputy.

12. The Registrar may nominate a Deputy in his office, and 40
remove him, and appoint another in his place, whenever he
thinks it necessary ; and in case of the death, resignation, re-
moval or forfeiture of office of the Registrar, the Deputy Registrar
may do and perform all and every act, matter and thing neces-
sary for the due execution of the said office, until a new ap- 45
pointment is made. 9 V. c. 34, s. 5 & 26.

13.

13. The Deputy before he enters on the execution of his office, shall take the same oath appointed to be taken by the Registrar, before two or more Justices of the Peace for the County. 9 V. c. 34, s. 26. Deputies to be sworn.

INSTRUMENTS AND PROCEEDINGS THAT MAY BE REGISTERED.

14. The following instruments and proceedings may be registered at the election of the party concerned, viz : What Deeds and Instruments may be registered.

1. Deeds, Conveyances and Assurances of or in any wise affecting in law or equity any lands in Upper Canada, executed after Letters Patent of such lands have been issued ; 9 V. c. 34, s. 6. Deeds.

2. Powers of Attorney under which any such Deed, Conveyance or Assurance has been executed ; 16 V. c. 187, s. 7. Powers of Attorney.
18 V. c. 127, s. 5.

3. Wills and Devises of or affecting any such lands, the testator being dead ; 9 V. c. 34, s. 6. Wills.

4. Judgments entered up in a suit or action in any Court of Record or County Court for Upper Canada, and in Division Courts if exceeding Ten pounds ; 9 V. c. 34, s. 13,—19 V. c. 90, s. 7,—13, 14 V. c. 53, s. 58. Judgments.

5. Decrees of foreclosure and all other decrees affecting any title or interest in land, also decrees or orders of the Court of Chancery for the payment of money costs or charges ; 18 V. c. 127, s. 4,—20 V. c. 56, s. 10. Decrees.

6. The filing of a Bill or taking of proceedings in Chancery whereby any title or interest in lands in Upper Canada may be brought in question ; 18 V. c. 127, s. 3. Bill in Chancery.

15. Deeds, Conveyances, Assurances, powers of Attorney and Wills are to be registered through memorials thereof ; and How Deeds, registered.

Sheriff's Deeds of lands sold for taxes, Judgments, Decrees and Proceedings in Chancery through certificates thereof. 9 V. c. 34, s. 7. How Sheriff's Deeds registered.

REQUISITES OF A MEMORIAL TO BE REGISTERED.

16. Every Memorial shall be in writing—

1. It shall contain the date of the Instrument or Will, the names and additions of all the parties to the instrument or of the Devisor or Testatrix of the will as set forth in the Instrument or Will ; 9 V. c. 34, s. 8. Memorial in writing, to contain—Date, &c.

- Names of witnesses; 2. The names and additions of all the witnesses to the Instrument or Will and of their places of abode respectively; 9 V. c. 34, s. 8.
- Description of land as in the Deed. 3. Shall mention the lands contained in the Instrument or Will, and the Townships or Parishes in the County or Riding where the lands are situate in the manner in which the same are described in the Instrument or Will or to the same effect. 9 V. c. 34, s. 8. 5
- Memorial of Deed, &c., to be under the hand of the grantor or grantees, and attested by two witnesses, &c. 17. The Memorial of an instrument other than a power of Attorney, shall be under the hand and seal of the grantor or of one or more of the grantors, or of the grantee or of one or more of the grantees his or their heirs, executors or administrators, guardians or trustees, and shall be attested by two witnesses one of whom shall be also a witness to the execution of the Instrument. 9 V. c. 34, ss. 7, 8. 15
- Memorial of powers of Attorney to be under the hand of the constituent or of the constituted. 18. The Memorial of a power of Attorney shall be under the hand and seal of the constituent or of the constituted, and shall be attested by two witnesses, one of whom shall be also a witness to the power of Attorney. 16 V. c. 187, s. 7,—18 V. c. 127, s. 5. 20
- Memorials of Wills to be under the hand of one of the devisees. 19. The Memorial of a will shall be under the hand and seal of the Devisee, or of one or more of the Devisees, his or their executors, administrators, guardians or trustees, and shall be attested by two witnesses, one of whom in the case of wills made and published out of Upper Canada, shall be also a witness to the Will. 9 V. c. 34, ss. 7, 8, 10. 25

MODE OF PROOF FOR REGISTRATION.

- Instruments or Wills, how proved. 20. In the case of an Instrument or Will, one of the witnesses to the memorial who is also a witness to the instrument, and in the case of a Will, one of the witnesses to the memorial thereof, or to the Will and Memorial (*as the case may be*) shall make an affidavit wherein he shall, in the case of an instrument, swear to the execution of the same and of the memorial thereof, and the place of such execution, and in the case of a Will, to the execution of the memorial thereof, or to execution of the Will and Memorial, (*as the case may be.*) 9 V. c. 34, s. 10. 30 35
- Deeds, &c., executed within Upper Canada, on what evidence to be registered. 21. When the instrument or will has been executed or made and published within Upper Canada, the affidavit may be sworn before the Registrar or Deputy Registrar of the County in which the lands lie, a Judge of any of the Superior Courts of Law or Equity in Upper Canada, a Commissioner authorized by any of such Courts to take affidavits in Upper Canada, or by a Judge of a County Court in Upper Canada within his County; and when the Instrument or Will has been executed 45 or

or made and published without Upper Canada, the affidavit may be sworn before any of the persons aforesaid, or before the Mayor or Chief Magistrate of any City, Borough or Town corporate in Great Britain or Ireland, and certified under the
 5 Common Seal of such City, Borough or Town corporate, or before a Judge of any of the Superior Courts of Common Law or Equity, or Circuit Court in Lower Canada, or before a Commissioner authorized by any of the Superior Courts of
 10 Common Law for Upper Canada, to take affidavits in Lower Canada, or before a Judge of the Supreme Court of any Colony belonging to the Crown of Great Britain, or before the Mayor of any City, Borough or Town corporate in any foreign Country, or any Consul or Vice Consul of Her Majesty resident therein.
 9 V. c. 34, s. 10,—18 V. c. 127, s. 5, 12 V. c. 77, s. 2,—19 V. c. 88, s. 2.

15 **22.** Where the Proof is made without Upper Canada, it may be either by affidavit or by a declaration, where by the law a declaration in writing may be substituted for an affidavit.
 9 V. c. 34, s. 10,—18 V. c. 127, s. 5.

If without
Upper Ca-
nada.

23. The memorial of a Deed, Conveyance or Will made
 20 and executed or published out of Upper Canada, shall be identified as that referred to in the affidavit, by a certificate under the hand of the person before whom the affidavit is made to be indorsed on the Deed, Conveyance or Will. 9 V. c. 34, s. 10.

And how iden-
tified.

24. When the witnesses to any Deed or Will, have died, or
 25 are permanently resident out of this Province, the Grantee, his Heirs, Executors, Administrators, Guardians or Trustees, or their Assignee, may make proof before the Justices in General Quarter Sessions assembled in any County of Upper Canada, of the execution of such Deed or Will, and upon a certificate, signed by
 30 the Chairman and witnessed by the Clerk of the Peace, that the majority of the Magistrates present in such Sessions, are satisfied by the proof adduced of the due execution of the said Deed or Will, the Registrar or his Deputy shall record such Deed or Will, and certificate, and shall certify the same. 9 V.
 35 c. 34, s. 11.

Cases in which
the witnesses
may be dead
or reside per-
manently out
of the Pro-
vince provided
for.

25. The Seal of any Corporation affixed to any Deed, Me-
 memorial or Instrument in writing, shall of itself be sufficient evi-
 40 dence of the due execution of such Deed, Memorial or Instru- ment in writing by such Corporation, for all purposes respect- ing the registering thereof, and no further evidence or verifica- tion of such execution shall be required for the purpose of regis-
 try. 9 V. 34, s. 29.

Seal of a Cor-
poration to be
sufficient evi-
dence to jus-
tify the regis-
tration of
their Deed.

26. Any Letter or Power of Attorney from the grantor or
 45 grantors under which an Instrument is executed may be regis- tered in the same manner as a Deed may be Registered. 16
 V. c. 187, s. 7,—18 V. c. 127, s. 5.

Memorials
of letters of
Attorney may
be registered,
and how.

27.

The Registrar to register Instruments and Wills on production thereof with memorials thereof duly proved. **27.** The Registrar or Deputy Registrar of the County, in which the lands are situate, shall upon the production to him of the Instrument, or Will or probate thereof, Memorial and Affidavit or declaration of execution, enter the memorial in the Register Book, and shall file the memorial and affidavit or declaration of execution, and immediately after such entry shall endorse a certificate on every such Deed or Will, or Probate thereof, and shall therein mention the certain day, hour and time on which such memorial has been entered and registered, expressing also in what book, page and number the same has been entered, and the said Registrar or his Deputy shall sign the said certificate when so endorsed, which certificate shall be taken and allowed as evidence of such respective registries in all Courts of Record whatsoever. 9 V. c. 34, s. 8. ~

Register books and memorials to be numbered, and date of registry noted. **28.** Every page of the Register Book, and every memorial entered therein shall be numbered, and the day of the month and the year and hour or time of the day when registered, shall be entered in the margins of the said Register Books and of the memorial. 9 V. c. 34, s. 8.

The Registrar to keep alphabetical list, &c., with reference to the numbers of the memorials alphabetical list, &c. **29.** Every Registrar shall keep an alphabetical calendar of all Townships and parishes within the County or Counties, Riding or Ridings, with reference to the number of every memorial that concerns the lands, tenements or hereditaments in every Township or Parish respectively, and of the names of the parties mentioned in the memorials; and the said Registrar shall enter the said memorials in the same order in which they respectively come to his hand. 9 V. c. 34, s. 8.

When a Deed relates to lands in several localities in the same county, only one memorial need be filed. **30.** When any Deed, Will or other Instrument, embraces different lots or parcels of land situate in different localities in the same County, it shall only be necessary to furnish one Memorial of such Deed, Will or other Instrument, and such Memorial shall be copied into the Registry Book for the City, Town, Township or place in which the different parcels or lots of land are situate, in the same manner and to the same extent only as if a separate Memorial had been furnished in relation to the lands situate within each such City, Town, Township or place respectively, and the Registrar shall make the necessary Entries and Certificates accordingly: but only one Certificate of Registry shall be allowed or charged for, and in counting folios to be charged for, the marginal certificates, notes or references shall not be included. 16 V. c. 187, s. 5.

Registrar to register Sheriff's Deeds of land sold for taxes. **31.** A Sheriff's Deed made under authority of Law of land sold for taxes before the first day of January one thousand eight hundred and fifty-one, may be registered upon the certificate of the Sheriff under his hand and seal of office, stating the name of the purchaser, the sum paid, the number of acres sold, the lot or tract of which they form a part, and the date of the Sheriff's Deed,

Deed, and such certificate may comprise a Schedule of any number of such Deeds, and the Registrar shall receive such certificate from the Sheriff in place of a memorial and shall, on production of the Sheriff's Deed, enter on record a transcript thereof which shall be deemed sufficient registry. 16 V. c. 182 s. 66, 6 G. 4. c. 7.

32. A Sheriff's Deed of land sold for taxes after the last above mentioned day may be registered upon the like certificate given by the Sheriff to the purchaser signed and sealed by the Sheriff as above provided, and containing the above mentioned particulars, which certificate shall be deemed a memorial, and the Registrar upon the production of such certificate and the Deed, shall register the same and grant a certificate of the registry. 16 V. c. 182, s. 65.

On what evidence Sheriff's Deeds for land sold for taxes, &c., to be registered.

33. When any Judgment is entered up in any suit or action in a Court of record in Upper Canada, the Plaintiff or Defendant in such Action, or his Attorney, may obtain a certificate from the Clerk of the Court in which such Judgment is obtained, signed by the Clerk and under the seal of the Court.

Certificate of judgment binding lands, how obtained.

20 FORM.

" In the Court of (as the case may be,) I hereby certify that Judgment was entered up between A. B., Plaintiff, and C. D., Defendant, on the day of in a plea of for pounds, debt (or damages) and pounds, costs.

" E. F., Clerk."

And for such certificate the Clerk may charge two shillings and six pence.

34. The party obtaining such certificate, or his Attorney, may carry the said certificate to the Registrar or Deputy Registrar of the County wherein the lands lie which belong to the party against whom such judgment has been entered, and such Registrar or Deputy upon the receipt thereof, signed and sealed as aforesaid, shall register the same; and the registry thereof shall be deemed a registry of the judgment for the purposes of this Act. 9 V. c. 34, s. 13 & 7.

Such certificate may be registered—effect of such registration.

35. When the Clerk of a County Court enters up any Judgment therein, he may give to the party on whose behalf it is entered, or to his legal representative, a certificate signed by him of such Judgment containing the like particulars as are required in certificates of Judgments from the Superior Courts, which certificate may be registered in the registry office of any County in Upper Canada, and when registered shall have the like force and effect in binding and operating as a charge upon lands, tenements and hereditaments of the judgment debtor in such County as certificates of Judgments from the Superior Courts. 19 V. c. 90, s. 7.

Certificate of Clerks of County Courts may be registered in any County.

Certificates of Clerks of Division Courts to have the same effect.

36. Any party obtaining a Judgment in any Division Court exceeding ten pounds may, at any time after fourteen days from the day of giving judgment, obtain a certificate of such judgment from the Clerk of such Division Court, in the form used in the Superior Courts as near as circumstances will permit, which certificate shall, on the request of the party obtaining the same be registered in the same manner, and on payment of the same fees to the Register as are paid upon certificates of the Judgments of the Superior Courts, and on such registry shall bind lands to the same extent as they would have been bound had the judgment been rendered in any of the Superior Courts. 13, 14 V. c. 53, s. 58

How decrees of foreclosure, &c., shall be registered.

37. Every decree of foreclosure, and every other decree in Chancery affecting any title or interest in land, may at the instance of any person, be registered in the Registry Office of the County where the land is situate, on a certificate given by the registrar of the said Court, stating the substance and effect of such decree, and the lands affected thereby. 15 V. c. 127, s. 4.

Registration of decree or order for payment of money in order to bind lands.

38. Every decree or order of the Court of Chancery, ordering money costs, charges or expenses to be paid by Instrument or otherwise to any person or into the Court, or to the credit of a cause in the Court or otherwise, may be registered in the Registry Office of the County, on the certificate of the Registrar or Deputy Registrar of the said Court, stating the title of the cause or matter in which the decree or order is made, the date of the decree or order and the amount of money thereby, or by any report made in pursuance thereof, ordered or decreed to be paid which certificate shall be entered and recorded by the County Registrar in the same books and in the same manner as certificates of Judgments at law. 20 V. c. 56, s. 10.

Court may confine the effect of the registration to specified property proved to be sufficient.

39. The Court of Chancery, upon being satisfied by proof that some specified part of the real estate of any person ordered by any decree or order of the said Court to pay any sum or sums of money, will be sufficient security for the payment of such sum or sums of money, may direct either in the same decree or order or by a subsequent decree or order, that the charge created by any such decree or order shall be confined to such part of the real estate of the person or persons so liable, and that the residue of the real estate of such person shall be unaffected by such registration, and in case such restriction is contained in the original decree or order, the Registrar's or Deputy Registrar's said certificate shall state the same, and if such restriction is contained in some subsequent order, the Registrar's or Deputy Registrar's certificate thereof may be registered by either party. 20 V. c. 56, s. 11.

What only shall be deemed

40. The filing of any bill, or the taking of any proceeding, in the Court of Chancery in Upper Canada, in which bill or proceeding

proceeding any title or interest in lands is brought in question, shall not be deemed notice of such bill or proceeding to any person not being a party to such bill or proceeding, unless and until a certificate given by the Registrar of the said Court of Chancery to some person demanding the same, in the form mentioned in this section, has been registered in the Registry Office of the County in which the lands are situate the title or interest in which is questioned in such bill or proceeding. 18 V. c. 127, s. 3.

ed notice of proceedings in Chancery by which title or interest in lands shall be called in question.

10

FORM.

"I certify that in a suit or proceeding in Chancery between A. B. and C. D., some title or interest is called in question in the following lands, (*stating them*)."

But no such certificate shall be required to be registered in any suit or proceeding for foreclosure of a registered mortgage. 18 V. c. 27, s. 3.

As to suit for foreclosure.

EFFECT OF REGISTERING OR OMITTING TO REGISTER.

41. After any memorial has been registered, as in this Act provided, every Deed and Conveyance made and executed of the lands, tenements or hereditaments, or any part thereof, comprised or contained in such memorial, shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, unless a memorial thereof be registered in the manner hereby directed, before the registering of the memorial of the Deed or Conveyance under which such subsequent purchaser or mortgagee may claim; and every devise by Will of the lands, tenements or hereditaments or of any part thereof, contained in any memorial registered as aforesaid, made and published after the registering of such memorial, shall be adjudged fraudulent and void against a subsequent purchaser or mortgagee for valuable consideration, unless a memorial of such Will be registered in the manner herein directed; and a memorial of any further mortgage (whether legal or equitable) to a first mortgagee, shall in like manner be registered before it can prevail against a second mortgagee of the whole or any part of the lands, tenements, hereditaments and premises comprised in the first mortgage. 9 V. c. 34, s. 6.

Deeds not registered to be void as against subsequent purchasers whose deeds are registered.

42. This Act shall not extend to any lease for a term not exceeding twenty-one years, where the actual possession goeth along with the lease. 9 V. c. 34, s. 18.

Act not to extend to certain leases.

43. All Wills, or the Probates thereof, recorded within the space of twelve months after the death of the Devisor, Testator or Testatrix, shall be as valid and effectual against subsequent purchasers, as if the same had been recorded immediately after such

Wills may be registered with effect within twelve

months after
the death of
the testator.

such death : And in case the Devisee, or person interested in the lands, tenements or hereditaments, devised in any such Will as aforesaid, is disabled from recording the same within the said time by reason of the contesting of such Will, or by any other inevitable difficulty without his wilful neglect or default, then the recording the same within the space of twelve months next after his attainment of such Will or Probate thereof, or the removal of the impediment aforesaid, shall be a sufficient recording within the meaning of this Act. 9 V. c. 34, s. 12. 5 10

Separate book
for registry
of judgments.

44. The registry of any deed, conveyance or other instrument, will, judgment, decree or order, affecting any lands or tenements that may be registered under this or any former Act, shall in Equity constitute notice of such deed, conveyance, will or judgment, to all persons claiming any interest in such lands or tenements subsequent to such registry. 13, 14 V. c. 63, s. 8. 15

Certificates of
judgments to
binding lands,
how obtained
and registered
and effect
thereof.

45. Every judgment entered up against any person in any Court of Record in Upper Canada, before the first day of January, one thousand eight hundred and fifty-one, and registered since that day or hereafter registered in any County in manner aforesaid, shall affect and bind all lands and tenements therein, belonging to the person against whom the Judgment has been rendered, in like manner as other judgments registered under this Act. 20 25

How register-
ed judgment
shall affect
lands, &c.

46. A judgment entered up against any person in any Court of record in Upper Canada, after the first day of January, one thousand eight hundred and fifty-one, shall so soon as a certificate of such judgment has been duly registered in any county operate as a charge upon all lands, tenements and hereditaments in that County, of, or to which such person was at the time of registering such judgment, or at any time afterwards became seized, possessed or entitled for any estate or interest whatever at Law or in Equity, whether in possession, reversion, remainder or expectancy, or over which such person had at the time of registering such judgment, or at any time afterwards any disposing power, which he might, without the assent of any other person, exercise for his own benefit, and shall be binding upon the person against whom judgment has been so entered up and registered, and against all persons claiming under him after such judgment and registry, and shall also be binding as against the issue of his body, and all other persons whom he might without the assent of any other person cut off and debar from any remainder, reversion or any other interest in or out of the said lands, tenements or hereditaments ; and every judgment-creditor shall have such and the same remedies in a Court of Equity against the hereditaments so charged by virtue of this Act or any part thereof, as he would be entitled to in case the person against whom such judgment was so entered up and 30 35 40 45 and

Remedies of
judgment
creditor.

and registered had power to charge the same hereditaments and had by writing under his hand agreed to charge the same with the amount of such judgment-debt and interest ; and all such judgments shall be claimed and taken to be valid and effectual according to the priority of registering such certificates : but nothing herein contained shall be deemed to alter or affect any doctrine of Courts of Equity whereby protection is given to purchasers for valuable consideration without notice. 13, 14 V. c. 63, s. 2.

As to notice.

10 **47.** A decree or order of the Court of Chancery for the payment of money, costs, charges or expenses when registered shall have the same effect as a registered judgment. 20 V. c. 56, s. 10.

Decrees and orders to affect lands in like manner.

15 **48.** No unregistered judgment shall take effect against a prior judgment registered, unless the party who has such registered judgment has for one year next after the entry of such judgment neglected to put his execution against lands in the hands of the proper Sheriff. 13, 14 V. c. 63, s. 1—9 V. c. 34, s. 13.

How far registered judgments protected against unregistered judgments.

20 **49.** After any Grant from the Crown of lands in Upper Canada, and Letters Patent thereof issued, every deed or devise executed after the First day of January one thousand eight hundred and fifty-one, whereby the said lands, tenements or hereditaments may be in any wise affected in Law or Equity, shall be adjudged fraudulent and void, not only against any subsequent purchaser or mortgagee for valuable consideration, but also against a subsequent judgment-creditor or creditor by decree or order in Chancery, who has registered a certificate of his judgment, decree or order, unless a memorial of such deed or devise or a certificate of such judgment be registered as by this Act is specified before the registering of the memorial of the deed or devise or certificate of judgment, decree or order, under which such subsequent purchaser, mortgagee or judgment-creditor or creditor by decree or order, claims subject nevertheless, as to devisees, to the provisions contained in the twenty-first section of this Act : but nothing herein contained shall affect the rights of equitable mortgagees as now recognized in the Court of Chancery in Upper Canada. 13, 14 V. c. 63, s. 3.

All Deeds, devises, &c., executed after 1st January, 1851, must be registered.

40 **50.** No judgment of any Court of Record in Upper Canada shall create a lien or charge upon any lands, tenements or hereditaments within the same, or upon any interests in lands that are now or may at any time hereafter be liable to seizure or sale on any execution against lands, until such judgment has been in the manner required by law for registering judgments, registered in the Registry Office of the County or Union of Counties in which such lands are situate. 18 V. c. 127, ss. 1, 2.

Judgments to give no lien or charge on lands until registered.

Judgment creditor not registered need not be a party to foreclosure. **51.** No judgment-creditor shall be a necessary party to any bill for the foreclosure of any mortgage, so as to prevent a mortgagee obtaining a complete title by such foreclosure, unless such judgment-creditor has registered his judgment in such County Registry Office as aforesaid, before the filing of the bill of such mortgage for such foreclosure. 18 V. c. 127, s. 2. 5

Deeds, &c., to take priority according to the date of registry. **52.** And whereas the doctrine of tacking has been found to be productive of injustice, and requires correction : every deed executed after the first day of January one thousand eight hundred and fifty-one, a memorial whereof has been or may be duly registered, and every judgment recovered after the date last aforesaid, a certificate whereof has been or may be duly registered, shall be deemed effectual both in Law and in Equity according to the priority of the time of registering such memorial or certificate ; and when no memorial of such deed has been duly registered, then such deeds shall be deemed effectual, both at Law and in Equity, according to the priority of time of execution. 13, 14 V. c. 63, s. 4. 10 15

THE MANNER OF REGISTERING SATISFACTION OF MORTGAGES AND JUDGMENTS.

Affidavits of payment of purchase money. **53.** Any affidavit of the due execution of any certificate of payment of mortgage money executed, published or made in Lower Canada may be sworn before any Judge or Commissioner mentioned in the twenty-first section of this Act. 20

54. When any registered Judgment or Mortgage has been satisfied, the Registrar or his Deputy— 25

How registered mortgages may be discharged. 1. In the case of a mortgage, on receiving from the person entitled to the amount of such Mortgage, or his Attorney, a certificate in the form in the Schedule to this Act marked A duly proved by the oath of a subscribing witness, in the same manner as herein provided for the proof of Deeds and other instruments affecting lands ; 30

How registered judgments may be discharged. 2. In the case of a Judgment, on receiving a satisfaction piece under the seal of the Court in which such Judgment was entered signed by the Clerk thereof, may write the word "discharged," and affix his name in the margin of the Register wherein the said Mortgage or Judgment is registered, which shall be deemed a discharge thereof ; and such certificate or satisfaction piece shall be filed and numbered and entered on the margin of the Register under the word "discharged." And every such certificate of payment or performance of the condition of any Mortgage by the Mortgagee, his Heirs, Executors, Administrators or Assigns, at whatsoever time given, when so registered, shall be as valid and effectual in law, as a release of such Mortgage, and as a reconveyance of 35 40

of the original estate of the Mortgagor therein mentioned : and shall defeat any title vested in the Mortgagee, his Heirs, Executors, Administrators or Assigns, as such Mortgagee but not any other title whatsoever. 9 V. c. 34, s. 24,—10 and 5 11 V. c. 16, ss. 1 & 2.

55. Any judgment registered against land shall and may be discharged from the registry of the County where the same is registered, on the production to the Registrar of such County of a certificate signed by the judgment-creditor, or, if more than one, by any one of them, his executors, administrators or assigns, to the following effect : Registry of judgment may be discharged by certificate of judgment creditor.

“ I do hereby certify that a judgment rendered in favor of A. B. against C. D., for the sum of £ , and registered in the Registry Office of the County of , has been discharged.” Form and proof of certificate.

And such certificate shall be proved to the Registrar by the affidavit of one subscribing witness who has witnessed the execution of such certificate, which affidavit may be taken before any person before whom an affidavit for the registry of any deed or other instrument can be taken : Provided always, that the registry of a judgment may also be discharged in any other manner provided by law. 20 V. c. 57, s. 20.

56. A Decree or Order of the Court of Chancery for the payment of money costs, charges or expenses, may be discharged in the same manner as a Registered Judgment. And decrees or orders in like manner.

57. Every judgment registered against land in any County shall in three years after such judgment has been registered, cease to be a lien or charge upon the land of the party against whom such judgment was rendered, or any one claiming under him, unless before the expiration of the said period of three years, such judgment has been re-registered ; and such lien or charge shall cease whenever the period of three years has at any time been allowed to elapse without a further re-registry. 20 V. c. 57, s. 19. Registration of judgment to bind lands only three years from registration, or one year from passing of this Act, unless registered.

DUTIES AND FEES OF REGISTRARS.

58. Every Registrar shall reside in the County, and shall keep his Office at the place named in his commission or appointed by Proclamation. Registrar to reside in County and keep his office in place named in his commission.

59. If any Registrar does not keep his office in the place appointed in his commission, or by proclamation, or, not having a fire-proof office and vaults, neglects or refuses to remove to the office provided for him by the County Council, at the time fixed by the Governor, or if the Registrar ceases to reside within the limits of the County of which he is Registrar or becomes If Registrar does not keep his office in the place appointed in his

commission or removes from the County or becomes wholly incapable for performing his duties, he shall be liable to be removed from his office. becomes by sickness or otherwise wholly incapable of discharging the duties of his Office, and if the Grand Jury at any Court of General Quarter Sessions of the County, on the evidence on oath of one or more competent witnesses, make a presentment of any of such facts respectively of which presentment the Clerk of the Peace shall forthwith forward a copy to the Governor, the Governor may in his discretion remove such Registrar. 9 V. c. 34, s. 19 & 20. 5

Hours and days at which the Registrars shall attend at the offices. **60.** The Registrar or his sufficient Deputy, shall attend at his office every day in the year (except Sunday, Christmas Day, New Year's Day, Good Friday, Ash Wednesday, Easter Monday and the Queen's Birth Day,) between the hours of ten in the forenoon and three in the afternoon, for the dispatch of all business belonging to the said office, and shall, when required, make searches concerning all memorials registered and concerning all Deeds, Wills or Judgments, decrees or orders recorded, and give certificates thereof under his hand if required by any person. 16 V. c. 187, s. 13,-9 V. c. 34, s. 16. 10 15

Treasurer of County to furnish register book for each Township, City and Town. **61.** The Treasurer of the County shall provide a fit and proper Register Book for each Township, reputed Township, City and Town, the limits whereof are defined by law; and all such Register Books shall be as nearly as may be of the like size and description as those heretofore furnished, and shall continue to be of one uniform size or nearly so, and from the time such books are so provided and received at the Registry office, the person who holds and executes the office of Register shall keep and cause to be used for that purpose a separate Register Book for and of each Township, reputed Township, City and Town, the limits whereof are defined by law within the County or Riding for which he holds office; and whenever any Registrar requires a new Registry Book, the same shall be furnished to him by the Treasurer on his application therefor, and all such books so furnished shall be paid for by the Treasurer out of the County Funds. If the Treasurer refuses or neglects to furnish such books within thirty days after the application of the Registrar therefor, the Registrar may provide the same and recover the cost thereof from the Municipality of the County. 16 V. c. 187, s. 3, 9 V. c. 34, s. 22. 20 25 30 35

Judge of County Court to give certificate. **62.** The Judge of the County Court of the County shall give a certificate respecting each Registry Book so furnished or provided in the form or to the effect in the Schedule to this Act annexed marked B. 16 V. c. 187, s. 3. 40

Registry to be deemed notice. **63.** The Registrar shall enter in a separate book to be kept for that purpose, the certificates of all judgments, decrees or orders brought to him for registration and prepare an Alphabetical Index thereto. 13, 14 V. c. 63, s. 9. 45

64. When any City, Town, Township, reputed Township or place theretofore making part of a County wherein a separate Registry Office is kept, is detached from such County and attached to or made part of another County for which a separate Registry Office is also kept, the Registrar of the County from which such localities are so detached, shall 16 V. c. 187, s. 1,—9 V. c. 34, s. 32.
1. Deliver to the Registrar of the County whereunto the same is attached that part of the Registry Book or Books which has been kept according to the statute for such City, Town, Township, reputed Township or place. 9 V. c. 34, ss. 22 & 32.
2. The original memorials of all deeds and wills of or relating to any lands within the same, and all plans or Maps of Town or Village lots within the same lodged according to law in his Office, and 9 V. c. 34, ss. 22 & 32,—18 V. c. 127, s. 6.
3. Also a statement of all titles to lands within such detached localities registered before separate Registry Books were kept for each Township or place, which statement shall set forth the dates of the Deeds, Wills and other registered documents affecting such lands and the particulars of the parcels of land to which they refer, and the names of the parties and witnesses thereto and shall be accompanied by an index thereto, which shall be considered as a part of the said statement, and
4. Such Registrar shall carefully compare such statement with the original entries in the Register Books in his office, and indorse a Certificate to that effect on the statement when furnishing the same, and 9 V. c. 34, s. 22 & 32.
5. Such Registrar shall moreover furnish therewith a statement of any Wills registered in any General Registry Book of Wills, and 9 V. c. 34, s. 22 & 32.
6. The Registrar receiving such Books and his successors shall keep the same among the Registry Books of his Office and deal with them in all respects in like manner as those originally supplied to and kept therein. 9 V. c. 34, s. 22 & 32.
65. Any Registrar who refuses to deliver such Books, plans or memorials as aforesaid, within three months after demand in writing therefor made upon him by the Registrar entitled to receive the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any Court of Oyer and Terminer and General Gaol Delivery shall forfeit his office and be liable to a fine in the discretion of such Court not exceeding one Hundred Pounds. 18 V. c. 127, s. 6.

When any place is detached from a County, such parts of the register books as relate to such place, shall be delivered to the Register of the County to which such place is attached.

The original memorials to be also transmitted.

Also a statement of titles entered before separate registry books were kept.

To be carefully compared.

Also a statement of Wills registered.

The Registrar receiving such books to keep the same safely.

Penalty for refusal after demand.

- Fees to Registrars in Upper Canada.** **66.** Every Registrar in Upper Canada shall be allowed the following fees, and no more, that is to say : 16 V. c. 187, s. 8.
- Affidavits of execution.** 1. For drawing Affidavit of Execution of Instrument and Memorial brought to be registered, if done by the Registrar or his Deputy, including swearing and all Certificates thereof, Two Shillings and Six Pence ; 5
- Recording Deeds.** 2. For recording every Deed, Conveyance, Will, Power of Attorney or Agreement, including all necessary Entries and Certificates, Six Shillings and Three Pence, but in case such Entries and Certificates exceed eight hundred words, at the rate of Eight Pence for every additional hundred words ; 10
- Sheriff's Deeds.** 3. For registering a Sheriff's deed, Three Shillings and Six Pence ;
- Certificates of judgment.** 4. For registering Certificate of Judgment, Two Shillings and Six Pence, and satisfaction thereof, Two Shillings and Six Pence ; 15
- suit.** 5. On registering any Certificates of a suit or proceeding in Equity, Two Shillings and Six Pence ; 18 V. c. 127, s. 7.
- Certificate of decree.** 6. On registering any Certificate of Decree, Five Shillings ; 20
- Certificate of payment of mortgage money.** 7. For entering Certificate of Payment of Mortgage Money, including all Entries and Certificates thereof, Two Shillings and Six Pence ;
- Affidavits of execution.** 8. Drawing Affidavit of the Execution thereof, including the swearing of the witness, when done by the Registrar or his Deputy, Two Shillings and Six Pence ; See No. 1. 25
- Searching records, &c.** 9. For searching Records relating to the title of any lot or parcel of land not exceeding four references, One Shilling and Three Pence, and One Shilling and Three Pence for every additional four distinct references, and so in proportion for every number of searches made ; Provided always, that in no case shall a general search into the title to any particular lot, piece or parcel of land exceed the sum of Ten Shillings ; 30
- Extracts.** 10. For every extract furnished by the Registrar, including Certificate, One Shilling and Three Pence, and where the same exceeds one hundred words, Nine Pence for every additional one hundred words contained in such Extract and Certificate. 16 V. c. 187, s. 8. 35
- Furnishing statements, &c.** 11. For furnishing statements required under the sixty-fourth Section of this Act to be paid by the County to which any City, Town, Township or place may be attached, the sum of Six Pence 40

Pence for every folio of one hundred words contained in any such statement so furnished. 14, 15 V. c. 5, s. 17.

67. The Registrar or his Deputy shall not be compelled to register any Deed, Conveyance, Will, Instrument, or Certificate unless the fees authorized by this Act are paid thereon. 9 V. c. 34, s. 27.

No Deed, &c., need be registered until the fees thereon be paid.

68. Every Registrar shall keep a book in which shall be entered all the Fees and Emoluments received by him by virtue of his office, shewing separately the sums received for registering Memorials, Certificates and other Documents, and for searches, and he shall make a Return of such Fees and Emoluments in detail to the Legislature annually. 16 V. c. 187, s. 9.

Registrar to keep books of receipts of fees, &c., and make returns thereof

69. If any Registrar or his Deputy neglects to perform his duty as required by this Act, or commits or suffers to be committed any undue or fraudulent practice in the execution thereof, and is thereof legally convicted, then such Registrar shall forfeit his said office and shall be liable to pay treble damages with full costs of suit to any person injured thereby, to be recovered by action of debt, or information, in any of Her Majesty's Courts of Record; and any Deputy executing the office of Registrar during any vacancy occasioned by death, resignation or forfeiture of the Registrar shall be for the same cause and in like manner liable. 9 V. c. 34, s. 21.

Punishment of Registrars guilty of undue practices.

MISCELLANEOUS PROVISIONS.

70. Any person or Corporation who surveys and subdivides any land into Town or Village lots, differing from the manner in which such lands were described as granted by the Crown, shall lodge with the Registrar a plan or map of such Town or Village lots, shewing the numbers and ranges of such lots, and the names, sites and boundaries of the streets or lanes by which such lots may be in whole or in part bounded, together with a declaration signed by such person, or by the lawful Officer, Agent or Attorney of such Corporation, that the said plan contains a true description of the lots and streets laid out by such person or Corporation, and thenceforth the Registrar may keep an Index of the land described on such map or plan as a Town or Village, or part of a Town or Village, by the name by which such person or Corporation designates the same. 9 V. c. 34, s. 33,—See 12 V. c. 35, s. 42.

When a Company, &c., subdivide any land into town lots a plan or map of such land may be lodged in the registry office.

71. And whereas it is desirable that Registrars should be enabled to afford purchasers and other persons making searches, information respecting the original Grantee of each lot, piece, parcel or tract of land within their respective County or Counties, together with the local situation of the same: the Officer or person performing the duties formerly assigned to the Surveyor

Surveyor General to furnish Registrars with certain information.

SCHEDULE B.

REFERRED TO IN THE 62ND SECTION OF THIS ACT.

Form of Certificate referred to in the Section of this Act.

This Register contains _____ pages and is to be used in and for the (City, Town or Township, as the case may be), in the County of _____, for the Enregistration of memorials, under the provisions of the Act of the Legislature of the Province of Canada, passed in the _____ year of Her Majesty's Reign, and intituled, *An Act respecting Registration of Deeds, Wills, Judgments and Decrees in Chancery*, and is provided in pursuance of the requirements of the said Statute.

Dated this _____ day of _____ in the year of
ou Lord one thousand eight hundred and _____ .

A. B.

Judge of the County Court of

C. A. P. C. X. V. I. I.

An Act respecting the transfer of real property, and the liability of certain interests therein to execution.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- 1.** The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, that is to say : the word " Land " shall extend to messuages, lands, tenements and hereditaments, whether corporeal or incorporeal, and to any undivided share thereof, and to any estate or interests therein, and to money subject to be invested in the purchase of land or of any interest therein ; the word " Conveyance " shall extend to a feoffment, grant, lease, surrender, or other assurance of land. 14, 15 V. c. 71, s. 1,—12 V. c. 71, s. 1. 5 10 15
- 2.** All corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery. 14, 15 V. c. 71, s. 2. Corporeal tenements, &c. deemed to lie in grant, &c.
- 3.** A feoffment, otherwise than by deed, shall be void at law, and no feoffment shall have any tortious operation. 14, 15 V. c. 71, s. 3. Feoffments unless by deed to be void. 20
- 4.** A partition and an exchange of any land and a lease required by law to be in writing of any land, and an assignment of a chattel interest in any land, and a surrender in writing of any land not being an interest which might by law have been created without writing, shall be void at law, unless made by deed. 14, 15 V. c. 71, s. 4. Partition on exchange of tenements, &c., unless by Deed to be void. 25
- 5.** A contingent, an executory, and a future interest and a possibility coupled with an interest in any land, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent into or upon any land may be disposed of by deed, but no such disposition shall by force only of this Act defeat or enlarge an estate tail, and any such disposition by a married woman shall be made conformably to the provisions of the Act enabling married women to convey their real estate. 14, 15 V. c. 71, s. 5. Certain interest in tenements may be disposed of by Deed. 35
- 6.** A contingent remainder, which existed at any time between the thirtieth day of May, one thousand eight hundred and forty-nine, and the second day of August, one thousand eight hundred hundred Certain contingent remainders 40

hundred and fifty-one, shall be deemed to have been capable of taking effect, notwithstanding the determination by forfeiture, surrender or merger, of any preceding estate of freehold. 14, 15 V. c. 71, s. 6. made valid.

5 **7.** When the reversion expectant on a lease of any land merges or is surrendered, the estate which, for the time being, confers, as against the tenant under the same lease, the next vested right to the same land shall, to the extent of and for preserving such incidents to and obligations on the same re-
10 version, as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the same lease. 14, 15 V. c. 71, s. 7. Effect of sur-
render or
merger of re-
versions ex-
pectant on a
lease in cer-
tain cases.

8. The *bonâ fide* payment of any money to and the receipt thereof by any person to whom the same is payable upon any
15 express or implied trust, or for any limited purpose, and such payment to and receipt by the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to
20 the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust or security. 12 V. c. 71, s. 10. Receipts of
trustees to be
effectual dis-
charges.

9. Neither of the words "Grant" or "Exchange," in any deed, shall create any warranty or right of re-entry, or cove-
25 nant by implication, except in cases where by any Act in force in Upper Canada, it is declared that the word "Grant" shall have such effect. 12 V. c. 71, s. 6. No implied
warranty, &c.
to be created
by the word
"grant" or
"exchange."

10. Any estate, right, title or interest in lands which, under the fifth section of this Act, may be conveyed or assigned by
30 any party, shall be bound by the judgments of any Court of Record, and shall be liable to seizure and sale under Execution against such party, in like manner and on like conditions as lands are now by law liable to seizure and sale under execution, and the Sheriff selling the same may convey and
35 assign the same to the purchaser in the same manner and with the same effect as the party might himself have done. 12 V. c. 71, s. 13. Any interest
in lands which
might be con-
veyed under
this Act to be
bound by
judgments
liable under
e cution.

11. The foregoing sections of this Act shall not extend to any deed, act or thing executed or done, or (except so far as regards
40 the provisions hereinbefore contained as to existing contingent remainders) to any estate, right or interest created, before the first day of January, one thousand eight hundred and fifty. 12 V. c. 71, s. 14. This Act not
to extend to
Deeds, &c.,
executed be-
fore 1st Jan-
uary, 1850.

12. Any Corporation aggregate in this Province, capable of
45 taking and conveying land, shall be deemed to have been and to be capable of taking and conveying land by deed of bargain and
and Corporations
aggregate may
convey by bar-
gain and sale.

and sale, in like manner as any person in his natural capacity, subject nevertheless to any general limitations or restrictions as to holding or conveying real estate which may be applicable to such Corporation. 4 W. 4, c. 1, s. 46.

Deed of bargain and sale shall not require enrolment to render it a valid conveyance.

But the necessity for registering to prevent a subsequent purchaser from gaining priority shall continue as before.

13. No deed of bargain and sale of land in Upper Canada, 5 executed after the sixth day of March, one thousand eight hundred and fifty-four, or hereafter executed, shall require enrolment or registration to supply the place of enrolment for the mere purpose of rendering such bargain and sale a valid and effectual conveyance for passing the land thereby intended to 10 be bargained and sold; but this shall not affect any question of priority under the Registry Act. 3 W. 4, c. 1, s. 47,—13, 14 V. c. 63, s. 3.

CAP. XCVIII.

An Act respecting Short Forms of Conveyances and Leases.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. When a deed made according to the forms set forth
5 in the first Schedule to this Act, or any other deed expressed to be made in pursuance of this Act, or referring thereto, contains any of the forms or words contained in column one of the second Schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same
10 effect, and be construed as if it contained the form of words contained in column two of the same Schedule, and distinguished by the same number as is annexed to the form of words used in the deed; but it shall not be necessary, in any such deed, to insert any such number. 9 V. c. 6, s. 1.
- Where words of column 1 of the second Schedule are employed, the Deed to have the same effect as if the words in column 2 were inserted.
- 15 2. Any deed or part of a deed, which fails to take effect by virtue of this Act, shall, nevertheless, be as effectual, to bind the parties thereto, so far as the rules of law and equity will permit, as if this Act had not been made. 9 V. c. 6, s. 4.
- Deeds failing to take effect under this Act to be as valid as if Act not made.
3. Every such deed, unless an exception be specially made
20 therein, shall be held and construed to include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments
25 and appurtenances whatsoever, to the lands therein comprised, belonging or in any wise appertaining, or with the same demised, held, used, occupied and enjoyed, or taken or known as part or parcel thereof; and if the same purports to convey an estate in fee, also the reversion or reversions, remainder
30 and remainders, yearly and other rents, issues and profits of the same lands, and of every part and parcel thereof, and all the estate, right, title, inheritance, use, trust, property, profit, possession, claim and demand whatsoever, both at law and in equity, of the grantor, in, to, out of, or upon the
35 same lands, and every part and parcel thereof, with their and every of their appurtenances. 9 V. c. 6, s. 2,—12 V. c. 10, s. 5.
- Deed to include all houses, &c., and the reversion and all the estate.
4. In the construction of this Act, and the Schedules thereto, unless there be something in the subject or context repugnant
40 to such construction, the word "lands" shall extend to all freehold tenements and hereditaments, whether corporeal or incorporeal, or any undivided part or share therein, respectively; and the word "party" shall mean and include any body politic or corporate or collegiate as well as an individual. 9 V. c. 6, s. 5.
- Construction of Act.

Remuneration for Deeds under the Act not to be by length only. **5.** In taxing any bill for preparing and executing any deed under this Act, the taxing officer, in estimating the proper sum to be charged therefor, shall consider not the length of such deed, but the skill and labour employed and responsibility incurred in the preparation thereof. 9 V. c. 6, s. 3. 5

Schedules, &c., to form part of Act. **6.** The Schedules, and the directions and forms therein contained, shall be deemed parts of this Act. 9 V. c. 6, s. 6.

SCHEDULES TO WHICH THIS ACT REFERS.

THE FIRST SCHEDULE.

This Indenture, made the _____ day of _____ one thousand eight hundred and _____, in pursuance of the Act to facilitate the conveyance of real property, between (*here insert names of parties and recitals, if any,*) Witnesseth, that in consideration of _____ pounds, of lawful money of Canada, now paid by the said (*grantee or grantees*) to the said (*grantor or grantors*) (the receipt whereof is hereby by him (*or them*) acknowledged,) he (*or they*) the said (*grantor or grantors*) doth (*or do*) grant unto the said (*grantee or grantees*) his (*or their*) heirs and assigns for ever, all, &c., (*parcels.*) (*Here insert covenants, or any other provisions.*)

In witness whereof, the said parties hereto have hereunto set their hands and seals.

THE SECOND SCHEDULE.

DIRECTIONS AS TO THE FORMS IN THIS SCHEDULE.

1. Parties who use any of the forms in the first column of this Schedule, may substitute for the words "covenantor" or "covenantee," or "releasor" or "releasee," "grantor" or "grantee," any name or names, and in every such case, corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may introduce into, or annex to, any of the forms in the first column, any express exceptions from, or other express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

4.

4. Such parties may add the name or other designation of any person or persons, or class or classes of persons, or any other words, at the end of form two, of the first column, so as thereby to extend the words thereof to the acts of any additional person or persons, or class or classes of persons, or of all persons whomsoever; and in every such case the covenants two, three and four, or such of them as may be employed in such deed, shall be taken to extend to the acts of the person or persons, class or classes of persons, so named.

5. Parties who use any of the forms in the first column of this Schedule from number ten to number nineteen inclusive, may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

6. Where the premises demised are of freehold tenure, the covenants ten to seventeen shall be taken to be made with, and the proviso eighteen to apply to the heirs and assigns of the lessor; and where the premises demised are of leasehold tenure, the covenants and proviso shall be taken to be made with, and apply to the lessor, his executors, administrators and assigns. 14, 15 V. c. 8, s. 4.

COLUMN TWO.

COLUMN ONE.

1. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, with and to the said covenantee, his heirs and assigns, in manner following, that is to say :

1. The said (covenantor) covenants with the said (covenantee.)

2. That for and notwithstanding any act, deed, matter or thing by the said covenantor, done, executed, committed, or knowingly or wilfully permitted or suffered to the contrary, he, the said covenantor, now hath in himself good right, full power, and absolute authority, to convey the said lands and other the premises hereby conveyed, or intended so to be, with their and every of their appurtenances, unto the said covenantee, in manner aforesaid, and according to the true intent of these presents.

2. That he has the right to convey the said lands to the said (covenantee) notwithstanding any act of the said (covenantor.)

3. And that it shall be lawful for the said covenantee, his heirs and assigns, from time to time and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess and enjoy the said land and premises hereby conveyed, or intended so to be, with their

3. And that the said (covenantee) shall have quiet possession of the said lands.

COLUMN ONE.

COLUMN TWO.

their and every of their appurtenances; and to have, receive, and take the rents, issues and profits thereof, and of every part thereof, to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim or demand whatsoever of, from, or by him the said covenantor, or his heirs, or any person claiming, or to claim, by, from, under, or in trust for him, them, or any of them.

4. Free from all incumbrances.

4. And that free and clear, and freely and absolutely acquitted, exonerated, and for ever discharged, or otherwise by the said covenantor or his heirs well and sufficiently saved, kept harmless, and indemnified of, from and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognizance, judgment, execution, extent, rent, annuity, forfeiture, re-entry, and any and every other estate, title, charge, trouble, and incumbrance whatsoever, made, executed, occasioned, or suffered by the said covenantor or his heirs, or by any person claiming, or to claim, by, from, under, or in trust for him, them, or any of them.

5. And the, said (covenantor) covenants with the said (covenantee) that he will execute such further assurances of the said lands as may be requisite.

5. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with, and to the said covenantee, his heirs and assigns, that he the said covenantor, his heirs, executors and administrators, and all and every other person whosoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title or interest whatsoever, either at law or in equity, in, to, or out of, the said lands and premises hereby conveyed, or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said covenantee, his heirs or assigns, make, do, execute, or cause to be made, done, or executed, all such further and other lawful acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the better, more perfectly, and absolutely

solutely conveying and assuring the said lands and premises hereby conveyed, or intended so to be, and every part thereof, with their appurtenances, unto the said covenantee, his heirs and assigns, in manner aforesaid, as by the said covenantee, his heirs and assigns, his or their counsel in the law, shall be reasonably devised, advised or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors or administrators, only, and so as no person who shall be required to make or execute such assurances, shall be compellable for the making or executing thereof, to go or travel from his usual place of abode.

6. And the said covenantor doth hereby, for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said covenantee, his heirs and assigns, that the said covenantor and his heirs shall and will, unless prevented by fire or other inevitable accident, from time to time, and at all times hereafter, at the request, costs and charges of the said covenantee, his heirs or assigns, or his or their attorney, solicitor, agent, or counsel, at any trial or hearing in any action or suit at law or in equity, or other judicature, or otherwise, as occasion shall require, produce all and every or any deed, instrument or writing hereunder written, for the manifestation, defence and support of the estate, title and possession of the said covenantee, his heirs and assigns, in, or to, the said lands and premises hereby conveyed, or intended so to be, and at the like request, costs and charges, shall and will make and deliver, or cause to be made and delivered, true and attested, or other copies or abstracts of the same deeds, instruments and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds, by the said covenantee, his heirs and assigns, or such person as he or they shall for that purpose direct and appoint.

6. And the said (covenantor) covenants with the said (covenantee) that he will produce the title deeds enumerated hereunder, and allow copies to be made of them, at the expense of the said (covenantee.)

COLUMN ONE.

7. And the said (covenantor) covenants with the said (covenantee) that he has done no act to incumber the said lands.

8. And the said (releasor) releases to the said (releasee) all his claims upon the said lands.

9. And the said (A. B.) wife of the said (grantor) hereby bars her dower in the said lands.

COLUMN TWO.

7. And the said covenantor, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with and to the said covenantee, his heirs and assigns, that he hath not at any time heretofore made, done, committed, executed, or wilfully or knowingly suffered any act, deed, matter or thing whatsoever, whereby or by means whereof the said lands and premises hereby conveyed, or intended so to be, or any part or parcel thereof, are, is, or shall or may be in any wise impeached, charged, affected, or incumbered in title, estate or otherwise howsoever.

8. And the said releasor hath released, remised, and forever quitted claim, and by these presents doth release, remise, and forever quit claim, unto the said releasee, his heirs and assigns, all and all manner of right, title, interest, claim, and demand whatsoever, both at law and in equity, into and out of the said lands and premises hereby granted, or intended so to be, and every part and parcel thereof, so as that neither he nor his heirs, executors, administrators, or assigns, shall nor may, at any time hereafter, have, claim, pretend to, challenge, or demand the said lands and premises, or any part thereof, in any manner howsoever, but the said releasee, his heirs and assigns, and the same lands and premises shall from henceforth for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said releasor, might or could have upon him in respect of the said lands, or upon the said lands.

9. And the said (A. B.) wife of the said (grantor) for and in consideration of the sum of _____ pounds, of the lawful money of Canada, to her in hand paid by the said (grantee) at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said (grantee) his heirs and assigns, all her dower and right and title which in the event of surviving her said husband, she might or would have to dower, in, to or out of the lands and

and premises hereby conveyed, or intended so to be.

10. And the said lessee doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the said lessor that he, the said lessee, his executors, administrators and assigns will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever.

10. That the said (lessee) covenants with the said (lessor) to pay rent.

11. And also will pay all taxes, rates, duties and assessments whatsoever, whether municipal, parliamentary or otherwise, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof.

11. And to pay taxes.

12. And also will, during the said term, well and sufficiently repair, maintain, amend and keep the said demised premises with the appurtenances, in good and substantial repair, and all fixtures and things thereto belonging, or which at any time during the said term shall be erected and made, when, where and so often as need shall be.

12. And to repair.

13. And also will from time to time, during the said term, keep up the fences and walls of or belonging to the said premises, and make anew any parts thereof that may require to be new-made in a good and husbandlike manner, and at proper seasons of the year.

13. And to keep up fences.

14. And also will not at any time during the said term hew, fell, cut down or destroy, or cause or knowingly permit or suffer to be hewed, felled, cut down or destroyed, without the consent in writing of the lessor, any timber or timber trees, except for necessary repairs, or firewood, or for the purpose of clearance as herein set forth.

14. And not to cut down timber.

15. And it is hereby agreed that it shall be lawful for the lessor and his agents, at all reasonable times during the said term, to enter the said demised premises to examine the condition thereof, and further that all want of reparation that upon such view shall be found,

15. And that the said (lessor) may enter and view state of repair, and that the said (lessee) will repair according to notice.

COLUMN ONE.

COLUMN TWO.

and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators and assigns will, within three calendar months next after such notice, well and sufficiently repair and make good accordingly.

16. And will not assign or sub-let without leave.

16. And also that the lessee shall not, nor will during the said term, assign, transfer or set over, or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, set over or sub-let unto any person or persons whomsoever without the consent in writing of the lessor, his heirs or assigns first had and obtained.

17. And that he will leave the premises in good repair.

17. And further, the lessee will, at the expiration, or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised with the appurtenances, together with all buildings, erections and fixtures thereon, in good and substantial repair and condition, reasonable wear and tear and damage by fire only excepted.

18. Proviso for re-entry by the said (lessor) on non-payment of rent or non-performance of covenants.

18. Provided always, and it is hereby expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, although no formal demand shall have been made thereof, or in case of the breach or non-performance of any of the covenants or agreements herein contained on the part of the lessee, his executors, administrators or assigns, then and in either of such cases it shall be lawful for the lessor at any time thereafter, into and upon the said demised premises, or any part thereof, in the name of the whole to re-enter, and the same to have again, re-possess and enjoy, as of his or their former estate; any thing hereinafter contained to the contrary notwithstanding.

19. The said (lessor) covenants with the said (lessee) for quiet enjoyment.

19. And the lessor doth hereby for himself, his heirs, executors, administrators and assigns, covenant with the lessee, his executors, administrators and assigns that, he and they paying the rent hereby reserved, and performing the covenants hereinbefore on his and their

COLUMN TWO.

their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the lessor, his heirs, executors, administrators and assigns, or any other person or persons lawfully claiming by, from or under him, them or any of them.

C A P . X C I X .

An Act respecting the Survey of Lands in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- 1.** Stone monuments or monuments of other durable materials, shall be placed at the several corners, governing points or off-sets of every Township that hath been surveyed, or may hereafter be surveyed in Upper Canada, and also at each end of the several Concession Lines of such Townships ; and lines drawn in the manner hereinafter prescribed from the monuments so erected, or to be erected, shall be taken and considered to be the permanent boundary line of such Townships and Concessions, respectively. 12 V. c. 35, s. 26. 5
- 2.** The monuments to be placed as above mentioned shall be so placed under the direction and order of the Commissioner of Crown Lands of this Province. 12 V. c. 35, s. 27. 15
- 3.** The courses and lengths of the said boundary lines, so ascertained and established, shall on all occasions be and be taken to be the true courses and lengths of the boundary lines of the said Townships and Concessions, whether the same do or do not, on actual survey, coincide with the courses and lengths in any Letters Patent of Grant or other Instrument mentioned and expressed in respect of such boundary lines. 12 V. c. 35, s. 28. 20
- 4.** If any person knowingly and wilfully pulls down, defaces, alters or removes any monument so erected as aforesaid, such person shall be adjudged guilty of Felony ; and if any person knowingly and wilfully defaces, alters or removes any other land mark, post, or monument placed by any land Surveyor, to mark any limit, boundary or angle of any Township Concession, range, lot or parcel of land, in Upper Canada, such person or persons shall be deemed guilty of a misdemeanor, and being convicted thereof before any competent Court, shall be liable to be punished by fine or imprisonment, or both, at the discretion of such Court, such fine not to exceed Twenty-five pounds, and such imprisonment not to be for a longer period than Three months, without any prejudice to any civil remedy which any party may have against such offender or offenders in damages by reason of such offence ; But this shall not extend to prevent Land Surveyors, in their operations, from taking up posts or other boundary marks when necessary, after which they shall carefully replace them as they were before. 12 V. c. 35, s. 29. 25
- 5.**

Stone monuments may be placed at certain points in Townships in U. C.

To be placed under the direction of the Commissioner of Crown Lands.

Boundaries ascertained as aforesaid in U. C., to be deemed the true ones.

Punishments of persons removing or defacing land marks in U. C. or in L. C.

As to Surveyors-

5. It shall not be necessary for the Commissioner of Crown Lands, to proceed to carry the provisions of the First, Second and Third Sections of this Act into execution, until an application for that purpose has been made to the Governor by the Council of the County, in which the Township or Townships interested may be situate, and which Council shall cause the sum requisite to defray the expenses to be incurred, or the proportion thereof payable by the inhabitants of any Township or Concession, to be levied on the said inhabitants, in the same manner as any sum required for any other local purpose authorized by law may be levied. 12 V. c. 35, s. 29.

Monuments not to be placed in U. C., except on the application of the Municipal Council.

6. And whereas in several of the Townships in Upper Canada, some of the Concession lines, or parts of the Concession lines, have not been run in the original survey performed under competent authority, and the surveys of some Concession lines or parts of Concession lines have been obliterated, and owing to the want of such lines the inhabitants of such Concessions are subject to serious inconvenience; the County Council of the County in which any Township in Upper Canada is situate, may, on application of one half of the resident land-holders in any Concession, (or without such application if the Council deem it necessary,) make application to the Governor, requesting Him to cause any such line to be surveyed, and marked by permanent stone boundaries under the direction and order of the Commissioner of Crown Lands, in the manner prescribed in this Act, at the cost of the proprietors of the lands in each Concession or part of a Concession interested.

Recital.

In what cases the Municipal Council may apply to have monuments placed.

7. The lines shall be so drawn as to leave each of the adjacent Concessions of a depth proportionate to that intended in the original survey.

As to the adjacent concessions.

8. The lines or parts of lines so surveyed and marked as aforesaid, shall thereafter be taken and considered to be the permanent boundary lines of such Concessions or parts of Concessions to all intents and purposes of law whatsoever.

To be permanent boundary lines.

9. The Council shall cause an estimate of the sum requisite to defray the expences to be incurred to be laid before them, in order that the same may be levied on the said proprietors, in proportion to the quantity of land held by them respectively in such Concession or part of a Concession, in the same manner as any sum required for any other purposes authorized by law may be levied.

Expences to be estimated and provided for.

Legal effect of the operation.

10. All expences incurred in performing any survey or placing any monument or boundary under the provisions of the sections preceding, shall be paid by the County Treasurer to the person or persons employed in such services, on the certificate and order of the Commissioner of Crown Lands. 12 V. c. 35, s. 31.

Expences to be paid to the Government.

11.

Municipal Councils may cause the boundaries of lots in any concession, &c., to be ascertained and marked.

11. Whenever the Municipal Council of any Township, City, Town or Incorporated Village in Upper Canada adopts a resolution on application of one half the resident landholders to be affected thereby, that it is desirable to place stone or other durable monuments at the front or at the rear, or at the front and rear angles of the lots in any Concession or Range or part of a Concession or Range in their Township, City, Town or Incorporated Village, such Municipal Council may make application to the Governor, in the same manner as is provided in the sixth and three following sections of this Act, praying Him to cause a survey of such Concession or Range or part of a Concession or Range to be made, and such boundaries to be planted, under the authority of the Commissioner or Crown Lands.

To be marked by stone or some other durable monuments to be placed at the angles.

12. The person or persons making such survey shall accordingly plant stone or other durable monuments at the front, or at the rear, or at the front and rear angles of each and every lot in said Concession or Range, or part of a Concession or Range, and the limits of each lot so ascertained and marked shall be the true limits thereof.

How cost to defrayed.

13. The cost of the said survey shall be defrayed in the manner prescribed by the eighth and ninth sections of this Act. 18 V. c. 83, s. 8.

Boundaries placed under the authority of the Government to be deemed the true ones, &c

14. And it being necessary to make definite provision for the mode in which the proper courses of boundary lines shall be ascertained in certain cases in Upper Canada ;--All boundary lines of Townships, Cities, Towns, Villages, all Concession lines, governing points, and all boundary lines of Concessions, sections, blocks, gores, commons and all side-lines and limits of lots surveyed, and all posts or monuments, which have been marked, placed or planted at the front angles of any lots or parcels of land, under the authority of the Executive Government of the late Province of Quebec or of Upper Canada, or under the authority of the Executive Government of this Province, shall be and the same are hereby declared to be the true and unalterable boundaries of all and every such Townships, Cities, Towns, Villages, Concessions, Sections, Blocks, Gores, Commons, and lots or parcels of land, respectively, whether the same upon admeasurement is found to contain the exact width, or more or less than the exact width expressed in any Letters Patent, Grant or other Instrument in respect of such Township, City, Town, Village, Concession, Section, Block, Gore, Common, lot or parcel of land, mentioned and expressed.

Townships, &c., to comprise all the space included within their boundaries.

15. Every Township, City, Town, Village, Concession, Section, Block, Gore, common, lot or parcel of land, shall embrace the whole width, contained between the front posts, monuments or boundaries, planted or placed at the front angles thereof

thereof respectively, so marked, placed or planted as aforesaid, and no more nor less, any quantity or measure expressed in the original grant or patent thereof notwithstanding. 12 V. c. 35, s. 32.

5 **16.** Every patent, grant or instrument, purporting to be for any aliquot part of any such township, city or town, village, concession, section, block, gore, common, lot or parcel of land, shall be construed to be a grant of such aliquot part of the quantity the same may contain, whether such quantity be more or less than that expressed in such patent, grant or instrument. 12 V. c. 35 s. 32. As to aliquot parts of Townships, &c.

15 **17.** In every City, Town or Village in Upper Canada, which has been surveyed by the authority aforesaid, all allowances for any road, street, lane or common laid out in the original survey of such City, Town or Village, shall be public highways and commons; and all posts or monuments placed or planted in the original survey of such City, Town or Village, to designate or define any allowance for a road, street, lane, lot or common, shall be the true and unalterable boundaries of every such road, street, lane, lot and common; and all Land Surveyors, employed to make surveys in such City, Town or Village shall follow and pursue the same rules and regulations in respect of such surveys as is by law required of them when employed to make surveys in Townships. 12 V. c. 35, s. 33. Road allowances in Cities, &c., to be public highways

25 **18.** Whereas many Townships, tracts or blocks of land in Upper Canada where granted by the Crown to companies and individuals before any surveys were made therein, and such Townships, tracts or blocks of land were afterwards surveyed by the owners thereof—All such surveys of such Townships, tracts or blocks of land, shall be original surveys thereof, and shall have the same force and effect as though the said original surveys and plans thereof had been made by the authority aforesaid; and all allowances for roads or commons surveyed in such Townships, tracts or blocks of land, and laid down on the plans thereof, shall be public highways and commons; and all lines run and marked in such original surveys, and all posts or monuments planted or placed in such original surveys, to designate and define any allowance for road, concession, lot of land or common, shall be the true and unalterable lines and boundaries of such allowance for road, common or lot of land, and all land Surveyors, when employed to make surveys in such Townships, tracts or blocks of land, shall follow and pursue the same rules and regulations in respect of such Townships, tracts or blocks of land, and the original surveys thereof, as they are by law required to follow and pursue in all Townships, tracts or blocks of land surveyed by the authority aforesaid. 12 V. c. 35, s. 34. Recital. As to lands granted in blocks and subsequently surveyed by the grantees.

19. The course of the boundary line of each and every concession, on that side from which the lots are numbered, shall Governing lines declared.
be

be the course of the division or side lines throughout the several Townships or Concessions in Upper Canada, respectively, provided that such division or side lines were intended, in the original survey performed under such authority as aforesaid, to run parallel to the said boundary. 12 V. c. 35, s. 35. 5

All sides lines to be run parallel to governing lines.

20. All Surveyors shall run all division or side-lines, which they may be called upon by the owner or owners of any lands to survey, so as to correspond with and be parallel to that boundary line of the concession in which such lands are situated, from whence the lots are numbered as aforesaid, provided such division or side-lines were intended, in the original survey performed under such authority as aforesaid to run parallel to the said boundary. 12 V. c. 35, s. 35. 10

Course to be adopted when concession bounded by lakes or rivers.

21. When that end of a concession, from which the lots are numbered, is bounded by a Lake or River, or other natural boundary, or when it has not been run in the original survey performed under competent authority as aforesaid, or when the course of the division or side-lines of the lots therein was not intended in the original survey performed as aforesaid, to run parallel to such boundary, the said division or side-lines shall run parallel to the boundary line at the other extremity of such concession, provided their course was intended, in the original survey performed as aforesaid, to be parallel thereto, and that such boundary line was run in the original survey. 12 V. c. 35, s. 35. 15 20 25

When division or side lines not intended to run parallel to the side lines at either end of a concession.

22. When in the original survey, performed under competent authority as aforesaid, the course of the division or side lines in any concession was not intended to be parallel to the boundary line at either end of such concession, they shall be run at such angle with the course of the boundary line at that end of the concession from which the lots are numbered, as is stated in the plan and field-notes of the original survey, of record in the Office of the Commissioner of Crown Lands of this Province, provided such line was run in the original survey as aforesaid, or with the course of the boundary line at the other extremity of the said concession, if the boundary at that end of the concession from which the lots are numbered was not run in the original survey as aforesaid; or if neither of the aforesaid boundaries of the concession were run in the original survey, or if it be bounded at each end by a Lake or River or other natural boundary, then at such angle with the course of the line in front of the said concession, as is stated in the plan and field-notes aforesaid. 12 V. c. 35, s. 35. 30 35 40

When a division or proof has been run between lots, the same shall govern.

23. If any division or side-line between lots, or proof-line intended to be parallel to the division or side-lines between lots, has been drawn in any such concession in the original survey thereof, the division or side-lines between the lots therein shall be drawn parallel to such division or side-line or proof-line. 12 V. c. 35, s. 35. 45

24. When two or more such division or side-lines or proof-lines have been drawn in the original survey of such concession, that division or side-line or proof-line which is nearest to the boundary of the concession from which the lots are numbered, shall govern the course of the division or side-lines of all the lots in such concession between the boundary of the the concession from which the lots are numbered and the next division or side-line or proof-line drawn in the original survey, and such last mentioned line or proof-line shall govern the course of the division or side-lines of all the lots up to the next division or side-line or proof-line drawn in the original survey, or to the boundary of the concession towards which the lots are numbered, as the case may be. 12 V. c. 35, s. 35.

When there are two of such lines, the line nearest the end of the concession from which the lots are numbered, to govern to the next of such lines.

25. In all those Townships in Upper Canada, which in the original survey have been divided into sections, agreeably to an Order in Council bearing date the Twenty-seventh day of March, one thousand eight hundred and twenty-nine, the division or side-lines in all concessions, in any section shall be governed by the boundary lines of such section, in like manner as the division or side-lines in Townships originally surveyed before the said day are governed by the boundary lines of the concession in which the lots are situate. 12 V. c. 35, s. 35.

How lines to be governed in Townships laid out in sections under the O. C. of the 27th March, 1829.

26. In all cases where any Letters Patent of Grant, or other Instrument, has issued for several lots or parcels of land in concessions adjoining each other, the side-lines or limits of the lots or parcels of land therein mentioned and expressed, shall commence at the front angles of such lots or parcels of land respectively, and shall be run as hereinbefore provided, and shall not continue on in a straight line, through several concessions, unless the side-lines or limits, when run as aforesaid, intersect the corresponding post or monument in the front of the concession next in rear, that is to say, each such lot or parcel of land shall be surveyed and bounded according to the provisions of this Act, independently of the other lots or parcels mentioned in the same grant or instrument. 12 V. c. 35, s. 44.

As to lands in adjoining concessions included in the same grant.

27. The front of each concession in any Township in Upper Canada, where only a single row of posts has been planted on the concession lines, and the lands have been described in whole lots, shall be that end or boundary of such concession which is nearest to the boundary of the Township, from which the several concessions thereof are numbered. 12 V. c. 35, s. 36.

What shall be deemed the front of a concession in certain cases.

28. In those Townships in Upper Canada which are bounded in front by a river or lake where no posts or other boundaries were planted in the original survey on the bank of such river or lake to regulate the width in front of the lots in the broken front concessions, the division or side-lines of the lots in such broken front concessions shall be drawn from the

Townships bounded in front by rivers or lakes, the lines to be drawn from posts in rear

of the concession ; when. the posts or other boundaries on the concession line in rear thereof, parallel to the governing line determined as aforesaid to the river or lake in front. 12 V. c. 35, s. 36.

When the front line of any concession was not run in the original survey. **29.** When the line in front of any such concession has not been run in the original survey, the division or side-lines of the lots in such concession shall be run from the original posts or monuments placed or planted on the rear line thereof parallel to the governing line determined as aforesaid to the depth of the concession—that is, to the centre of the space contained between the lines in front of the adjacent concessions, if the concessions were intended in the original survey to be of an equal depth, or if they were not so intended, then to the proportionate depth intended in the original survey, as shown on the plan and field-notes thereof of record in the office of the Commissioner of Crown Lands, having due respect to any allowance for a road or roads made in the original survey ; and a straight line joining the extremities of the division or side-lines of any lot in such concession drawn as aforesaid, shall be the true boundary of that end of the lot which has not been run in the original survey. 12 V. c. 35, s. 36.

Fronts of concessions in certain other cases depths of lots, &c. **30.** In those Townships in Upper Canada in which the concessions have been surveyed with double fronts, that is, with posts or monuments planted on both sides of the allowances for roads between the concessions, and the lands have been described in half lots, the division or side-lines shall be drawn from the posts at both ends to the centre of the concession, and each end of such concession shall be the front of its respective half of such concession, and a straight line joining the extremities of the division or side-lines of any half lot in such concession, drawn as aforesaid, shall be the true boundary of that end of the half lot which has not been bounded in the original survey. 12 V. c. 35, s. 37.

Mode of drawing lines in double fronted concession. **31.** And whereas some of the double front Concessions in the Townships in Upper Canada, are not of the full depth, and doubts have arisen as to the manner in which the division or side-lines in such concessions should be established :—In such concessions the division or side-lines shall be drawn from the posts at both ends thereof, to the centre of the concession, as provided in the last preceding section of this Act, without reference to the manner in which the lots or parts of lots in such concession have been described for Patent. 18 V. c. 83, s. 9.

As to concessions in cases where alternate concession lines only have been run. **32.** In those Townships in which each alternate concession line only has been run in the original survey, but with double fronts as aforesaid, the division or side-lines shall be drawn from the posts or monuments on each side of such alternate concession lines to the depth of a concession, that is, to the centre of the space contained between such alternate concession

sion lines, if the concessions were intended in the original survey to be of an equal depth, or if they were not so intended, then to the proportionate depth intended in the original survey, as shewn on the plan and field-notes thereof of record in the office of the Commissioner of Crown Lands; and each alternate concession line as aforesaid shall be the front of each of the two concessions abutting thereon. 12 V. c. 35, s. 38.

33. Every Land Surveyor employed to run any division-line or side-line between lots, or any line required to run parallel to any division-line or side-line in the concession in which the land to be surveyed lies, shall, if it has not been done before, or if it has been done, but the course cannot at such time be ascertained, determine by astronomical observation, the true course of a straight line between the front and rear ends of the governing boundary line of the concession or section, and shall run such division-line or side-line as aforesaid, truly paral-
 15 lled to such straight line, if so intended in the original survey, or at such angle therewith as is stated in the plan and field-notes as aforesaid, which shall be deemed to be the true
 20 course of the said governing or boundary line for all the purposes of this Act, although such governing or boundary line as marked in the field be curved or deviate otherwise from a straight course; and the same rule shall be observed, if a line
 25 is to be run at any angle with a front line or other line, which may not be straight. 12 V. c. 35, s. 39.

Rule when a line is to be drawn parallel to a governing line.

34. In all cases when any Land Surveyor is employed in Upper Canada to run any side-line or limits between lots, and the original post or monument from which such line should commence cannot be found, he shall obtain the best evidence
 30 that the nature of the case will admit of, respecting such side-line, post or limit: but if the same cannot be satisfactorily ascertained, then the Surveyor shall measure the true distance between the nearest undisputed posts, limits or monuments, and divide such distance into such number of lots as the same
 35 contained in the original survey, assigning to each a breadth proportionate to that intended in such original survey, as shewn on the plan and field-notes thereof, of record in the office of the Commissioner of Crown Lands, and if any portion of the line in front of the concession in which such lots are situate, or
 40 boundary of the Township in which such concession is situate, has been obliterated or lost, then the Surveyor shall run a line between the two nearest points or places where such line can be clearly and satisfactorily ascertained, in the manner provided in this Act, and shall plant all such intermediate posts
 45 or monuments as he may be required to plant, in the line so ascertained, having due respect to any allowance for a road or roads, common or commons, set out in such original survey; and the limits of each lot so found shall be the true limits thereof. 18 V. c. 83, s. 10.

Case where the original post or monument cannot be found provided for in Upper Canada.

As to allowan-
ces for roads
or streets in
Towns or Vil-
lages laid out
by private
parties.

35. And whereas Towns and Villages in Upper Canada have been or may be surveyed and laid out by companies and individuals, and by different owners of the lands comprising the same, and lands have been or may be sold therein according to the surveys and plans thereof, all allowances for roads, streets or commons, which have been surveyed in such Towns and Villages in Upper Canada, and laid down on the plans thereof, and upon which lots of land fronting on or adjoining such allowances for roads, streets or commons, have been or may be sold to purchasers, shall be public highways, streets and commons; and all lines which have been or may run, and the courses thereof given in the survey of such Towns and Villages, and laid down on the plans thereof, and all posts or monuments which have been or may be placed or planted in the first survey of such Towns and Villages to designate or define any such allowances for roads, streets, lots or commons, shall be the true and unalterable lines and boundaries thereof respectively. 13, 14 V. c. 1, s. 5,—12 V. c. 35, s. 41.

Lots of land
not to be laid
out so as to in-
terfere with
any allowance
for roads.

36. No lot or lots of land in such Towns and Villages shall be so laid out as to interfere with, obstruct, shut up, or com-
pose any part of any allowance for road, common or com-
mons, which was surveyed and reserved in the original survey of the Township or Townships wherein such Towns or Villages are or may be situate. Any owner or owners of any such Towns or Villages, or the owner or owners of any original division thereof, may amend or alter the first survey and plan of any such Town or Village, or any original particular division thereof, provided no lots of land have been sold fronting on or adjoining any street or streets, common or commons where such alteration is required to be made. No such private survey shall be valid, unless performed by a duly authorized Surveyor.

Original own-
ers or their
heirs to de-
posit plan of
towns, &c., or
villages laid
out by them.

37. The original owner or owners of the lands forming the site of any Town or Village in Upper Canada, mentioned in the four last preceding sections of this Act, or the agent or agents, heirs or other legal representatives of the original owner or owners of any such Town or Village, or any original division thereof, shall, (if not already done) provide and deposit in the Registry Office of the County wherein such Town or Village is situate, a fair and correct plan or map of such Town or Village, or original division thereof, on a scale of not less than one inch to every four chains, and lay down thereon all roads, streets, lots and commons within the same, with the courses and width thereof respectively, and the width and length of all lots, and the courses of all division-lines between the respective lots within the same, together with such information as will show the lots, concessions, tracts or blocks of land of the Township wherein such Town or Village is situate. 12 V. c. 35, s. 42.

38. Every such plan or map of every such Town or Village or original division thereof, shall be certified by some Land Surveyor, and also by the original owner or owners thereof, or the legal representative or representatives of such owner or owners, as being a correct plan or map of the same. 12 V. c. 35, s. 42. Plan to be certified.

39. Every copy of such plan or map obtained from such Registry Office, and certified as correct by the Registrar of such County, shall be taken as evidence of the original plan and survey of such Town or Village in all Courts of Record. 12 V. c. 35, s. 42. Copies of registered plans, to be evidence of the originals.

40. Whenever any such plan or map of any such Town or Village, in Upper Canada, or original division thereof, has been made and deposited in the Registry Office of the County wherein the lands are situate, the Registrar of such County shall make a record of the same, and enter the day and year on which the same was deposited in his office; and for such service the said Registrar shall be entitled to charge the same fees, and no more, than by law established for making a record of any other document, which is by law required to be entered of record in his office. 12 V. c. 35, s. 43. Duty of the Registrar in whose office any such plan shall be deposited.

41. Every Registrar shall keep a separate book for the registering of title deeds of lands situate in any such Town or Village, in the same manner as is by law required for registering title deeds for lands situate in Townships. 12 V. c. 35, s. 43. Registrar to keep a separate registry book, &c.

42. If the owner or owners of any such Town or Village, or any original division thereof, or their agents, heirs, or other legal representatives, refuse or neglect to make or cause to be made, the plan or map of such Town or Village, or original division thereof, and deposit the same in a Registry Office of the County wherein the same is situate, within one year from and after the time of surveying and laying out the same, he or they shall forfeit and pay for such refusal or neglect, the sum of two pounds ten shillings, and a like sum for every year thereafter until such plan or map has been made and deposited in the Registry Office of the County wherein the same is situate. 12 V. c. 35, s. 43. Penalty for neglect.

43. The payment of any such penalty or penalties shall not free or discharge such owner or owners, their agents, or other legal representatives, from any penalties which may not have been paid at the time of such payment. 12 V. c. 35, s. 43. Effect of payment of any penalty.

44. The several Penalties or Forfeitures mentioned in preceding sections of this Act, may be recovered upon information and complaint before any three of Her Majesty's Justices of the Peace of the County in which the lands lie, and shall be levied Penalties, &c., how recoverable, and their appropriation.

levied by warrant signed by any two of the Justices, who have heard the complaint, directed to the Sheriff of the said County, commanding him, the said Sheriff, to make of the Goods and Chattels of the person or persons convicted on such information and complaint in his County, the amount of such Penalties or Forfeitures, and the costs of such conviction, and to return the said warrant, and to pay the moneys thereon made to the Treasurer of the County, on a day to be therein named, and not less than one Calendar month from the date of such warrant, and the said moneys shall be appropriated in like manner as the Assessment levied for the general use of such County. 12 V. c. 35, s. 43. 5 10

Where the owner has no goods his lands may be sold by Sheriff. 45. In case the Sheriff returns on the said warrant, that the said person or persons so convicted has or have no goods in his County, then, any two Justices of the said County, shall issue a like warrant to the Sheriff, against the Lands and Tenements of the said person or persons in the said County, returnable in one year from the date thereof, and the Sheriff shall thereupon advertise the said Lands for sale, and sell the same, in the same manner as he is now authorized and required by law to advertise and sell lands under a Writ of *Fieri Facias*. 12 V. c. 35, s. 7. 15 20

Surveyors in U. C. to keep regular journals and field notes and furnish copies to parties interested. 46. Every Land Surveyor in Upper Canada shall keep exact and regular journals and field-notes of all his surveys, and file them in the order of time in which the surveys have been performed, and shall give copies thereof to the parties concerned when so required, for which he is hereby allowed the sum of five shillings currency, for each copy, if the number of words therein do not exceed four hundred words, but if the number of words exceed four hundred, he is allowed six pence additional for every hundred words, over and above four hundred words. 12 V. c. 35, s. 45. 25 30

Surveyors in U. C. may administer oaths for certain purposes. 47. For better ascertaining the original limits of any lot, concession, range, Township or tract of land in Upper Canada, every Land Surveyor acting in that portion of this Province, shall and may administer an oath or oaths to each and every person whom he examines concerning any boundary, post or monument, or any original land mark, line, limit or angle of any Township, concession, range, lot or tract of land which such Surveyor may be employed to survey. 12 V. c. 35, s. 46. 35 40

Evidence taken by Surveyors in U. C. to be reduced to writing and signed, &c. 48. All evidence taken by any Surveyor as aforesaid, in Upper Canada, shall be reduced to writing, and shall be read over to the person giving the same and signed by such person, or if he cannot write, he shall acknowledge the same as correct before two witnesses, who shall sign the same with the Surveyor; and such evidence shall, and any document or plan prepared and sworn to as correct before a Justice of the Peace, by any Surveyor, with reference to any survey by him performed, 45

formed, may be filed and kept in the Registry Office of the County in which the lands to which it relates are situate, subject to be produced thereafter in evidence in any Court of Law or Equity within Upper Canada. 12 V. c. 35, s. 47.

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1. For receiving and filing the same, the Registrar shall be entitled to one shilling and three pence currency.

2. The expense of filing the same shall be borne by the parties in the same manner as other expenses of the survey.

49. If any person, in any part of this Province, wilfully swears or affirms falsely concerning any matter with regard to which an oath may be required under this Act, such person shall be deemed guilty of wilful and corrupt perjury, and being thereof convicted before any competent Court shall be liable to be punished accordingly. 12 V. c. 35, s. 48.

Wilful false swearing under this Act to be perjury.

50. If an action of ejectment is brought in Upper Canada, against any person, who, after any line or limit has been established according to this Act, may be found, in consequence of unskilful survey, to have improved on lands not his, her or their own, the Judge of Assize, before whom such action is tried, shall direct the Jury to assess such damages for the defendant for any loss he may sustain in consequence of any improvement made before the commencement of such action, and also to assess the value of the land to be recovered; and if a verdict is found for the plaintiff, no Writ of Possession shall issue until such plaintiff has tendered or paid the amount of such damages, or has offered to release the said land to the defendant, provided the said defendant pays or tenders to the plaintiff the value of the land so assessed, before the fourth day of the ensuing term. 12 V. c. 35, s. 49.

As to cases in Upper Canada where from unskilful survey, a party may have improved lands afterwards found to belong to his neighbour.

51. In all cases in which the Jury before whom any action of ejectment may be tried in Upper Canada, assess damages for the defendant as provided in the next preceding section, for improvements made upon land not his own, in consequence of unskilful survey, and when it satisfactorily appears that the defendant does not contest the plaintiff's action for any other purpose than to obtain the value of the improvements made upon the land previous to the alteration and establishing of the lines according to law, the Judge before whom such action is tried, shall certify such fact upon the record, and thereupon the defendant shall be entitled to the costs of the defence, in the same manner as if the plaintiff had been non-suited on the trial, or a verdict had been rendered for the defendant; provided the defendant, at the time of appearing, gave notice in writing to the plaintiff in such ejectment, or to his Attorney named on the Writ, of the amount claimed for such improvements, and that on payment of which amount the defendant or person in possession would surrender the possession to such plaintiff,

Plaintiff not to have costs in such cases from the time Defendant offers to give up the lands on receiving the value of his improvements stating the amount.

Unless the jury shall assess the improvements at less than the sum demanded.

plaintiff, and that the said defendant did not intend at the trial to contest the title of the plaintiff; and if on the trial it is found that such notice was not given as aforesaid, or if the jury assess for the defendant a less amount than that claimed in the notice, or find that the defendant has refused to surrender possession of the land claimed, after tender made of the amount claimed, then in any of such cases the Judge shall not certify, and the defendant shall not be entitled to the costs of the defence, but shall pay costs to the plaintiff; and upon the trial of any cause after such notice no evidence shall be required to be produced in proof of the title of the lessor or lessors of the plaintiff.

That no proof
of plaintiffs'
lessors' title
be required.

C A P . C .

An Act respecting the Provincial Lunatic Asylum at Toronto.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Provincial Lunatic Asylum in Toronto, and all the property real and personal, and all effects belonging to it, shall be vested in the Crown. 16 V. c. 188, s. 2. Asylum and property vested in the Crown.

2. The financial business and affairs of the said Institution shall be managed by an officer to be appointed by the Governor during pleasure, and to be called "The Bursar of the Provincial Lunatic Asylum," who shall give Bonds in such sum as the Governor directs for the due performance of the duties of his Office. 16 V. c. 188, s. 3. Financial business and affairs to be managed by a Bursar, who shall give security.

3. The Bursar shall report the state of the income and expenditure in the following manner : And report periodically.
 - 15 1. To the Inspectors of Lunatic Asylums at each visit ;
 2. Monthly, to the Medical Superintendent ; 20 V. c. 28, s. 16 ;
 3. Quaterly, to the Governor ; and
 4. Annually to each House of the Provincial Parliament, within ten days after the opening of each Session thereof. 16 V. c. 188, s. 3.

4. The Governor may appoint during pleasure a Medical Superintendent who shall reside in the Asylum, and who shall : Medical Superintendent to be appointed : his special duties.
 - 25 1. Direct and control the medical and moral treatment of the patients ;
 2. Hire and discharge from time to time the Keepers and Servants ;
 3. Watch over the internal management, and maintain the discipline and due observance of the By-Laws of the Institution ;
 - 30 4. Report the condition thereof to the Visiting Inspectors at each visit, and annually to the Governor, and to each House of the Provincial Parliament within ten days after the opening of each Session thereof.

5. No person shall be received into the Institution as a Lunatic without a Certificate from three Medical Licentiates, signed and verified by the Reeve of the Township or incorporated Village, or the Mayor of the City or incorporated Town from which the Lunatic has been sent, and in the absence of the Reeve or Mayor, by the Deputy or other person for the time being authorized to act in the place of the Reeve or Mayor. 16 V. c. 188, s. 7. 5

6. Such Certificate shall state that the subscribing Medical Licentiates at the same time and in the presence of each other, examined the patient, and after due inquiry into all necessary facts relating to his case, found him to be a Lunatic. 16 V. c. 188, s. 7. 10

7. Such Certificate shall be sufficient authority to any person to convey the Lunatic to the said Asylum, and to the authorities of the Asylum to detain him therein so long as he continues to be insane. 16 V. c. 188, s. 7. 15

8. When any Lunatic sent to the Asylum is under the age of twenty-one years, and has a Father or Mother able to pay for his maintenance, or has a Guardian or Committee, the Bursar and Medical Superintendent shall send a copy of the Certificate hereinbefore mentioned, attested under their hands, to the Father or Mother, Guardian or Committee, as the case may be, of such Lunatic, to which copy the Medical Superintendent and Bursar, shall subscribe a certificate of the admission of such Lunatic and of the amount which will become due for him per quarter to the Asylum by the By-laws thereof. 16 V. c. 188, s. 11. 20
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9. The Bursar, conjointly with the Medical Superintendent, shall, on the first day of each of the months of January, April, July and October, and during the time the Lunatic remains in the Asylum, demand from the Father or Mother, Guardian or Committee, as the case may be, of such Lunatic, such sum as may be due for such Lunatic to the Asylum, which sum shall be forthwith paid on such demand. 16 V. c. 188, s. 9. 30
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10. On the first of the said quarter days after the admission of the Lunatic, such demand shall be for a sum proportionate to the broken period elapsed since the admission of the Lunatic, and on the discharge of the Lunatic a like demand shall be made for the sum due for the broken period since the then last quarter day. 40

11. In case of refusal or neglect to pay the dues the Bursar may apply upon Affidavit, to the County Judge of the County in which such Father or Mother, Guardian or Committee may reside, and the Judge, on the return of a Rule, which he shall make upon the proper party, to shew cause, being satisfied 45

No Lunatic to be received without certificate of three Medical Licentiates, verified by Reeve or Mayor.

Contents of the certificate.

Effect of certificate.

When father, mother or guardian of Lunatic under 21 is able to pay for his maintenance, duty of Bursar and Superintendent to send certificate.

Bursar and Superintendent may demand amount due for Lunatic.

On each quarter day.

Mode of enforcing the claim if not paid forthwith.

5 **11.** If the Father or Mother of the Lunatic is able to pay for his maintenance, or that such Guardian or Committee is able to pay for the same out of property in his possession belonging to such Lunatic, the Bursar shall be entitled to an order for the payment of the amount then due and the costs, and a Writ of Execution may issue thereon in like manner as upon a judgment of such Court for the amount. 16 V. c. 188, s. 9.

12. The Judge, after hearing the parties and their witnesses under oath, either orally or in writing by Affidavit, may make the order herein referred to, or, if he thinks fit, direct an issue to be made up and tried before a Jury previous to making such order. 16 V. c. 188, s. 9. Hearing of the case.

13. If any Lunatic upon or at any time after his admission into the Asylum, possesses or becomes possessed of or entitled to any real or personal property whereby the expenses of his maintenance in the Asylum can be paid, and he has no Guardian or Committee lawfully appointed to take the care or management of the same for the benefit of the Lunatic, then if any such demand for the sum due for the maintenance of the Lunatic in the Asylum is not paid on demand, or there is no one of whom it can be demanded, and such property is, in the opinion of the Bursar, more than sufficient to maintain the family (if any) of such Lunatic, the Bursar may take possession of such property, or so much thereof as he thinks necessary to pay or to secure the payment of the sum due or to become due, for the support and maintenance of the Lunatic in the Asylum, and he shall have full power over and be competent to manage and appropriate, take or recover possession of, lease, mortgage, sell and convey all or any part of such property in the name of such Lunatic, or as his Committee under this Act, as fully and effectually to all intents and purposes as such Lunatic could or might do, if of full age and of sound and disposing mind. 16 V. c. 188, s. 10. If a Lunatic in the Asylum be possessed of property, and the sum due for his maintenance be not paid, the Bursar may take possession.

14. Before any sale and conveyance of any real property of such Lunatic, the Bursar shall report the case with the terms of the proposed sale to the County Judge of the County within which the property is situate for his approval, and such sale and conveyance so approved, shall be valid and binding upon the Lunatic and his heirs. 16 V. c. 188, s. 10. The Bursar to report to the County Judge before sale.

15. The Bursar shall be liable to render an account as to the manner in which he has managed the property and effects of such Lunatic in the same way and subject to the same responsibilities as any Trustee, Guardian or Committee duly appointed for a similar purpose may be called upon to account. 16 V. c. 188, s. 10. The Bursar to account for the effects of Lunatics.

16. In cases mentioned in the next three preceding sections, if doubt or opposition arises as to the right of property, the Inquisition in case of doubt as to property.

the Bursar or the person claiming the property, may apply to the County Judge of the County in which such property is, to cause an inquisition to be held before such County Judge and to try and determine either by himself, or by a jury when required by either party, but not otherwise, the right of property : 5
which such Judge shall accordingly do. 16 V. c. 188, s. 11.

Governor to
fix salaries,
within certain
amounts.

17. The Governor may fix the salaries of the Medical Superintendent not to exceed Five Hundred Pounds, and of the Bursar not to exceed Three Hundred Pounds, and the same shall be payable out of any funds appropriated to the support of 10
the said Asylum. 16 V. c. 188, s. 12.

Interpreta-
tion.

18. The word "County" in this Act, shall include any Union of Counties for Municipal purposes; the word "Father" shall include any husband of the mother of a Lunatic, and the word "Mother" shall include any wife of the father of a 15
Lunatic; provided, in either case, that the birth of such Lunatic be legitimate.

NOTE.—This Act should have followed Cap. 62.

C A P. C I.

An Act respecting the Criminal Law of Upper Canada.

WHEREAS the Criminal Law of England was, by an Preamble.
 Act of the Parliament of Great Britain, passed in the
 fourteenth year of the reign of King George the Third, intituled,
 5 “An Act for making more effectual provision for the Govern-
 ment of the Province of Quebec, in North America,” intro-
 duced and established as the Criminal Law of the Province of
 Quebec, which Province was afterwards divided into the
 Provinces of Upper and Lower Canada; And whereas the said
 Criminal Law as it stood on the day hereinafter named, was
 10 afterwards established as the Criminal Law of Upper Canada ;
 And whereas divers amendments and improvements were after-
 wards made in the same by the Mother Country, some of
 which it has been deemed expedient to introduce and adopt in
 Upper Canada: Her Majesty, by and with the advice and con-
 15 sent of the Legislative Council and Assembly of Canada,
 enacts as follows: 40 G. 3, c. 1.

1. The Criminal Law of England, as it stood on the seven-
 teenth day of September, in the year of our Lord one thousand
 seven hundred and ninety-two, except as the same has since
 20 been repealed, altered, varied, modified or affected by any Act
 of the Parliament of the late Province of Upper Canada, or of
 the Province of Canada, still having force of law, or by judicial
 decisions in the Superior Courts of Criminal Jurisdiction in
 Upper Canada, shall be the Criminal Law of Upper Canada,
 25 subject to the provisions contained in the Consolidated Statues,
 passed concurrently herewith, or in any future Statues that
 may be passed respecting the same.

The Criminal
 Law of Eng-
 land intro-
 duced as it
 stood on the
 17th day of
 September,
 1792.

CAP. CII.

An Act respecting the apprehension of Criminals, escaping from any of Her Majesty's Provinces and Governments in North America, into Upper Canada.

Preamble.

FOR the apprehension of felons and other malefactors who having committed crimes in some of Her Majesty's Provinces and Governments in North America, escape into Upper Canada: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, 5 enacts as follows: 37 G. 3, c. 15, s. 1, 16 V. c. 179, s. 7.

Warrants issuing within Her Majesty's other Governments in North America against felons escaping therefrom, may be executed within Upper Canada being duly endorsed.

1. If any person against whom a warrant has been issued by the Chief Justice of the Queen's Bench, or by any other Magistrate having competent authority in any of Her Majesty's Provinces or Governments in North America respectively, for any 10 felony or other crime of a high nature, escapes into or is found in any part of Upper Canada, any Justice of the Peace of the County, City or place, where such person resides or is supposed to be, may upon due proof being made of the hand-writing of the Magistrate who issued the warrant, endorse his the said Jus- 15 tice's name thereon and such warrant so endorsed shall be a sufficient authority to all persons to whom such warrant was originally directed, and also to all Constables of the County, City or place where such warrant has been so endorsed, to execute the same, by apprehending the person against whom 20 such warrant has been granted, and to convey him into the Province from which such warrant was originally issued, to be dealt with according to law. 37 G. 3, c. 15, s. 2.

Security being previously given to indemnify the Province against any expense and to bring the offender so apprehended to trial.

2. Before any such warrant is so endorsed, the person applying for its endorsement shall enter into a recognizance with 25 sufficient sureties, in a sum not less than fifty pounds, to indemnify this Province, against any expense that may arise or accrue from the apprehension of such offender, and also to bring the said offender or cause him to be brought to trial; and the Magistrate to whom such application is made, is 30 hereby authorized to take such recognizance. 37 G. 3, c. 15, s. 3.

CAP. CIII.

An Act respecting the apprehension of fugitive offenders from Foreign Countries, and delivering them up to Justice.

FOR the apprehending and delivering up felons and other malefactors, who, having committed crimes in foreign countries, seek an asylum in Upper Canada : Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Preamble.

1. In case murder, forgery, larceny or other crime punishable by the laws of Upper Canada with death or confinement at hard labor—is charged to have been committed within the jurisdiction of a Foreign Country—by a person who has fled to or sought refuge in Upper Canada—and in case a requisition is made by the Government of such Country or by its Ministers or Officers for the surrender of such person, then—upon such evidence of criminality as would warrant his apprehension and commitment for trial had the offence been committed in Upper Canada, the Governor may, in his discretion, by and with the advice of the Executive Council, deliver such person up to justice and direct his transmission to the custody of such Foreign Government. 3 W. 4, c. 6, s. 1.

Government authorized to deliver up to justice persons who may have fled from other Countries into this Province, charged with heinous offences.

2. For preventing the escape of any person so charged before an order for his transmission can be obtained from the Governor, any Judge or Justice of the Peace in Upper Canada, acting within his jurisdiction, upon such evidence on oath as satisfies him that the person accused stands charged with some crime of the description hereinbefore specified, and that there is good ground to suspect him to have been guilty thereof may issue his warrant for the apprehension and commitment of such person, in order that he may be detained in secure custody until application can be made to the Governor for his surrender and until an order can be made thereon. 3 W. 4, c. 6, s. 2.

Persons charged with offences committed in foreign countries may be committed until an application can be made to the Government for delivering up such offender.

CAP. CIV.

An Act relating to High Treason and other offences.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- High Treason.** 1. If any person compasses or imagines the death of our Lady the Queen, or levies war against Her Majesty, in Upper Canada, or is adherent to the Queen's enemies in Upper Canada, giving to them aid and comfort, therein or elsewhere, such person is guilty of treason, and shall suffer death. 3 W. 4, c. 3, s. 1. 5
- If an officer or soldier corresponds with the enemy, he shall be guilty of High Treason.** 2. If any Officer or Soldier in Her Majesty's army, holds correspondence with any rebel, or enemy of Her Majesty, or gives them advice or intelligence, either by letters, messages, signs or tokens, or in any manner of way whatsoever, or treats with such rebels or enemies, or enters into any condition with them without Her Majesty's license, or the license of the General, Lieutenant-General or Chief Commander, every such person so offending is guilty of high treason, and shall suffer death. 3 W. 4, c. 3, s. 14. 10 15
- Sentence to be pronounced in cases of High Treason.** 3. In all cases of high treason, the sentence or judgment to be pronounced against any person convicted and adjudged guilty thereof shall be, that such person shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until such person be dead; and that afterwards the body of such person shall be dissected and anatomized. 3 W. 4, c. 3, s. 19. 20 25
- Rescuing persons convicted of murder or committed for murder.** 4. If any person forces, sets at liberty or rescues, or attempts to rescue or set at liberty, any person out of prison, who has been committed for or found guilty of murder; or rescues, or attempt to rescue, any person convicted of murder going to execution or during execution, such offender is guilty of felony, and shall suffer death, and any accessory before the fact to any such offence is guilty of felony, and shall suffer death. 3 W. 4, c. 3, s. 4. 30
- Persons confessing or outlawed to be punished in the same manner as if convicted by verdict.** 5. Any person indicted for any offence made capital by this or any other Statute, shall be liable to the same punishment, whether he is convicted by verdict or confession, or outlawed upon indictment; and this as well in the case of accessories as of principals. 3 W. 4, c. 3, ss. 16 & 25. 35
- The Riot Act, 1 Geo. 1, c. 5, adapted to Upper Canada.** 6. In case any persons to the number of twelve or more, being unlawfully, riotously and tumultuously assembled together, to the disturbance of the public peace, are by Proclamation, made in the Queen's name, in the form in this Act 40 Act

Act directed, required or commanded by any one or more Justice or Justices of the Peace, or by the Sheriff of the County, or his Deputy Sheriff, or by the Mayor, or other head officer, or Justice of the Peace of any city or town corporate, where such persons are so assembled, to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, and in case such persons to the number of twelve or more, (notwithstanding such Proclamation made,) unlawfully, riotously and tumultuously, remain or continue together by the space of one hour after such command or request, such continuing together to the number of twelve or more, after such command or request so made by Proclamation, is felony, and the offenders shall suffer death. § W. 4, c. 3, s. 13.

Justices of the Peace may enjoin persons riotously assembled to disperse.

7. The order and form of the Proclamation to be made by the authority of this Act shall be as follows, that is to say: The Justice of the Peace, or other person authorized to make the said Proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence to be, while Proclamation is making; and after that, shall openly and with a loud voice make, or cause to be made, Proclamation in these words, or like in effect: § W. 4, c. 3, s. 13.

Form of Proclamation.

Our Sovereign Lady the Queen chargeth and commandeth all persons being assembled immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act, for preventing tumults and riotous assemblies.—God save the Queen.

8. Every such Justice and Justices of the Peace, Sheriff, Deputy Sheriff, Mayor and other Head Officer, within the limits of their respective jurisdictions, shall on notice or knowledge of any such unlawful, riotous and tumultuous assembly, of persons to the number of twelve or more, resort to the place where such unlawful, riotous and tumultuous assembly is, and there make, or cause to be made, Proclamation in manner aforesaid. § W. 4, c. 3, s. 13.

Justice of the Peace, Sheriffs, Mayors, &c., to repair to place of riot, and there make Proclamation.

9. And if twelve or more of the persons so unlawfully, riotously and tumultuously assembled, continue together, after Proclamation made in manner aforesaid, and do not disperse themselves within one hour, then every Justice of the Peace, Sheriff and Deputy Sheriff of the County where such assembly may be, and also every High and Petty Constable, and other Peace Officer within such County, and also every Mayor, Justice of the Peace, Sheriff and other Head Officer, High or Petty Constable, and other Peace Officer, of any city or town corporate where such assembly may be, and any person or persons commanded to assist such Justice of the Peace, Sheriff or Deputy Sheriff, Mayor, Bailiff, or other Head Officer aforesaid, (who may command all Her Majesty's subjects of age and ability

Consequences of persons riotously assembled not dispersing in obedience to the Proclamation.

ability to be assisting to them therein) shall seize and apprehend, the persons so unlawfully, riotously and tumultuously continuing together, after Proclamation made as aforesaid, and shall forthwith carry the persons so apprehended before one or more of Her Majesty's Justices of the Peace of the County 5 or place where such persons are so apprehended, in order to their being proceeded against for such their offences according to law.

Persons suppressing riot justified—even though death of a rioter ensues.

10. If any of the persons so unlawfully, riotously and tumultuously assembled, happen to be killed, maimed or hurt, by 10 reason of their resisting the persons dispersing, seizing or apprehending, or endeavouring to disperse, seize or apprehend them, then every such Justice of the Peace, Sheriff, Deputy Sheriff, Mayor, Head Officer, High or Petty Constable, or other Peace Officer, and all persons who were aiding and assisting them, 15 or any of them, shall be free, discharged and indemnified, as well against the Queen's Majesty, as against all and every other person and persons, of, or concerning, the killing, maiming or hurting, of any such person or persons so unlawfully, riotously and tumultuously assembled, as aforesaid. 3 W. c. 3, s. 13. 20

Consequences of any person opposing Peace Officer and others suppressing riots.

11. If any person or persons with force and arms, wilfully and knowingly oppose, obstruct, or in any manner let, hinder or hurt, any person or persons who begin to proclaim, or go to proclaim, according to the Proclamation hereby directed to be made, whereby such Proclamation cannot be made, then 25 every such opposing, obstructing, letting, hindering or hurting, such person or persons so beginning or going to make such Proclamation, as aforesaid, is felony, and the offenders shall suffer death, and every such person or persons so being unlawfully, riotously and tumultuously assembled, to the number of twelve, 30 or more, as aforesaid, to whom Proclamation should or ought to have been made, if the same had not been hindered, as aforesaid, who to the number of twelve or more, continue together, and do not disperse themselves within one hour after such let or hindrance so made, having knowledge thereof, are 35 guilty of felony, and shall suffer death. 3 W. 4, c. 3, s. 13.

Prosecutions for acts under this statute to be commenced within 12 months.

12. No person or persons shall be prosecuted by virtue of this Act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed. 3 W. 4, c. 3, s. 13. 40

Punishment for setting fire to any of H. M. dock-yards, ships, &c.

13. If any person within Upper Canada, wilfully and maliciously sets on fire or burns, or otherwise destroys or causes to be set on fire or burnt, or otherwise destroyed, or aids, procures, abets or assists, in the setting on fire or burning, or otherwise destroying, of any of Her Majesty's ships or 45 vessels of war, whether on float or building, or begun to be built in any of Her Majesty's dock yards or building or repairing by contract in any private yard for the use of Her Majesty, or

or any of Her Majesty's arsenals, magazines, dock yards, rope yards, victualling offices, or any of the buildings erected therein or belonging thereto, or any timber or materials there placed, for building, repairing or fitting out of ships or vessels, or any of
5 Her Majesty's military, naval, or victualling stores, or other ammunition of war, or any place or places where any such military, naval, or victualling stores, or other ammunition of war is, or are, kept, placed or deposited, such offender is guilty of felony, and shall suffer death. § W. 4, c. 3, s. 14.

G A P .

C A P . C V .

An Act to protect the Inhabitants of Upper Canada against lawless aggressions from Subjects of Foreign Countries at peace with Her Majesty.

Preamble.

FOR the protection of the inhabitants of Upper Canada against lawless aggressions from Subjects of Foreign Countries at peace with Her Majesty : Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

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Citizens or subjects of a foreign power taken in arms in this Province ;

May be tried by a Militia Court Martial.

And if convicted to be sentenced to death.

1. If any person, being a citizen or subject of any Foreign State or Country at peace with Her Majesty, is, or continues in arms against Her Majesty, within Upper Canada, or commits any act of hostility therein, or enters Upper Canada with design or intent to levy war against Her Majesty, or to commit any felony therein, for which any person would by the laws of Upper Canada be liable to suffer death, then the Governor may order the assembling of a Militia General Court Martial for the trial of such person, agreeably to the Militia Laws ; and upon being found guilty by such Court Martial of offending against this Act, such person shall be sentenced by such Court Martial to suffer death, or such other punishment as shall be awarded by the Court. 3 V. c. 12, s. 2.

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Any subject levying war in this Province with foreigners ;

Or commit such felony as aforesaid.—

With intent to aid such persons ;

May be tried and punished in like manner.

2. If any subject of Her Majesty, within Upper Canada, levies war against Her Majesty, in company with any of the subjects or citizens of any Foreign State or Country then at peace with Her Majesty, or enters Upper Canada in company with any such subjects or citizens with intent to levy war on Her Majesty, or to commit any such act of felony as aforesaid or if with the design or intent to aid and assist he joins himself to any person or persons whatsoever, whether subjects or aliens, who have entered Upper Canada with design or intent to levy war on Her Majesty, or to commit any such felony within the same, then such subject of Her Majesty, may be tried and punished by a Militia Court Martial, in like manner as any citizen or subject of a Foreign State or Country at peace with Her Majesty, is liable under this Act to be tried and punished. 3 V. c. 12, s. 3.

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Any such foreigners may be tried before a Court of Oyer and Terminer.

3. Every citizen or subject of any Foreign State or Country who offends against the provisions of this Act, is guilty of felony, and may, notwithstanding the provisions hereinbefore contained, be prosecuted and tried before any Court of Oyer and Terminer and General Gaol Delivery in and for any County in Upper Canada, in the same manner as if the offence had been committed in such County, and upon conviction shall suffer death as a felon. 3 V. c. 12, s. 4.

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CAP. CVI.

An Act to prevent the unlawful training of persons in Military evolutions, and the use of Fire Arms; and to authorize the seizure of Fire Arms collected for purposes dangerous to the public peace.

HER Majesty, by and with the advice and consent of the Preamble.
Legislative Council and Assembly of Canada, enacts as follows :

1. All meetings and assemblies of persons for the purpose of
5 training or drilling, or of being trained or drilled to the use of
arms, or for the purpose of practising military exercises, or
evolutions, without lawful authority, are prohibited, and every
person who attends any such meeting or assembly, for the
purpose of training or drilling any other person or persons to
10 the use of arms, or to the practice of military exercise or evolu-
tion, or who trains or drills any other person or persons to the
use of arms, or to the practice of military exercise or evolution
as aforesaid, or who aids or assists therein, shall be guilty of a
15 Misdemeanor, and being convicted thereof, shall be confined in
the Penitentiary for the term of two years, or be punished
by fine and imprisonment in the Common Gaol of the County
in which the conviction takes place, for any period less
than two years, at the discretion of the Court; and every per-
20 son who attends any such meeting or assembly, for the purpose
of being, or who at any such meeting or assembly is trained or
drilled to the use of arms, or the practice of military exercise
or evolutions, being convicted thereof, shall be punished by
fine and imprisonment in the Common Gaol, for any period
less than two years, at the discretion of the Court. (1 V. c. 11.
25 s. 1.)

Meetings of persons for the purpose of being drilled to the use of arms, prohibited.

Punishment of persons engaged in drilling.

Punishment of persons present at such drilling, &c.

2. Any Justice of the Peace, or any Constable or Peace
Officer, or any person acting in their aid may disperse any such
unlawful meeting or assembly as aforesaid, and arrest and de-
tain any person present at, or aiding, assisting or abetting, any
30 such assembly or meeting; and the Justice of the Peace who
arrests any such person, or before whom any person so arrested
is brought, may commit such person for trial for such offence,
unless such person gives bail for his appearance at the then next
Assizes, to answer to any indictment which may be preferred
35 against him, for any such offence against this Act. (1 V.
c. 11, s. 2.)

Justices, &c., authorized to disperse unlawful meetings of persons, and Justices empowered to commit offenders.

3. This Act is not to prevent any prosecution, by indict-
ment or otherwise, for any thing that is an offence within the
intent and meaning of this Act, and which might have been so
40 prosecuted if this Act had not been made, unless the offender
has been prosecuted for such offence under this Act, and con-
victed or acquitted thereof. (1 V. c. 11, s. 3.)

Act not to prevent prosecution by indictment, &c.

4.

Concurrent jurisdiction given to Justices of different Districts in carrying this Act into effect.

4. All Justices of the Peace in and for any County in Upper Canada, shall have concurrent jurisdiction as Justices of the Peace, with the Justices of any other County, in all cases as to the carrying into execution the provisions of this Act, and as to all matters and things relating to the preservation of the Public Peace, as fully and effectually as if each of such Justices was in the Commission of the Peace for each of such Counties. (1 V. c. 11, s. 7.) 5

Governor may declare by Proclamation that this Act is no longer in force in any particular District, and again to declare the same in force.

5. The Governor, by and with the advice of the Executive Council, may by Proclamation, declare that this Act shall be no longer in force in any particular County therein specified; and from and after the period specified in any such Proclamation, the powers of this Act shall no longer be in force in such County; And the Governor, upon such advice as aforesaid, may by Proclamation, declare any such County to be again within the powers of this Act. (S V. c. 11, s. 9.) 10 15

All prosecutions for offences committed against this Act to be commenced in six months.

6. No person shall be prosecuted for any offence done or committed contrary to the provisions of this Act, unless such prosecution is commenced within six calendar months after the offence committed. (S V. c. 11, s. 10.) 20

Actions against Justices, &c., for any thing done under this Act to be commenced within six months.

7. Any action or suit brought against any Justice of the Peace, Constable, Peace Officer, or other person, for any thing done or acted in pursuance of this Act, must be commenced within six calendar months next after the fact committed, and not afterwards; and the venue in any such action or suit shall be laid in the proper County where the fact was committed, and not elsewhere; and the defendant may plead the general issue, and give this Act and the special matter in evidence in any trial to be had thereupon; and if such action is brought after the time limited for bringing the same, or the venue is laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant; and in such case, or if the plaintiff becomes non-suit, or discontinues his action after appearance by the defendant, or if the jury find a verdict for the defendant upon the merits, or if upon demurrer judgment be given against the plaintiff, the defendant shall have double costs, to be recovered in the same manner as in other cases. (1 V. c. 11, s. 8.) 25 30 35

Other protection to Justices, &c.

CAP CVII.

An Act for the punishment of any persons who seduce Soldiers or Sailors to desert Her Majesty's Service.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. If any person other than an enlisted Soldier in Her Majesty's Service, or a Sailor engaged in the Naval Service of Her Majesty, by words or with money, or by any ways, methods or means whatsoever, directly or indirectly, persuades, encourages, prevails upon, or procures any such Soldier or Sailor to desert or leave Her Majesty's Military or Naval Service, such offender shall be deemed guilty of a Misdemeanor, and upon conviction before any Court of Oyer and Terminer and General Gaol Delivery in Upper Canada, shall be punished by fine and imprisonment in the Common Gaol of the County in which the conviction takes place, for such period being less than two 15 years, as the said Court may impose, or by imprisonment at hard labor in the Penitentiary, for a period not less than two nor more than seven years, in the discretion of the Court. (3 V. c. 3, s. 2.)

Any person procuring soldiers or sailors to desert to be liable to imprisonment in the common gaol or Penitentiary and to a fine, in the discretion of the Court.

2. If any person other than an enlisted Soldier, or a Sailor engaged in the Naval Service of Her Majesty, conceals, receives or assists any deserter from Her Majesty's Naval or Military Service, knowing him to be a deserter, the person so offending shall be guilty of a Misdemeanor, and upon conviction before any such Court as aforesaid shall be liable to the same 25 punishments mentioned in the preceding section of this Act. (3 V. c. 3, s. 3.)

Any person harboring a deserter liable to the same penalties.

CAP. CVIII.

An Act respecting Forgery and Perjury in certain cases.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- 1.** If any person forges any seal, stamp or signature of any document mentioned or referred to in the Act respecting Witnesses and Evidence, or tenders in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall be imprisoned in the Penitentiary for any term not exceeding ten years or be imprisoned in any Common Jail or house of correction with hard labor for any term not exceeding one year, nor less than two months. (16 V. c. 19, s. 11)
- 2.** Whenever any such document has been admitted in evidence, the Court or the person who has admitted the same, may, at the request of any party against whom the same is admitted in evidence, direct that the same shall be impounded and be kept in the custody of some Officer of the Court or other proper person, for such period and subject to such conditions as to the said Court or person seems meet. (16 V. c. 19, s. 11.)
- 3.** If any person forges the seal or any process of any Division Court, or serves or enforces any such forged process, knowing the same to be forged, or delivers or causes to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of any such Court, knowing the same to be false, or if any person acts or professes to act under any false color or pretence of the process of any such Court, such person shall be guilty of felony. (13, 14 V. c. 53, s. 36.)
- 4.** If any person forges any signature to any affidavit made or taken under the Common Law Procedure Act, or uses or tenders in evidence any such affidavit with any false, forged or counterfeited signature thereto, knowing the same to be false, forged or counterfeit, he shall be guilty of felony, and shall be imprisoned at hard labor in the Penitentiary for any term not more than ten years nor less than four years. (19, V. c. 43, s. 40.)
- 5.** If any person forges or counterfeits any Debenture issued under the authority of the Act, to provide for the accommodation of the Superior Courts, or any stamp, indorsement or writing thereon or therein, or demands to have such counterfeited debenture, or any debenture with such counterfeited writing or other

Punishment of persons forging documents, &c., or using them knowing them to be forged.

Documents may be impounded on request of party against whom it may have been used.

Punishment for persons forging the seals of the Courts.

Punishment for forging signatures, &c.

Penalty on persons forging Debentures, &c.

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other indorsement thereon or therein, exchanged for money by any person, liable or required to exchange the same, or by any other person, knowing the debenture so tendered or the indorsement or writing thereon or therein to be so forged or counterfeited, with intent to defraud Her Majesty, or the person appointed to pay the same, or any other person or persons, body or bodies politic, or corporate, the person so offending shall be guilty of felony, and shall suffer such punishment as may be adjudged in that behalf, not exceeding imprisonment at hard labor in the Penitentiary for seven years. (9 V. c. 33, s. 3.)

6. If any person forges or alters, or offers, utters, disposes of, or puts off knowing the same to be forged or altered, any certificate, or copy, certified under the Act respecting the reservation of points of law arising in Criminal cases tried at any Assizes, Quarter Sessions, or Recorder's Court by a Chief Justice or Senior Judge, or by a Clerk of Assize, Clerk of the Peace or Recorder's Clerk, as the case may be, with intent to cause any person to be discharged from custody, or otherwise prevent the course of justice, he shall be guilty of felony, and shall, at the discretion of the Court, be imprisoned in the Penitentiary for any period not more than seven nor less than three years. (14, 15 V. c. 13, s. 6.)

Forging certificates in case of criminal points reserved.

7. Every person charged with committing any felony under this Act, may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed, in the county or place in which he has been apprehended or is in custody. (19 V. c. 43, s. 40.)

Where offenders to be tried.

8. Every accessory before or after the fact to any such offence, may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed, in any county or place in which the principal offender may be tried.

Accessories.

9. If any person wilfully and corruptly makes any false affidavit out of Upper Canada, before any Chief Justice or other Officer or Functionary authorized to take the same under the Common Law Procedure Act aforesaid, the person so offending shall be deemed guilty of perjury, in like manner as if such false affidavit had been made in Upper Canada before competent authority, and he may be dealt with, indicted, tried, and if convicted, sentenced, and his offence may be laid and charged to have been committed, in that county or place where he has been apprehended or is in custody. (19 V. c. 43, s. 40.)

Trial, punishment, &c., for taking false affidavits out of Upper Canada.

C A P . C I X .

An Act respecting the punishment of Persons illegally solemnizing Marriage in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Punishment of persons not being Ministers pretending to solemnize marriage.

1. If any person not being a Clergyman or Minister of a religious denomination existing in Upper Canada, solemnizes or pretends to solemnize matrimony in Upper Canada, or falsely personates any Clergyman or Minister for the purpose of officiating at any such ceremony, he is guilty of a misdemeanor, and shall be imprisoned in the Provincial Penitentiary for a period not less than two years, or suffer such other punishment, either by fine, or imprisonment less than two years, or both, as any Court of Record in Upper Canada having competent jurisdiction may deem meet and just. 20 V. c. 66, s. 5. 5 10

Punishment of persons procuring persons not Ministers to pretend to marry, &c.

2. If any person knowingly procures any other person not being a Minister or Clergyman of some religious denomination existing in Upper Canada, to perform the ceremony of matrimony, or knowingly aids or abets any such pretended Clergyman or Minister in performing such ceremony, he is guilty of a misdemeanor, and shall be liable to the punishment expressed in the preceding section of this Act. 20 V. c. 66, s. 6. 20 15

Quarter sessions not to have jurisdiction over such offence.

3. If any Clergyman or Minister, legally authorized to solemnize marriage within Upper Canada, knowingly or wilfully solemnizes marriage therein without publication of banns or without license of marriage first had and obtained from some person having authority to grant the same, he is guilty of a misdemeanor, and shall be punished accordingly; But such offence shall not be cognizable at any Court of Quarter Sessions. 2 G. 4, c. 11, s. 1, 25

Prosecution must be within two years.

4. No prosecution for any offence against this Act shall be commenced after two years from the time of the offence committed; and in every such prosecution, wherein the legal authority of any person to solemnize marriage within Upper Canada comes in question, the proof of authority shall be upon the defendant. 2 G. 4, c. 11, s. 1, 2. 30

Proof of legal authority to solemnize marriage shall be on defendant.

C A P . C X .

An Act respecting Slander and Libel.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. On the trial of any action, indictment or information, for
 5 the making or publishing any libel on the plea of not guilty
 pleaded, the jury sworn to try the issue may give a general
 verdict of guilty or not guilty upon the whole matter put in issue
 in such action, indictment or information, and shall not be
 required or directed by the Court or Judge before whom such
 10 action, indictment or information is tried, to find the defendant
 guilty, merely on the proof of publication by such defendant of
 the paper charged to be a libel, and of the sense ascribed to the
 same in such action, indictment or information ; but the Court
 or Judge before whom such trial is had, shall, according to the
 discretion of such Court or Judge, give the opinion and direc-
 15 tions of such Court or Judge to the jury on the matter in issue,
 as in other cases ; and the jury may on such issue find a
 special verdict, if they think fit so to do, and the defendant, if
 found guilty, may move in arrest of judgment on such ground
 and in such manner as he might have done before the passing
 20 of this Act. 13, 14 V. c. 60, s. 1.

Jury not to be directed to return a verdict of guilty on the mere proof of the publication and of the sense ascribed.

2. In actions of libel and slander, the Plaintiff may aver
 that the words or matter complained of were used in a defa-
 matory sense—specifying such defamatory sense without any
 prefatory averment to show how such words or matter were
 25 used in that sense, and such averment shall be put in issue by
 the denial of the alleged libel or slander ; and where the words
 or matter set forth, with or without the alleged meaning, show
 a cause of action, the declaration shall be sufficient. 19 V. c.
 48, s. 110.

Averments in actions for slander or libel.

3. In any action for defamation when the defendant has
 pleaded not guilty only, or has suffered judgment by default, or
 judgment has been given against him on demurrer, he may
 give in evidence in mitigation of damages, that he made or
 offered a written or printed apology to the plaintiff for such
 35 defamation, before the commencement of the action or in case
 the action was commenced before there was an opportunity of
 making or offering such apology, that he did so as soon after-
 wards as he had an opportunity. 13, 14 V. c. 60, s. 2.

Defendant may prove in mitigation that he offered a written apology.

4. In an action for libel contained in any public newspaper
 40 or other periodical publication, the defendant may plead that
 such libel was inserted in such newspaper or other periodical
 publication, without actual malice, and without gross negli-
 gence, and that before the commencement of the action or at
 the

Defendant may plead that the libel was inserted without malice or gross

negligence, and that he offered to publish an apology. the earliest opportunity afterwards, he inserted in such newspaper or other periodical publication, a full apology for the said libel, or if the newspaper or periodical publication in which the said libel appeared should be ordinarily published at intervals exceeding one week, that he had offered to publish such apology in any newspaper or periodical publication to be selected by the plaintiff in the action. 13, 14 V. c. 60, s. 3. 5

And may pay money into Court as amends. 5. Any defendant, upon filing such plea, may pay into Court a sum of money by way of amends for the injury sustained by the publication of the libel, which payment shall be of the same effect, and available to the same extent and in the same manner, and be subject to the same rules and regulations as to costs, and the form of pleading, (except so far as regards the additional facts hereinbefore required to be pleaded by such defendant,) as payment of money into Court in other cases, and 15 to such plea the plaintiff may reply generally, denying the whole of the plea. 13, 14 V. c. 60, s. 3.

Punishment for extorting money by threatening to publish or promising to prevent the publication of a libel. 6. If any person publishes or threatens to publish any libel upon any other person, or directly or indirectly ; 20

1. Threatens to print or publish, or
2. Proposes to abstain from printing or publishing, or
3. Offers to prevent the printing or publishing, of any matter or thing touching or concerning any other person, with intent to extort any money or security for money, or any valuable thing, from such or from any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, such offender shall be fined in a sum not exceeding One Hundred Pounds, and be imprisoned in the Common Gaol for any period less than two years in the discretion of the Court. 13, 14 V. c. 60, s. 4. 30

Punishment for publishing a libel knowing it to be false. 7. If any person maliciously publishes any defamatory libel, knowing the same to be false, every such person, shall be fined not more than Fifty Pounds, and be imprisoned in the Common Gaol for a period not exceeding one year. 13, 14 V. c. 60, s. 5. 35

Punishment for publishing any libel. 8. If any person maliciously publishes any defamatory libel, such person, shall be fined not exceeding the sum of Twenty-five Pounds, or be imprisoned not exceeding six calendar months, or both as the Court may award. 13, 14 V. c. 60, s. 6. 40

Truth being pleaded may be inquired into, but shall not be a defence except in certain cases. 9. To any indictment or information for a defamatory libel it shall be a good defence for the defendant to plead by way of justification the truth of the matters charged in the manner required in pleading a justification to an action for defamation, and that it was for the public benefit that such matters should have 45

have been published, and to such plea the prosecutor may reply generally, denying the whole thereof. 13, 14 V. c. 60, s. 7.

10. Without such plea the truth of the matters charged as libellous in such indictment or information or that it was for the public benefit, that such matters should have been published, shall in no case be inquired into, and in addition to such plea, the defendant may plead not guilty. 13, 14 V. c. 60, s. 7.

Nor rules specially pleaded.

11. If after such plea the defendant is convicted on such indictment or information, the Court may in pronouncing sentence, consider whether the guilt of the defendant is aggravated or mitigated by such plea, and by the evidence given to prove or disprove the same. 13, 14 V. c. 60, s. 7.

When such a plea may aggravate or mitigate the sentence

12. No defence otherwise open to the defendant under the plea of not guilty, shall be taken away or prejudiced by reason of such special plea. 13, 14 V. c. 60, s. 7.

No defence under the plea of not guilty affected.

13. Whenever upon the trial of any indictment or information for the publication of a libel, to which the plea of not guilty has been pleaded, evidence is given which establishes a presumptive case of publication against the defendant by the act of any other person by his authority, the defendant may prove, and if proved it shall be a good defence, that such publication was made without his authority, consent or knowledge, and that the said publication did not arise from want of due care or caution on his part. 13, 14 V. c. 60, s. 8.

In certain cases defendant may prove publication without his authority, &c.

14. In the case of an indictment or information by a private prosecutor, for the publication of any defamatory libel, if judgment is given against the defendant, he shall be liable for the costs sustained by the prosecutor by reason of such indictment or information; and if judgment is given for the defendant, he shall be entitled to recover from such prosecutor the costs sustained by the defendant by reason of such indictment or information, such costs to be taxed by the Clerk of either the Courts of Queen's Bench or Common Pleas in Toronto, or the Deputy of either such Clerks in the Counties where such trial took place, at the option of the party in whose favor such costs are to be taxed; and such costs shall be recoverable by Writ of Attachment on the order of any Judge of either of the said Courts of Queen's Bench or Common Pleas, or of any Judge of the County Court in the county in which such indictment or information was tried, and all proceedings for the recovery of such costs shall be entitled in the Court of Oyer and Terminer for the County in which the trial was had, and such Writ of Attachment shall be returnable in either of the said Superior Courts as in other cases of Attachment, and on its return, such proceedings shall be had thereon as may now be had in any case of Attachment for non-payment of Costs, pursuant to an order or rule of either of the said Superior Courts. 13, 14 V. c. 60, s. 9.

Private prosecutor if successful entitled to costs, and so of defendant.

How recoverable.

Proceedings for recovery, how entitled.

C A P . C X I .

An Act to prevent the Profanation of the Lord's Day,
in Upper Canada.

WHEREAS it is expedient to enact a Law against the Profanation of the Lord's Day, commonly called Sunday, which day ought to be duly observed and kept holy : Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

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No sale to take
place on Sun-
day.

1. It is unlawful for any Merchant, Tradesman, Artificer, Mechanic, Workman, Labourer or other person whatsoever, on the Lord's Day to sell or publicly shew forth, or expose, or offer for sale, or to purchase, any goods, chattels, or other personal property, or any real estate whatsoever, or to do or exercise any worldly labour, business or work of his ordinary calling, (conveying Travellers or Her Majesty's Mail, by land or by water, selling Drugs and Medicines, and such other works of necessity, and works of charity, only excepted). 8 V. c. 45, s. 1. 15

Tippling, &c.,
prohibited on
Sunday.

2. It is not lawful for any person on that day to tittle, or to allow or permit tippling in any Inn, Tavern, Grocery or House of Public Entertainment, or to revel, or publicly exhibit himself in a state of intoxication, or to brawl or use profane language in the public streets or open air, so as to create any riot or disturbance, or annoyance to Her Majesty's peaceable subjects, or to hold, convene or attend any public political meeting. 20

Games and
amusements,
prohibited.

3. It is not lawful for any person on that day to play at skittles, ball, foot-ball, racket, or any other noisy game, or to gamble with dice or otherwise, or to run races on foot, or on horseback, or in carriages, or in vehicles of any sort. 8 V. c. 45, s. 1. 25

Hunting and
shooting.

4. It is not lawful for any person on that day to go out fishing or hunting or shooting, or in quest of, or to take, kill or destroy, any deer or other game, or any wild animal, or any wild fowl or bird, or fish, or to use any dog, gun, rifle or other engine, or any fishing rod, net or trap, for the above mentioned purpose, except in defence of his property, from any wolf or other ravenous beast or bird of prey. 8 V. c. 45, s. 1. 30

Exception.

Bathing.

5. It is not lawful for any person on that day to bathe in any exposed situation in any water within the limits of any incorporated City or Town, or within view of any place of Public Worship, or private residence. 8 V. c. 45, s. 1. 35

Penalty.

6. Any person convicted before a Justice of the Peace of any act hereinbefore declared not to be lawful, upon the oath or affirmation of one or more than one credible witness, or upon view 40
view

view had of the offence by the said Justice himself, shall be fined in a sum not exceeding ten pounds, nor less than five shillings, for every such offence, together with the costs and charges attending the proceedings and conviction. 8 V. c. 45, s. 1.

5 7. All sales and purchases, and all contracts and agreements for sale or purchase, of any real or personal property whatsoever, made by any person or persons on the Lord's Day, are to be utterly null and void. 8 V. c. 45, s. 3. Sales and agreements made on Sunday to be void

8. When any person has been charged upon oath or otherwise, in writing, before any Justice of the Peace, with any offence against this Act, the said Justice shall summon the person so charged to appear before him, at a time and place to be named in such Summons, and if such person fails or neglects to appear accordingly, then (upon proof of due service of the Summons upon such person, by delivering or leaving a copy thereof at his house, or usual or last place of abode, or by reading the same over to him personally,) the said Justice may either proceed to hear and determine the case *ex parte*, or issue his Warrant for apprehending such person, and bringing him before himself, or some other Justice of the Peace within the same County or Municipality; and the Justice before whom the person charged appears or is brought, shall proceed to hear and determine the case, or the said Justice, on view of the offence, may verbally order or if on the complaint of a third party, then, in writing order the offender to be at once committed (although it be on the Lord's Day) to the common gaol of the place, or into other safe custody, there to remain until the morrow, or some other day, according to circumstances, until the case be heard and disposed of. 8 V. c. 45, s. 4. Justice to summon accused party.
Commitment.

9. The Justice before whom any person is convicted of any offence against this Act, may cause the conviction to be drawn up in the following form, or in any other form of words to the same effect, as the case may require, that is to say: Form of conviction.

Be it remembered, that on the _____ day of _____, in the year of our Lord, eighteen _____, at _____, in the County of _____, (or at the City of _____, as the case may be,) A. B., of _____, is convicted before me, C. D., one of Her Majesty's Justices of the Peace for the said County, (or City, as the case may be,) for that he the said A. B. did (specify the offence, and the time and place, when and where the same was committed, as the case may be;) and I, the said C. D., adjudge the said A. B., for his offence to pay (immediately, or on or before the _____ day of _____,) the sum of _____, and also the sum of _____, for costs; and in default of payment of the said sums respectively, to be imprisoned in the common gaol of the said County (or City, as the case may be,) for the space of _____ months, unless the said sums shall sooner be

be paid : and I direct that the said sum of
(the penalty,) shall be paid as follows, that is to say : one
 moiety thereof to the party charging the offence, and the
 other moiety to the Treasurer of the Town, Township
 or Village, *(naming the one in which the offence was* 5
committed, or Chamberlain, of the said City, as the case may
be,) to be by him applied according to the provisions of the
 Act, *(insert the title of this Act).*

Given under my hand and seal, the day and year first
 above mentioned. 10

C. D., J. P. [L. S.]

Conviction and commitment not to be void for want of form. 10. A conviction under this Act shall not be quashed for want of form ; nor shall any Warrant of Commitment be held void by reason of any defect therein, if it is alleged that the party has been committed, and there is a good and valid conviction to sustain the same. S V. c. 45, s. 5. 15

In default, may levy fine. 11. In default of payment of any fine imposed under this Act, together with the costs attending the same, within the period specified for the payment thereof at the time of conviction by the Justice of the Peace before whom such conviction takes place, such Justice of the Peace (if he deems it expedient so to do) may issue his Warrant directed to any Constable to levy the amount of such fine and costs within a certain time, to be in the said Warrant expressed ; and in case no distress sufficient to satisfy the amount is found, he may commit the offender to the Common Gaol of the District wherein the offence was committed, for any term not exceeding three calendar months, unless the fine and costs are sooner paid. S V. c. 45, s. 7. 20
Commitment. 25

Limitation of time for prosecution. 12. The prosecution for any offence punishable under this Act, must be commenced within one calendar month after the commission of the offence, and not afterwards ; and the evidence of any inhabitant of the Municipality in which the offence was committed, shall be admitted and receivable, notwithstanding the fine incurred by the offence may be payable for the benefit of such Municipality ; but the party who makes the charge in writing before the Justice, shall not be admitted as a witness in the case. S V. c. 45, s. 8. 30
Who may be witnesses. 35

Appeal to the Quarter Sessions. 13 In case a person thinks himself aggrieved by any conviction or decision under this Act, then, in case such person within six days after such conviction or decision, and ten days at least before the first Court of General Quarter Sessions of the Peace, or in Cities before the first Recorder's Court, (if there be a Recorder's Court) to be held not sooner than twelve days next after such conviction or decision, gives to the other party notice in writing, of his intention to appeal, and of the cause and matter thereof, and in case such person either remains in custody 40
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custody until the sitting of such Court, or enters into a recognizance, with two sufficient sureties before any Justice of the Peace, conditioned personally to appear at the said Court of Quarter Sessions or Recorder's Court, as the case may be, and to try such Appeal, and to abide the judgment of the Court thereupon, and to pay such costs as may be by the Court awarded, then in case such person is in Custody, the Justice before whom the recognizance is entered into, shall liberate such person, and such person may appeal to such Court of Quarter Sessions or Recorder's Court, and the Court so appealed to shall hear and determine the matter of the appeal, and make such Order therein, with or without costs to either party, as the Court seems meet; and in case of the dismissal of the appeal or of the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as may be awarded, and shall, if necessary, issue Process for enforcing such judgment. 8 V. c. 45, s. 9.

14. Every Justice of the Peace before whom any person is convicted of any offence against this Act, shall transmit the conviction to the next Court of General Quarter Sessions, or Recorder's Court (as the case may be) to be holden for the County or City wherein the offence was committed, there to be kept by the proper officer among the records of the Court. 8 V. c. 45, s. 10.

Justices to transmit the conviction to the Quarter Sessions.

15. All actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the County where the fact was committed, and must be commenced within three calendar months after the fact committed, and not afterwards; and notice in writing, of such action, and of the cause thereof, must be given to the Defendant one calendar month at least before the action; and in any such action the Defendant may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; (8 V. c. 45, s. 11.)

Where actions, &c., are to be tried.

Defendant may plead general issue.

16. No Plaintiff shall recover in such action, if tender of sufficient amends was made before such action brought, or if a sufficient sum of money has been paid into Court after such action brought, by or on behalf of the Defendant; and if a verdict passes for the Defendant, or the Plaintiff becomes non-suit, or discontinues any such action after issue joined, or if upon demurrer or otherwise judgment is given against the Plaintiff, the Defendant may recover his full costs, as between Attorney and Client, and have the like remedy for the same as any Defendant hath by law in other cases. (8 V. c. 45, s. 11.)

Tender of amends, &c.

Defendant if successful to have full costs.

17. All sums of money awarded or imposed as fines or penalties, by virtue of this Act, shall be paid as follows, that is to say: one moiety thereof shall be paid to the party charging the offence in writing, before the Justice, and the other

Distribution of penalties.

C A P . C X I I .

An Act respecting County Attorneys.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. In every County in Upper Canada, there shall be a County Attorney for the County, to aid in the Local Administration of Justice, and to perform the duties by this Act assigned to County Attorneys. 20 V. c. 59, s. 1. County At-
torney for
every County.
2. The Governor may appoint a County Attorney for each County in Upper Canada, to hold office during pleasure, and upon the death, resignation or removal of a County Attorney, to supply the vacancy. 20 V. c. 59, s. 3. Governor to
appoint, re-
move, &c.
3. No person shall be appointed as a County Attorney, or shall act in that capacity, who is not a Barrister at Law of not less than three years' standing at the Upper Canada Bar, and a resident in the County for which he is appointed ; But any person now holding the Office of Clerk of the Peace, who is a Barrister at Law, may be appointed to the Office of County Attorney for the County of which he is Clerk of the Peace. 20 V. c. 59, s. 2. Who only may
be appointed.
4. No County Attorney shall, by himself or partner in business, act or be directly or indirectly concerned as Counsel or Attorney for any prisoner or party, in respect to any charge against such prisoner or party of treason, felony or other offence punishable under the criminal Law of this Province. 20 V. c. 59, s. 4. Neither Coun-
ty Attorney
nor his part-
ner to defend
persons charg-
ed with crimi-
nal offences.
5. Every County Attorney shall give such security, and for such sum, and with so many sureties, and in such manner and form, as the Governor may direct, for the due performance of his office and the due payment of all moneys received by him under the provisions of any Act of the Parliament of this Province. 20 V. c. 59, s. 15. County At-
torney to give
security.
6. Every County Attorney shall—
- First—Receive and examine all informations, examinations, depositions, recognizances, inquisitions and papers connected with criminal charges which the Magistrates and Coroners of the County are hereby required to transmit to him—and when necessary, he shall cause such charges to be further investigated, and additional evidence to be collected if required,—and also sue out process to compel the attendance of witnesses and the production of papers, so that prosecutions at the Assizes and Quarter Sessions may not be unnecessarily delayed or fail through want of proof that might be secured ; To receive and
examine in-
formations,
&c.

To secure at-
tendance of
witnesses.
- Secondly—

To institute and conduct prosecutions at Quarter Sessions :

Secondly—He shall institute and conduct on the part of the Crown, prosecutions for felonies and misdemeanors at the Court of Quarter Sessions for the County he is appointed to, in the same manner as the Law Officers of the Crown institute and conduct similar prosecutions at the Assizes and with like rights and privileges, except as to the right of entering a *nolle prosequi*, and generally he shall attend to all criminal business at the Court of Quarter Sessions,—and perform also the like duties in the Recorder's Court in those Cities wherein such Courts exist ;

And Recorder's Courts.

Watch over certain cases brought by private prosecutors.

Thirdly—He shall watch over the conduct of cases at the Court of Quarter Sessions, wherein it is questionable if the conduct complained of be punishable by law, or where the particular act or omission presents more of the features of a private injury than a public offence ; and without unnecessarily interfering with private individuals, who wish in such cases to prosecute, may assume wholly the conduct of the case where justice between the public and the accused seems to demand his interposition ;

To deliver papers connected with criminal business at Assizes to Crown Officer.

Fourthly—He shall deliver to the Crown Officer or Counsel appointed by the Attorney-General, all papers connected with the criminal business at the Assizes on or before the opening of the Court ; be present at such Court, and if required, assist such Crown Officer or Counsel with the Criminal business, and in the absence of the Law Officers of the Crown and of such Counsel, he shall represent the Crown and take the charge and conduct of the criminal business to be done at the Assizes for his County ;

To institute and conduct summary proceedings before Magistrates where the Public Revenue, &c., is concerned.

Fifthly—If required by the general regulations touching his office to be made in pursuance of the provisions hereinafter contained ; he shall institute and conduct proceedings before Justices of the Peace under any Act or Law conferring summary powers to convict for offences in relation to the Public Revenue, the Public Property, the Public Domain, the Public Peace, the Public Health, and any other matter made punishable on summary conviction before Justices of the Peace, and he may institute such proceedings, on a complaint in writing, or as Public Prosecutor, in cases wherein the public interests require the exercise of such office ;

To advise Magistrates at their request.

Sixthly—If by any Justice of the Peace requested in writing containing a Statement of the particular case, he shall advise and instruct such Magistrate in respect to criminal offences brought before him for preliminary investigation or for adjudication. 20 V. c. 59, s. 5.

County Attorney to take oath of office.

7. Every County Attorney, before he shall be qualified to act as such, shall take before some County Judge the following oath, that is to say :

“ I do swear that I will truly and faithfully, according to the Oath.
 “ best of my skill and ability, execute the several duties, powers
 “ and trusts of County Attorney for the County of without
 “ favor or affection to any party. So help me God.” 20 V.
 5 c. 59, s. 6.

8. In every case of misdemeanor tried at the Court of Quarter Sessions, in which costs are or may be ordered to be paid by a Defendant, the County Attorney shall be entitled to fees as Attorney and Counsel for services rendered in such case, to be taxed by the Court according to the scale of allowance in the County Courts as nearly as the nature of such services will allow ; such fees in case of conviction to form part of the costs payable by a Defendant. 20 V. c. 59, s 7..

Fees in cases conducted by him at trial where costs are paid by the defendant.

9. In all cases of felony tried as aforesaid, and in all cases of misdemeanor in which no costs have been ordered to be paid, or, if ordered to be paid, cannot be made of the Defendant, the County Attorney shall be entitled to receive for the services rendered by him in each such case the sum of Twenty-five shillings, to be paid upon certificate of the Chairman of the Court of Quarter Sessions, and to form a portion of the expenses of the administration of Criminal Justice in Upper Canada. 20 V. c. 59, s. 7.

And in case of felony or misdemeanor where costs are not paid by defendant.

10. The County Attorney shall on or before the tenth day of February in each year, render an account to the Inspector General, under oath, of all emoluments received by him under this Act for the then preceding year. 20 V. c. 59, s. 7.

Account to be rendered by him.

11. The Governor in Council may make such general regulations as to him seems expedient, for carrying out the provisions of this Act, and also touching the office of County Attorney, and for the prosecution of offenders against the criminal laws of this Province, and may from time to time alter such regulations. 20 V. c. 59, s. 8.

Governor in Council to make regulations as to duties of County Attorneys. &c.

12. After the passing of this Act, no person shall be appointed a Clerk of the Peace for any County in Upper Canada, who is not a Barrister at law of not less than three years' standing at the Upper Canada Bar; and such Clerk of the Peace shall be ex-officio County Attorney for the County of which he is Clerk of the Peace. 20 V. c. 59, s. 9.

Clerks of the Peace hereafter appointed must be Barristers ;
And shall be County Attorneys.

13. In case of the illness or unavoidable absence of the County Attorney, the Senior County Judge of the County Court of the County, may appoint some Barrister at law to act for such County Attorney during such illness or absence, and notice of the appointment and the cause thereof shall be sent by such County Attorney to the Governor, who may at any time annul such appointment. 20 V. c. 59, s. 10.

Case of unavoidable absence or illness of County Attorney provided for.

14.

14. In every case where a person is committed for trial, or bailed to answer to a criminal charge, the Justice of the Peace so committing or bailing, shall deliver or cause to be delivered without delay to the County Attorney for the County, the informations, depositions, examinations, recognizances and papers connected with the charge; and the County Attorney shall be deemed the "proper officer" of the Courts within the meaning of the Statute, to facilitate the performance of the duties of Justices of the Peace, out of Sessions, and in every case of inquisition found before Coroners, the inquisition and every recognizance taken before them, with the written information (if any), and the depositions and statements (if any) of the accused, shall be forthwith delivered to the County Attorney of the County in which such inquisition has been found; and in every case in which an information has been laid or complaint made before a Justice of the Peace, whether proceedings have been taken therein or not, such Justice shall hand over to the County Attorney all papers connected therewith, on being by him required so to do. 20 V. c. 59, s. 11.

15. The Deputy Clerk of the Crown in every County in Upper Canada, shall submit his accounts and books for examination to the County Attorney of the County, and the County Attorney shall inspect and examine such accounts and compare them with the Books required to be kept by the Deputy Clerk of the Crown, and such County Attorney shall certify on every such account, that he believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and shall forthwith forward every such account to the Inspector General. 20 V. c. 59, s. 14.

16. The County Attorney shall be the Receiver of Fees belonging to the General Fee Fund from every County Court and Division Court Clerk in his County, and every such Attorney shall be paid a percentage of four pounds on every one hundred pounds of the gross produce of the Court Fees paid over to him by such Clerks, and a like percentage on all public moneys coming into his hands. 20 V. c. 59, s. 15.

17. Nothing in this Act shall affect the validity of any Bond, Covenant or Security given by Clerks, Bailiffs, Officers of Courts or County Treasurers, or the remedy given thereunder, but the same may be enforced in case of breach thereof in the same manner as if this Act had not been passed; and Bonds or Securities which at the time of this Act coming into force are enforceable in the name of the County Treasurer, may be enforced, sued on and prosecuted by and in the name of the County Attorney for the particular County. 20 V. c. 59, s. 17.

18. In citing, pleading, or otherwise referring to this Act, it shall, in all cases, be sufficient to use the expression "The Upper Canada County Attorneys' Act," or words of similar import. 20 V. c. 59, s. 18.

19. In construing this Act, the following words shall have Interpretation
 the several meanings hereby assigned to them, over and above clause.
 their several ordinary meanings, unless there be something in
 the context repugnant to such construction: the word "County,"
 5 shall include any two or more Counties united for judicial
 purposes; the words "Courts of Assize," shall include Courts
 of Oyer and Terminer and General Gaol Delivery; the word
 "Assizes," shall be understood to mean the Courts of Assize,
 Nisi Prius, Oyer and Terminer and General Gaol Delivery, and
 10 the Sittings of these Courts; and the rules of construction laid
 down by the Interpretation Act shall be applicable to this Act.
 20 V. c. 59, s. 19.

CAP. CXIII.

An Act respecting proceedings to outlawry in criminal cases.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. The Courts of General Quarter Sessions of the Peace in the several Counties of Upper Canada, shall be in the place and stead of the County Courts of England, as far as respects any purpose of outlawry, or any proceedings therein. 55 G. 3, c. 2, s. 2. 5

The first process shall be a Capias returnable in Court of Queen's Bench.

2. The process upon every indictment to bring the person indicted into Court, shall be a capias, in the usual form, issued from the Court before which the indictment is found, directed to the Sheriff of the County wherein the said Court is sitting, commanding him to take the person indicted and to bring him before the said Court: and if the person cannot be taken during the sitting of the said Court, then so soon after as he can be taken, to bring or cause him to be brought, before some Justice of the Peace of the said County, to be dealt with according to law. 10 15

3. Such capias shall be made returnable in the Court of Queen's Bench or Common Pleas, on the first day of the term next after the sitting of the Court before which the said indictment has been found: and if upon the return of the said writ the Sheriff of the said County returns that the person therein named is not to be found in his County, then an alias writ of capias shall issue from the Court of Queen's Bench or Common Pleas, under the seal of the Court, tested of the first day of the term, if in term time, or on the last day of the preceding term, if in vacation, returnable before such Court, on the first day of the next ensuing term. 55 G. 3, c. 2, s. 3. 20 25

If returned non est inven- tus then a Writ of Exigent to issue.

4. If to the said writ of alias capias, the Sheriff returns that the person therein named is not to be found in his County, then upon motion in Court, or before a Judge in vacation, a writ of exigent shall issue under the seal of the Court, tested on the first day of the term, if in term time, or on the last day of the preceding term, if in vacation, directed to the Sheriff of the County into which the said writs of capias issued; which writ of exigent shall be returnable on the first day of the fifth term from that in which the same is awarded, and may be in the form following, that is to say: 30 35

VICTORIA,

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland QUEEN, Defender of the Faith.

To the Sheriff of the County—Greeting :

We command you, that you cause A. B. late of
 5 to be demanded from General Quarter Sessions, to General Quarter Sessions in your County until, according to the law of Upper Canada, he be outlawed if he doth not appear, and if he doth appear, then that you take him and cause him to be safely kept, so that you may have his body before us, in our Court of
 10 at Toronto, on the day of term next (*the return of the writ*) to answer to a certain bill of indictment found against him for (*whatsoever the crime may be*) and have then there this writ.

Witness, the Honorable Chief Justice, at Toronto,
 15 this day of , in the year of our reign. 55 G. 3, c. 2, s. 4.

5. The Sheriff to whom the said writ of exigent issues shall at three successive Courts of General Quarter Sessions of the Peace, to be holden in and for his County, before the return
 20 of the said writ, in open Court, immediately after the charge to the Grand Jury, make or cause to be made proclamation of the person named in the said exigent, requiring him to render himself to answer to the said indictment. 55 G. 3, c. 2, s. 5. How the Sheriff shall proceed thereon.

6. If the person so demanded does not appear, the Sheriff to
 25 whom the said writ of exigent is directed, shall indorse upon the said writ of exigent a return in the following form : 55 G. 3, c. 2, s. 6. Return thereof.

By virtue of the within writ, to me directed, at the Court of General Quarter Sessions of the Peace, held at in
 30 and for the County of on the day of in the year within written, the within named A. B. was a first time demanded, and did not appear : And at the Court of General Quarter Sessions of the Peace, held at aforesaid, for the County aforesaid, on the day
 35 of in the year aforesaid, (*or as it may be*) the said A. B. was a second time demanded, and did not appear : And at the Court of General Quarter Sessions of the Peace held at aforesaid, for the County aforesaid, on the day of in the year aforesaid, (*or as it may*
 40 *be*) the said A. B. was a third time demanded, and did not appear, therefore the said A. B., according to the law of Upper Canada, is outlawed.

The answer of C. D. Sheriff.

When a Writ
of Proclama-
tion shall be
awarded.

7. In all criminal cases wherein any writ of exigent is awarded under this Act, against any person described in the indictment, as being lately conversant in any other County of Upper Canada than that in which the said exigent is so awarded, a writ of proclamation shall be awarded and made out of the same Court, or by order of a Judge in vacation, having day of teste and return as the writ of exigent has, and shall be directed and delivered to the Sheriff of the County in which the person indicted is in the said indictment described as having lately been conversant, which writ of proclamation may be in the following form: 55 G. 3, c. 2, s. 7.

Victoria, &c., &c., &c.

To the Sheriff of the County—Greeting:

Form of.

Whereas by a writ, we lately commanded our Sheriff of the County of that he should cause A. B. late to be demanded from General Quarter Sessions, to General Quarter Sessions, until, according to the law of Upper Canada, he should be outlawed if he did not appear, and if he did appear, then that he should take him and cause him to be safely kept, so that he might have his body before us in our Court of ; at Toronto, on the day of term then next, to answer to a certain bill of indictment found against him for ; therefore we command you, that in pursuance of the Statute in that behalf, you cause the said A. B. to be proclaimed upon three several days according to the form of the said Statute, that he render himself to our Sheriff so that he may have his body before us, at the time and place aforesaid, to answer to the said indictment, and have there then this writ.

Witness, the Honorable , at Toronto, this day of , in the year of our reign.

And the Sheriff to whom the said writ of proclamation issues shall at three successive Courts of General Quarter Sessions of the Peace before the return of the said writ, in open Court, on the first day of the said Court, make or cause to be made proclamation of the person named in the said writ of proclamation, according to the command of the said writ.

8. When the said writ of proclamation has been executed as aforesaid, the Sheriff to whom the same is directed, shall indorse thereon a return in the following form:

By virtue of the within writ to me directed, I caused the within named A. B. to be proclaimed three several days, according to the effect of the within mentioned Statute, as it is within commanded me. 55 G. 3, c. 2, s. 8.

The answer of C. D. Sheriff.

9. After the return of the said writ of exigent, and of the writ of proclamation, when required to be issued in manner aforesaid, the person against whom the same issued, shall in default of appearance, incur and suffer the same forfeiture and 5 disabilities, and the like process shall be had thereupon, as in cases of outlawry for the same offences by the criminal law of England, as it stood on the seventeenth day of September, in the year of our Lord, one thousand seven hundred and ninety-two. 55 G. 3, c. 2, s. 9.

Consequences of non-appearance.

10 10. In case of an indictment being found by a Grand Jury, at any Court of competent jurisdiction in Upper Canada, against any person for High Treason, Misprision of Treason, or Treasonable Practices, and in case the Sheriff makes return to any warrant or *capias* issued thereupon, that such person 15 is not to be found in his County, the Governor, by and with the advice and consent of the Executive Council, may immediately upon the making of such return, issue a Proclamation, to be published not less than six weeks in the *Canada Gazette*, calling upon and requiring the person against whom such 20 indictment has been found, to surrender himself to the custody of the Sheriff of the County within which the Court was held, before which such indictment was found by a day to be named in the said Proclamation, such day not being less than three calendar months, from the first publication of such Proclamation in the *Gazette*; and if such person does not, by the 25 day in such Proclamation named, surrender himself to the custody aforesaid, and submit to justice, then and in such case, after the day in such Proclamation named, he shall stand and be adjudged attainted of the crime expressed and set forth in such 30 indictment, and shall suffer and forfeit, as a person attainted of such crime by the laws of the land, ought to suffer and forfeit. 1 V. c. 9, s. 1.

Proceedings to be had against persons indicted for High Treason, &c.

Proclamation to issue calling upon person indicted to surrender himself.

11. The Justices of every Court of Oyer and Terminer and General Gaol Delivery, at which any such indictment has been 35 found as aforesaid, shall, upon the return of the Sheriff that the person named in such indictment is not to be found within his County, certify the said indictment, and the proceedings thereon, into the Court of Queen's Bench; and every such Sheriff, at the expiration of the term limited in such Proclamation, shall make a return to the said Court of Queen's 40 Bench, of the name of the person, who being named in any such Proclamation as aforesaid, has not surrendered himself to the custody of the said Sheriff, pursuant to the exigency of such Proclamation; and the said Court of Queen's Bench shall, 45 during the term in or before which such last-mentioned return has been made, direct judgment of Attainder against such person to be entered on record. 1 V. c. 9, s. 2.

Justices of Oyer and Terminer to certify indictment and return of Sheriff that party has not been arrested into the Court of Queen's Bench.

12. If any person against whom any such Judgment of Attainder has been entered does within three calendar months next 5 after

In case party surrenders himself.

after the day of entry of such Judgment, surrender himself to the custody of the Sheriff of the County of York, and by the oath of two credible witnesses, establishes to the satisfaction of the said Court of Queen's Bench, that such person was actually and bonâ fide prevented from surrendering himself, pursuant to the exigency of such Proclamation, by reason of absence beyond seas, sickness or other inevitable necessity, then the said Court may reverse the said Judgment of Attainder, and transmit the indictment to any Court of Oyer and Terminer, to be held in and for the County wherein such indictment was found; and such person, so surrendering, shall be tried for the offence charged in such indictment in like manner as if no such Judgment of Attainder had been entered. 1 V. c. 9, s. 3.

CAP. CXIV.

An Act respecting the administration of Justice in cases of Misdemeanor

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Where any person is prosecuted in Her Majesty's Court of Queen's Bench or of Common Pleas for Upper Canada, for any misdemeanor, by information there filed or by indictment there found, or removed into such Court, and appears therein in term time, in person, or if a corporation by Attorney, to answer to such information or indictment, such defendant upon being charged therewith, shall not implead to a following term, but shall plead or demur thereto, within four days from the time of his appearance, and in default of his pleading or demurring within four days aforesaid, judgment may be entered against such defendant for want of a plea.
2. In case such defendant appears to such information or indictment by Attorney, such defendant shall not implead to a following term, but a rule requiring such defendant to plead, may forthwith be given and served, and a plea to such information or indictment may be enforced, or judgment in default may be entered, in the same manner as might have been done formerly, in cases where the defendant had appeared to such information or indictment by Attorney in a previous term: but the Court or any Judge of either of the said Courts, upon sufficient cause shewn for that purpose, may allow further time for such defendant to plead or demur to such information or indictment. 20 V. c. 62, s. 1.
3. No person prosecuted, shall traverse or postpone the trial of any indictment found against him at any Session of Oyer and Terminer and Gaol Delivery or at any Session of the Peace or Recorder's Court; but if the Court upon his application or otherwise is of opinion that the defendant ought to be allowed a further time either to prepare for his defence or otherwise, such Court may adjourn the trial to the next subsequent Session, upon such terms as to bail or otherwise, as to such Court seems meet, and may respite the recognizances of the prosecutor and witnesses accordingly, in which case such prosecutor and witnesses shall be bound to attend to prosecute and give evidence at such subsequent Session, without entering into any fresh recognizances for that purpose. 20 V. c. 62, s. 2.
4. In case any prosecution for misdemeanor instituted by Her Majesty's Attorney or Solicitor General, in any of the Courts aforesaid, is not brought to trial within twelve calendar months

Defendant in misdemeanor not allowed to postpone trial by impleading in the Queen's Bench or Common Pleas.

Time to plead may be allowed upon cause shewn.

Traverse at Sessions, abolished.

Court may on cause shewn allow defendant time for preparing defence.

In Crown prosecutions for misdemeanor

months

not brought
to trial in 12
months after
plea of not
guilty Court
may order
trial unless
nolle prosequi
be entered.

months next after the plea of not guilty has been pleaded thereto, the Court in which such prosecution is depending, upon application made on behalf of any defendant in such prosecution, of which application twenty days previous notice is to be given to Her Majesty's Attorney or Solicitor General, may make an Order, authorizing such defendant to bring on the trial of such prosecution; and thereupon such defendant may bring on such trial accordingly, unless a *nolle prosequi* has been entered to such prosecution. 20 V. c. 62, s. 3. 5

C A P. X V.

An Act to facilitate the Despatch of Business before Grand Juries.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Foreman of every Grand Jury empanelled in Upper
5 Canada, shall administer an oath to every person who, under the circumstances hereafter enacted, appears before such Grand Jury to give evidence in support of any Bill of Indictment ; and every such person may be sworn and examined upon oath by such Grand Jury, touching the matters in question. Witnesses examined before Grand Juries to be sworn in the presence of the jurors.
- 10 2. The name of every witness examined, or intended to be so examined, shall be endorsed on the Bill of Indictment ; and the Foreman of the Grand Jury shall write his initials against the name of each witness sworn by him and examined touching such Bill of Indictment. The names to be endorsed on the Bill and marked with the initials of the Foreman.
- 15 3. The name of every witness intended to be examined on any Bill of Indictment shall be submitted to the Grand Jury by the Crown Counsel at the Assizes, and by the prosecuting officer acting on behalf of the Crown at all other Courts, and none others shall be examined by or before such Grand Jury,
20 unless upon the written order of the presiding Judge. The names to be submitted to the Grand Jury by the Queen's Counsel, and none others examined without special order.
4. Nothing in this Act shall affect any Fees by law payable to any Officer of any Court for swearing witnesses, but such Fees shall remain payable as if the Witnesses had been sworn in open Court. 20 V. c. 4, s. 1. Fees to officers for swearing witnesses to be paid as usual.
- 25 5. It shall not be necessary for any person to take an oath in open Court in order to qualify such person to give evidence before the Grand Jury. 20 V. c. 4, s. 2. Witnesses need not be sworn in Court.
- 30 6. The word " Foreman " shall include any member of such Grand Jury who may, for the time being, act on behalf of the Foreman in the examination of witnesses in support of any Bill of Indictment, and the word " Oath " shall include affirmation, where, by law, an affirmation is required or allowed to be taken in lieu of an oath. 20 V. c. 4, s. 3. Interpretation of terms.

CAP. CXVI.

An Act to allow to any person indicted a Copy of the Indictment.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Copy of indictment to be delivered to prisoner on payment of certain charges.

I. Any person indicted in any of Her Majesty's Courts in Upper Canada, for any felony or misdemeanor, may apply 5 to such Court for a copy of the indictment, and the same shall, with all convenient expedition, be made out and delivered to such person, upon payment to the Clerk or officer at the rate of nine pence for every one hundred words contained in such indictment: but such copy shall not be received in evidence upon any trial for a malicious prosecution. 6 W. 4, 10 c. 44, s. 2.

CAP. CXVII.

An Act respecting Amendments.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. Every Court of Record holding plea in Civil Actions, Courts of Record including Courts of Oyer and Terminer and General Gaol Delivery in Upper Canada, may cause the record on which any trial may be pending before any such Court or Judge upon any indictment or information for any misdemeanor, when any variance appears between any matter in writing or in print produced in evidence, and the recital or setting forth thereof upon the record whereon the trial is pending, to be forthwith amended in such particular by some officer of the Court, on payment of such costs (if any) to the other party as such Court or Judge may think reasonable, and thereupon the trial shall proceed as if no such variance had appeared; and in case such trial is had at *Nisi Prius*, the order for the amendment shall be endorsed on the *postea* and returned with the record, and thereupon the papers, rolls and other records of the Court, from which such record issued, shall be amended accordingly. 1 W. 4, c. 1, s. 1.

C A P . C X V I I I .

An Act respecting the reservation of Points of Law
in Criminal Cases.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Any Question of law may be reserved by certain Courts for the opinion of one of the Superior Courts of Law, &c.

1. When any person has been convicted of any treason, felony or misdemeanor before any Court of Oyer and Terminer or Gaol Delivery, or Quarter Sessions, the Judge, Recorder or Justices of the Peace before whom the case was tried, may, in his or their discretion, reserve any question of law which arose on the trial, for the consideration of the Justices of either of Her Majesty's Superior Courts of Common Law, and thereupon may respite the execution of the judgment on such conviction, or postpone the judgment, until such question has been considered and decided, and in either case, the Court, in its discretion, shall commit the person convicted to prison, or take a recognizance of bail, with one or two sufficient sureties, in such sum as the Court thinks fit, conditioned for his appearance at such time as the Court directs to receive judgment or to render himself in execution, as the case may be. 14, 15 V. c. 13, s. 1. 5 10 15

Case to be stated and certified to such Superior Court.

2. The Judge, Recorder, or Chairman of the Court of Quarter Sessions, shall thereupon state in a case to be signed by such Judge, Recorder or Chairman, the question or questions of law so reserved, with the special circumstances upon which the same arose ; and such case shall be transmitted by such Judge, Recorder or Chairman to one or other of the said Superior Courts on or before the last day of the first week of the Term of such Superior Courts next after the time when such trial was had. 14, 15 V. c. 13, s. 2. 25

Powers of the Judges of such Superior Court.

3. The Justices of either of the said Superior Courts shall hear and finally determine the said questions, and reverse, affirm or amend any judgment which has been given on the indictment or inquisition on the trial whereof such questions arose, or avoid such judgment, or order an entry to be made on the record, that in the judgment of the said Justices the party convicted ought not to have been convicted, or arrest the judgment, or if no judgment has been given, order judgment to be given thereon at some future Session of Oyer and Terminer or Gaol Delivery, or Sessions of the Peace or Recorder's Court, or make such other order as justice may require. 14, 15 V. c. 13, s. 2. 30 35

Judgment to be certified to the Court below : its consequences.

4. The judgment and order of the said Justices shall be certified under the hand of the Chief Justice or Senior Judge of such Court to the Clerk of Assize, or to the Clerk of the Peace, or Recorder's Clerk, as the case may be, who shall enter the 40

the same on the original record in proper form, and a certificate of such entry, under the hand of the Clerk of Assize, or the Clerk of the Peace, or the Recorder's Clerk, as the case may be, in the form as near as may be, or to the effect mentioned 5 in the Schedule annexed to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by him to the Sheriff or Gaoler in whose custody the person convicted is, and the said certificate shall be sufficient warrant to such Sheriff or Gaoler, and all 10 other persons, for the execution of the judgment, as so certified to have been affirmed or amended, and execution shall thereupon be executed on such judgment, or the person convicted shall be discharged from further imprisonment, if the judgment has been reversed, avoided or arrested, and the next Court of 15 Oyer and Terminer or Gaol Delivery, or Sessions of the Peace, or Recorder's Court shall vacate the recognizance of bail, if any; or if the Court below is directed to give judgment, such Court shall proceed to give judgment at the next Session. 14, 15 V. c. 13, s. 2.

20 5. The judgments of the Justices of the said Superior Courts shall be delivered in open Court, after hearing Counsel or the parties, in case the prosecutor or person convicted thinks it fit that the case should be argued, in like manner as the judgments of the said Superior Courts are now delivered. 14, 25 15 V. c. 13, s. 3.

How the judgment of the Superior Court shall be delivered.

6. The said Justices of the said Superior Courts, when a case has been reserved for their opinion, may if they think fit, cause the case or certificate to be sent back for amendment, and judgment may be delivered after it has been amended. 14, 15 30 V. c. 13, s. 4.

Case may be sent back for amendment.

SCHEDULE.

Whereas at the Session of the Peace, for the County (or united Counties or City) of _____ held on _____ before _____ and others, their fellows (or at the Session of Oyer and Terminer and Gaol delivery, held for the County (or united Counties) of _____, on _____ before the Honorable _____, one of the Justices of the Court of _____, and others his fellows, Justices of Oyer and Terminer and Gaol delivery,) A. E., late of _____ having been found guilty of felony, and judgment thereon given, that (*state the substance,*) the Court before whom he was tried reserved a certain question of law for the consideration of the Justices of one of the Superior Courts of Common Law, and execution was thereupon respited in the mean time (*as the case may be*); This is to certify that the Justices of the Court of Queen's Bench (or Common Pleas) having

having met at Toronto, in Term, it was considered by the said Justices there, that the Judgment aforesaid should be annulled, and an entry made on the record, that the said A. B. ought not, in the Judgment of the said Justices, to have been convicted of the felony aforesaid; and you are therefore hereby required forthwith to discharge the said A. B. from your custody.

(Signed, E. F.

Clerk of the Peace for the County (or united Counties of (or Recorder's Clerk of the City of , or Clerk of Assize of , as the case may be.)

To the Sheriff of , and }
 the Gaoler of , and }
 all others whom it may concern. }

CAP. CXIX.

An Act respecting new Trials and Appeals in Criminal Cases in Upper Canada.

HER Majesty, by and with the advice and consent of the legislative Council and Assembly of Canada, enacts as follows :

1. When a person has been convicted of any treason, felony or misdemeanour, before a Court of Oyer and Terminer, or Gaol Delivery, or Quarter Sessions, such person may apply for a new trial upon any point of law or question of fact, in as ample a manner as any person may apply to the Superior Courts of Common Law for a new trial, in a civil action. 20 V. c. 61, s. 1.

Persons convicted of treason, felony or misdemeanour, may apply for a new trial, and to what Court.

2. When the conviction has taken place at a Court of Oyer and Terminer or Gaol Delivery, the application shall be to one of the Superior Courts of Common Law; but shall not be entertained unless made on or before the last day of the first week of the Term next succeeding the Court of Oyer and Terminer or Gaol Delivery at which the conviction took place. 20 V. c. 61, ss. 1 & 3.

One of the Superior Courts if convicted of the Assizes.

3. In such case if the conviction is affirmed by the Superior Court, the person convicted may appeal to the Court of Error and Appeal; Provided the appeal is allowed by the Superior Court, or by two of the Judges thereof, in term or vacation; But such allowance shall not be granted nor the appeal heard except within six calendar months after the conviction has been affirmed, unless otherwise ordered by the Court of Error and Appeal. 20 V. c. 61, s. 4.

If the Superior Court affirm the conviction, the person convicted may apply to the Court of Error and Appeal.

4. Any rule or order of the Court of Error and Appeal shall be final. 20 V. c. 61, s. 4.

5. No sentence of death in a case of capital felony shall be passed to take effect until after the expiration of the Term of the Superior Courts next succeeding the sitting of the Court at which the sentence of death is passed. 20 V. c. 61, s. 5.

Delay for execution of sentence of death.

6. When the conviction has taken place at a Court of Quarter Sessions, the application for a new trial shall be to such Court. 20 V. c. 61, s. 1.

7. In such case, if the conviction is affirmed, a further appeal shall lie to either of the Superior Courts of Common Law. 20 V. c. 61, s. 2.

Appeal to the Superior Courts of Common Law.

8. In the event of such an Appeal, the Court of Quarter Sessions shall state in a case to be prepared by the Appellant, and approved

approved by the Court, and signed by the Chairman or Recorder, the question or questions of law or fact upon which the new trial was applied for, together with the circumstances upon which the same arose and the judgment of the Court, with the reasons therefor. 20 V. c. 61, s. 2. 5

When and how such case shall be transmitted.

9. This case shall be transmitted by the Court of Quarter Sessions to one of the Superior Courts of Common Law on or before the first day of the Term of the Superior Court next after the time when the rule or order appealed from was made. 20 V. c. 61, s. 2. 10

10. The judgment of the Superior Court on the appeal from the Quarter Sessions shall be final. 20 V. c. 61, s. 2.

Court to have power to hear and determine all questions of law, &c.

11. The Court to which an application for a new trial is made, either in the first place or by way of Appeal, shall have power to hear and determine the questions of law and fact involved in the application, and shall affirm the conviction or order a new trial, or otherwise, as justice requires. 20 V. c. 61, s. 2. 15

12. In case a new trial is granted, the same proceedings shall take place as to any future trial or the commitment or bailing of the person convicted, as if no conviction had taken place. 20 V. c. 61, s. 1.

Court to make order, &c.

13. In case a new trial is refused, the Court shall make such order for carrying out the sentence already passed, or for passing sentence if none has been passed, or for the discharge of the person so convicted on bail, or otherwise, as justice requires. 20 V. c. 61, ss. 2 & 4. 25

Court may make rules.

14. The Court may in every case make such other rules and orders as are necessary to carry into effect any judgment pronounced under this Act. 20 V. c. 61, ss. 2 & 4. 30

Judges to make rules for giving effect to this Act.

15. The Judges of the Superior Courts of Common Law, or a majority of them, and the Court of Error and Appeal, respectively, may from time to time make such general rules and orders as they consider necessary more effectually to carry out the provisions of this Act. 20 V. c. 61, s. 6. 35

What judgment may be pronounced by a Court of Error.

16. Whenever any Writ of Error has been brought upon any judgment or any indictment, information, presentment or inquisition in any criminal case, and the Court of Error reverses the judgment, the Court of Error may either pronounce the proper judgment, or remit the record to the Court below, in order that such Court may pronounce the proper judgment upon such indictment, information, presentment or inquisition. 14, 15 V. c. 13, s. 5. *Ante* cap. 19, p. 139. 40

17. The words "Superior Courts of Common Law," in this Interpretation Act, mean the Courts of Queen's Bench and Common Pleas, and the words "Quarter Sessions," include Recorder's Court.
20 V. c. 61, s. 2.

C A P . C X X .

An Act respecting Appeals in cases of Summary Conviction.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Appeal given in every case where the matter is not a crime.

1. In case any person complainant or respondent, thinks himself aggrieved by any conviction or decision before any Justice or Justices of the Peace,—Mayor, or Police Magistrate in any matter cognizable by such Justice or Justices of the Peace, Mayor or Police Magistrate, not being a crime, then in case such person within four days after such conviction or decision, and eight days before the first Quarter Sessions of the Peace or in Cities before the first Recorder's Court, if there be a Recorder's Court, to be held not sooner than twelve days next after such conviction or decision, gives to the other party, or leaves with the convicting Justice for him, a notice in writing of his intention to appeal and of the cause and matter thereof, and in case such person either remains in custody until such Sessions, or enters into a recognizance with two sufficient sureties before a Justice of the Peace, conditioned to appear at the said Quarter Sessions or Recorder's Court, as the case may be, and try such appeal and to abide the judgment of the Court thereupon and to pay such costs as shall be by the Court awarded, in which case the Justice before whom the recognizance is entered into shall liberate such person if in custody, such person may appeal to such Court of Quarter Sessions or Recorder's Court, and such Court shall at such Sessions hear and determine the matter of such appeal, and make such order therein, with or without costs to either party, as to the Court seems meet, and in case of the dismissal of the appeal or of the affirmance or of the conviction, shall order and adjudge the offender to be punished according to the conviction and to pay such costs as may be awarded, and shall if necessary issue process for enforcing such judgment. 13, 14 V. c. 54, s. 1.

Court to hear and determine the matter.

Jury to be empannelled on the request of either party to appeal.

2. Whenever any appeal is made from the decision of any Justice, Mayor or Police Magistrate, the Court of Quarter Sessions or Recorder's Court respectively, appealed to, shall, at the request of either appellant or respondent, empannel a Jury to try the matter on which such decision has been made, and shall administer to such Jury the following oath: 13, 14 V. c. 54, s. 2.

“ You do solemnly swear that you will well and truly try the matter of the complaint of C. D. against E. F. and a true verdict give according to the evidence. So help you God.”

And

And the Court on the finding of such Jury shall thereupon give such Judgment as the circumstances of the case require, not however exceeding the amount of penalty or period of imprisonment that might have been imposed or awarded under any law giving cognizance to the said Justice, Mayor or Police Magistrate. 13, 14 V. c. 54, s. 2.

3. Any appellant may abandon his appeal by giving the opposite party notice of such intention in writing six days before the Sessions, appealed to, and thereupon the convicting Justice, Mayor or Police Magistrate may tax the respondent's additional costs if any, and add the same to the original costs, and proceed on the original conviction or decision in the same manner as if there had been no appeal thereon. 13, 14 V. c. 54, s. 3.

Appeal may be abandoned.

Proceedings in such case.

4. An appeal shall lie in like manner from all decisions, convictions and orders made by any Justice of the Peace, or by any person authorized to act in that capacity upon complaints against any person or persons for committing any offence against any By-Law of any Municipal Council. 16 20 V. c. 178, s. 26.

Appeals to lie in cases under By-laws of a Municipality.

CAP. CXXI.

An Act respecting the punishment of certain offences,
and the Commuting of Sentence of Death in certain
cases.

HER Majesty, by and with the advice and consent of the
Legislative Council and Assembly of Canada, enacts as
follows:

Persons con-
victed of a fe-
lonious rescue,
&c., how pu-
nished.

1. In case of the conviction of any person for a felonious rescue
or for assaulting with any weapon a Sheriff, or other Peace Offi- 5
cer, in the execution of his duty; or of perjury; or of fraud; or
cheating; or conspiracy; or of assisting in or attempting to effect
the escape of a prisoner confined for a felony or other crime, be-
fore or after conviction—the person convicted of such offence
may be sentenced to be imprisoned only, or imprisoned and kept 10
to hard labour, or in solitary confinement in the Common Gaol
or House of Correction, for any period less than two years, or
in the Penitentiary, for any term not less than two and not
exceeding seven years. 7 W. 4, c. 6, ss. 1 & 2.

Governor may
commute sen-
tence of death,
except for
high treason
or murder.

2. The Governor may commute the Sentence of Death pas- 15
sed upon any person convicted of a capital crime, other than
high treason or murder, and with authority from Her Majesty,
upon any person convicted of high treason or murder, to soli-
tary confinement; or to confinement with or without hard labour
in the Common Gaol or House of Correction for any period 20
less than two years or in the Penitentiary either during life or
for any term of years not less than two years; and an
Instrument under the hand and seal of the Governor, declar-
ing such commutation of sentence, shall be sufficient authority
to any of Her Majesty's Judges or Justices in Upper Canada, 25
having jurisdiction in such cases, to make such orders, and
give such directions, under his hand and seal, as may be requi-
site for the change of custody of such convict, and for his con-
duct to and delivery at such Gaol, House of Correction or
Penitentiary, and his detention therein, according to the terms 30
on which his sentence has been commuted. 7 W. 4, c. 6, s. 3.

CAP. CX XII.

An Act respecting Estreats.

WHEREAS it is expedient to provide for the more summary and convenient collection of fines, issues, amerciaments and sums due upon recognizances forfeited to Her Majesty: Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Unless otherwise provided, all fines, issues, amerciaments and forfeited recognizances, set, imposed, lost or forfeited, by or before any Court of Oyer and Terminer, or General Gaol Delivery, or before any Court of Assize and Nisi Prius, shall, within twenty-one days from the adjournment of such Court, be fairly entered and extracted on a roll, by the Clerk of Assize, or in case of his death or absence, by any other person under the direction of the Judge who presided at such Court; which roll shall be made in duplicate, and be signed by the Clerk of Assize, or in case of his death or absence, by such Judge.

7 W. 4, c. 10, s. 1.

All fines, &c., lost, &c., shall within 21 days from adjournment of Court be entered on a roll by Clerk of Assize.

2. One of the said rolls shall be transmitted to the office of the Clerk of the Crown, on or before the first day of the term next succeeding such Court, and the other of such rolls shall, so soon as the same is prepared, be sent by the Clerk of Assize, or in case of his death or absence, by such Judge as aforesaid, with a Writ of Fieri Facias and Capias, according to the form in the Schedule to this Act annexed, to the Sheriff of the County in and for which such Court was holden; and such Writ shall be authority to the Sheriff for proceeding to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements cannot be found, whereof the sums required can be made; and every person so taken shall be lodged in the Common Gaol of the County, until satisfaction has been made, or until the Court of Queen's Bench or Common Pleas, upon cause shewn by the party as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with.

7 W. 4, c. 10, s. 2.

One copy of roll to be sent to Clerk of the Crown within time mentioned, &c., the other to the Sheriff of the District in which fine, &c., occurred.

Mode of proceeding to levy fine &c.

3. All fines, issues, amerciaments and forfeited recognizances, not otherwise provided for, set, imposed, lost or forfeited, by or before any Court of General Quarter Sessions of the Peace, shall, within twenty-one days after the adjournment of such Court, be fairly entered and extracted on a roll by the Clerk of the Peace, which roll shall be made out in duplicate, and shall be signed by the Clerk of the Peace.

7 W. 4, c. 10, s. 3.

Fines, &c., incurred at General Quarter Sessions to be entered and extracted on a roll in duplicate.

4.

Manner of proceeding to compel payment of fines, &c., imposed by Court of General Quarter Sessions.

4. One of the said rolls shall remain deposited in the office of the Clerk of the Peace, and the other of such rolls shall, so soon as the same is prepared, be sent by the Clerk of the Peace, with a Writ of Fieri Facias and Capias, according to the form in the Schedule to this Act annexed, to the Sheriff of the County in which such Court of Quarter Sessions was held; and such Writ shall be authority to the Sheriff for proceeding to the immediate levying and recovering of such fines, issues, amerciaments and forfeited recognizances, on the goods and chattels, lands and tenements of the several persons named therein, or for taking into custody the bodies of such persons respectively, in case sufficient goods and chattels, lands or tenements shall not be found, whereof the sums required can be made; and every person so taken shall be lodged in the Common Gaol of the County until satisfaction has been made, or until the Court of General Quarter Sessions of such County, upon cause shewn by the party as hereinafter mentioned, makes an order in the case, and until such order has been fully complied with. 7 W. 4, c. 10, s. 4.

Court may forbear estreating recognizance under certain circumstances.

5. Except in the cases of persons bound by recognizance for their appearance or for whose appearance any other person has become bound to prosecute or give evidence, &c., and for which provision is made in the Statute of the Province of Canada, respecting Estreats in every case of default, whereby a recognizance has become forfeited, if the cause of absence is made known to the Court in which the party was bound to appear, the Court, on consideration of such cause, and considering also whether by the non-appearance of such person the ends of justice have been defeated or delayed, may forbear to order the recognizance to be estreated; and with respect to all recognizances estreated and all fines imposed by any Court, for the non-attendance of any Juror or Constable, or of any public officer bound to attend at such Court, if it appears to the satisfaction of the Judge who presided at such Court, or in the case of proceedings before any Court of General Quarter Sessions of the Peace, to the Chairman and any two of the Justices who presided at such Court, that the absence of the person for whose appearance any recognizance was entered into, or of any person fined for non-attendance, was owing to circumstances which rendered such absence justifiable, such Judge or the Chairman and Justices aforesaid may make an order directing that the sum forfeited upon such estreated recognizance, or the fine imposed in any such case as aforesaid, shall not be levied.

Court or Justice may direct Sheriff to forbear levying fines, &c., under certain circumstances.

6. And for such purpose, the Clerk of Assize, or Clerk of the Peace, before sending to the Sheriff any roll, with a Writ of Fieri Facias and Capias, as directed by this Act, shall submit the same to the Judge who presided at the Assizes, or to the Chairman who presided at the Court of Quarter Sessions, for his revision; and such Judge or such Chairman, taking to his

his assistance two of the Justices who presided with him at the Sessions, may make a minute on the said roll and Writ of any such forfeited recognizances and fines as he or they think fit to direct not to be levied ; and the Sheriff shall observe the direction in such minute written upon such roll and Writ, or endorsed thereon, and shall forbear accordingly to levy any such forfeited recognizance or fine. 7 W. 4, c. 10, s. 5.

7. If upon any Writ issued under this Act, the Sheriff takes lands or tenements in execution, he shall advertise the same in like manner as he is required to do before the sale of lands in execution in other cases ; and no sale shall take place in less than twelve calendar months from the time the Writ came to the hands of the Sheriff. 7 W. 4, c. 10, s. 6.

Mode of proceeding where lands are seized for payment of fines, &c.

8. The Clerk of Assize, or Clerk of the Peace, shall, at the foot of each roll made out as herein directed, make and take an affidavit in the following form, that is to say : 7 W. 4, c. 10, s. 7.

“ I, A. B., (*describing his office,*) make oath that this roll is truly and carefully made up and examined, and that all fines, issues, amerciaments, recognizances and forfeitures which were set, lost, imposed or forfeited, at or by the Court therein mentioned, and which in right and due course of law ought to be levied and paid, are, to the best of my knowledge and understanding, inserted in the said roll ; and that in the said roll are also contained and expressed all such fines as have been paid to or received by me, either in Court or otherwise, without any wilful discharge, omission, misnomer or defect whatsoever. So help me God.”

Oath to be taken and subscribed at foot of roll by Clerks of Assize or Clerk of the Peace.

Which oath any Justice of the Peace for the County is hereby authorized to administer.

9. Every Justice of the Peace before whom any recognizance is entered into or taken, shall, in such recognizance, state and specify particularly the profession, art or trade, of every person so entering into such recognizance, together with the Christian name and surname, and also the place of his or her residence, and shall, at the time give, or cause to be given, to the person or persons entering into the same, and to each of his sureties, a written or printed paper or notice, in the form or to the effect following, adapting the same to the particular circumstances of the case :

Certificate to be given by Justice of the Peace.

County of _____ } Take notice, that you,
to wit : _____ } are bound in the sum of _____,
pounds, and your sureties, _____, in the sum of _____,
pounds each, to appear at _____, to be holden at _____,
and unless you personally make your appearance accordingly,
the _____

the recognizance entered into by yourself and your sureties will be forthwith levied on you and your bail. 7 W. 4, c. 10, s. 8.

Dated this _____ day of _____, 18 _____

A. B.,

5

Justice of the Peace, for the County of _____

Conditions upon which goods seized by Sheriff, &c., may be released.

10. If any person on whose goods and chattels a Sheriff, Bailiff or other officer is authorized to levy any such forfeited recognizance, gives security to the said Sheriff or other officer, for his appearance at the return day mentioned in the Writ, in the Court into which such Writ is returnable, then and there to abide the decision of such Court, and also to pay such forfeited recognizances, or sum of money to be paid in lieu or satisfaction thereof, together with all such expenses as may be adjudged and ordered by the Court, such Sheriff or officer shall discharge the goods and chattels of such person out of custody; and in case such person does not appear in pursuance of his undertaking, the Court may forthwith issue a Writ of Fieri Facias and Capias against the surety or sureties of the person so bound as aforesaid. 7 W. 4, c. 10, s. 9. 20

Court under certain circumstances may discharge forfeited recognizances, &c.

11. The Court of Queen's Bench or Common Pleas, or Court of General Quarter Sessions, into which any Writ of Fieri Facias and Capias, issued under this Act, is returnable, may inquire into the circumstances of the case, and may, in its discretion, order the discharge of the whole of the forfeited recognizance, or sum of money paid or to be paid in lieu or satisfaction thereof, and make such order thereon as may to such Court appear just; and such order shall accordingly be a discharge to the Sheriff, or to the party, according to the circumstances of the case. 7 W. 4, c. 10, s. 10. 25 30

Manner of return by Sheriff, &c.

12. The Sheriff to whom any Writ is directed under this Act, shall return the same on the day on which the same is made returnable, and shall state on the back of the roll attached to such Writ, what has been done in the execution thereof; and such return shall be filed in the Court into which such return is made. 35

Copy of roll and return to be sent to Receiver General.

13. A copy of such roll and return, certified by the Clerk of the Peace, or by the Clerk of the Crown, (as the case may be,) shall be forthwith transmitted to the Receiver General of the Province, with a minute thereon of any of the sums therein mentioned, which have been remitted by order of the Court, in the whole or in part, or directed to be forborne, under the authority of this Act. 7 W. 4, c. 11, s. 11. 40

14.

14. The Sheriff shall, without delay, pay over all moneys by him collected to the Receiver General, for the time being. 7 W. 4, c. 11, s. 12, Sheriff to pay over money to Receiver General.

15. This Act is not to affect the provisions of the Statute of the Province of Canada, respecting the Estreat of the recognizance of any person bound for his appearance or for the appearance of any other person to prosecute or give evidence in any case of felony or misdemeanor, or to answer for any common assault or to articles of the Peace. 4, 5 V. c. 24, s. 49.

SCHEDULE.

Victoria, by the Grace of God, &c.

To the Sheriff of _____, Greeting :

You are hereby commanded to levy of the goods and chattels, lands and tenements, of all and singular, the persons in the roll or extract to this Writ annexed mentioned, all and singular the debts and sums of money upon them severally imposed and charged, as therein is specified ; and if any of the said several debts cannot be levied, by reason of no goods or chattels, lands or tenements being to be found belonging to the said parties, respectively, then and in all such cases, that you take the bodies of such parties, and keep them safely in the Gaol of your County, there to abide the judgment of our Court of Queen's Bench (or Common Pleas or Court of General Quarter Session, *as the case may be,*) upon any matter to be shewn by them, respectively, or otherwise to remain in your custody as aforesaid, until such debt is satisfied, unless any of such persons respectively gives sufficient security for his appearance at the said Court, on the return day hereof, for which you will be held answerable ; and what you do in the premises make appear (before us in our Court of Queen's Bench) (or Common Pleas or at the next Court of General Quarter Sessions of the Peace), *as the case may be,* at Toronto, on the _____ day of _____ term next, and have then and there this Writ. Witness, &c., A. B., Clerk of Assize, at the last Assizes, (or C. D., Clerk of the Peace) for the County of _____, this _____ day of _____, 18 _____.

CAP. CXIII.

An Act respecting the appropriation of Fines in certain cases.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Such portion of all fines distributed by the Law of England to the poor shall be paid to the Treasurers of the several Counties for the purposes of the respective Counties.	<p>1. In all cases not otherwise provided for in which, by the criminal law of England in force in Upper Canada, the whole or any part of any fine or penalty imposed for the punishment of any offence is in any manner appropriated for the support of the poor, or to any parochial or other purpose, inapplicable to Upper Canada, such fine or penalty, or the part thereof so appropriated, shall when received be paid to the Treasurer of the County or Chamberlain of the City in which the conviction takes place, to be appropriated to the purposes thereof, and accounted for in the same manner as the general rates and assessments levied therein are applicable and accountable by law. 11 G. 4, c. 1.</p>	<p>5</p> <p>10</p> <p>15</p>
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CAP. CXXIV.

An Act respecting the Fees of Counsel and other Officers and of Justices of the Peace.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Courts of Queen's Bench and Common Pleas may from time to time determine and by rule or order declare the fees to be allowed to any Clerk of the Crown, Counsel, Attorney, Sheriff, or other officer or person for or in respect of any business done or transacted in either of the said Courts in Criminal Prosecutions, and in all matters, causes and proceedings which regard the Queen's Revenue, and in all Prosecutions, matters and proceedings under any Commission or Court of Oyer and Terminer and General Gaol Delivery, or under any Special Commission or Court of Oyer and Terminer. 2 G. 4, c. 1, s. 45.
- The Superior Courts of Law to frame tariff of fees to be allowed in Criminal and Exchequer. Proceeding in such Courts and the Courts of Oyer and Terminer and Gaol Delivery.
2. The table of fees for services rendered in the administration of justice, and for other County purposes, by Sheriffs, Coroners, Clerks of the Peace, Constables and Criers, heretofore framed by the Justices of the Peace of their respective Counties in quarter sessions assembled and confirmed by the Judges of the Court of Queen's Bench at Toronto, are to continue to be received by such officers respectively, until otherwise appointed, and the Chief Justices and other Judges of the Superior Courts of common law at Toronto may in term time, by any rule or rules to be by them made from time to time, as occasion may require, appoint the fees to be taken and received by such Sheriffs, Coroners, Clerks of the Peace, Constables and Criers, for such services as aforesaid. S V. c. 38, s. 1.
- Fees to be fixed by Quarter Sessions.
3. All per centage, fees or allowances, on levying fines and recognizances, may be levied over and above the amount of such fines and recognizances, and all fees on services for individuals at whose instance the same are performed and for the private benefit of or in the nature of a civil remedy, shall be paid by such individuals, and the Judges shall, in tables to be by them framed as aforesaid, distinguish the fee to be paid by private individuals, and except as herein otherwise provided, all other fees shall be paid out of the County funds. S V. c. 38, s. 2.
- Mode of levying fees.
4. When any person is convicted before any Court of Quarter Sessions of any assault and battery, or other misdemeanor, such person shall pay such costs as may be allowed and taxed by the Court, but when any Defendant or Defendants is acquitted, the costs of the prosecution shall be paid out of the County funds.
- By whom costs in prosecution for assault and battery are to be paid.

5.

In case of felony, costs to be paid out of the County funds. **5.** When any person is prosecuted or tried for Felony and convicted or acquitted, or otherwise discharged, the costs of prosecution shall be paid out of the County funds. 8 V. c. 38, s. 3.

Fees for services not mentioned therein. **6.** Nothing herein contained shall deprive any of the before mentioned Officers of such fees as are allowed by any Act of Parliament, for other services not herein provided for. 8 V. c. 38, s. 3. 5

County Treasurer's duty. **7.** The Treasurer of every County shall, without further authority, pay the amount of the fees, which are payable out of County funds, when duly allowed by the Magistrates in Quarter Sessions assembled, as in the order prescribed by law for the payment of the expenses of the administration of justice, that is to say, after the expenses of levying and collecting and managing the rates and taxes imposed in any County are paid ; 15 all sums of money payable out of the funds of any County to the Sheriff, Coroner, Gaoler, Surgeon of the County Gaol, or to any other Officer or person, for the support, care or safe keeping of the prisoners in the County Gaol, or for the repairing and maintaining of the Court House or Gaol, or for any other purpose whatever connected with the administration of justice within the County, shall be paid out of the County funds by the Treasurer before and in preference to all other charges. 20 8 V. c. 38, s. 5,—4, 5 V. c. 10, s. 59.

Penalty for any Officer taking higher fees for the said services. **8.** If any Officer hereinbefore mentioned wilfully and knowingly demands or receives any other or greater fee or allowance than the fee and allowance established as aforesaid, for any of the services performed by them respectively, unless allowed by some other Act of Parliament for other services as aforesaid, he shall, for every such offence, forfeit and pay the sum of ten 30 pounds, to any person who sues therefor, in any Court having competent jurisdiction to hear and determine the same. 8 V. c. 38, s. 4.

Limitation of suits for penalties. **9.** All such suits and actions must be brought before the end of six calendar months after the offence committed, and not 35 otherwise. 8 V. c. 38, s. 6.

Fees receivable by Justices of the Peace. **10.** The following fees, and no others, shall be taken by Justices of the Peace in Upper Canada, or by their Clerks, for the duties and services hereinafter mentioned, that is to say : 40 14, 15 V. c. 119, s. 2.

For information and Warrant for apprehension, or for an information and Summons for assault, trespass, or other misdemeanor, two shillings and six pence ;

For each copy of Summons to be served on defendant or defendants, six pence ; 45

For

For a *Subpœna*, six pence,—only one on each side being charged for in each case, and which may contain any number of names; and if the justice of the case requires it, additional *Subpœnas* shall be issued without charge;

- 5 For every Recognizance, one shilling and three pence,—only one to be charged in each case;

For every Certificate of Recognizance under the Act for the more convenient recovery of Estreats, one shilling and three pence;

- 10 For information and Warrant of surety of the peace for good behaviour, to be paid by complainant, two shillings and six pence;

For Warrant of Commitment for default of surety to keep peace or good behaviour, to be paid by complainant, two shillings and six pence.

11. The costs to be charged in all cases of convictions, where the fees are not expressly prescribed by any Statute, shall be as follows, that is to say: 14, 15 V. c. 119, s. 3. Cost on conviction.

For information and Warrant for apprehension, or for information and Summons for service, two shillings and six pence;

For every copy of Summons to be served upon defendant or defendants, six pence;

For every *Subpœna* to a Witness, (as provided in the first section of this Act,) six pence;

- 25 For hearing and determining the case, two shillings and six pence;

For Warrant to levy penalty, one shilling and three pence;

For making up every Record of Conviction when the same is ordered to be returned to the Sessions, or on *certiorari*, five shillings.

For copy of any other paper connected with any trial, and the Minutes of the same if demanded,—every folio of one hundred words, six pence.

- 35 12. But in all cases which admit of a summary proceeding before a single Justice of the Peace, and wherein no higher penalty than five pounds can be imposed, the sum of two shillings and six pence only shall be charged for the Conviction, and one shilling and three pence for the Warrant to levy the penalty; and in all cases where persons are *subpœnaed* to give evidence As to summary proceedings.

evidence before Justices of the Peace in cases of assault, trespass or misdemeanor, the Witness shall be entitled, in the discretion of the Magistrate, to receive at the rate of two shillings and six pence for every day's attendance, where the distance travelled in coming to and returning from such adjudication does not exceed ten miles, and three pence for each mile above ten. 5

13. Every Bill of Costs shall, when demanded to be made out in detail, and when so made, six pence. 14, 15 V. c. 119, s. 3.

Act not to authorize fees or allowance to witnesses in cases above misdemeanors, &c.

14. This Act is not to authorize any claim being made by the Justices aforesaid, for Fees of any description connected with cases above the degree of misdemeanor; nor shall Witnesses in such cases be allowed any thing for their attendance or travel, except under the order of the Court before which the trial of the case has been had. 14, 15 V. c. 119, s. 6. 15

CAP. CXXV.

An Act respecting the expenses of the Administration of Justice in Criminal matters in Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

- 5 **1.** The expenses of the administration of Criminal Justice in Upper Canada, shall be paid out of the Consolidated Revenue Fund of this Province. 9 V. c. 58, s. 1. How expenses of criminal justices payable.
- 2.** All accounts of or relative to the said expenses shall be examined, audited, vouched, and approved under such regulations as the Governor in Council, from time to time directs and appoints. 9 V. c. 58, s. 2. Accounts to be audited in such manner as the Governor in Council appoints.
- 3.** The several heads of expense mentioned in the Schedule to this Act, shall be deemed expenses of the administration of Criminal Justice within the meaning of this Act. 9 V. c. 58, 15 s. 3. What shall be deemed such expenses.

SCHEDULE.

CLERK OF THE PEACE.

Furnishing annually, Lists of Constables to the Sheriff, and Coroner—

Making up Lists of persons qualified by law to serve as Jurors, residing within the limits of each Division Court, specifying the place of residence and addition of each person, including the certificate and the transmission of the list to the Clerk of each Division Court—

Copies of Depositions or Examinations furnished to Prisoners or Defendants, or their Counsel, when proper to be furnished, and required by the party or his Counsel—

If payable by the Crown ; and to be paid by the Crown, or by the party applying, according to the nature of the case.

Receiving and filing each Presentment of the Grand Jury—

If payable by the Crown ; and to be paid by the Crown, or by the party, as the case may be.

Arraigning each Prisoner or Defendant indicted, and recording plea—

Empanelling

Empanelling and Swearing the Jury in every case, whether Criminal or otherwise, where by law a trial by Jury is to be had at the Quarter Sessions, and where no fee is fixed by Statute—

Swearing each Witness for the prosecution, upon any trial by a Jury, or to go before the Grand Jury—

Filing each Exhibit upon a trial—

Charging the Jury with the Prisoner or Defendant, upon each indictment—

Receiving and Recording each verdict of a Jury, in any case of trial by Jury—

Recording each Judgment or Sentence of the Court, upon verdict or confession—

Making out and delivering to the Sheriff a Calendar of the Sentences at each Court—

Certified Copy of Sentences sent with the Prisoners to the Penitentiary, after each Session—

Making up Record of Conviction or Acquittal, in any case where it may be necessary—

If payable by the Crown ; and to be paid by the Crown, or by the party, as the case may be.

Discharging any Prisoner by Proclamation—

Drawing out and taking each Recognizance to appear, either of Prosecutor, Defendant or Witness—

Calling parties on their Recognizance and recording their non-appearance—

Making out Lists of forfeited Recognizances and Fines, to submit to the Justices after each Quarter Sessions, in order to their being estreated—

Entering any Order of Sessions to remit an estreat, and recording an entry of the same—

If payable by the Crown ; and to be paid by the Crown, or by the party relieved, as the Justices may order.

Drawing Order of the Justices to estreat and put in process—

entering

Entering and extracting upon a Roll, in duplicate, the Fines, Issues, Amerciaments and forfeited Recognizances, recorded in each Session, making oath to the same, and transmitting it to the Sheriff—

Making out and delivering to the Sheriff the Writ of *feri facias* and *capias* thereon—

Making out and certifying copy of Roll and Return of Sheriff, and transmitting it to Receiver General—

Making up Books of Orders of Sessions, declaring the limits of the Division Courts, and entering the times and places of holding the Courts—

Making out and transmitting a copy thereof to the Government—

Making out and transmitting copies (with letter) to the Clerk of each Division Court, of the Divisions made by the Quarter Sessions—

Drawing Orders of Sessions for altering the limits of Division Courts—

Making out and transmitting copies of such Orders to the Government—

Making out and transmitting copies of such Orders to each Division Court affected by the alteration—

For each Copy of Schedule of Division Courts, with the Order of Sessions for publication—

Swearing each party to an Affidavit, where no charge is elsewhere provided for it—

If payable by the Crown; and to be paid by the Crown, or by the party for whom the Affidavit is sworn, according to the nature of the case.

S H E R I F F .

Notice of appointment to the Associate Justices of Oyer and Terminer—

Attending the Assizes—

Attending the Quarter Sessions—

Summoning each Grand Jury for the Assizes or Quarter Sessions—

Summoning each Petit Jury for the Assizes or Quarter Sessions—

For every Prisoner discharged from Gaol, having been committed by Warrant for trial at the Assizes or Quarter Sessions, or Mayor's or Recorder's Court—

Bringing up each Prisoner for arraignment, trial and sentence, whether convicted or acquitted—

Drawing Calendar of Prisoners for Trial at the Assizes, including copies—

Drawing Calendar of Prisoners for trial at the Quarter Sessions, including copies—

Advertising the holding the Assizes or Quarter Sessions—

Every Annual or General Return, required by law, or by the Government, respecting the Gaol or the Prisoners therein—

Every other Return made to the Government or to the Sessions, required by Statute or by order of the Court—

Returning Precept to the Assizes or Sessions—

Conveying Prisoners to the Penitentiary, or to another County, and disbursements—

If payable by the Crown ; and to be paid by the Crown, or by the party, as the case may be.

Arrest of each individual upon a Warrant—

Serving Subpoena for the Crown upon each person—

Conveying Prisoners on Attachment or *Habeas Corpus* to another County, and disbursements—

Making return upon Attachment or Writ of *Habeas Corpus*—

Levying Fines or Issues on Recognizances estreated, and mileage—

According to the Statute for regulating the fees of County Officers and Justices of the Peace.

Carrying into execution the Sentence of the Court in capital cases—

Attending and superintending the Execution in such cases—

Summoning

Summoning each Constable to attend the Assizes or Sessions—

Keeping a Record of Jurors who have served at each Court—

All disbursements actually and necessarily made in guarding Prisoners, or in their conveyance to the Penitentiary, to any other County or elsewhere, or for other purposes in the discharge of the duties of the Office, (when not otherwise provided for,) to be allowed by the Justices in Sessions—

CORONER.

Precept to summon Jury—

Empanelling a Jury—

Summons for Witness—

Information or Examination of each Witness—

Taking every Recognizance—

Necessary travel to take an Inquest—

Taking Inquisition and making Return—

Every Warrant—

CONSTABLE.

Arrest of each individual upon a Warrant—

If payable by the Crown ; and to be paid by the Crown, or by the party, as the case may be.

Serving Summons or Subpoena—

Mileage—

If payable by the Crown ; and to be paid by the Crown, or by the party, as the case may be.

Attending Assizes or Sessions—

Attending any Justice on the examination of Prisoners charged with any crime—

If payable by the Crown ; and to be paid by the Crown, or by the party, as the case may be.

Mileage in going to serve Summons or Warrant when the service has not been effected ; the Justices in Session being satisfied that due diligence was used—

Taking Prisoners to Gaol,—and disbursements necessarily expended in their conveyance—

Summoning Jury for Inquest—

Attending Inquest for each day other than the first—

Serving notice of appointment of Constables, when personally served—

C R I E R .

Making Proclamation for opening or adjourning the Courts of Assize and *Nisi Prius*, Oyer and Terminer, and General Gaol Delivery and Quarter Sessions—

Making every other Proclamation—

Calling and Swearing Grand Jury—

Calling and Swearing every Petit Jury—

Calling and Swearing every Witness or Constable—

Attending Assizes and Quarter Sessions—

O T H E R M A T T E R S .

The maintenance of Prisoners confined upon Criminal charges—

A proportion of the Salary of the Gaoler of each County Gaol, and of the payment of Turnkeys—

Medicines, Fuel and other similar necessities for the Gaol, and the Prisoners confined on Criminal charges—

Disbursements in transporting Prisoners to the Penitentiary, and for carrying other Sentences of the Courts into effect—

Together with all other charges relating to Criminal Justice payable to the foregoing Officers specially authorized by any Act of the Legislature, and heretofore payable out of County funds—

C A P . C X X V I .

An Act respecting the Expenditure of County Funds, for certain purposes within Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. All accounts or demands preferred by any person against the County, the approving and auditing of which belongs to the Court of Quarter Sessions, shall be delivered to the Clerk of the Peace, on or before the first day of the Session in each Term, to be laid before the Bench. When accounts to be audited by the Q. S. and to be delivered to the C. of the P.
2. No accounts shall be passed or audited at any Court of Quarter Sessions in any County of Upper Canada, unless at least seven Magistrates are present, and whose names shall be entered on the record. No accounts to be passed by less than 7 Magistrates.
3. The Court shall take the accounts into consideration on the second day of each Session, and dispose of the same as soon as practicable, and all orders or checks signed by the Chairman of the Quarter Sessions, except for the payment of Constables or services rendered during the sitting of the Court, shall express the Act of Parliament if any under which the expenditure was authorized. 7 W. 4, c. 18, s. 2. Accounts to be examined on the second day of each Session and orders given.
4. At the adjournment of each Court of Quarter Sessions, the Clerk of the Peace shall furnish the Treasurer with a list of the orders passed during such Session, according to their priority ; and the Treasurer shall pay such orders according to the respective dates and numbers in which the same were passed at the said Session : But all sums necessary to defray the expences of the custody and maintenance of prisoners, and the accounts of Public Officers, and Officers of the Court, shall be first paid. 7 W. 4, c. 18, s. 3. Clerks of the Peace to furnish Treasurers with lists of orders.
5. Whenever an order has been passed or recorded by any number of Magistrates in any County in Upper Canada, the same shall not be rescinded unless at least the same number be present. 7 W. 4, c. 18, s. 4. No order to be rescinded unless 7 Magistrates present.
6. The Magistrates for any County, except for debts actually due by such County, shall not order or direct the payment of any sum of money by the Treasurer of such County, unless it appears by the Treasurer's accounts that there are sufficient funds in his hands to meet the payment of such order ; and if any such order is made contrary to the provisions hereof, the person or persons in whose favor such order has been made, may recover the same against the Magistrates who sanctioned such order, in an action to be brought for that purpose, as for so much money had and received to his or their use and benefit. 7 W. 4, c. 18, s. 5. Except for debts due, no orders to issue unless funds in hands.

C A P . C X X V I I .

An Act respecting the support of insane destitute Persons.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Clerk of the Peace to lay before the Grand Jury of the Quarter Sessions an account of money necessary for maintaining insane persons.

1. The Clerk of the Peace, shall once in each year, lay before the Grand Jury of the Quarter Sessions, in each County, an account in detail of all sums of money expended during the last preceding twelve months, or necessary to be advanced during the next ensuing twelve months, for the purpose of maintaining and supporting insane destitute persons, received into the Gaol of such County, and the said Grand Jury may at such Quarter Sessions present such just and reasonable sum as they in their discretion think necessary for the purpose of maintaining and supporting insane destitute persons, either in the Gaol or some other place, within such County, for the year next ensuing the said Sessions; which presentment shall be made once in each and every year, and in each and every year the like account in detail of the moneys expended the past year, shall be laid before the Grand Jury as aforesaid. 11 G. 4, c. 20, s. 1 & 2, 3 W. 4, c. 45, s. 2.

The sum of money presented to be paid by the Treasurer.

2. The Chairman of the Quarter Sessions may, from time to time, issue his warrant for the payment of such sum of money to the amount, but not exceeding the amount so presented, and such money shall be payable by the Treasurer of the County, for the time being, out of the moneys of the said County in his hands and unappropriated, and the account, so laid before the said Grand Jury from time to time, so far as the same has been approved of, and the said warrant, shall be a sufficient discharge and indemnity to all persons concerned in the expenditure of such sum or sums of money. 11 G. 4, c. 20, s. 2.

Witnesses may be summoned before the Grand Jury.

3. The said Court of Quarter Sessions shall from time to time, by writ of subpœna, call before them any person required by the Grand Jury, and shall swear such person in open Court, true answer to make to all such questions as may be asked of him by the said Grand Jury, touching and concerning insane destitute persons in the County, and their maintenance and support, and every such person shall be examined on the said oath before the Grand Jury. 11 G. 4, c. 20, s. 4.

How long Act to continue in force.

4. This Act shall continue in force until the First day of January, one thousand eight hundred and fifty and from thence to the end of the next ensuing Session of Parliament, and no longer. 20 V. c. 16.

CAP. CXXVIII.

An Act respecting the costs of levying Distresses for Small Rents and Penalties.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. No person making any distress for rent or for any penalty when the sum demanded and due does not exceed the sum of twenty pounds, in respect of such rent or penalty, and no person employed in making such distress, or doing any act in the course of such distress, or for carrying the same into effect, shall receive, from any person or out of the produce of the chattels distrained upon and sold, any other costs in respect of such distress, than such as are set forth in the Schedule hereunto annexed, and no person shall make any charge, for any thing mentioned in the said Schedule, unless such act has been really done. 1 V. c. 16, s. 1. Fees to be charged and services for which the same may be charged.
2. If any person offends against any of the provisions in the last section contained the party aggrieved thereby, may apply to any Justice of the Peace for the County, City or Town, where such offence was committed, for the redress of such grievance, whereupon such Justice shall summon the person complained of to appear before him, at a reasonable time to be fixed in such summons, and such Justice shall examine into the matter of such complaint and also hear the defence of the person complained of; and if it appears to such Justice that the person complained of has so offended, such Justice shall order and adjudge treble the amount of the money unlawfully taken and full costs to be paid by the person so having offended to the party aggrieved. 1 V. c. 16, s. 2. Penalty for extortion.
3. In case of non-payment of any money or costs so adjudged to be paid, such Justice shall forthwith issue his warrant to levy the same by distress and sale of the goods and chattels of the party convicted rendering to him the overplus, if any. 1 V. c. 16, s. 2. How penalty to be levied.
4. In case no sufficient distress can be had, such Justice shall, by warrant under his hand, commit the party to the common Gaol within the limits of his jurisdiction, there to remain until such order or judgment is satisfied. 1 V. c. 16, s. 2. Commitment.
5. Such Justice, at the request of the party complaining, or complained against, may summon all persons as witnesses, and administer an oath to them, touching the matter of such complaint, or the defence against it. Justices may summon witnesses.
- 6.

Penalty for disobeying.

6. If any person so summoned neglects to obey the summons, without any reasonable or lawful excuse, or refuses to be examined upon oath (or affirmation, as the case may be), he shall forfeit a sum not exceeding forty shillings, to be adjudged, levied and paid in such manner, and by such means and with such power of commitment, as hereinbefore directed with respect to orders and judgments made or given at the instance of original complaints, excepting as regards the form thereof which may be made in such form as such Justice thinks fit. 1 V. c. 16, s. 3. 5 10

For preferring unframed complainant.

7. If such Justice finds that the complaint of the party aggrieved is not well founded, he may order and adjudge costs, not exceeding twenty shillings, to be paid to the party complained against, which order shall be carried into effect and levied and paid in such manner as is hereinbefore directed as to the order and judgment founded on such original complaint. 1 V. c. 16, s. 4. 15

Justices not to make orders against landlord, &c.

8. Nothing hereinbefore contained shall empower such Justice to make any order or judgment against the landlord for whose benefit any such distress was made, unless such landlord personally levied such distress. 1 V. c. 16, s. 4. 20

Party aggrieved by distress for rent not barred of his action, &c.

9. No person aggrieved by any distress for any rents or penalty, or by any proceedings had in the course thereof, or by any costs or charges levied upon him in respect of the same, shall be barred from any suit or remedy which he might have had before the passing of this Act, excepting so far as any complaint preferred under this Act has been determined by the order and judgment of the Justice before whom it was heard and determined, and in all cases where the matter of such complaint is made the subject of any action, the order and judgment may be given in evidence, under the plea of the general issue. 1 V. c. 16, s. 4. 25 30

Orders and judgments to con- cording to Schedule annexed.

10. Orders and judgments on such complaints shall be made in the form in the Schedule hereunto annexed; and may be proved before any Court, by proof of the signature of the Justice to such orders and judgments. 1 V. c. 16, s. 5. 35

Persons levying distress to give copy of charges to party distrained.

11. Every person who makes and levies any distress, shall give a copy of demand, and of all the costs and charges of the distress signed by him, to the person on whose goods and chattels the distress is levied, although the amount of the rent or penalty demanded exceeds the sum of twenty pounds. 40

SCHEDULE REFERRED TO IN THIS ACT.

Form of the Order and Judgment of the Justice before whom complaint is preferred when the Order and Judgment is for the complainant.

In the matter of complaint of A. B. against C. D. for the breach of the provisions of an Act passed in the year of the reign of Her Majesty Queen Victoria, intituled, *An Act [insert the title of this Act]*, I, E. F., a Justice of the Peace for the , do order and adjudge, that the said C. D. shall pay to A. B. the sum of , as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a distress for [*as the case may be*], and the further sum of for costs in this complaint.

(Signed) E. F.

Form of the Order and Judgment of the Justice when he dismisses the complaint as unfounded, with or without costs, as the case may be.

In the matter of complaint of A. B. against C. D. for the breach of the provisions of an Act passed in the year of the reign of Her Majesty Queen Victoria, intituled, *An Act [insert the title of this Act]*, I, E. F., a Justice of the Peace in and for the do order and adjudge that the complaint of the said A. B. is unfounded; [*if costs are given*] and I do further order and adjudge, that the said A. B. shall pay unto the said C. D. the sum of .

(Signed) E. F.

Schedule of Costs and Charges on Distresses for small Rents and Penalties.

Levying distresses under ten pounds : five shillings.

Man keeping possession, per diem : three shillings and nine pence.

Appraisment, whether by one Appraiser or more : four pence in the pound on the value of the goods.

If any printed advertisement, not to exceed in all five shillings.

Catalogues, Sale and Commission, and delivery of goods : one shilling in the pound on the net produce of the Sale.

C A P .

C A P . C X X I X .

An Act respecting the return of Convictions and Fines by Justices of the Peace and of Fines levied by Sheriff's.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Justices of the Peace to make return of convictions and of monies received.

Justices of the Peace to make returns to the Quarter Sessions of all convictions and fines in cases adjudicated by them and of the application of moneys received.

1. Every Justice of the Peace, before whom any trial or hearing has been had under any law, giving jurisdiction in the premises, and who has convicted and imposed any fine, forfeiture, penalty or damages upon the Defendant, shall make a due return thereof in writing under his hand to the next ensuing General Quarter Sessions of the Peace, for the County in which such conviction has taken place, and of the receipt and application by him of the moneys received from the Defendant, and in case the conviction took place before two or more Justices, such Justices, being present and joining in such conviction, shall make an immediate Return thereof, as nearly as circumstances permit in the form set forth in the following Form : 4, 5 V. c. 12, s. 1.

Return of Convictions made by me (or us, as the case may be) in the month of, 18

Name of the Prosecutor.	Name of the Defendant.	Nature of the Charge.	Date of Conviction.	Name of Convicting Justice.	Amount of penalty, fine or damage.	Time when paid or to be paid to said Justice.	To whom paid over by said Justice.	If not paid, why not, and general observations, if any.
								<i>A. B. Convicting Justice, or C. D. Convicting Justices, (as the case may be)</i>

And the Justices to whom any such moneys are afterwards paid, shall make a Return of the receipts and application thereof, to the next General Quarter Sessions, which Return shall be filed by the Clerk of the Peace, with the records of his office. 4, 5 V. c. 12, s. 1.

Penalty for Justices of the Peace neglect-

2. In case any Justice or Justices, before whom any such conviction takes place or who receives any such moneys, neglect or refuse to make such return thereof or in case

case any such Justice or Justices wilfully make a false, partial or incorrect return, or wilfully receive a larger amount of fees than is by law authorized to be received, in every such case, such Justice or Justices, and each and every of them so neglecting, or refusing, or wilfully making such false, partial or incorrect return, or wilfully receiving a larger amount of fees as aforesaid, shall forfeit and pay the sum of twenty pounds, together with full costs of suit, to be recovered by any person who sues for the same by action of debt or information in any Court of Record in Upper Canada, one moiety whereof shall be paid to the party suing, and the other moiety into the hands of Her Majesty's Receiver General to and for the public uses of the Province. 4, 5 V. c. 12, s. 2.

ing to comply with the provisions of this Act.

3. All prosecutions for penalties arising under the provisions of this Act, must be commenced within six months after the cause of action accrue, and the same shall be tried in the County wherein such penalties were incurred, and if a verdict passes for the Defendant, or the Plaintiff becomes nonsuit, or discontinues any such action after issue joined, or if upon demurrer, or otherwise, judgment be given against the Plaintiff, the Defendant shall recover his full costs of suit, as between Attorney and Client, and have the like remedy, for the same, as any Defendant hath by law in other cases. 4, 5 V. c. 12, s. 3.

Actions for penalties under this Act limited to six months after cause.

4. The Clerk of the Peace of the County in which any such returns are made shall, within seven days after the adjournment of the next ensuing General Quarter Sessions, cause to be published the said returns in one public Newspaper in the County, or if there be no such Newspaper, then in a Newspaper of an adjoining County, and also fix up in the Court House of the County, and also in a conspicuous place in the Office of such Clerk of the Peace, for public inspection, a Schedule of the returns so made by such Justices; and the same shall continue to be so fixed up, until the end of the next ensuing General Quarter Sessions of the Peace, and for every Schedule so made and exhibited by the said Clerk of the Peace, he shall be allowed in his accounts with the said County, the Fee of one pound, besides the expense of publication, to be paid by the Treasurer thereof. 4, 5 V. c. 12, s. 4.

Clerk of the Peace to publish and put up in Court House the returns so made to Quarter Sessions.

Fee for so doing.

5. The Clerk of the Peace of each County within twenty days after the end of each Quarter Sessions of the Peace, shall transmit to the Inspector General of the Province a true copy of all such returns made within his County. 4, 5 V. c. 12, s. 5.

Copy of returns to be sent to Inspector General.

6. Nothing herein contained shall exonerate Justices of the Peace from duly returning to the General Quarter Sessions of the Peace of their respective Counties, any convictions, or records of convictions, which are by Law required to be so returned.

This Act not to dispense with other necessary returns or to be returned.

drive persons aggrieved of the right to prosecute a Justice of the Peace liable to be indicted for any offence. returned, or prevent any person aggrieved, from prosecuting by Indictment, any Justice of the Peace, for any offence, the commission of which would subject him to Indictment at the time of the passing of this Act. 4, 5 V. c. 12, s. 6 & 7.

Sheriffs to make return of fines levied.

Sheriffs to transmit quarterly accounts to Inspector General.

Penalty upon neglect.

7. Every Sheriff shall, quarterly and within twenty days 5 after the expiration of each quarterly period, transmit to the Inspector General of the Province a just, true and faithful account, to be verified upon oath, of all fines, penalties and forfeitures, which he has been required and commanded to levy and make by any lawful authority, and of the receipt and application of the same, or of the reason why the same have not 10 been received and applied, and each Sheriff shall pay over to the proper Officer or person lawfully entitled to receive the same, the several sums collected by him as aforesaid, within 15 twenty days next after the expiration of the period within which the same has been collected ; and every Sheriff neglecting or refusing to transmit such quarterly account, or to pay over any such sum or sums of money so collected by him, within the period hereby prescribed, shall incur and be subject to the like penalty, and may be sued for the same in the same manner 20 as is hereinbefore provided and declared with regard to Justices of the Peace neglecting or refusing to make the returns required by this Act. 4, 5 V. c. 12, s. 8.

C A P . C X X X .

An Act respecting the administration of Justice in the unorganized tracts of Country within the limits of Upper Canada.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1. The Governor may from time to time by proclamation, 5 declare that from and after a day to be named therein, any part or parts or the whole of the unorganized tracts of Country bordering on and adjacent to Lakes Superior and Huron, including the Islands in those Lakes which belong to Upper Canada, and also any other parts of Upper Canada not included within 10 the limits of any County, shall form a temporary Judicial District or temporary Judicial Districts, and in such proclamation define the limits of such temporary Judicial District or Districts, and name the same respectively ; and the Governor may divide each of such Districts into two or more Divisions, and define the 15 limits and extent of every such Division, and number such Divisions, beginning at number one ; and may from time to time alter the limits and extent of such Districts and the Divisions thereof respectively. 20 V. c. 60, s. 1.
2. A portion or portions of any County not included in any 20 Township may, for all purposes connected with the administration of Justice under this Act, be included within the limits of any such temporary Judicial District as aforesaid, and may again be separated therefrom by the Governor. 20 V. c. 60, s. 2.
3. The Governor may from time to time appoint in and for 25 every such temporary Judicial District, a fit and proper person to be the Stipendiary Magistrate thereof, who shall hold office during pleasure, and exercise within such District, magisterial judicial and other functions herein after expressed and who shall reside in such place within the District for which he is appointed 30 as the Governor directs. 20 V. c. 60, s. 3.
4. Every such Stipendiary Magistrate shall be paid, out of 35 the Consolidated Revenue Fund of this Province, the yearly sum of three hundred pounds, to be paid half yearly on the thirtieth day of December and the thirtieth day of June in each year, by equal portions, and may moreover have and take to his own use the fees authorized to be taken by Justices of the Peace in Upper Canada, or by their Clerks in cases of summary conviction. 20 V. c. 60, s. 4.
5. Every such Stipendiary Magistrate, shall be *ex officio* a 40 Justice of the Peace for the temporary Judicial District for which he is appointed, and shall have all the powers, jurisdiction

Governor may erect certain unorganized tracts into temporary judicial districts.

Division Courts.

Tracts not included in township may be annexed to such districts.

Stipendiary Magistrate may be appointed in and for each such district.

Salary of such Magistrate.

Such Magistrate to be a Justice of the

Peace: powers as such, &c. tion and authority, and shall perform all the duties which a Justice of the Peace in any County in Upper Canada now has, and is required to perform within any such County; and all the protections and provisions of law applicable to such Justices of the Peace shall extend and apply to such Stipendiary Magistrate acting within the limits of his temporary Judicial District; and such Stipendiary Magistrate may and shall act in the execution of the office of Justice of the Peace for such temporary Judicial District, although he may not have such qualification by estate in lands, tenements and hereditaments, as is required by the consolidated Act of Canada, intituled, *An Act for the qualification of Justices of the Peace.* 20 V. c. 60, s. 5.

6. The Governor may appoint Justices of the Peace for such temporary Judicial Districts, or for all or any part of the unorganized tracts of Country in Upper Canada by commission as heretofore, and the name of any Stipendiary Magistrate may be inserted in any such commission. 20 V. c. 60, s. 5.

Such magistrate to appoint constables; their powers. 7. Every such Stipendiary Magistrate shall from time to time appoint a sufficient number of fit and proper persons to serve in the office of Constable in his temporary Judicial District, and may at his pleasure remove any such Constable; and such Constable may be selected from among the body of men known as the enrolled pensioners, and such persons so selected shall be bound to discharge the duties of Constables, and every Constable so appointed as aforesaid shall have and exercise and perform all the duties and powers, and shall be subject to all the responsibilities that Constables appointed by the Courts of Quarter Sessions in Upper Canada now have and can perform and exercise and are now subject to; and all the privileges, protections and provisions of law applicable to such Constables shall extend and apply to Constables appointed by a Stipendiary Magistrate under this Act; and the lawful fees and expenses of such last named Constables, other than the fees they may be entitled to receive from parties, shall be audited by the Stipendiary Magistrate, and paid out of the Consolidated Revenue Fund of this Province in such manner as the Governor may from time to time direct. 20 V. c. 60, s. 6.

Audit and payment of Constables.

Punishment of Constable misbehaving. 8. If any Constable appointed under the authority of this Act is guilty of any disobedience of orders, neglect of duty, or of any misconduct as such Constable, and is convicted thereof before the Stipendiary Magistrate for the temporary Judicial District, or before any Justice of the Peace acting therein, he shall forfeit a sum to be fixed by such Magistrate or Justice not exceeding ten pounds and costs, and in default of immediate payment thereof, shall suffer imprisonment for any time not exceeding three months unless such fine and costs be sooner paid; And any such person may be proceeded against by indictment for any offence committed by him as Constable, but not both by Indictment and also under this Act for the same offence. 20 V. c. 60, s. 7.

9. The Governor may from time to time direct that one or more suitable erections shall be provided by the Commissioner of Public Works in each temporary Judicial District for the safe custody of prisoners charged with crime or convicted of any offence, and every erection so provided shall be deemed a Common Gaol, and the Common Gaol of such temporary Judicial District ; But criminal offenders fully committed for indictment and trial, shall as heretofore be committed to the Common Gaol of the proper County in Upper Canada, to be dealt with according to law, and shall not be detained in the Common Gaol of any temporary Judicial District an unreasonable time, regard being had to the season of the year and the possibility of travelling at the time of his commitment as aforesaid ; and until such erections are provided, offenders may be committed to any suitable place within the temporary Judicial District. 20 V. c. 60, s. 7.
10. The Stipendiary Magistrate shall from time to time appoint a Keeper to every Common Gaol in his temporary Judicial District, and such Gaol-keeper shall perform all the duties, and be under and subject to all the liabilities that the Gaoler of the Common Gaols in the several Counties in Upper Canada now perform and are subject to, and shall give such security for the due performance of the duties of his office as the Governor from time to time prescribes, and every such Gaol-Keeper shall be paid out of the Consolidated Revenue Fund, such sums of money annually as the Governor may think reasonable for the services performed. 20 V. c. 60, s. 9.
11. All moneys arising from penalties, forfeitures and fines imposed by any such Stipendiary Magistrate, or by any Justice of the Peace acting within his temporary Judicial District when paid and levied, shall, (if not directed by law to be otherwise appropriated) from time to time be paid to such Stipendiary Magistrate who shall account for the same, and pay over or disburse the moneys arising therefrom, at such times, in such manner, and to such person or persons, as the Governor may from time to time direct. 20 V. c. 60, s. 10.
12. Every such Stipendiary Magistrate shall keep minutes of every proceeding had by and before him, and shall keep such accounts, make such returns, and collect such information, with respect to the temporary Judicial District for which he is appointed and the state and condition thereof, as the Governor may from time to time prescribe and require. 20 V. c. 60, s. 11.
13. In order to the administration of Justice between party and party, Courts of Civil Jurisdiction shall be held in every temporary Judicial District, and a Court shall be held in every Division declared and appointed as a Division under the first section of this Act, at such periods as the Governor may from time

Temporary Gaols to be provided.

Provision against unnecessary detention therein.

Keeper of the Gaol.

His remuneration.

Application of fines and forfeitures.

Accounts thereof.

Magistrate to keep minutes, accounts, &c.

Civil Court to be held in each Division.

- Style of Court.** time to time order ; And the Court to be held in each such Division shall be known by the name and style of "The first (or other, as the case may be) Division Court for the temporary Judicial District of" 20 V. c. 60, s. 12.
- Magistrate to hold such Court—powers.** **14.** The Stipendiary Magistrate for each temporary Judicial District shall preside over the several Division Courts, and to qualify him to preside over the same he shall, in addition to his oath of office as a Justice of the Peace, take the following oath before some person authorized to administer the same, that is to say : 20 V. c. 60, s. 13. 5 10
- Oath of office of Magistrate.** " I do swear that I will truly and faithfully execute the several powers, duties and trusts committed to me by the Temporary Judicial District Act, without fear, without favor and without malice. So help me God."
- Jury trial.** **15.** Such Magistrate shall be the sole Judge in all actions brought in the said Division Courts, and shall determine all questions as well of fact as of law in relation thereto in the summary manner authorized by this Act ; But if he thinks fit to have any fact or facts controverted in a cause, tried by a Jury, a Jury of five persons present shall be returned instantly by the Clerk of the Court to try such fact or facts, and such magistrate may give judgment on the verdict of the Jury. 20 V. c. 60, s. 13. 20
- Clerk and Bailiff of Division Courts.** **16.** For every such Division Court, there shall be a Clerk and one or more Bailiffs, and the Stipendiary Magistrate may from time to time appoint and may, at his pleasure, remove the Clerks and Bailiffs of the Courts over which he presides, and every Clerk shall have an office at such place within the Division for which he is appointed as the Stipendiary Magistrate may direct ; and in case the Stipendiary Magistrate removes any such Clerk or Bailiff and appoints another in his place, such Magistrate shall order the books, papers and all documents relating to the business or matters of the Division Court, to be delivered over to the newly appointed Clerk or Bailiff, and if any person in whose custody such books, papers or documents may be, refuses to obey such order, Her Majesty's Court of Queen's Bench or Common Pleas in Upper Canada, or any Judge thereof in vacation, upon proof of service of such order upon such person, may by rule or summons call upon such person or persons to show cause why such books, papers or documents should not be delivered in conformity with the order of the said Stipendiary Magistrate ; and upon due proof of the service of such rule or summons, or on hearing the parties, the said Court of Queen's Bench or of Common Pleas, or any Judge thereof in vacation may order the issue of an attachment against such person, and in default of the delivering up of the said books, papers or documents, may make such order for the imprisonment or such other punishment of such person, as the justice of the case to the said Court 35 40 45
- Proceedings if Clerk or Bailiff be removed to compel delivery of papers, &c., to his successor.**

Court or Judge seems to require; and any other person unlawfully holding or getting possession of such books, papers or documents, or any of them, shall be guilty of a misdemeanor. 20 V. c. 60, s. 14.

- 5 **17.** Every Clerk and Bailiff appointed under the provisions of this Act shall give security by entering into a bond to Her Majesty in such sums, with so many sureties, and in such form as the Governor may direct for the due accounting for all fines and moneys by them, by virtue of their offices, respectively
 10 received, and also for the due and faithful performance of the duties of their several offices; and every such Clerk and Bailiff shall also give security for such sum and with so many sureties as the Stipendiary Magistrate for the temporary Judicial District directs, by entering into a joint and several covenant,
 15 according to the form given in the Schedule to this Act marked A, or in words to the same effect, which covenant shall be available to, and may be sued upon by any person suffering damages by the default, breach of duty or misconduct of any such Clerk or Bailiff, respectively, in any Court of competent Jurisdiction in
 20 Upper Canada; and such covenants shall not be accepted until the sureties therein mentioned have been approved of under the hand of such Stipendiary Magistrate, and declared sufficient for the sums for which they have respectively become bound; and such covenants shall be executed in duplicate, one of
 25 which shall be filed in the office of the Inspector General of this Province, and the other with such Stipendiary Magistrate; and a copy of every such covenant, certified by the Inspector General, or by said Stipendiary Magistrate, shall be received in all Courts as sufficient evidence of the due execution and of
 30 the contents thereof, without any other proof whatever. 20 V. c. 60, s. 15.

Clerks and Bailiffs to give security for good behaviour.

Form.

Sureties to be subject to approval.

Proof of bond.

- 18.** The Stipendiary Magistrate shall fix and appoint the days and places within every Division when and at which the Division Court therefor shall be holden, and shall give due notice
 35 thereof; and whenever from illness of the Stipendiary Magistrate or from any casualty it happens that he does not arrive in time, or is not able to open any Court to be holden under this Act on the day appointed for that purpose, the Clerk or Deputy Clerk of such Court, shall, after the hour of eight o'clock in the
 40 afternoon of such day, adjourn by proclamation the Court which was appointed to be opened on that day, to an earlier hour to be named by him on the following day not being Sunday or a legal holiday, and so from day to day adjourning over any Sunday or holiday, until the Stipendiary Magistrate arrives to
 45 open the Court, or until he receives other directions from such Magistrate. 20 V. c. 60, s. 16.

Sittings of the Court, how notified, &c.

Clerk may adjourn the Court in certain cases.

19. Every Division Court holden under the authority of this Act, shall have jurisdiction, power and authority to hold plea of all personal actions (save as hereinafter excepted) for or
 54 against

Jurisdiction of the Court.

Mode of proceeding.

Certain causes of action not recognizable.

Not to be Courts of Record.

Causes of action not to be divided in order to give jurisdiction; but excess may be abandoned.

Executor, &c., may sue and be sued.

Minors for wages.

No privilege allowed.

against any person, body corporate or otherwise, where the debt or damages claimed is not more than Twenty-five pounds, and the Stipendiary Magistrate presiding over such Court shall hear and determine such actions and matters in relation thereto in a summary way, and make such orders, judgments and decrees as appear to him just and agreeable to equity and good conscience; but the said Division Courts shall not have cognizance of any action for any gambling debt, or for any spirituous or malt liquors or other like liquors, nor for any action whether brought by the payee or any other person on a note of hand, the consideration or any part or the consideration of which was for any such gambling debt or such liquors, nor of any action of ejectment or in which the title to any corporeal or incorporeal hereditaments, or to any toll custom or franchise shall be in question, or in which the validity of any devise, bequest or limitation under any will or settlement may be disputed, nor of any action for malicious prosecution, or for libel or slander, or for criminal conversation or seduction or breach of promise of marriage; and nothing herein contained shall be construed to constitute the said Division Courts, Courts of Record. 20 V. c. 60, s. 17. 5 10 15

20. A Plaintiff shall not divide any cause of action into two or more suits for the purpose of bringing the same within the jurisdiction of a Division Court holden under the authority of this Act, but any plaintiff, having a cause of action above the value of Twenty-five pounds, for which a suit might be brought under this Act, if the same was not above that sum, may abandon the excess in the first instance on the face of the claim sued on, and upon proving his case, may recover to an amount not exceeding Twenty-five pounds, and the judgment of the Court upon such suit shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment shall be made accordingly; but no unsettled account to a greater amount than Fifty pounds shall be sued for in any of the said Courts. 20 V. c. 60, s. 18. 25 30 35

21. Any executor or administrator may sue and be sued in any such Division Court, in like manner as if he were a party in his own right, and judgment and execution shall be such as in the like cases would be given or issued in any Superior Court; and any one under the age of Twenty-one years may prosecute a suit, in any such Court for any sum of money not exceeding Twenty-five pounds, due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age. 20 V. c. 60, s. 19. 40

22. No privilege shall be allowed to any person to exempt him from the jurisdiction of the Division Courts created by this Act. 20 V. c. 60, s. 20. 45

23. When any plaintiff has a debt or demand recoverable under this Act, against two or more persons partners in trade or otherwise jointly answerable, but residing in different Divisions, or one or more of whom cannot be found, one or more of such persons may be served with the process as hereinafter directed, and judgment may be obtained, and execution issued against such person notwithstanding others jointly liable may not have been served or sued, reserving to the person against whom execution has issued, his right, if any, to demand contribution from any other person jointly liable with him. 20 V. c. 60, s. 21.

Actions against persons jointly liable in different divisions, &c.

24. All suits cognizable in a Division Court under this Act may be entered and tried in the Court holden for the Division in which the cause of action arose, or in the Court holden for the Division in which the defendant, or one of the defendants if there be more than one, dwells or carries on business at the time of action brought, and in actions against Division Court Clerks, in the next adjoining Division within the temporary Judicial District; and with consent of both parties to a suit, the Stipendiary Magistrate may try such suit in any Division Court within the local limits of his jurisdiction. 20 V. c. 60, s. 22.

In what division any suit shall commence.

25. There shall be a seal for every Court holden under this Act, and all summonses and other process shall be sealed or stamped with the seal of the Court; and every person who forges the seal or any process of the Court, or who serves or enforces any such forged process knowing the same to be forged, or delivers or causes to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said Court knowing the same to be false, or who acts or professes to act under any false color or pretence of the process of the said Court, shall be guilty of felony. 20 V. c. 60, s. 23.

Each Court to have a seal.

Punishment for forging seal.

26. The Clerk of every Division Court holden under the authority of this Act, shall issue all summonses and furnish copies thereof, with the notices thereon, in the form given in the Schedule to this Act marked D, and particulars of the plaintiff's claim or demand and copy thereof, and of the defendant's set-off, which copy of demand, particulars, or set-off are to be furnished to the Clerk by the plaintiff and defendant, respectively, and he shall also issue all warrants, precepts and writs of execution, tax costs subject to the revision of the Stipendiary Magistrate, and enter and register a note of all summonses, orders, judgments, executions and returns, and of proceedings of the Court in a Procedure Book to be kept by him, and shall keep an account of all fines payable into Court, and of all suitor's moneys paid into and out of Court, and enter an account of all such fines and moneys in a Cash-book to be kept by him for that purpose, which said Books may be kept in the form given in the said Schedule, and such Clerk shall sign his name

Clerks to issue summonses, &c., and in what forms.

Register to be kept, also accounts.

on every page of the said books respectively, and the same shall at all times be accessible to the Stipendiary Magistrate whose duty it shall be to inspect and examine the same at every sittings of the Court. 20 V. c. 60, s. 24.

27. The entries for the said Procedure book and Cash-book, respectively, or a copy thereof, signed and certified as a true copy by such Clerk, shall at all times be admitted in all Courts and places whatsoever as evidence of such entries and of the proceedings referred to by such entries without any further proof. 20 V. c. 60, s. 24. 5
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28. The Clerk and bailiff of every such Division Court shall render to the said Stipendiary Magistrate such accounts and returns verified on oath as he may from time to time require. 20 V. c. 60, s. 24. 15

29. The bailiffs of the said Courts shall attend every sittings of the said Courts, and shall serve all summonses, and execute all orders, warrants, precepts and writs of the said Courts, and each of such bailiffs shall also exercise the power and authority of a constable and peace officer during the actual holding of the Division Court of which he is a bailiff, with full power to prevent all breaches of the peace, riots or disturbances within the Court-room or building wherein the said Court is held, or in the public streets, squares or other places within hearing of such Court, and to arrest with or without any warrant all parties engaged in any such disorder or offending against the meaning of this clause, and to bring such offender before the nearest Justice of the Peace or any judicial officer having power to investigate the matter or adjudicate thereupon. 20 V. c. 60, s. 24. 20
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30. There shall be payable to the Clerks and bailiffs on every proceeding in such Division Courts such fees as are set down in the Schedule to this Act annexed marked B, and a table of such fees shall be hung up in some conspicuous place in the office of each Clerk, and the fees on every proceeding shall be paid in the first instance by the party on whose behalf such proceeding is to be had, on or before such proceeding, and if not so paid, the payment thereof may be enforced by order of the Stipendiary Magistrate, in the same way as any judgment of the Court can be recovered; and if any Clerk, bailiff or other officer employed in putting this Act or any of the powers thereof into execution, shall exact, take or accept any fee or reward whatsoever, other than such fees as aforesaid, for or on account of any thing done by virtue of or relative to putting this Act into execution, every such person so offending shall, upon proof thereof before the said Court, be for ever incapable of serving or being employed under this Act, in any office of profit or emolument, and shall be also liable to damages to the party aggrieved. 20 V. c. 60, s. 25. 30
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31.

Certified copies of entries to be evidence.

The Clerk to render accounts to the Magistrate.

Duties of the Bailiffs.

Powers.

Fees to Clerks and Bailiffs.

Penalty for exacting undue fees.

31. The plaintiff, in any suit brought in the said Division Courts, shall enter a copy, and if necessary, copies of his demand or claim in writing, which shall be numbered according to the order in which entered, and thereupon a summons, bearing the number of the demand or claim on the margin thereof, shall be issued, and it shall be in substance in the form to the Schedule to this Act annexed marked D, and a copy of such summons, to which shall be attached a copy of the plaintiff's account or of the particulars of his demand, as the case may be, and the notice in the said Schedule of such demand or account or claim, shall be served on the defendant ten days at least before the day on which the Division Court shall be holden at which the cause shall be tried; and the delivery of such copies of summons and account or demand to the defendant, or to his wife or servant, or to any grown person being an inmate of his dwelling-house or usual place of abode, trading or dealing, shall be deemed a good service of such summons, account or demand; But personal service of such summons on the debtor shall be necessary in all cases where the amount or damages sued for exceed the sum of forty shillings. 20 V. c. 60, s. 26.

Mode of commencing suits.

Particulars of demand.

Service of process, how made.

Personal service in certain cases.

32. Either of the parties to a suit may obtain from the Clerk of the Division Court wherein the same has been brought, or from any Division Court Clerk within the temporary Judicial District, a summons in the form in Schedule marked D, requiring the attendance of a witness resident within the temporary Judicial District with or without a clause requiring the production of books, papers and writings in his possession or control; and in any such summons any number of names may be inserted, and service of any such summons by the bailiff of any Division Court or by any literate person, shall be valid and effectual; and every person on whom any such summons may have been served, either personally or at his or her usual place of abode, and to whom at the same time a tender of payment of his or her expences were made, on the scale of allowance given in the Schedule marked C, to this Act, and who refuses or neglects without sufficient cause to appear before the Court or before arbitrators appointed under this Act, or to produce any books, papers or writings required by such summons to be produced, and also every person in Court called upon to give evidence, who refuses to be sworn or affirmed (where affirmation is by law allowed) and give evidence, shall forfeit and pay such fine not exceeding five pounds as the Stipendiary Magistrate may set on him, and shall moreover be liable to imprisonment by order of such Stipendiary Magistrate for any time not exceeding ten days; and such fine shall be levied and collected with costs in the same manner as upon a judgment of the Court, and the whole or any part of such fine, in the discretion of the Stipendiary Magistrate (after deducting the costs) shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall be paid over

Subpoenas for witnesses.

Service.

Penalty for disobeying subpoenas.

How to be levied and applied.

over to the Stipendiary Magistrate, and accounted for by him as aforesaid. 20 V. c. 60, s. 27.

Clerk or Bailiff may receive confessions of judgment.

33. Any bailiff or Clerk of the said Courts shall accept and take a confession or acknowledgment of debt in the form in Schedule marked D, from the defendant in any suit hereafter to be brought in any Division Court who may be desirous of making the same, and such confession or acknowledgment shall be in writing and witnessed by the Bailiff or Clerk at the time of the taking thereof; and upon the production of such confession or acknowledgment to the Judge, and upon proof thereof by the oath of the said Bailiff or Clerk, and if such oath or affidavit states that the party making it had not received and is not to receive any thing from the plaintiff or defendant, or any other person, for taking such acknowledgment, and that he has no interest in the demand sought to be recovered, then judgment may be entered on such confession. 20 V. c. 60, s. 28. 5 10 15

Set-off and Statute of limitations pleadable.

34. Any defendant may avail himself of the law of set-off, the statute of limitations, or any other relief or discharge under any statute or law of Upper Canada, and may set up the same by way of defence on the hearing or trial; and in case of set-off, if the defendant's demand exceeds that of the plaintiff, the Stipendiary Magistrate may non-suit the plaintiff, or if the defendant's demand, after remitting any portion of it he may please, does not exceed twenty-five pounds, the Stipendiary Magistrate may give judgment for the defendant for the balance found to be in his favor; but no statutory defence shall be admitted unless notice thereof in writing and a copy of such debt or demand, by way of set-off in the form in Schedule marked D, shall have been delivered to the plaintiff or left at his usual place of abode if within the Division, or if living without the Division, to the Clerk of the said Court, at least six days before the trial or hearing: And when any judgment is given in any case where a set-off is set up, the judgment of the Stipendiary Magistrate on such set-off shall be a full discharge as well of the amount allowed to be set-off as the amount by which such claim of the defendant exceeded twenty-five pounds, and such judgment shall be so entered accordingly. 20 V. c. 60, s. 29. 20 25 30 35

Appearance of parties and mode of trial.

35. On the day named in the summons, the plaintiff shall appear in the Division Court in person, or by some person in his behalf, and thereupon the defendant shall be required by himself or by some person on his behalf, to answer; and on answer being made in Court, the Stipendiary Magistrate shall proceed in a summary way to try the cause and give judgment without further pleading or formal joinder of issue; and if the defendant does not appear as aforesaid, or sufficiently excuse his or her absence, or neglects to answer, the Judge, on proof of due service of the summons, may proceed to the hearing or trial of the cause on the part of the plaintiff only, and the order, verdict 40 45

Default of defendant.

verdict or judgment pronounced thereupon after hearing the evidence to be adduced on the part of plaintiff, shall be final and absolute, and as valid as if both parties had attended; and the Judge may make an order for granting time to the plaintiff or defendant to proceed in the prosecution or defence of the suit; and in cases where the plaintiff does not appear in person or by some one on his behalf, or appearing, does not make proof of his demand to the satisfaction of the Stipendiary Magistrate, such Magistrate, may award the defendant such costs and such further sum of money by way of satisfaction for his trouble and attendance, as he in his discretion may think proper, to be recovered as in other cases provided under this Act. 20 V. c. 60, s. 30.

Delay may be allowed by Court.

36. On the hearing or trial of any action, or in any other proceeding in the said Division Courts, the parties thereto, and all other persons, may be summoned as witnesses and examined either on behalf of the Plaintiff or Defendant, upon oath (or affirmation, when allowed instead of an oath,) to be administered by the proper officer of the Court; But no party to a suit shall be summoned or examined except at the instance of the opposite party or of the Stipendiary Magistrate. 20 V. c. 60, s. 31.

Examination of witnesses, &c.

As to examination of parties.

37. In any suit for a debt or money demand not exceeding ten pounds brought in any such Division Court, the Stipendiary Magistrate, in his discretion, may receive the affidavit of any party or witness in the said suit resident without the limits of his temporary Judicial District; But the said Stipendiary Magistrate before pronouncing judgment may, in his discretion, require any such party or witness to answer on affidavit any interrogatories that may be filed in the cause; and in such suits the Stipendiary Magistrate, upon proof of and being satisfied with the general correctness of the books, of either plaintiff or defendant may in his discretion, receive the same in evidence, and may give judgment on such evidence for any sum not exceeding ten pounds. 20 V. c. 60, s. 32.

Affidavits may be received in certain cases.

Books of parties how receivable.

38. No evidence shall be given by the plaintiff or defendant on the trial of any cause as aforesaid, of any cause of action, claim or set-off, except of such as may be stated and contained in the demand, account, claim, or set-off entered as before directed; but the Stipendiary Magistrate may, if he thinks it conducive to the ends of justice, adjourn the hearing of any cause in order to permit either party to summon or produce further testimony, or to serve or give any notice which may be necessary to enable such party to enter more fully into his case or defence, or from any other cause which said Stipendiary Magistrate may deem reasonable, upon such conditions as to the payment of costs and admission of evidence or other equitable terms as to him may seem meet. 20 V. c. 60, s. 33.

Evidence limited to demand stated.

Court may adjourn the case for further evidence, &c.

Affidavits,
how sworn.

39. All affidavits to be used in the said Division Courts or before the Stipendiary Magistrate, may be sworn before him or before any Clerks of the said Division Courts, or before any Commissioner for taking affidavits in either of the Superior Courts of Common Law in Upper Canada, or before any Justice of the Peace. 20 V. c. 60, s. 34. 5

Judgments to
be final, but
Court may
non-suit
plaint or al-
low new trial.

40. Every order and judgment of any Division Court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the Stipendiary Magistrate may non-suit the plaintiff in any case in which satisfactory proof is not given to him entitling either the plaintiff or the defendant to the judgment of the Stipendiary Magistrate, and any plaintiff may, at any time before verdict or judgment is pronounced, elect to be non-suited and insist thereon. 20 V. c. 60, s. 35. 10 15

As to new
trials.

41. The Stipendiary Magistrate, may in any case if he thinks fit, order a new trial to be had upon such terms as he thinks reasonable, and in the meantime may stay the proceedings; But a new trial must be applied for at furthest within fourteendays, and good ground be shown therefor by the party 20 applying. 20 V. c. 60, s. 35.

Costs discre-
tionary, or to
abide the
event.

42. The costs of any action or proceeding under this Act shall be paid by or apportioned between the parties in such manner as the Stipendiary Magistrate thinks fit, and if not so apportioned, the costs shall abide the event of the action or 25 proceeding. 20 V. c. 60, s. 35.

Decisions to
be pronounced
in open Court,
but Court
may take time
to consider it.

43. Every decision of the Stipendiary Magistrate shall be openly pronounced in Court as soon as may be after the hearing thereof, except that in any case where the Stipendiary Magistrate is not prepared to pronounce a decision *instanter*, 30 he may postpone judgment and name a subsequent day and hour for the delivery thereof in writing at the Clerk's office, and at such day and hour the Clerk may read the judgment to the parties or their agents, if present, and if not, may enter the said judgment in their absence, and such judgment shall be as 35 effectual as if rendered in Court at the trial; But the issuing of execution shall not be postponed without the consent of the party entitled to the same for a longer period than fifty days after the day of trial or hearing. 20 V. c. 60, s. 36.

Execution of
judgments.

44. Whenever any judgment has been given or order made 40 in the said Courts by the Stipendiary Magistrate for the payment of money, the party in whose favor the judgment has been given or such order made, or in whose favor judgment may be given in case of default or failure in payment thereof, may sue out execution against the goods and chattels of the party against 45 whom such Judgment or order was given or made, and thereupon the Clerk of the Court, at the request of the party prosecuting such order

Precept to
Balliff.

order or judgment, shall issue under the seal of the Court a Precept in the nature of a *fiery facias*, in the form in Schedule marked D, which shall be dated on the day it actually issues, be directed to the bailiff of the Court and be returnable into the Court from which it issued within thirty days from the date thereof. 20 V. c. 60, s. 37.

45. Such Bailiff by virtue thereof, shall levy by distress and sale of any goods and chattels and of any money or bank-notes within the Temporary Judicial District, belonging to the person against whom such execution issued, such sum of money and costs (together with interest thereon from the date of entry of judgment) as may be so ordered and past due, and shall pay the same over to the Clerk forthwith; But the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, shall to that extent be protected from seizure. 20 V. c. 60, s. 37.

Seizure by Bailiff.

Exemptions.

46. The bailiff upon taking any goods or chattels into his custody by virtue of a writ of execution, shall endorse thereon the date of seizure, and shall immediately give public notice by advertisement signed by him, describing the goods and chattels taken, and stating the time and place within the Division when and where such goods will be exposed for sale, which notice shall be put up in three of the most suitable places within the Division, at least eight days before the time appointed for the sale; and no bailiff or other officer of any of the said Division Courts shall directly or indirectly purchase any goods or chattels sold under execution, and every purchase made in contravention of this enactment shall be absolutely void. 20 V. c. 60, s. 38.

Bailiff to give notice of sale.

Bailiff not to purchase.

47. If there be cross-judgments between the parties, execution shall be taken out by the party only who obtained judgment for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum; and if both sums be equal, satisfaction shall be entered upon both judgments. 20 V. c. 60, s. 39.

Execution in cases of cross-judgments.

48. In case any person in any temporary Judicial District being indebted in any sum not exceeding twenty-five pounds and not less than twenty shillings, for any debt or money demand arising upon any contract express or implied, or upon any judgment, absconds from this Province leaving personal property liable to seizure under execution for debt in such temporary Judicial District, or in case any such person attempts to remove his personal property out of such temporary Judicial District, or in case any such person keeps concealed therein to avoid service of process with intent and design in any such case to defraud his creditors, any creditor of such person, his servant or agent, may make application to the Clerk of any Division

Proceedings in suits against absconding debtors.

Division Court of the temporary Judicial District wherein the debtor was last domiciled, or where the debt was contracted, or to the Stipendiary Magistrate therein, and upon making or producing an affidavit or affirmation to the purport of that in the Schedule to this Act annexed marked D, and upon then and there filing the said affidavit or affirmation with such Clerk or Stipendiary Magistrate, such Clerk or Stipendiary Magistrate may forthwith issue a warrant under his hand and seal, directed to the bailiff of the Division Court within which the same is issued, or to any constable, commanding such bailiff or constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person of what nature and kind soever, liable to seizure under execution for debt within such temporary Judicial District, or a sufficient portion thereof to secure the sum mentioned in the warrant, with the costs of the action, and to return the same forthwith to the Division Court of the Division wherein such warrant was issued; and upon receipt of such warrant the bailiff or constable to whom the same may be directed, shall forthwith execute the same, and make a just and true inventory of all personal estate and effects, seized and taken by him by virtue thereof, and he shall forthwith return the same to the Clerk of the Division Court of the Division within which such warrant was issued. 20 V. c. 60, s. 40.

Warrant of Attachment to issue on proper affidavit.

Inventory to be made.

As to division in which the proceedings may be had, &c.

Plaintiff not to divide his claim but may abandon excess.

In cases of several Attach-

49. Proceedings may be conducted to judgment and execution in any case commenced by attachment under the provisions of this Section, in the Division Court of the Division within which the warrant of attachment issued; and when in any case proceedings were commenced before the issuing of an attachment under the provisions of this section, such proceedings may be continued to judgment and execution in the Division Court within which such proceedings were so commenced; and the property seized upon any such attachment shall be liable to seizure and sale under the execution to be issued upon such judgment, or in case such property has been sold as perishable, the proceeds thereof shall be applied in satisfaction of such judgment; But a plaintiff shall not divide any cause of action into two or more suits for the purpose of bringing the same within the provision of this section, and any plaintiff having a cause of action above the value of twenty-five pounds, for which an attachment might be issued under this section if the same were not above that value may abandon the excess, and upon proving his case, shall recover to an amount not exceeding twenty-five pounds, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly. 20 V. c. 60, s. 40.

50. Whenever several attachments are issued against a party, the proceeds of the goods and chattels attached shall not

not be paid over to such attaching creditors according to priority, but shall be rateably distributed amongst the attaching creditors who obtain judgment against the debtor in proportion to the amount of the sums really due upon such judgments, and no distribution shall take place until a time reasonable in the opinion of the Judge has been allowed to the several creditors to obtain judgment; and if such goods and chattels are not sufficient to satisfy the claims of all the attaching creditors, none shall be allowed to share unless he sued out his attachment within one month from the issuing of the first attachment, and the costs of the first attaching creditor shall be paid in full. 20 V. c. 60, s. 41.

ments, proceeds to be distributed rateably, and among whom

51. All property seized under the provisions of the next preceding section, shall be forthwith handed over to the custody and possession of the Clerk of the Division Court of the Division within which the warrant was issued, who shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same. 20 V. c. 60, s. 42.

Custody of property attached.

52. If any person against whose estate or effects any warrant of attachment as aforesaid has issued, or any person on his behalf, at any time prior to the recovery of judgment in the cause, executes and tenders to the creditor who sued out such warrant, and files in the Division Court to which the warrant has been returned, a bond, with good and sufficient sureties, in the form in Schedule marked D, to be approved of by the Clerk of such Division Court, binding the obligors jointly and severally in double the amount of the sum claimed, with condition that the debtor or debtors (*naming him, or them*) shall, in the event of the claim being proved and judgment being recovered thereon as in other cases where proceedings have been commenced against the person, pay the amount thereof, or the value of the property so taken and seized, to the claimant or claimants, or shall produce such property whenever thereunto required to satisfy such judgment, such Clerk may thereupon supersede such warrant, and all and singular the property which may have been attached shall be restored. 20 V. c. 60, s. 43.

Attachment dischargeable by giving security by bond.

53. In case more warrants than one have issued at the suit of separate creditors, a Bond similar to that mentioned in the last preceding section shall be given to the plaintiffs in such suits jointly, and the condition of such Bond shall be adapted to the circumstances. 20 V. c. 60, s. 43.

If more suits than one—a bond to be given in each suit.

54. If after the period of one month from the seizure aforesaid, the party against whom the warrant or warrants issued, or some one on his behalf, does not appear and give such bond with sureties conditioned as above mentioned, then as soon as judgment has been obtained upon such claim or claims, execution

Sale of property attached if security be not given.

execution thereupon may immediately issue, and the property seized upon such attachment or attachments, or enough of such property to satisfy the same, may be sold thereon to satisfy the same according to law, or enough of the proceeds thereof may be applied to satisfy the judgment and costs, if the same has been previously sold as perishable property under the provisions of this Act. 20 V. c. 60, s. 44. 5

55. In order to proceed in the recovery of any debt due by the person against whose property a warrant of attachment shall have issued under this Act, where process shall not have been previously served, such process may be served either personally or by leaving a copy at the last place of abode of the defendant, with any person there dwelling, or by leaving the same at the said dwelling if no person be there found; and in every case, all subsequent proceedings shall be conducted according to the usual course of practice and proceedings in the said Division Courts. 20 V. c. 60, s. 45. 10 15

56. If it appears to the satisfaction of the Stipendiary Magistrate in the trial of any cause, upon affidavit or other sufficient proof, that any creditor suing out an attachment under the provisions of this Act, had not reasonable or probable cause for taking such proceeding, then such Stipendiary Magistrate shall order that no costs shall be allowed to such creditor and in such case no costs shall be recovered by the plaintiffs in the cause. 20 V. c. 60, s. 45. 20

57. In case any horses, cattle, sheep or other perishable goods or chattels have been taken upon any warrant issued under this Act, the Clerk of the Court having custody or keeping thereof, may have the same valued by two indifferent persons, and at the request of the plaintiff suing out the warrant, may expose and sell the same at public auction to the highest bidder, giving at least eight days' notice, at the office of the Clerk of the said Division Court, and at two other public places within such Division, of the time and place of such sale, if the articles seized will admit of that notice, otherwise he may sell the same at his discretion. 20 V. c. 60, s. 46. 25 30 35

58. It shall not be compulsory upon the Bailiff or Constable to seize, nor upon the Clerk to sell such perishable articles, until the party suing out the warrant has given a bond to the defendant or defendants therein, with good and sufficient sureties in double the amount of the appraised value thereof (to be ascertained as aforesaid) conditioned that the party directing such seizure or sale will repay the value thereof, together with all costs, and damages that may be incurred in consequence of such seizure or sale, in case judgment be not obtained for the party who sued out such attachment, which bond shall also be filed with the papers in the cause. 20 V. c. 60, s. 46. 40 45

59. Any bond given in the course of any proceeding under this Act, may be sued in any Division Court of the Temporary Judicial District wherein the same was executed, and proceedings may be thereupon carried on to judgment and execution in such Court notwithstanding the penalty contained in such bond may exceed the sum of twenty-five pounds. 20 V. c. 60, s. 46.

As to suit on such bond.

60. Every such bond may be delivered up to the party entitled to the same, by the order and at the discretion of such Court, to be enforced or cancelled, as the case may require. 20 V. c. 60, s. 46.

Court may order bond to be enforced or surrendered, as the case may be.

61. Any residue remaining after satisfying the judgment with the costs thereupon, shall be delivered to the defendant, or to his agent or to the person in whose custody the same were found, whereupon the responsibility of the Clerk as respects such property shall cease. 20 V. c. 60, s. 47.

Residue of proceeds, how dealt with.

62. The Stipendiary Magistrate holding any Division Court as aforesaid, may, in any case, with the consent in writing of both parties to the suit, order the same, with or without other matters in dispute between the parties and within the jurisdiction of the Court as to subject matter but irrespective of amount if not exceeding two hundred pounds, to be referred to arbitration to such persons, and in such manner and on such terms as he may think reasonable and just; and such reference shall not be revocable by either party, except by consent of the Stipendiary Magistrate; and the award of the arbitrator or arbitrators or umpire, shall be entered in the cause as a judgment of the Court, and shall be as binding and effectual, to all intents and purposes, as if given by the Stipendiary Magistrate in a cause within his ordinary jurisdiction. 20 V. c. 60, s. 48.

Matters in dispute not over £200 may be referred to arbitration.

Award to be entered as a judgment.

63. The Stipendiary Magistrate may, on application to him within fourteen days after the entry of such award, set the same aside, or may, with the consent in writing of both parties revoke the said reference and order another reference to be made in the manner aforesaid; and when any reference has been made by any such order as aforesaid, either of the parties to the suit, may obtain from the Clerk of any Division Court, and cause to be duly served, a summons or subpoena requiring the attendance of any witness resident within any such Temporary Judicial District, before the said arbitrators, in like manner as before the Stipendiary Magistrate at the sittings of the said Division Courts. 20 V. c. 60, s. 48.

Award may be set aside.

Subpoenas to witness before arbitrators.

64. If the parties between whom differences have arisen agree by a memorandum signed by them to refer their causes of action, claims and demands to the Stipendiary Magistrate of a temporary Judicial District, and that such Stipendiary Magistrate may try and determine the same, the said Stipendiary

Parties may agree that the Magistrate shall try any matter not over £200.

diary Magistrate shall have power and jurisdiction so to do, provided the subject matter of difference is upon a cause or causes of action not exceeding two hundred pounds in amount, and not within the subjects excepted from the jurisdiction of the said Division Courts, and so stated in the memorandum. 5
20 V. c. 60, s. 49.

Submission to be made in duplicate.

65. Every such memorandum shall be executed in duplicate, one of which shall be filed with the said Stipendiary Magistrate and the other with the Clerk of some one of the said Division Courts, and shall thereupon confer on such Court jurisdiction and authority to hear and determine the matters so referred. 10
20 V. c. 60, s. 49.

May be filed and proceedings thereon had to judgment in one of the Division Courts.

66. Upon such memorandum being filed the plaintiff may enter his claim for suit in such Division Court, and sue out a summons thereupon as in ordinary cases, and the proceedings in the said suit may be conducted to judgment and execution (irrespective of the amount recovered, so that it do not exceed two hundred pounds) in the same manner as in other suits in the said Court, and the judgment in any such suit shall have the same effect as any other judgment of the Court. 15
20 V. c. 60, s. 49.

Punishment of persons insulting the Magistrate or any officer, &c.

67. If any person wilfully insults the Stipendiary Magistrate or any officer of any Division Court during his sitting or attendance in Court, or wilfully interrupts the proceedings of such Court, any Bailiff or Officer of the Court, with or without the assistance of any other person, may, by order of the Stipendiary Magistrate, take such offender into custody, and the Stipendiary Magistrate may impose upon him a fine not exceeding the sum of five pounds, and in default of immediate payment thereof, may, by warrant under his hand and seal in the form in the Schedule marked D., cause such fine to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, or such magistrate may commit the offender to the Gaol of the Temporary Judicial District for any period not exceeding one calendar month. 25
30
35
20 V. c. 60, s. 50.

Punishment for assaulting any officer, resisting process, &c.

68. If any Officer or Bailiff of any Court holden under this Act, is assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made, of any goods or other property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the Stipendiary Magistrate; and the Bailiff of the Court, or any Peace Officer in any such case, may take the offender into custody, (with or without warrant,) and bring him before such Stipendiary Magistrate accordingly. 40
45
20 V. c. 60, s. 51.

69. In case the Bailiff of any Division Court holden under this Act, employed to levy any execution against goods and chattels, shall by neglect or connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance or omission, and upon the facts alleged being proved to the satisfaction of the Court, on the oath of any credible witness, the Stipendiary Magistrate may order such Bailiff to pay such damages as it may appear the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal to pay the same, payment thereof shall be enforced by suchways and means as are herein provided for enforcing judgments recovered in the said Court. 20 V. c. 60, s. 52.

Punishment of bailiff for neglect, connivance, &c.

70. If any Bailiff or Officer of any Division Court, acting under color or pretence of the process of such Court, is guilty of extortion or misconduct, or does not duly pay or account for any money levied or received by him under the authority of this Act, the Stipendiary Magistrate, at any sitting of the Court, if the party aggrieved thinks fit to complain to him, may inquire into such matter in a summary way, and for that purpose may summon and enforce the attendance of all necessary parties, and make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of any such damages and costs to the parties aggrieved, as the said Stipendiary Magistrate thinks just; and in default of payment of any money so ordered to be paid by such bailiff or officer within the time specified for the payment thereof in such order, the Stipendiary Magistrate, may, by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, and in default of such distress may commit the offender to the Common Gaol of the temporary Judicial District for any period not exceeding three calendar months. 20 V. c. 60, s. 53.

Punishment of bailiff or officer guilty of extortion.

71. If any Bailiff neglects to return any writ of execution within three days after the return day thereof, or makes a false return thereto, the party who sued out such writ may maintain an action on the covenant against such Bailiff and his sureties in any Court having competent jurisdiction in Upper Canada, and shall recover therein the amount for which the execution issued with interest from the date of the Judgment upon which such execution was issued, or such less sum as in the discretion of the Judge or Jury the plaintiff under the circumstances may be justly entitled to recover, and if a judgment be obtained in such suit against the Bailiff and his sureties, execution shall immediately issue thereon. 20 V. c. 60, s. 54.

Punishment of bailiff neglecting to return writ or making false return.

Forms in the schedule or to like effect to be valid.

72. The forms contained in the Schedule to this Act annexed marked D, are given as examples of the forms for proceedings in the said Division Courts, and may be used with such modifications as may be necessary in all actions and proceedings in the said Division Courts, but nothing herein contained shall render it erroneous or irregular to depart from the letter of such forms so long as the substance is expressed; and with reference to forms not contained in the said Schedule, the forms contained in the said Schedule shall be used as guides in framing the same. 20 V. c. 60, s. 55. 5 10

Want of form not to vacate.

73. No order, verdict or judgment, or other proceeding made concerning any of the matters aforesaid, shall be quashed or vacated for any matter of form. 20 V. c. 60, s. 57.

Provision for protection of persons levying by distress.

74. When any levy or distress is made for any sum of money levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto; nor shall the party distraining, be deemed a trespasser from the beginning on account of any irregularity afterwards committed by the party so distraining, but the person aggrieved by such irregularity may recover full satisfaction for the special damage. 20 V. c. 60, s. 56. 15 20

Act not to provisional districts.

75. So soon as Provisional Judicial Districts are formed as hereinafter provided, including any temporary Judicial District formed under this Act, the provisions hereinbefore contained shall cease to have any force therein except so far as may be necessary for supporting any process and proceedings issued, had or taken before or at the time when such Provisional Districts may be formed. 20 V. c. 60, s. 61. 25 30

PROVISIONAL JUDICIAL DISTRICTS

Governor may form provisional judicial districts out of unorganized tracts.

76. The Governor may from time to time, by Proclamation under the Great Seal, declare that from and after a certain day to be therein named, a certain part or certain parts or the whole of the unorganized tracts of country hereinbefore mentioned, shall form a Provisional Judicial District or Provisional Judicial Districts, and define the limits of such Provisional Judicial District or Districts; and such Provisional District or Districts shall thereupon be formed accordingly. 16 V. c. 176, s. 1. 35

Governor may authorize the holding of certain Courts in such provisional Districts.

77. The Governor may during the continuance of any such Provisional Judicial District formed as aforesaid, issue the necessary commissions authorizing the holding therein Courts of Assize and Nisi Prius, Oyer and Terminer and General Gaol Delivery. 16 V. c. 176, s. 2.

78. The Governor may appoint in each such Provisional Judicial District a fit and proper person, being a Barrister of not less than five years' standing at the Bar of Upper Canada, to be Judge thereof, and such Judge shall have the same powers, duties and emoluments, and be paid in the same manner as any County Judge in Upper Canada, except that his salary shall not exceed Five Hundred Pounds per annum, and he shall hold his office during pleasure, and shall reside within the limits of his Provisional Judicial District, and shall not directly or indirectly practise or carry on or conduct any business in the profession or practice of the Law while holding his office of Judge, on pain of forfeiting the same, and of a penalty of One Hundred Pounds. 16 V. c. 176, s. 3.
79. The Governor may pay to the Sheriffs and other officers of every Provisional Judicial District, by way of Salary or otherwise, out of any unappropriated moneys belonging to the Consolidated Revenue Fund of this Province, such several sums of money as he may think reasonable for the services performed by such Officer respectively. 16 V. c. 176, s. 4.
80. The Laws now in force, with respect to the holding of Courts of Quarter Sessions of the Peace, County Courts and Division Courts respectively, in the several Counties in Upper Canada, and to the composition, power and jurisdiction of such Courts respectively, and to the appointment, powers, duties and emoluments of Sheriffs, Coroners, Clerks, Constables and all other Officers attached to such Courts or employed in the administration of justice in connection therewith, shall extend and apply to such Provisional Judicial Districts which shall be deemed and held to be Counties for all and every the purposes of such Laws. 16 V. c. 176, s. 5.
81. Such Courts shall be held at such place in each such Provisional Judicial District as the Governor in Council by Proclamation from time to time appoints, and the word "District" shall be substituted for the word "County" in the titles of such Courts and Officers, as well as in the interpretation of such Laws, in their application to such Provisional Judicial Districts. 16 V. c. 176, s. 5.
82. The Justices of the Peace appointed for any such Provisional Judicial District, or for any part or parts of Upper Canada included therein, or wherein the same may be included, shall have, use, exercise and enjoy within such Provisional Judicial District, all the jurisdiction, powers and authorities, and discharge and perform all the duties which the Justices of the Peace in Upper Canada by law had and were entitled and required to use, exercise and enjoy, discharge and perform immediately previous to and upon the twenty-seventh day of August, one thousand eight hundred and forty-one; and also all such other powers and jurisdiction as may have been

Governor may appoint Judges for such provisional districts, their powers, salary, &c.

Governor may pay Sheriff, &c., of such districts.

Certain laws to apply to provisional districts, which shall be considered as Counties with regard to them.

When courts to be held.

Districts to be substituted for counties.

Justices of the Peace to have the powers which Justice of the Peace had in the districts in Upper Canada.

been since conferred upon Justices of the Peace in general, in Upper Canada : But it shall not be necessary for any such Justice of the Peace to possess the property qualification required by the "Act for the qualification of Justices of the Peace ;" And all such Justices of the Peace and other officers, shall be entitled to the benefit of all provisions of law in force in Upper Canada for the protection of Justices of the Peace and such other Officers as aforesaid. 16 V. c.176, s. 6. 5

Any territory not included in any township may be included in a provisional district.

83. The Governor, may by Proclamation as aforesaid, include within the limits of any such Provisional Judicial District, any portion of any County in Upper Canada not included in any Township ; and thereupon such portion shall for all purposes connected with the administration of Justice cease to belong to such County ; but whenever such portion so included in any such Provisional Judicial District, or any part thereof, shall be formed or erected into a Township, the same shall thereupon cease to belong to or form part of the Provisional District; in which the same may have been included ; and whenever any portion of any such Provisional Judicial Districts which at the time of the formation thereof was not included in any Township or County, shall be formed or erected into a Township or Townships, and attached to any County in Upper Canada, the same shall in like manner thereupon immediately cease to belong to or form part of such Provisional Judicial District. 16 V. c. 176, s. 7. 10 15 20 25

When it shall be again separated.

When crimes and offences in unorganized tracts may be charged to have been committed and be tried.

84. All crimes and offences committed in any of the said unorganized tracts of Country in Upper Canada, including Lakes, Rivers and other waters therein, not embraced within the limits of any organized County, may be laid and charged to have been committed and may be enquired of tried and punished within any County, or in any such Provisional Judicial District, and such crime or offence shall be within the jurisdiction of any Court having jurisdiction over crimes or offences of the like nature committed within the limits of the County or Provisional Judicial District, (as the case may be,) before which Court such crime or offence may be prosecuted, and such Court shall proceed thereon to trial, judgment, and execution, or other punishment for such crime or offence, in the same manner as if such crime or offence had been committed within the County, or Provisional Judicial District where such trial is had. 2 W. 4, c. 2, s. 2,—16 V. c. 176—20 V. c. 60—59 G. 3, c. 10. 30 35 40

When to be tried when judicial districts or new counties are formed.

85. When any Provisional Judicial District, or new County is formed and established in any of the unorganized tracts of Country aforesaid and is so declared by law, or by the Governor by Proclamation under the Great Seal, all crimes and offences committed within the limits of any such Provisional Judicial District or new County, shall be enquired of, 45

of, tried and punished within the same, in like manner as such crimes or offences would have been enquired of, tried and punished if the last preceding Section had not been made or passed. 2 W. 4, c. 2, s. 2,—16 V. c. 176—20 V. c. 60.

5 **86.** All buildings and erections provided by the Commissioners of Public works by direction of the Governor in Council for the holding of Courts and for the safe custody of Prisoners in such Provisional Judicial Districts as aforesaid, shall for the time being be deemed the Court Houses and Gaols of each of
 10 such Provisional Districts respectively. 16 V. c. 176, s. 10.

Certain buildings to be deemed Gaols of such provisional districts.

87. Any Sheriff or other Officer whose duty it is or who may be legally required to summon and return Jurors or persons to serve as Jurors, within any of the said Provisional Districts, shall and may select, choose and return for
 15 such Jurors any of the inhabitants of such Provisional Districts respectively, without reference to the mode prescribed for selecting, balloting or returning Jurors by the Upper Canada Jurors' Act, and Juries *de medietate linguæ*, and Juries of a like
 20 nature, may be ordered by the Court before which any cause or prosecution in any of the said Provisional Districts may be pending. 16 V. c. 176, s. 11.

Any persons may be returned as Jurors in the said provisional districts.

88. The Queen's Writs shall run from all the Courts of Law and Equity in Upper Canada into the said unorganized Country, and have the same force and effect upon persons and
 25 property as the said Writs have the organized parts of Upper Canada, and may be directed to the Sheriff of the County next adjacent thereto. 20 V. c. 60, s. 62.

Writs from Courts of Law and Equity to run into the unorganized tracts: to whom to be directed.

89. The Governor in Council may appoint a Registrar of Deeds in and for the unorganized tracts of Country bordering
 30 on and adjacent to Lakes Superior and Huron, who shall register all deeds and other conveyances and agreements relating to lands situate in any part of the said unorganized tracts and laid out and surveyed by the Crown. 20 V. c. 60, s. 63.

Registrar of Deeds may be appointed for certain tracts.

90. The said Registrar shall keep his office in a place
 35 to be named for that purpose in his Commission, or at such other place as may be appointed for that purpose from time to time by the Governor in Council, and his duties shall be the same as the duties of other Registrars under the Register Act for Upper Canada, or any Act hereafter passed in that
 40 behalf; his fees shall be the same as those appointed by such Statute or the Governor in Council may order an annual Salary, not exceeding two hundred pounds, to be paid to the said Registrar out of the Consolidated Revenue Fund of this Province, in lieu of such fees, which fees shall in such
 45 case be paid into such Revenue. 20 V. c. 60, s. 64.

Where Registrar shall hold his office: his duties, fees, &c.

Or he may be paid an annual salary.

Persons inciting Indians, &c., to the commission of certain offences, how punishable.

91. Any person inciting any Indians or half-breeds frequenting or residing in any of the unorganized tracts of country aforesaid, to the disturbance of the public peace or to the commission of any other indictable offence, shall be guilty of a felony, and upon conviction thereof shall be sentenced to imprisonment for not more than five years nor less than two years in the Provincial Penitentiary. 16 V. c. 176, s. 9. 5

Persons accused or convicted of crimes in any such provisional districts may be committed to any Gaol in Upper Canada

92. Any person accused of inciting Indians or half-breeds as aforesaid, or accused or convicted of any other crime or offence in any such Provisional District as aforesaid, may be committed to any Common Gaol in Upper Canada; and the Constable or other officer having charge of such person and entrusted with his conveyance to any such Common Gaol, may pass through any County or Counties in Upper Canada with such person in his custody, and the keeper of the Common Gaol of any County in Upper Canada in which it may be found necessary to lodge for safe keeping any such person as aforesaid so being conveyed through such County in custody as aforesaid, shall receive such person and him safely keep and detain in such Common Gaol for such period as may be reasonable or necessary, and the Keeper of any Common Gaol in Upper Canada, to which any such person may be committed as aforesaid, shall receive such person and him safely keep and detain in such Common Gaol under his custody until discharged in due course of law, or bailed in cases in which bail may be law be taken. 16 V. c. 176, s. 9. 10 15 20 25

Provision for protection of persons acting in pursuance of this Act.

93. All actions and prosecutions commenced against any person for any thing done in pursuance of this Act, shall be commenced within six calendar months after the act was committed, and not afterwards or otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, one calendar month at least before the commencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends was made before such action brought, or if after action brought, a sufficient sum of money is paid into Court with costs by or on behalf of the defendant; and in any such action the defendant may plead the general issue, and give any special matter arising under this Act in evidence under such plea; and if any person brings any suit in any of Her Majesty's Courts of Record in respect of any grievance committed by any Clerk, Bailiff or Officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and the Jury upon the trial of the action do not find greater damages for the plaintiff than the sum of ten pounds, no costs shall be awarded to the Plaintiff in such action. 20 V. c. 60, s. 58. 30 35 40 45

SCHEDULE A.

COVENANT BY THE CLERK OR BAILIFF.

Know all men by these presents that we, J. B., Clerk, (or Bailiff, as the case may be) of the Division Court number in the Temporary Judicial District of , S. S., of , in the , and P. M., of in the

do hereby jointly and severally for ourselves and for each of our heirs, executors and administrators covenant and promise that J. B., Clerk (or Bailiff) of the said Division Court (as the case may be) shall duly pay over to such person or persons as may be entitled to the same, all such moneys as he shall receive by virtue of the said Office of Clerk (or Bailiff, as the case may be), and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk, (or Bailiff) by Law, and shall not misconduct himself in his said Office to the damage of any person being a party in any legal proceeding; nevertheless it is hereby declared that no greater sum shall be recovered under this covenant against the several parties thereunto than as follows, that is to say:

Against the said J. B. in the whole,

Against the said J. S. "

Against the said P. M. "

In witness whereof, we have to these presents set our hands and seals, this day of , in the year of Our Lord, one thousand eight hundred and

Signed, sealed and delivered } in the presence of }

L. S.

L. S.

L. S.

SCHEDULE B.

TARIFF OF FEES AND ALLOWANCES TO BE RECEIVED BY CLERKS
AND BAILIFFS.

CLERKS' FEES.	Not exceeding £5.			Exceeding £5 and not exceeding £15.			Exceeding £15 and not exceeding £20.			Exceeding £20.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
Entering every Account and issuing Summons.....	0	1	0	0	1	6	0	2	0	0	2	6
Copy of Summons, Particulars of Demand or Set Off, each.....	0	0	6	0	0	9	0	1	0	0	1	3
Every Summons to Witnesses with any number of names.....	0	0	6	0	0	6	0	0	6	0	0	6
Entering Bailiff's returns to Summons to Defendant.....	0	0	3	0	0	3	0	0	3	0	0	3
Every copy of Subpoena when made by the Clerk.....	0	0	3	0	0	3	0	0	3	0	0	3
Entering Set Off or other Defence requiring notice to Plaintiff.....	0	0	9	0	1	0	0	1	0	0	1	3
Adjournment of any cause.....	0	1	0	0	1	0	0	1	0	0	1	0
Entering every Judgment or order made at hearing.....	0	0	9	0	1	0	0	1	3	0	1	6
Taking confession of Judgment.....	0	0	9	0	0	9	0	0	9	0	0	9
Every Warrant, Attachment or Execution.....	0	1	3	0	1	6	0	2	0	0	2	6
Drawing every bond including Affidavit of Justification.....	0	3	9	0	3	9	0	3	9	0	3	9
For every Affidavit taken, and drawing the same, if not over 3 folios, if over that number, 3d. per folio..	0	1	0	0	1	0	0	1	0	0	1	0
Every search on behalf of a person not a party to a Suit, to be paid by the Applicant.....	0	0	6	0	0	6	0	0	6	0	0	6
Every search for a party to a Suit when the proceedings are over a year old.....	0	0	6	0	0	6	0	0	6	0	0	6
BAILIFFS' FEES.												
Service of Summons or other Process, except Subpoena, on each person..	0	0	6	0	0	9	0	1	0	0	1	3
Service of each Subpoena.....	0	0	4	0	0	4	0	0	4	0	0	4
Taking confession of Judgment.....	0	0	9	0	0	9	0	0	9	0	0	9
Enforcing every Warrant, Execution or Attachment against the body or the goods.....	0	1	6	0	2	0	0	3	0	0	4	0
Drawing every bond authorized to be taken by him.....	0	2	6	0	2	6	0	2	6	0	2	6
Every Schedule of property seized...	0	1	3	0	1	3	0	1	3	0	1	3
For necessary notices of sale under execution.....	1s.	each										

For necessary travel to serve Summons and other process, or to execute Warrant or Attachment, a sum in the discretion of the Stipendiary Magistrate, not exceeding 8d. per mile travel from Clerk's office.

Upon the sale of any property under any Execution, the sum of two and a half per cent on the amount realized, and not to apply to any overplus on the Execution.

SCHEDULE

SCHEDULE C.

ALLOWANCE TO WITNESSES.

Attendance per day in Court.....£0 3 9
 Travelling expenses, a reasonable sum in the discretion of the Stipendiary Magistrate, not exceeding 1s. per mile, one way.

And where a witness attends in two or more causes, his expenses may be apportioned between or amongst such causes if the Stipendiary Magistrate shall think fit.

SCHEDULE D.

PROCEDURE BOOK.

Division Court, for the
 Ensuing Sittings, 26th February, 18

No. 1 A. D. 18

JOHN DOE vs. THOMAS ROE.
 of | of

1851.

1st Jan.	Received particulars of plaintiff's demand (on contract) for £ and plaintiff paid towards costs.
11th "	Issued summons to Bailiff, costs and mileage.
24th "	Summons returned served the day of
28th "	Defendant paid £ demand and costs.
10th Feb.	Paid plaintiff £ demand and costs, deposited.

No. 2. A. D. 18

JOHN DEW vs. THOMAS FEN.
 of | of

10th Jan.	Received particulars of plaintiff's demand (for Tort) for £5 plaintiff paid on account of costs and directed two subpoenas, and gave notice to try by Jury.
12th "	Issued summons to Bailiff, costs and mileage.
20th "	Summons returned served the day of
8th Feb.	Issued Jury summonses and subpoenas to Bailiff.
13th "	Jury summonses returned served, 10 miles travel, subpoenas served also.
20th "	Both parties appeared, cause tried, judgment for plaintiff on verdict for pounds, shillings and pence damages, and pounds shillings and pence costs, to be paid in days.
20th March.	Defendant paid pounds in full of judgment and costs.

No. 3. A. D. 18

JAMES JONES vs. THOMAS THOMPSON.
 of | of

11th Jan.	Received particulars of plaintiff's demand (on contract) for £ and on account of costs.
12th "	Issued summons to G. G. Bailiff; costs and mileage.
1st Feb.	Summons returned, served the day of 9 miles travel.
3rd "	Defendant executed Cognovit for.
20th "	Judgment for plaintiff—debt, and pounds costs, to be paid in days.
10th March.	Defendant paid £ debt and costs.

N. B.—The proceedings in a suit may be continued from page to page, giving a reference from one to another; and the sums of money may be in decimal currency, pursuant to 16 Vic. cap. 158, if so ordered.

CASH BOOK.

CASH BOOK—RECEIPTS.				CASH BOOK—PAYMENTS.				
Account of Suitors' money paid into the Division Court for the commencing the 1st of January, 1851.				Account of Suitors' money paid out of the Division Court for the commencing the 1st of January, 1851.				
No.	Style of Cause.	When Received.	From whom Received.	No.	Style of Cause.	When Paid.	To whom Paid.	
				Amount.			Amount.	
				£ s. d.			£ s. d.	
36	Doe vs. Roe	24th Jan., 1851.	Defendant	10 0 0	100	Den vs. Fen et al.	Plaintiff	
100	Den vs. Fen et al.	27th " "	Bailiff	5 10 0	163	Thomas vs. Roe, et al.	Plaintiff	
250	James etc. Jones	28th Feb., "	Plaintiff	0 18 4	250	James etc. Jones.	Defendant	
163	Thomas vs. Roe et al.	10th April, "	Wm. Roe	20 11 8				
	Receipts up to 30th April.....			37 0 0		Payments up to 30th of April.....		
	Paid to Suitors as per payment account.....			27 0 0				
	Balance in Court, 30th April, carried to next Quarter...			10 0 0			27 0 0	
To Cash Balance remaining in Court 30th April.....£				10 0 0				
387	Johnston etc. Wilson, 3rd Sept., 1851.		From Plaintiff, &c.	2 7 6	857	Johnston etc. Wilson, 20th Sept., 1851.	Defendant, &c.	
	&c.							

* N. B.—Or the amount may be in decimal currency, pursuant to 16th Vict., ch. 188, if so ordered.

PARTICULARS IN CASES OF CONTRACT.

A. B., of _____, claims of C. D., of _____, the sum of _____ [the amount of the following account or the amount of the note (a copy of which is under written) together with interest thereon:] or for that the said C. D. promised (*here state shortly the promise*) which undertaking the said C. D. hath not performed:—or, for that the said C. D. by deed under his seal dated _____, covenanted to, &c., and that the said C. D. hath broken said covenant,—whereby the said A. B. hath sustained damages to the amount aforesaid.]

A. B.

PARTICULARS IN CASES OF TORT.

A. B., of _____, states, that C. D., of _____, did, on or about the _____ day of _____, A. D. 18 _____, at the _____, unlawfully [take and convert one cow and one calf, the property of the said A. B.: or break and injure a wagon of the said A. B.: or keep a dog, which the said C. D. knew was accustomed to bite mankind or sheep, and that the said dog did, on the day and at the place aforesaid, bite and lacerate the arm of the said A. B., or kill or injure two sheep, the property of the said A. B.: or assault and beat the said A. B., (*or as the case may be, stating the Tort sued for in concise language*);] The said A. B., hath sustained thereby damages to the amount of _____, and claims the same of the said C. D.

A. B.

PARTICULARS IN ACTIONS AGAINST A CLERK OR BAILIFF, AND HIS SURETIES.

A. B., of _____, claims of C. D., Clerk (*or Bailiff*) of the _____ Division Court for the _____, and E. F., of _____, and G. H., of _____, (*sureties for*) and parties with the said C. D. to a covenant for the due performance of the duties of his said office the sum of _____ for moneys had and received by the said C. D. as such Clerk (*or Bailiff*) as aforesaid, in a certain cause in the said _____ Division Court, wherein the said A. B. was plaintiff, and one H. H. was defendant, to and for the use of the said A. B., the payment whereof the said C. D. unduly withholds. And also (*stating in like manner any other similar claim*)—[or, the sum of _____ for damages sustained by the said A. B., through the misconduct (*or neglect*) of the said C. D. in the performance of the duties of his said office: For that on the _____ day of _____, at _____, (*describe in ordinary language the neglect or misconduct, whereby the damage was occasioned.*)].

A. B.

SUMMONS

day of _____, 18____, duly serve the said C. D., with a true copy of the annexed summons and statement of claim, by delivering the same personally to the said C. D., (or if the service were not personal, state how and on whom served) and that he necessarily travelled _____ miles to make such service.

E. F.

Sworn before me, at
this day of _____ 18____ }
Clerk Division Court. }

Or,

This Form may be used, when the affidavit is endorsed on the summons :

I swear, that this summons and claim annexed thereto were served by me on the _____ day of _____ by delivering a true copy of both, personally, to the defendant, (or to the wife or servant of the defendant, or to a grown up person being an inmate of, and at the defendant's dwelling) and that I necessarily travelled _____ miles to do so.

E. F., Bailiff.

Sworn, &c.

NOTICE OF SET-OFF.

In the _____ Division Court for the Temporary Judicial District of _____

Between A. B., plaintiff ;
and
C. D., defendant.

Take notice, that the defendant will sett-off the following claim on the trial, viz: _____

Dated this _____ day of _____ 18____

C. D.

To A. B., the plaintiff.

NOTICE OF DEFENCE UNDER STATUTE.

In the _____ Division Court for the Temporary Judicial District of _____

Between A. B., plaintiff ;
and
C. D., Defendant.

The

The plaintiff is required to take notice, that upon the hearing of this cause, the defendant intends to give in evidence, and insist upon the following ground of defence, namely, that the claim, for which he the defendant has been summoned, has been barred by the Statute of Limitations (*or as the case may be.*)

Dated this day of , 18

C. D.

To A. B., the plaintiff.

N. B.—*This notice may be embodied with notice of set-off.*

CONFESSION OF DEBT AFTER SUIT COMMENCED.

In the Division Court for the Temporary Judicial
District of

Between A. B., plaintiff :
and
C. D., defendant.

I acknowledged that I am indebted to the plaintiff in the sum of , and consent, that judgment for that amount and costs may be entered against me in this cause.

C. D.

Dated the day of , 18

Witness , Clerk (*or Bailiff.*)

AFFIDAVIT OF EXECUTION OF CONFESSION.

In the Division Court for the Temporary Judicial
District of

Between A. B., plaintiff ;
and
C. D., defendant.

E. F., Clerk (*or Bailiff*) of the said Division Court, maketh oath and saith, that he did see the above (*or annexed*) confession duly executed by the said defendant, and that he is a subscribing witness thereto, and that he, deponent, has not received, and is not to receive any thing from the plaintiff or defendant, or any other person, except his lawful fees, for taking such confession, and that he has no interest in the demand sought to be recovered in this action.

E. F.

Sworn

Sworn before me, at _____, on _____, the _____ day of _____, 18____, Clerk, &c. }

SUMMONS TO WITNESS.

In the _____ Division Court for the Temporary Judicial District of _____

Between A. B., plaintiff; and C. D., defendant.

You are hereby required to attend at the sittings of the said Court, to be holden at _____, on the _____, 18____, at the hour of _____ in the forenoon, to give evidence in the above cause, on behalf of the above-named _____ [and then and there to have and produce (state particular documents required) and all other papers relating to the said action, in your custody, possession, or power.]

Given under the seal of the Court, this _____ day of _____, 18____.

Clerk.

To

MINUTE IN PROCEDURE BOOK OF JUDGMENT OF NONSUIT, OR DISMISSAL FOR WANT OF PROSECUTION.

Judgment of Nonsuit (or that the cause be dismissed) or "and that plaintiff pay _____ for defendant's costs," or "for defendant's trouble, and _____ for his costs; to be paid in _____ days."

MINUTE IN PROCEDURE BOOK OF JUDGMENT AGAINST DEFENDANT FOR DEBT OR DAMAGE.

Judgment for the plaintiff for _____ debt (or damages) and _____ costs; to be paid in _____ days (when an excess has been abandoned, add the words "being in full discharge of his cause of action.")

MINUTE IN PROCEDURE BOOK OF JUDGMENT FOR DEFENDANT.

Judgment for the defendant for _____ costs; or for _____ on set-off, or for his trouble and loss of time, and also _____ for his costs; to be paid forthwith) (where an excess in the set-off has been abandoned, add the words "being in full discharge of his claim, including the excess abandoned.")

ORDER

ORDER FOR NEW TRIAL.

In the
District of

Division Court for the Temporary Judicial

Between A. B., plaintiff;
and
C. D., defendant.

It is ordered, that the judgment rendered in this cause, and all subsequent proceedings be set aside, and a new trial be had between the parties on (*set out the terms or conditions, if any, on which the order is made.*)

_____,
Supendary Magistrate, &c.

Dated _____, 18 .

EXECUTION AGAINST THE GOODS OF DEFENDANT.

In the
District of
No. _____,

Division Court for the Temporary Judicial

, A. D. 18 .

Between A. B., plaintiff;
and
C. D., defendant.

Whereas at the sittings of the said Court holden on _____ at _____, by the judgment of the said Court, the said plaintiff recovered against the said defendant the sum of _____ for a certain debt (*or for certain damages*) with _____ for costs, which said debt (*or damages*), and costs were ordered to be paid by the said defendant, at a day now passed; and whereas the defendant has not made such payment; These are therefore [as before, (*or as often before*)] to command you forthwith to make and levy by distress and sale of the goods and chattels of the said defendant, wheresover the same may be found within the said Temporary Judicial District of _____ (except the wearing apparel and bedding of the said defendant, or his family, and the tools or implements of his trade, if any, to the value of £5) the said debt (*or damages*) and costs, amounting together to the sum of _____ and your lawful fees on the execution of this precept, so that you may have the said sum of _____, within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said plaintiff.

Given under the seal of the Court, this _____ day of _____, 18 .

_____,
Clerk.

T

Bailliff

Bailiff of the said Court.

Judgment,
Execution,
Paid,
Levy,

EXECUTION AGAINST GOODS OF PLAINTIFF.

In the District Court for the Temporary Judicial
District of No. , A. D. 18

Between A. B., plaintiff ;
and
C. D., defendant.

Whereas at the sittings of this Court, holden on
at , judgment was given for the defendant, and
for the sum costs (or for the sum of on
set-off for costs ; or judgment of dismissal was given
and for the sum of for defendant's trouble, and
for costs) to be paid at a day now past ; and whereas
the plaintiff has not paid the same : These are therefore to com-
mand you, forthwith to make and levy by distress and sale of
the goods and chattels of the plaintiff, wheresoever the same
may be found within the said Temporary Judicial District of
(except the wearing apparel and bedding of the said
plaintiff or his family, and the tools and implements of his trade,
if any, to the value of £5) the said sum of or the said
sum of and amounting together to the
sum of and your lawful fees on the execution of this
precept, so that you may have the said sum of with-
in thirty days after the date hereof, and pay the same over to
the Clerk of the Court for the said defendant.

Given under the seal of the Court, this day of ,
18

_____,
Clerk.

To

Bailiff of the said Court.

Judgment,
Execution,
Paid,
Levy,

RECORDS OF THE COURT
AFFIDAVIT FOR ATTACHMENT.

If made after suit commenced, insert style of Court and Cause.

I, A. B., of _____, in the county of _____
(or E. F., of &c., agent for A. B., of &c., do make oath (or
being one of the people called Quakers, affirm), and say, that
C. D., of (or late of) _____ in the County of _____,
is justly and truly indebted to me deponent (or to the
said A. B.) in the sum of _____ [for goods sold and
delivered by this deponent (or by the said A. B.) to the said C.
D., at his request (or other cause of action, stating the same in
ordinary and concise language)] and I, deponent, further say,
that I have good reason to believe, and do verily believe, that
the said C. D. hath absconded from this Province, leaving per-
sonal property liable to seizure under execution for debt in the
temporary Judicial District of (or hath attempted to remove his
personal property out of the temporary Judicial District of
_____ or keep himself, or property, concealed within the tempo-
rary Judicial District of _____ to avoid the service of pro-
cess (as the case may be,) with intent and design to defraud me
deponent (or the said A. B.) of the said debt; and I deponent
further say, that this affidavit is not made, nor the process there-
on to be issued, from any vexatious or malicious motive what-
ever.

Sworn before me, at _____ in the _____
this _____ day of _____ 18 _____ }
Clerk, &c. } A. B. (or E. F.)

N. B.—*If the party sue in a special character, as executor or
the like, it should be stated in the Affidavit, in what character he
claims the debt.*

BOND ON SEIZURE OR SALE OF PERISHABLE PROPERTY.

In the _____ Division Court for the Temporary Judicial
District of _____

Between A. B., plaintiff,
and
C. D., defendant.

Know all men by these presents, that we A. B. of _____
(insert place of residence and addition) the above-named plain-
tiff, E. F., of &c., and G. G. of &c., are, and each of us is,
jointly and severally held and firmly bound to _____ of &c.,
the above-named defendant, in the sum of _____ of lawful
money of Canada, to be paid to the said defendant, his certain
attorney, executors, administrators and assigns, for which pay-
ment, well and truly to be made, we bind ourselves, our heirs,
executors

executors and administrators, and each, and every of us, binds himself, his heirs, executors, and administrators firmly by these parents.

Sealed with our respective seals.

Dated this day of A. D., 18 .

Whereas the above-named plaintiff hath sued out of the above-named Court a Warrant of Attachment against the goods and chattels of the above-named defendant, and hath requested that certain perishable property, to wit (*specify property*) belonging to the above-named defendant, may be seized, and forthwith exposed and sold, under and by virtue of the said Warrant of Attachment, [*or Whereas certain perishable property, to wit , belonging to the above-named defendant, hath been seized under and by virtue of a Warrant of Attachment, issued out of the above-named Court in the above-named cause, and hath been duly appraised and valued at the sum of and is now in the hands of the Clerk of the said Court ; And whereas the said above-named plaintiff hath requested the said Clerk to expose and sell the said goods and chattels as perishable property]* according to the form of the Statute in that behalf.

Now the condition of this obligation is such, that if the said above-named plaintiff, his heirs, executors or administrators, do repay to the said above-named defendant, his executors, or administrators, the value of the said goods and chattels, together with all costs and damages that may be incurred in consequence of the seizure and sale thereof, in case judgment be not obtained by the plaintiff according to the true intent of the forty-sixth section of "The Temporary Judicial District Act, 1857," Then this obligation to be void—else to remain in full force and virtue.

Signed, Sealed and delivered in presence of	}	A. B. [L. S.]
		E. F. [L. S.]
		G. G. [L. S.]

BOND ON SUPERSEDEAS TO WARRANT OF ATTACHMENT.

In the Division Court for the Temporary Judicial
District of

Between A. B., plaintiff,
and
C. D., defendant.

Know all men by these presents, that we C. D., of (*insert place of residence and address*) the above-named defendant, E. F., of &c., and G. G., of &c., are, and each of us is, jointly and severally

severally held and firmly bound to A. B., of &c., the above-named plaintiff, in the sum of _____ of lawful money of Canada, to be paid to the said plaintiff, his certain attorney, executors, administrators and assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each and every of us binds himself, his heirs, executors and administrators, firmly by these presents.

Sealed with our respective seals.

Dated the _____ day of _____, 18 ____.

Whereas the above-named plaintiff hath sued out of the above-named Court a Warrant of Attachment against the goods and chattels of the above-named defendant, for the sum of _____ and under and by virtue of the said Warrant of Attachment, certain goods and chattels of the said defendant, to wit: (*specify the property seized*) have been seized and attached; and the said defendant desires, that the said warrant be superseded, and the said property so attached, restored to him under the provisions of the forty-third clause of "The Temporary Judicial District Act 1857."

Now the condition of this obligation is such, that if the said defendant, his heirs, executors or administrators, do and shall, in the event of the claim, in the said cause being proved, and judgment being recovered thereon, as in other cases, where proceedings have been commenced against the person, pay the same, or pay the value of the said property, so taken and seized as aforesaid, to the said plaintiff, his executors or administrators, or shall produce such property, whenever thereto required, to satisfy such judgment. Then this obligation to be void—else to remain in full force and virtue.

Signed, Sealed and delivered in presence of	}	C. D., [L. S.]
		E. F., [L. S.]
		G. G., [L. S.]

ORDER OF REFERENCE.

In the _____ Division Court for the Temporary Judicial District of _____

Between A. B., plaintiff,
and
C. D., defendant.

By consent of the above-named plaintiff and defendant given in open Court, it is ordered, that all matters in difference in this cause (*and if consented to, add "and all other matters within the jurisdiction of this Court as to subject matter, but not exceeding in amount £200 in difference between the said parties"*) be referred to the ward of _____ so as said award be _____
be _____

be made in writing, ready to be delivered to the parties entitled to the same, on or before the _____ day of _____; and that the said award may be entered as the judgment in this cause (*add any special terms as*) "the costs of reference to be in the discretion of the arbitrator" or "the costs of the action to abide the event of the suit."

Given under the seal of the Court, this _____ day of _____, 18.

_____,
Clerk.

AWARD.

The Award may, if endorsed on the order, be in the following Form :

After hearing and considering the proofs laid before me (*or us*) in the matters of the within reference, and in full determination of the matters to me (*or us*) referred, I (*or we*) do award, that the within-named A. B. is entitled to recover from the within-named C. D. the sum of _____ together with the costs of this suit, and also _____ the costs of this reference, (*or as the case may be,*) and that the same shall be paid by the said C. D. within _____ days, and that judgment be entered in the within mentioned case accordingly.

_____,
Arbitrator.

Dated this _____ day of _____, 18 .

MINUTE IN PROCEDURE BOOK OF JUDGMENT ON AWARD.

Judgment for the plaintiff, (*or defendant*) for _____ costs (*or for the sum of _____ and _____ costs*) pursuant to award; to be paid in _____ days.

MINUTE IN PROCEDURE BOOK OF ORDINARY JUDGMENT AGAINST EXECUTOR OR ADMINISTRATOR.

Judgment for the plaintiff for _____ and _____ costs, to be paid in _____ days, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels.

EXECUTION AGAINST GOODS OF TESTATOR.

In the _____ Division Court for the Temporary Judicial District of _____
Between A. B., plaintiff,
and
C. D., Executor (*or administrasor of F., deceased*), defendant.

Whereas at a sitting the said Court, holden on _____ at _____ by the judgment of the said Court, the said plaintiff recovered against the said defendant as executor (or administrator of E. F. deceased, the sum of _____, for a certain debt, with _____, for costs, to be levied of the goods and chattels of the deceased; failing such goods, the costs to be levied of the defendant's proper goods and chattels, which said debt and costs were ordered to be paid at a day now past, and the defendant has not paid the same: These are therefore to command you, forthwith to make and levy, by distress and sale of the goods and chattels, which were the property of the said E. F. in his lifetime, in the hands of the defendant to be administered, where-soever the same may be found within the said Temporary Judicial District of _____, the said debt and costs, amounting together to the sum of _____, together with the costs of this execution, or such part thereof for the satisfying of this execution, and the costs of making and executing the same, if the defendant have so much thereof in his hands to be administered; and if have not so much thereof in his hands to be administered, then that you make and levy of the proper goods, and chattels, money, of the defendant, the sum of _____, for the costs aforesaid, and the costs of this execution and levying the same, so that you may have the said moneys within thirty days after the date hereof, and pay the same over to the Clerk of the Court, for the said plaintiff.

Given under the seal of the Court, this _____ day of _____ . 18 .

Clerk.

To _____,
Bailiff of the said Court.

Debt,
Costs,
Execution,
Paid,
Levy,

N. B.—Warrants of execution upon a judgment given in other cases against executors may be drawn from this Form, with the requisite alterations.

MINUTE IN PROCEDURE BOOK OF IMPOSITION OF FINE ON
WITNESS.

Adjudged that H. H. was duly summoned to appear as a witness, in this action, at the sittings of this Court here this day, [and also to produce (as the case may be)] that payment (or a tender of payment) of his reasonable expenses was made to him,—and that he did not appear [or having appeared, did willfully refuse to be sworn, and give evidence in this action
(or

(or to produce such &c.)] (*Or* Adjudged, that H. H. being before this Court, now holden and called upon to give evidence in this cause, did wilfully refuse to be sworn and give evidence.) And further adjudged that the said H. H. pay a fine of _____, for such neglect, (*or* refusal) in _____ days, (*or* forthwith;) And that the sum of _____, part of the said fine, be paid by the Clerk to the plaintiff (*or* defendant) being the party injured by such neglect or refusal.

MINUTE IN PROCEDURE BOOK OF ORDER FOR IMPOSITION OF FINE FOR CONTEMPT.

It is adjudged that E. F., at the sittings of this Court now holden in open Court, is guilty of a contempt of the said Court, by wilfully insulting _____ Stipendiary Magistrate of the said Court [*or* "in view of the Court, by wilfully insulting _____, Clerk (*or* Bailiff) of the said Court, during his attendance at such Court" (*or* by wilfully interrupting the proceedings of the said Court:")] And it is ordered, that the said E. F. forthwith pay a fine of _____, for such offence, and, in default of payment, be committed to _____, for _____ days, unless such fine, the costs herein, and the expense attending the commitment, be sooner paid.

WARRANT OF COMMITMENT FOR CONTEMPT.

In the _____ Division Court for the Temporary Judicia District of _____
To _____, Bailiff of the said Court, and to all Constables and Peace Officers of the said Temporary Judicial District of _____ and to the Jailer of _____

Whereas at the sittings of this Court, holder *or* _____ at _____, it was adjudged, that E. F. did, then and there in open Court, wilfully insult me _____, Stipendiary Magistrate, of the said Court [*or* did, in view of the Court, wilfully insult _____, Clerk (*or* Bailiff) of the said Court, during his attendance at such Court (*or* did unlawfully interrupt the proceedings of the said Court)]; And it was ordered, that the said E. F. should forthwith pay a fine of _____, for such offence, and in default of payment, be committed to the _____, for _____ days;

And whereas the said E. F., did not pay the said fine, in obedience to the said order: These are therefore to require you, the said Bailiff and others, to take the said E. F., if he shall be found within the _____, and deliver him to the said jailer of _____; And you the said jailer are hereby required to receive the said E. F., and him safely keep in the Gaol aforesaid, for the term of _____ days from the arrest under this warrant, unless the said fine

and

and costs, the costs amounting to _____, and also the expenses attending the commitment, amounting together to the sum of _____, be sooner paid.

Given under my hand and seal, this _____ day of _____, 18 _____.

_____, [L. S.]
Judge.

Sealed with the seal of
the Court, [L. S.]
_____,
Clerk. }

Fine £
Costs £
Execution £

WARRANT TO LEVY FINE UPON WITNESS.

In the _____ Division Court for the Temporary Judicial District of _____

Between A. B., plaintiff,
and
C. D., defendant.

Whereas at the sittings of this Court, holden on _____ at _____, it was adjudged, that H. H. was duly summoned to appear as a witness in this action, at a sittings of this Court [and also to produce (as the case may be)]; that payment (or a tender of payment) of his reasonable expenses was made to him, and that he did not appear [or having appeared did wilfully refuse to be sworn and give evidence in this action (or to produce such &c.)]: (where a witness in Court refuses to give evidence, instead of the foregoing, commence "Whereas _____, being before the Court at a sittings thereof, and called upon to give evidence, in the above cause, did wilfully refuse to be sworn and give evidence"); And thereupon it was adjudged, that the said _____ should pay a fine of _____, for such neglect. (or refuse) in _____ days: (or forthwith): And whereas the said _____ hath not made such payment: These are therefore (as before or as often before) to command you forthwith to make and levy by distress and sale of the goods and chattels of the said _____ wheresoever the same may be found, within the said Temporary Judicial District of _____ (except the wearing apparel and bedding of the said _____ or his family, and the tools and implements of his trade, if any, to the value of £5) the said fine and costs amounting together to the sum of _____, and

your

your lawful fees on the execution of this precept; so that you may have the said sum of _____ within thirty days after the date hereof, and pay the same over to the Clerk of the Court.

Given under the seal of the Court, this _____ day of 18 .

By order of the Court.

_____,
Stipendiary Magistrate.

_____,
Clerk.

To _____, Bailiff of the said Court.

Fine,
Costs,
Execution,

CAP. CXXXI.

An Act to protect Justices of the Peace from Vexatious Actions.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Actions for things done within jurisdiction of the Justice to be on the case as for a tort malice, and want of probable cause must be alleged and proved.

1. Every Action brought against any Justice of the Peace for any act done by him in the execution of his duty as such Justice, with respect to any matter within his jurisdiction, shall be an action on the case as for a tort, and in the declaration it shall be expressly alleged that such act was done maliciously and without reasonable and probable cause; and if at the trial of any such Action, upon the general issue pleaded, the Plaintiff fails to prove such allegation, he shall be non-suit, or a verdict shall be given for the Defendant. (16 V. c. 180, s. 1.)

Actions when the Justice shall have exceeded his jurisdiction may lie without such allegation.

2. For any act done by a Justice of the Peace in a matter of which by law he has not jurisdiction, or in which he has exceeded his jurisdiction, or for any act done under any Conviction or Order made or Warrant issued by such Justice in any such matter, any person injured thereby may maintain an action against such Justice in the same form and in the same case as he might have done before the passing of this Act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause. (16 V. c. 180, s. 2.)

But not for an Act done under a conviction or order until the same be quashed.

3. No such Action shall be brought for any thing done under such Conviction or Order until the Conviction or Order has been quashed, either upon appeal or upon application to one of the Superior Courts of Common Law for Upper Canada; nor shall any such Action be brought for any thing done under any Warrant issued by such Justice to procure the appearance of the party, and which has been followed by a Conviction or Order in the same matter, until the Conviction or Order has been quashed as aforesaid. (16 V. c. 180, s. 2.)

Nor for an Act done under a Warrant to compel appearance if a summons were previously served and not obeyed.

4. If such last mentioned Warrant has not been followed by any such Conviction or Order, or if it be a Warrant upon an information for an alleged indictable offence, if a Summons was issued previously to such Warrant, and such Summons was served upon such person, either personally or by leaving the same for him with some person at his last or most usual place of abode, and he did not appear according to the exigency of such Summons, in such case no such Action shall be maintained against such Justice for any thing done under such Warrant. (16 V. c. 180, s. 2.)

5. Where a Conviction or Order has been made by one or more Justice or Justices of the Peace, and a Warrant of distress or of commitment has been granted thereon by some other Justice of the Peace *bonâ fide* and without collusion, no Action shall be brought against the Justice who so granted such Warrant by reason of any defect in such Conviction or Order, or for any want of jurisdiction in the Justice or Justices who made the same, but the Action (if any) shall be brought against the Justice or Justices who made such Conviction or Order. (16 V. c. 180, s. 3.)

If one Justice make a conviction, &c., and another grant a Warrant, action must be against the former.

6. In all cases where a Justice or Justices of the Peace refuse to do any act relating to the duties of his or their Office as such Justice or Justices, the party requiring such act to be done may, upon an affidavit of the facts, apply to either of the Superior Courts of Common Law in Upper Canada; or to the Judge of the County Court of the County or United Counties in which such Justice or Justices reside, for a rule calling upon such Justice or Justices, and also the party to be affected by such act, to show cause why such act should not be done; and if after due service of such rule good cause is not shown against it, the said Court may make the same absolute, with or without or upon payment of costs, as may seem meet; and the Justice or Justices, upon being served with such rule absolute, shall obey the same, and shall do the act required; and no action or proceeding shall be commenced or prosecuted against such Justice or Justices for having obeyed the rule and done the act required as aforesaid. (16 V. c. 180, s. 4.)

If a Justice refuse to do any Act, either of the Superior Courts of Common Law or a County Judge may order him to do it, and no action shall then lie against him for doing it.

7. In case a Justice of the Peace has granted a Warrant of Distress or Warrant of Commitment upon any Conviction or Order which, either before or after the granting of such Warrant, has been confirmed upon appeal, no Action shall be brought against such Justice by reason of any defect in such Conviction or Order for any thing done under such Warrant. (16 V. c. 180, s. 5.)

After conviction, &c., confirmed on appeal, no action to lie for an Act done under a Warrant upon it.

8. In case any such Action is brought, where by this Act it is enacted that no action shall be brought under particular circumstances, a Judge of the Court in which any such Action is pending shall, upon application of the Defendant, and upon an affidavit of facts, set aside the proceedings in such Action, with or without costs, as to him seems meet. (16 V. c. 180, s. 6.)

If an action be brought contrary to this Act, Judge may set aside the proceedings.

9. No Action shall be brought against any Justice of the Peace for any thing done by him in the execution of his Office, unless the same is commenced within Six Calendar Months next after the act complained of was committed. (16 V. c. 180, s. 7.)

Limitation of actions.

Notice of action to be given, and how.

10. No such Action shall be commenced against any such Justice of the Peace until one calendar month at least after a notice in writing of such intended Action has been delivered to him, or left for him at his usual place of abode, by the party intending to commence such Action, or by his Attorney or Agent, in which notice the cause of Action, and the Court in which the same is intended to be brought, shall be clearly and explicitly stated ; and upon the back thereof shall be endorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said Attorney or Agent, if such notice is served by such Attorney or Agent. (16 V. c. 180, s. 8.)

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Venue how to be laid.

11. In every such Action the venue shall be laid in the County where the act complained of was committed, and in Actions in County or Division Courts the Action must be brought in the County or Division within which the act complained of was committed or the Defendant resides, and the Defendant may plead the General Issue and give any special matter of defence, excuse or justification in evidence under such plea, at the trial of such Action. (16 V. c. 180, s. 9.)

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Defendant may plead the general issue and give the special matter, &c., in evidence.

Action not to be brought in County or Division Court, if the Justice objects.

12. No Action shall be brought in any County or Division Court against a Justice of the Peace for any thing done by him in the execution of his office if such Justice objects thereto ; and if within six days after being served with a notice of any such Action, such Justice or his Attorney or Agent, gives a written notice to the Plaintiff in the intended Action that he objects to being sued in such County or Division Court for such cause of action, no proceedings shall afterwards be had in such County or Division Court in any such Action, but it shall not be necessary to give another notice of Action in order to sue such Justice in any other Court. (16 V. c. 180, s. 9.)

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County Courts to hold plea of actions against J. P. up to £30.

Tender and payment of money into Court by Justice.

13. In every such case after notice of Action has been given as aforesaid, and before such Action has been commenced, the Justice to whom such notice has been given may tender to the party complaining, or to his Attorney or Agent, such sum of money as he thinks fit as amends for the injury complained of in such notice : and after such Action has been commenced, and at any time before issue joined therein, such Defendant, if he has not made such tender, or in addition to such tender, may pay into Court such sum of money as he thinks fit, and such tender and payment of money into Court, or either of them, may afterwards be given in evidence by the Defendant at the trial under the General Issue. (16 V. c. 180, s. 10.)

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If Jury thinks plaintiff entitled to no greater damages, they shall give a

14. If the jury at the trial are of opinion that the Plaintiff is not entitled to damages beyond the sum so tendered or paid into Court, then they shall give a verdict for the Defendant, and the Plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into Court, or so much thereof

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thereof as is sufficient to pay or satisfy the Defendant's costs in that behalf, shall thereupon be paid out of Court to him, and the residue, if any, shall be paid to the plaintiff. (16 V. c. 180, s. 10.)

5 **15.** If where money is so paid into Court in such Action, the Plaintiff elects to accept the same in satisfaction of his damages in the Action, he may obtain from any Judge of the Court in which such Action has been brought, an order that such money shall be paid out of Court to him, and that the Defendant shall pay him his costs to be taxed, and thereupon the said Action shall be determined, and such order shall be a bar to any other Action for the same cause. (16 V. c. 180, s. 10.)

16. If at the trial of any such Action the Plaintiff does not prove that such Action was brought within the time herein-before limited in that behalf, and that such notice as aforesaid was given one calendar month before such Action was commenced, and the cause of Action stated in such notice, and does not prove that the cause of Action arose in the County or place laid as venue in the margin of the declaration, and when the plaintiff sues in a County or Division Court that the cause of action arose within the County or United Counties for which such Court is holden, then and in any such case such Plaintiff shall be nonsuit, or the Jury shall give a verdict for the Defendant. (16 V. c. 180, s. 11.)

18. In all cases where the Plaintiff in any such Action is entitled to recover, and he proves the levying or payment of any penalty or sum of money under any Conviction or Order as parcel of the damages he seeks to recover, or if he proves that he was imprisoned under such Conviction or Order, and seeks to recover damages for such in imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of two pence as damages for such imprisonment, or any costs of suit whatsoever, if it is proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and with respect to such imprisonment that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay. (16 V. c. 180, s. 12.)

19. If the Plaintiff in any such Action recovers a verdict, or the Defendant allows judgment to pass against him by default, such plaintiff shall be entitled to costs in such manner as if this Act had not been passed. (16 V. c. 180, s. 13.)

20. If in such case it be stated in the declaration, or in the Summons and particulars in the Division Court, if he sue in that

verdict for the defendant.

If the plaintiff accepts the money.

If plaintiff fail to prove certain things, he shall be nonsuited or verdict given for the defendant.

Damages limited in certain cases.

If plaintiff recovers verdict, &c., to be entitled to costs.

Also in suits in Division Courts.

that Court, that the act complained of was done maliciously and without reasonable and probable cause, the Plaintiff, if he recover a verdict for any damages, or if the Defendant allow judgment to pass against him by default, shall be entitled to his full costs of suit, to be taxed as between Attorney and Client ; and in every action against a Justice of the Peace for any thing done by him in the execution of his Office, the Defendant, if he obtain judgment upon verdict or otherwise, shall in all cases be entitled to his full costs in that behalf, to be taxed as between Attorney and Client. (16 V. c. 180, s. 13.) 5 10

C. A. P. CXXXII.

An Act respecting Inquests by Coroners.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- 1.** No Inquest shall be held on the body of any deceased person by any Coroner until such Coroner has reason to believe that the deceased died from violence or unfair means, or by culpable or negligent conduct, either of himself or of others. In what cases only inquests shall be held. 13, 14 V. c. 56, s. 1.
- 2.** But upon the death of any prisoner or any Lunatic confined in any Lunatic Asylum, the Warden, Gaoler, Keeper or Superintendent of any Penitentiary, Gaol, Prison, House of Correction, Lock-up house, House of Industry or Lunatic Asylum in which such prisoner or Lunatic died, shall immediately give notice thereof to some Coroner of the County or City in which such death takes place, and such Coroner shall proceed forthwith to hold an Inquest upon the body. Proceedings in case of the death of any prisoner or person confined in a Lunatic Asylum. 13, 14 V. c. 56, s. 2.
- 3.** If any person, having been duly summoned as a juror or as a witness to give evidence upon any Coroner's Inquest, does not, after being openly called three times, appear and serve as such juror, or appear and give evidence as such witness, such Coroner may impose such fine upon the delinquent person as he thinks fit, not exceeding twenty shillings; and shall thereupon make out and sign a certificate, containing the name, residence and trade or calling of such person, the amount of the fine imposed, and the cause of such fine, and transmit such certificate to the Clerk of the Peace of the County in which such person resides, on or before the first day of the Quarter Sessions of the Peace then next ensuing, and cause a copy of such certificate to be served upon such person by leaving it at his residence, within a reasonable time after such Inquest. Penalty on persons summoned to attend inquests and not attending.
- 4.** The fine so certified shall be estreated, levied and applied in like manner, and subject to the like powers, provisions and penalties in all respects, as if it had been part of the fines imposed at such Quarter Sessions. And how enforced.
- 5.** Nothing herein contained shall affect any power now by law vested in any Coroner for compelling any person to appear and give evidence before him, or for punishing any person for contempt of Court, in not so appearing and giving evidence or otherwise. Former powers of the coroner not to be affected. 13, 14 V. c. 56, s. 3.
- 6.** No Inquisition found upon or by any Coroner's Inquest, nor any judgment recorded upon or by virtue of any such Inquisition, Omission of unnecessary

words &c., not to vitiate any inquisition. sition, shall be quashed, stayed or reversed for want of the averment therein of any matter unnecessary to be proved, nor for the omission of any technical words of mere form, and in all cases of technical defect, either of the Superior Courts of Common Law, or any Judge thereof, or any Judge of Assize or Gaol Delivery, may, upon any such inquisition being called in question before them or him, order the same to be amended. 13, 14 V. c. 56, s. 4. 5

Coroner may summon a medical practitioner to attend at any inquest. 7. Whenever upon the summoning or holding of any Coroner's Inquest, the Coroner finds that the deceased was attended at his or her death, or last illness by any legally qualified medical practitioner, the Coroner may issue his order for the attendance of such practitioner as a witness at such inquest in the form following: 13, 14 V. c. 56, s. 5. 10

CORONER'S INQUEST AT _____, UPON THE BODY OF _____

By virtue of this my order, as Coroner for _____, you are required to appear before me and the Jury, at _____, on the _____ day of _____, at _____ o'clock, to give evidence touching the cause of death of _____, (*and when the witness is required to make or assist at a post mortem examination add*) and make or assist in making a *post mortem* examination of the body, with (or without) an analysis, (*as the case may be*), and report thereon at the said Inquest. 15 20

Signed,
Coroner.

If the Coroner finds that the deceased was not so attended, &c. If the Coroner finds that the deceased was not so attended, he may issue his order for the attendance of any legally qualified medical practitioner being at the time in actual practice in or near the place where the death happened; and the Coroner may at any time before the termination of the Inquest, direct the performance of a *post mortem* examination, with or without an analysis of the contents of the stomach or intestines, by the medical witness summoned to attend at such Inquest; But if any person states upon oath before the Coroner, that in his belief the death was caused partly or entirely by the improper or negligent treatment of any medical practitioner or other person, such medical practitioner or other person shall not assist at the *post mortem* examination. 25 30 35

A majority of the jurymen may require the Coroner to summon another medical practitioner. 8. Whenever it appears to the majority of the Jurymen sitting at any Coroner's Inquest, that the cause of death has not been satisfactorily explained by the evidence of the medical practitioner or other witnesses examined in the first instance, such majority may name to the Coroner in writing, any other legally qualified medical practitioner or practitioners, and require the Coroner to issue his order in the form hereinbefore mentioned 40

- mentioned for the attendance of such last mentioned medical practitioner or practitioners, as a witness or witnesses, and for the performance of such *post mortem* examination as in the last preceding section mentioned, and whether before performed or not; and if the Coroner refuses to issue such order, he shall be guilty of a misdemeanor, and be punishable by a fine not exceeding Ten Pounds, or by imprisonment not exceeding one month, in the discretion of the Court, or by both fine and imprisonment as to the Court seems fit. 13, 14 V. c. 56, s. 6.
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- 10 **9.** Where any legally qualified medical practitioner has attended in obedience to any such order as aforesaid, he shall receive for such attendance, if without a *post mortem* examination, One Pound Five Shillings; if with a *post mortem* examination, without an analysis of the contents of the stomach or intestines, Two Pounds Ten Shillings; if with such analysis, Five Pounds, together with the sum of One Shilling per mile, for each mile he has to travel to and from such inquest, such travel to be proved by his own oath to the Coroner, who may administer the same; and the Coroner shall make his order on the Treasurer of the County in which such inquest is holden, in favor of such medical practitioner, for the payment of such fees or remuneration, and such Treasurer shall pay the sum mentioned in such order, to such medical witness out of any funds he may then have in the County Treasury. 13, 14 V. c. 56, s. 7.
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Penalty on
Coroner refusing.

Allowance to
such medical
practitioner.

To be paid on
Coroner's, and
by whom.

- 10.** Where any such order for the attendance of any medical practitioner has been personally served, or if not personally served, has been received by him or left at his residence in sufficient time for him to have obeyed such order, and he has not obeyed the same, he shall forfeit the sum of Ten Pounds upon complaint made by the Coroner or by any two of the Jury holding such Inquest, before any two Justices of the Peace of the County where the Inquest has been held, or of the County where such medical practitioner resides; and such Justices shall proceed to the hearing and adjudication of such complaint; and if such medical practitioner does not shew a sufficient reason for not having obeyed such order, they shall enforce the said penalty by distress and sale of the offender's goods in the same manner as they are empowered to do by the Statute for the summary enforcement of any penalty or forfeiture. 13, 14 V. c. 56, s. 8.
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Penalty on
practitioners
summoned and
failing to attend.

CAP. CXXXIII.

An Act respecting Court Houses, Gaols and Houses of Correction.

HER Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Sheriff to appoint Gaoler, &c.

1. In every County, the Sheriff shall have the nomination and appointment of such person as he judges most proper, to the office of Gaoler and keeper of the Gaol and Court House, and may also remove and discharge such Gaoler and keeper. 32 G. 3, c. 8, s. 14. 5

No license to be granted for retailing spirituous liquors within such Gaols.

2. No license shall be granted for retailing spirituous liquors within any Gaol or Prison ; and if any Gaoler, keeper or Officer, of any Gaol or Prison, sells, lends, uses or gives away, or knowingly permits or suffers any spirituous liquors or strong waters to be sold, used, lent or given away, in such Gaol or Prison, or brought into the same, other than such spirituous liquors or strong waters as are prescribed by or given by the prescription and direction of a regular Physician, Surgeon or Apothecary, such Gaoler, keeper or other Officer, shall, for every such offence, forfeit the sum of Twenty Pounds, one moiety thereof to Her Majesty, for the public uses of the Province, and the other moiety, with full costs of suit, to the person who sues for the same in any of Her Majesty's Courts of Record in Upper Canada, and in case any Gaoler or other officer being so convicted, offends again in like manner, and is thereof a second time convicted, such second offence shall be a forfeiture of his office. 32 G. 3, c. 8, s. 15. 10 15 20 25

Penalty on Gaolers transgressing in this respect

Gaoler to have a yearly salary in place of all fees, perquisites or impositions whatever.

3. The Justices of the Peace within the limits of their respective Counties in Quarter Sessions assembled, shall appoint a reasonable yearly Salary, according to their discretion, to be paid to the Gaoler, and such Salary shall be in place of all fees, perquisites or impositions of any sort or kind whatever ; and no Gaoler or Officer belonging to the Gaol, shall demand or receive any fee, perquisite or other payment from any Prisoner confined within the Gaol or Prison. 32 G. 3, c. 8, s. 17. 30

Penalty on persons supplying spirits to a prisoner in Gaol.

4. If any person gives, conveys or supplies to any prisoner confined in any common Gaol or House of Correction in Upper Canada, any rum, brandy, whiskey or other spirituous liquors, contrary to such rules and regulations as have been or may be from time to time established by law, every such offender, being duly convicted thereof before two Justices of the Peace, shall be fined a sum not exceeding five pounds ; and such conviction may be paid, and such fine, in default of payment, may be enforced and the party convicted may be punished in the manner and form prescribed by any Statutes regulating summary convictions by Justices of the Peace out of Sessions. 3 V. c. 14, s. 1. 35 40 45

5. When any person is charged on the oath of one credible witness before any one Justice of the Peace, with any offence against this Act, such Justice may summon the person charged to appear at a time and place to be named in such summons; and if he do not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally) any two Justices of the Peace for the County where the offence is alleged to have been committed, may either proceed to hear and determine the case ex-parte, or issue their warrant for apprehending such person, or any one of the said Justices may, if he thinks fit, without any previous summons, issue such warrant. 3 V. c. 14, s. 2.

Any one justice may summon the party accused.

And in default of appearance.

6. Such Justices may summons witnesses, either in support of the prosecution or for the defendant; and if any person having been personally summoned to attend as a witness, neglects or refuses to attend, or fails to shew some reasonable excuse for his non-attendance, he may be fined for such non-attendance by the Justices assembled to try the offence, in any sum not exceeding five pounds, to be enforced in manner and form mentioned in the last preceding Section. 3 V. c. 14, s. 4.

Power to summon witnesses.

7. In default of payment of any fine imposed under the authority of this Act, together with the costs attending the same, within the period specified for the payment thereof at the time of the conviction by the Justices before whom such conviction takes place, such Justices may issue their warrant, directed to any Constable, to levy the amount of such fine and costs of the goods of the offender within a certain time, to be in the said warrant expressed; and in case no distress sufficient to satisfy the amount can be found, they may commit the offender to the Common Gaol or House of Correction of the County wherein the offence was committed, for any time not exceeding one calendar month, unless the fine and costs be sooner paid. 3 V. c. 14, s. 5.

In default of payment of fines and costs.

Offender may be committed.

8. No conviction under this Act shall be quashed for want of form, and no warrant of committal shall be held void by reason of any defect therein, if it be alleged that the party has been convicted, and there is a good and valid conviction to sustain the same. 3 V. c. 14, s. 3.

No conviction or committal to be quashed for want of form.

GAOLS TO BE HOUSES OF CORRECTION.

9. Until separate Houses of Correction are erected in the Several Counties in Upper Canada, the Common Gaol in each County respectively shall be a House of Correction; and every idle and disorderly person, or rogue and vagabond, and incorrigible rogue, and any other person by law subject to be committed to a House of Correction, shall, unless otherwise provided by law, be committed to the said Common Gaols respectively. 50 G. 3, c. 5.

Until houses of correction shall be erected, the Common Gaols in each respective district are constituted Houses of correction.





SCHEDULE OF STATUTES

WHICH RELATE TO

UPPER CANADA ONLY,

AND

WHICH HAVE BEEN CONSOLIDATED.

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- 1. LAW OF ENGLAND introduced as to civil rights. *Except Sec 2.*
- 5- 2. TRIAL BY JURY. *Accidents by Fire*
- 7. MILLS, tolls regulated.
- 8. GAOLS AND COURT HOUSES, erection of, &c.

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33 GEORGE III.

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- Section 10* 2. TOWNSHIP OFFICERS.
- 7. MARRIAGES.
- 7. SLAVES, introduction of, prohibited.
- 8. PROBATE and Surrogate Courts.
- 13. SPIRITUOUS LIQUORS.—Sec. 3.

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34 GEORGE III.

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- 2. COURTS of King's Bench and Appeal. *Section 1 only.*

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35 GEORGE III.

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- 4. KING'S BENCH. *36 George 3*
- 3 *Liquors Licenses*

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37 GEORGE III.

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- 7. DOWER, more easy mode of barring. *Spirituous Liquors*
- 13. LAW, practice of, Law Society.
- 15. FUGITIVE FELONS, &c.

*A.*

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- Caps.
- 4. MARRIAGES.
- 5. DIVISION of the Province.

39 GEORGE III.

- Caps.
- 3. ORPHAN CHILDREN.

40 GEORGE III.

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- 1. CRIMINAL LAW of England, further introduced.
- 4 Spirituous Liquors*

41 GEORGE III.

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- 6. QUARTER SESSIONS, general and other Courts, &c. *Section 1 only*

43 GEORGE III.

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- 1. SALES of Lands and Tenements.
- 1 Spirituous Liquors 45 George 3*
- 47 GEORGE III.

- Caps.
- 11. FEES, Clerks of the Peace.

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- 7. DOWER, mode of barring.
- 12 Statute Labour in Essex and Kent*

49 GEORGE III.

- Caps.
- 4. SHERIFF'S Sales and Costs in certain cases. *Sections 1, 2, + 5.*
- 6. MENONISTS AND TUNKERS.

50 GEORGE III.

- Caps.
- 1. HIGHWAYS. *Sections 12 + 35*
- 5. COMMON JAILS declared to be Houses of Correction.
- 10. MODE of barring Dower.

51 GEORGE III.

- Caps.
- 6. DISTRICT COURTS and Sheriffs. *Sections 2 + 3*

53 GEORGE III.

- Caps.
- 4. MILITIA PENSIONS. *Section 1 only*
- 3 *Spirituosus Liquors*

55 GEORGE III.

- Caps.
- 2. PROCEEDINGS in Outlawry.

57 GEORGE III.

- Caps.
- 9. OYER AND TERMINER, Courts of.
- 6 *Auctioneers*

59 GEORGE III.

- 2 Caps.
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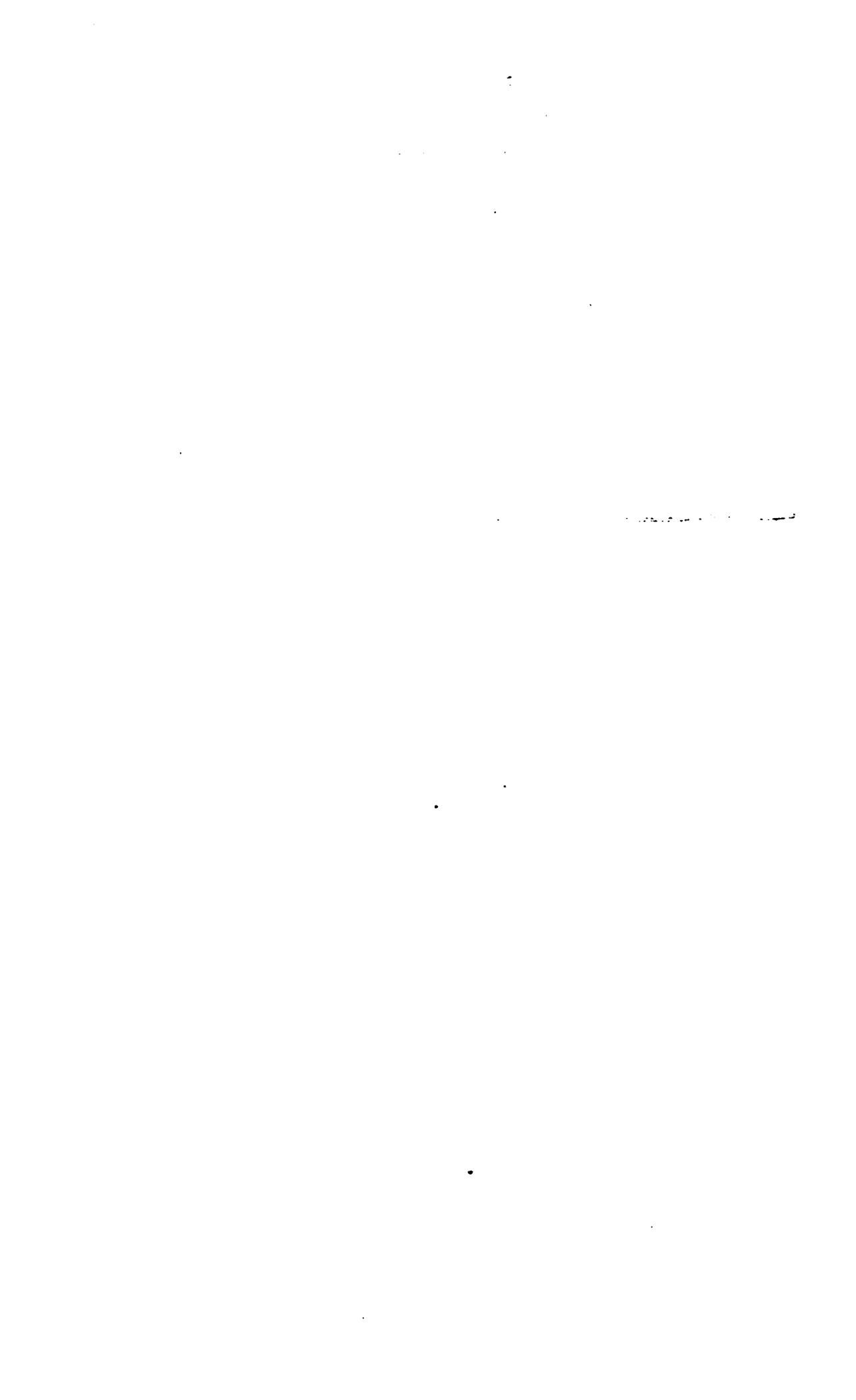
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