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No. 57.

3rd Session, 5th Parliament, 20 Victoria, 1857.

B I L L .

**An Act to amend the Judicature Acts of
Lower Canada.**

Received and read first time, Friday, 6th
March, 1857.

Second reading, Friday, 13th March, 1857.

Hon. Atty. Genl. CARTIER.

S. Derbishire & G. Desbarats, Queen's Printer.

An Act to amend the Judicature Acts of Lower Canada.

WHEREAS the increasing wealth and population of Lower Canada, the recent subdivision thereof into Counties for the purposes of Representation in Parliament, and the establishment of a complete and efficient Municipal System therein, render it expedient to provide more generally for the Local Administration of Justice in every class of cases, and afford means for making such provision; And whereas it is expedient at the same time to make certain improvements in the procedure in the Courts of Justice in the said portion of the Province: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

Preamble.

RE-DIVISION OF LOWER CANADA INTO DISTRICTS.

I. Lower Canada shall be divided into nineteen Districts, in the manner set forth in Schedule A to this Act, the first column whereof contains the name of each District; the second column, the places which shall be comprised within the District; and the third column, the name of the place at or near which the sittings of the Superior Court shall be held and at which the District Court House and Gaol shall be.

Lower Canada divided into 19 Districts as in Schedule A.

II. A Court House and Gaol shall be forthwith built in the manner hereinafter provided, in each of the New Districts mentioned in the said Schedule.

Court Houses and Gaols in New Districts.

III. The immediate re-division of Lower Canada into Districts, in order that proper buildings may be erected and other provision made for carrying this Act fully into effect, shall operate no change in the local jurisdiction of the Superior Court or Circuit Court, in and for any of the present Districts or Circuits, until the day which shall be named as that on which this Act shall take full effect in civil matters, in the first Proclamation to be issued under this Act appointing the times at which Terms of the said Courts are to be held in the new Districts, and declaring them to be established for all purposes of the administration of justice in civil matters.

Re-division not to affect local jurisdiction of Civil Courts until the Act is fully in force in civil matters.

IV. And, in like manner, the said re-division shall operate no change in the local jurisdiction of the Court of Queen's Bench in and for any of the present Districts, in the exercise of its original criminal jurisdiction, or in the local jurisdiction of

Not of Criminal Courts, Justices, &c., until it is fully in force as to

criminal mat- any Court of Quarter Sessions, or other Court of criminal juris-
 ters. diction, or of any Justice of the Peace or other functionary or
 Officer having any jurisdiction or duty in criminal matters, or
 the local jurisdiction or authority of any Justice of the Peace
 in civil matters or otherwise, until the day which shall be named
 as that on which this Act shall take full effect in Criminal mat- 5
 ters, in the first Proclamation to be issued under this Act ap-
 pointing the times at which the Terms of the Courts of Queen's
 Bench are to be held in the new Districts, and declaring them
 to be established for all purposes of the administration of justice 10
 in criminal matters.

Effect of alter- V. Notwithstanding any change in the limits of any of the
 ation in limits present Districts, by the coming into force of the whole or any
 of present dis- part of this Act, they shall not be deemed New Districts, nor
 tricts limited. shall such change affect the appointment of any Judge, Justice 15
 of the Peace or Officer, or his powers or duties except in so
 far as they may depend on the local limits of the District, or
 may be affected by other provisions of this Act.

COURTS AND JUDGES.

A fourth Puis- VI. So much of the second section of the Judicature Act of 20
 né Judge of the Queen's 1849, chapter 37, as limits the number of Puisné Judges of the
 Bench may be Court of Queen's Bench for Lower Canada to three, is hereby
 appointed. repealed, with the fourth section of the same Act; and in addi-
 tion to the Chief Justice and three Puisné Judges mentioned in
 the said section, there shall be a fourth Puisné Judge of the 25
 said Court, to be appointed and qualified in like manner as the
 other Puisné Judges, and with the like powers, duties and salary.

Where the VII. The Judges of the said Court shall respectively reside at
 Judges shall or near Quebec or Montreal, and at least two of them shall
 reside. reside at each of the said places. 30

Quorum of the VIII. The tenth section of the said Act is hereby repealed; and
 Court. any four of the Judges of the said Court shall form a Quorum
 thereof in Appeal and Error, and may hold the Court and
 exercise all the powers and authority thereof; and any Judgment
 Three Judges 35
 required to or Order in Appeal or Error concurred in by any three Judges
 affirm or re- of the Court at any sitting thereof, shall have the same force
 verse a judg- and effect as if concurred in by all the Judges so present; and
 ment. no judgment appealed from shall be reversed, altered or con-
 firmed, unless by the concurrence of three Judges of the said
 Court. 40

Number of IX. So much of the third section of the Judicature Act of
 Judges of Su- 1849, chapter 38, as limits the number of Judges of the Superior
 perior Court Court to ten, or as appoints the places at which they shall
 increased. reside, is hereby repealed; and the said Superior Court shall
 consist of eighteen Judges, that is to say, of a Chief Justice 45
 and seventeen Puisné Judges.

X. The Chief Justice and Judges of the said Court in office when the next preceding section shall take effect, shall remain such by virtue of the commission they then hold ; the new Judges of the Court and all future Judges thereof, shall be appointed from among the then Circuit Judges, and the Advocates of at least ten years' standing at the Bar of Lower Canada, in the manner provided by the Act last cited, all the provisions whereof and of the law shall apply to all the Judges of the said Court.

Present Judges to remain ; how new Judges shall be appointed and qualified.

XI. Four of the Judges of the said Court shall reside at the City of Montreal—three at the City of Quebec—one at the Town of Three-Rivers—one at the Town of Sherbrooke—one at the Village of Aylmer—or in the immediate neighbourhood of the said places respectively,—two in the District of Gaspé and one in the District of Saguenay, at such places as shall be appointed by the Governor ; and the others at such places as the Governor shall appoint in the District or Districts in which they shall by him be directed from time to time ordinarily to exercise their judicial functions.

Where the Judges shall respectively reside.

XII. The Salary of the Chief Justice and the Salaries of the Puisné Judges of the said Court appointed before the passing of this Act, shall not be affected by it ; but of Puisné Judges hereafter to be appointed, the Salaries shall be as follows :

Salaries of the Judges of the Superior Court.

Of those who shall be directed to reside in the Districts of Montreal and Quebec, *one thousand* pounds per annum ;

Of those who shall be directed to reside in the other Districts, except those of Gaspé and Saguenay, *eight hundred* pounds per annum ;

And of those who shall be directed to reside in the Districts of Gaspé and Saguenay, *seven hundred* pounds per annum ;

The allowance to Judges for travelling expenses, shall be fixed by the Governor in Council, as heretofore.

Travelling expenses.

XIII. The office of Circuit Judge is hereby abolished ; and the Circuit Court shall be held by the Judges of the Superior Court, each of whom shall have all the powers and duties vested in or assigned to any Circuit Judge at the time when this section shall take effect. The Circuit Court shall be held in each District at the place where the Superior Court shall be held therein, and being so held shall be known as the Circuit Court for the District of (*naming the District*), and its jurisdiction shall extend over the whole of such District, in like manner as that of the Circuit Court in any Circuit now extends over such Circuit, but concurrently with the Circuit Court (if any) to be held as hereinafter provided in and for any County in such District, in so far as regards such County.

Office of Circuit Judge abolished : and Judges of Superior Court to hold the Circuit Court.

Circuit Court to be held in and for each District,

COURT OF QUEEN'S BENCH, APPEAL SIDE.

Section 8 of 12 V. c. 37, repealed. XIV. The eighth section of the said Act of 1849, chapter 37, is hereby repealed.

Section 9 amended. XV. The ninth section of the said Act of 1849 is hereby amended so as to read as follows :

Terms of the Court, Appeal side. Four terms of the said Court in Appeal and Error shall be held in each year at each of the Cities of Quebec and Montreal; the said terms shall commence respectively on the day of March, the day of June, the day of September and the day of December, at City of Montreal; and on the day of March, the day of June, the day of September and the day of December at the City of Quebec, and shall continue at each place during *ten* calendar days: Provided always, that the Court may on the last juridical day of any such term, adjourn for the purpose of giving judgment only, to any day thereafter, on and after which day it may again adjourn for the like purpose; and such adjournment may be to any day during a Criminal Term of the Court or subsequent thereto: And provided also, that any one Judge, or in the absence of a Judge, the Clerk of the Court, or his Deputy, may, on any day in term, open and adjourn the Court, receive returns and motions of course, call parties who ought then to appear in Court, and record appearances or defaults, and do other acts of a like nature requiring no exercise of judicial discretion."

Extraordinary Terms of the Court may be held, and how. XVI. The Governor may at any time and from time to time, by Proclamation, direct an extraordinary Term of the said Court in Appeal and Error to be held either at Quebec or Montreal, and to commence and end on such days as shall be appointed in such proclamation, which shall be issued at least days before that appointed for the commencement of such term; and to any such extraordinary term all the provisions of this Act, and of the law, with regard to ordinary terms of the Court in Appeal and Error, shall apply in so far as may be consistent with such proclamation; and the sittings at any term of the Court on the Appeal side, ordinary or extraordinary, may be closed, whenever there shall be no business before the Court, or the Term may be continued by the Judges by adjournment until there shall be no business before it.

At what places Appeals shall be heard from the several Districts. XVII. Cases in Appeal or Error from the Districts of Ottawa, Montreal, Terrebonne, Joliette, Richelieu, St. Francis, Bedford, St. Hyacinth, Iberville and Beauharnois, shall be heard and determined at the City of Montreal only, and the Writs in such cases shall be returnable there; and cases in Appeal or Error from the Districts of Three-Rivers, Quebec, Saguenay, Gaspé, Rimouski, Kamouraska, Montmagny, Beauce and Arthabaska, shall be heard and determined at the City of Quebec only, and the Writs in such cases shall be returnable there.

XVIII. The third section of the Act of 1851, chapter 88, is hereby so amended as to read as follows : Section 3 of 14, 15 V. c. 88, amended.

“ And whenever any cause in Appeal or Error shall have been heard by four Judges only of the said Court, and taken *en délibéré* by them, and three of the said Judges shall not concur in opinion as to the judgment which ought to be given in such cause, the Court may discharge the *délibéré*, and order that the cause be re-heard ; and if at the time when such cause shall come up for re-hearing, the other Judge, shall be lawfully recused or disqualified or rendered incompetent either by reason of interest or otherwise to sit in such cause, or shall be absent, any Judge of the Superior Court may act as a Judge of the Court of Queen’s Bench as regards such cause, and shall have the same power and authority with respect to the same, and to all judicial acts required therein, either before or after the determination thereof, as a Judge of the said last named Court not disqualified or rendered incompetent.” Judges of Superior Court to act in certain cases as Judges of Q. B. Appeal side.

And the said section so amended shall be read as part of the said Act of 1851, which shall apply to the Court of Queen’s Bench, as hereby constituted, and to the five Judges thereof. Act of 1851 to apply.

XIX. The salary of the Clerk of Appeals shall hereafter be such sum not exceeding _____ per annum, as the Governor in Council shall from time to time direct ; and so much of the Act of 1855, chapter 98, as fixes his salary, is hereby repealed. Salary of Clerk of Appeals.

XX. The said Court sitting in Appeal and Error shall be a Court of Error in criminal as well as in civil cases, and shall have jurisdiction in Error in all criminal cases before the said Court on the Crown side thereof, or before any Court of Oyer and Terminer, or Court of Quarter Sessions ; And the Writ of Error shall operate a stay of execution of the judgment of the Court below. Court to be a Court of Error in criminal cases.

And in order to provide means of deciding any difficult question of law which may arise at Criminal Trials— Provision for reserving difficult questions of law at Criminal Trials.

XXI. When any person shall have been convicted of any treason, felony or misdemeanor, at any criminal term of the said Court of Queen’s Bench, or before any Court of Oyer and Terminer, Gaol Delivery, or Quarter Sessions, the Court before which the case shall have been tried, may, in its discretion, reserve any question of law which shall have arisen on the trial, for the consideration of the said Court of Queen’s Bench on the Appeal side thereof, and may thereupon respite execution of the judgment on such conviction, or postpone the judgment until such question shall have been considered and decided by the said Court of Queen’s Bench ; and in either case the Court before which the case trial was had, in its discretion, shall commit the person convicted to prison, or shall take a recogni- In what cases questions may be reserved.

zance of bail with one or two sufficient sureties, and in such sum as the Court shall think fit, conditioned to appear at such time or times as the Court shall direct, and receive judgment or render himself in execution, as the case may be.

Case to be stated by the Court reserving the question.

XXII. The said Court shall thereupon state, in a case to be signed by the Judge or Judges, Recorder, Inspector and Superintendent of police, or Chairman holding or presiding such Court, the question or questions of law which shall have been so reserved, with the special circumstances upon which the same shall have arisen; and shall forthwith transmit the same to the Clerk of Appeals at the place where appeals from the District in which the conviction was had, are to be heard; and the said Court of Queen's Bench shall have full power and authority at any sitting thereof on the Appeal side, after the receipt of such case, to hear and finally determine every question therein, and thereupon to reverse, amend or affirm any judgment which shall have been given on the indictment or inquisition on the trial whereof such question arose, or to avoid such judgment, and to order an entry to be made on the record, that in the judgment of the said Court of Queen's Bench the party convicted ought not to have been convicted, or to arrest the judgment, or to order judgment to be given thereon at some other Criminal Term of the said Court, or Session of Oyer and Terminer, or Quarter Sessions, if no judgment shall before that time have been given, as the said Court of Queen's Bench shall be advised, or to make such other order as justice may require.

Court of Q. B. to give the proper judgment in the case.

Judgment of Q. B., to be certified to the Court from which the case is sent: and proceedings thereon.

XXIII. The judgment or order, if any, of the Court of Queen's Bench in such case as aforesaid, shall be certified under the hand of the Chief Justice or one of the Judges concurring therein, to the Clerk of the Court from which the same was sent, who shall enter it on the original record in proper form, and a certificate of such entry under the hand of such Clerk, in the form, or as near as may be to the effect of the Schedule B, to this Act, with the necessary alterations to adapt it to the circumstances of the case, shall be delivered or transmitted by such Clerk to the Sheriff or Gaoler in whose custody the person convicted shall be, and such certificate shall be a sufficient warrant to such Sheriff or Gaoler and all other persons, for the execution of the judgment as the same shall have been so certified to him to have been affirmed or amended, (and execution shall thereupon be done on such judgment), or for the discharge of the person convicted from further imprisonment if the judgment be reversed, avoided or arrested; and in that case such Sheriff or Gaoler shall forthwith discharge him, and at the next sitting of the Court from which the case was sent, the recognizance of bail, if any, shall be vacated; and if the Court from which the case was sent shall be directed by the Court of Queen's Bench to give judgment, it shall give judgment at the then next session thereof.

XXIV. The judgment of the Court of Queen's Bench in any such case as aforesaid, shall be delivered in open Court, after hearing Counsel or the parties, in case the prosecutor or the party convicted shall think it fit that the case be argued, and in like manner as other judgments of the said Court on the Appeal Side, but no notice appearance or other form of procedure, except such only, if any, as the Court may in such case see fit to direct, shall be requisite.

Judgment of Q. B., to be delivered in open Court, &c.

XXV. The Court of Queen's Bench, when a case has been so reserved for its opinion, shall have power, if it see fit, to cause the case or certificate to be sent back for amendment, and thereupon the same shall be amended accordingly, and judgment shall be delivered after it shall have been amended.

Q. B. may send back the case for amendment.

XXVI. Whenever any Writ of Error shall be brought upon any judgment on any indictment, information, presentment or information in any criminal case, and the Court of Queen's Bench shall reverse the judgment, the said Court may either pronounce the proper judgment, which shall be executed as the judgment of the Court below, or may remit the record to the Court below, in order that such Court may pronounce the proper judgment.

Q. B., reversing a judgment to pronounce the proper one, &c.

XXVII. If in any criminal case either reserved as aforesaid or brought before it by Writ of Error, the Court of Queen's Bench shall be of opinion that the conviction was bad from some cause not depending upon the merits of the case, it may by its judgment declare the same, and direct that the party convicted be tried again, as if no trial had been had in such case.

May order new Trial in certain cases.

XXVIII. Whoever shall forge or alter, or shall offer, alter, dispose of or put off, knowing the same to be forged or altered, any certificate or certified copy of any certificate, required or authorized by the next preceding sections, with intent to cause any person to be discharged from custody, or otherwise prevent the due course of justice, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned in the Provincial Penitentiary for any period not more than seven nor less than three years.

Forging certificate, &c., under foregoing clauses, to be felony.

COURT OF QUEEN'S BENCH—CROWN SIDE.

XXIX. The thirty-third section of the said Act of 1849, chapter 37, is hereby repealed; and any one of the Judges of the Superior Court may hold any term or sitting of the Court of Queen's Bench, for the exercise of the original criminal jurisdiction of that Court, and shall have all the powers of a Judge thereof and of the Court in the exercise of the said jurisdiction; but it shall not be incumbent upon any Judge of the Superior Court to hold any such term or exercise any such powers at either of the Cities of Quebec or Montreal, if there be

Section 33 of 12 V. c. 37 repealed; and any Judge of the Superior Court may hold any Criminal Term. Proviso.

a Judge of the Court of Queen's Bench present at such City and able to act.

Part of Sect. 34 repealed : when the Term shall commence at Quebec and Montreal.

XXX. So much of the thirty-fourth section of the said Act of 1849, as fixes the time at which the terms of the said Court, on the Crown side, is hereby repealed ; and the said terms or sittings shall commence at Quebec, for the District of Quebec, on the twenty-fourth of January and the twenty-fourth of June ; and at Montreal, for the District of Montreal, on the twenty-fourth of March and the twenty-fourth of September.

Terms in other Districts may be fixed by Proclamation.

XXXI. The Governor may by proclamation from time to time fix the periods at which the terms of the Court of Queen's Bench in the exercise of its original criminal jurisdiction, shall commence in all or any of the Districts other than those of Quebec and Montreal, and may alter the same in like manner ; but there shall not be less than such terms in each District in every year ; and to such terms and to any extraordinary term which the Governor may think proper to order in any District, the provisions of the said Act of 1849, chapter 37, and more especially of the thirty-fifth and thirty-sixth sections thereof, shall apply.

Certain sect. of 12 V. c. 37 to apply.

Terms in present districts to remain as now until altered.

XXXII. The terms of the said Court on the Crown side, in the present Districts, shall continue as now fixed by law until altered by proclamation as aforesaid : and any such term may be closed whenever there is no business before the Court or continued by adjournment, until there is no business before it.

Court to have powers of Court of Q. S., when such Court is not held in the District.

XXXIII. The Court of Queen's Bench shall, at any terms thereof held for the exercise of its original criminal jurisdiction in any District in which no Court of Quarter Sessions shall have been appointed to be held, have cognizance of, try and determine all matters and Appeals of which by law the Court of Quarter Sessions would have cognizance if such Court were held in the District, and such Appeals shall accordingly lie to the said Court of Queen's Bench, and the Judges and Officers thereof shall, with respect thereto, have the powers of the Court of Quarter Sessions whenever no such Court as last mentioned shall be appointed to be held in the District.

SUPERIOR COURT.

Nature and amount of jurisdiction not affected.

Extent of local jurisdiction of the Court.

XXXIV. The nature and amount of the Jurisdiction of the Superior Court shall not be affected by this Act ; and the local extent of its jurisdiction when held in any District, and the powers of the Judges and Officers thereof in such District, shall be governed by the provisions of the said Act of 1849, chapter 38, in that behalf, which shall apply to the New Districts constituted under this Act, and shall be construed as referring to them.

XXXV. The Governor may by proclamation from time to time fix the periods at and during which the terms of the Superior Court shall be holden in all or any of the Districts, and may alter the same in the like manner, but not less than three
 5 terms of the said Court shall be held in each District every year; except in the District of Gaspé in which not less than two such terms shall be held; Provided always, that the terms of the Superior Court in the present Districts shall remain as
 10 now fixed by law until they shall be so altered; And provided also, that, except in the Districts of Gaspé, and Saguenay, no term
 of the said Court shall be so fixed as that any part thereof shall be between the ninth day of July and the first day of September, both days exclusive: and nothing in any Act or
 15 Proclamation shall prevent the Court from closing the term if there be no further business before it, or from continuing it by adjournment until there is no further business before it, as hereinafter provided.

Governor may fix Terms of the Court, and alter them.

Proviso.

Proviso: not to be held in the dog-days.

XXXVI. All the powers which by any Act prior to this are
 20 vested in or may be executed by any two Judges or *Quorum* of the Superior Court in term or out of term, are hereby vested in and shall be exercised by any one Judge of the said Court, and in term or out of term according as they might heretofore have
 25 been exercised in term or out of term, by such *Quorum*, so that any one Judge shall be a *Quorum* of the Court, and may hear, try and determine all causes and matters whatever cognizable by the Court, and exercise all the powers of the Court with regard to the same; and so much of the fifteenth section of the
 30 said Act of 1849, chapter 38, as requires or permits more than one Judge to hold the terms of the said Court, or fixes the *Quorum* thereof at more than one, is hereby repealed.

One Judge to hold the Superior Court.

Part of section 15 of 12 V. c. 38, repealed.

XXXVII. The next preceding section shall apply to cases
 35 pending when it shall take effect, so that any one Judge may continue and determine any proceedings commenced by any greater number of Judges; and any Judge may continue and complete any matter commenced or continued by another, but shall not reverse any decision of another Judge, unless he might reverse such decision if it were his own.

Next preceding section to apply to pending cases.

XXXVIII. Any two or more Judges of the Superior Court
 40 residing in the same District, may, and shall, whenever the despatch of business requires it, sit at the same time and at the same place, but in separate apartments, in term or out of term, and may each severally hear and determine all causes and matters, preside at *enquête*, and generally may and shall and
 45 exercise the same powers in all respects as if he alone were sitting at such place.

Judges may sit at the same time and place in separate apartments.

XXXIX. If the sole Judge in any District shall be unavoidably absent therefrom, or absent with leave of the Governor, or

One Judge may be direct-

ed to act for another unavoidably absent, &c.

Assistant Judges.

Case of recusation of the sole Judge in a District provided for.

Any part of Judge's charge to Jury in a civil case to be put in writing if objected to.

Writ of Appeal need not be allowed by Judge of Court below.

How *enquête* days shall be appointed in Districts of Quebec and Montreal.

shall, from sickness or otherwise, be unable to perform his duties, the Chief Justice of the Superior Court being informed thereof shall direct some one of the Puisné Judges resident in the District of Quebec or of Montreal to supply the place of such sole Judge and perform his duties, which such Puisné Judge shall accordingly do; and in any case of urgent necessity, an Assistant Judge of the said Court may be appointed under the Act of 1852, chapter 13, providing for such appointment. 5

XL. If the sole Judge resident in any District or assigned to hold the Superior Court in any District be a party to any suit brought therein, or be liable to be recused therein, the same may be brought in any adjoining District, upon allegation of the fact, the proof of which, if disputed, shall lie upon the party alleging it; and if any such Judge be recused during the course of any suit or proceeding, it shall be forthwith removed to that one of the adjoining Districts which the Judge shall appoint, to the Court in which the record shall be forthwith transmitted by the Prothonotary; and if in either case the recusation shall be undisputed or shall be maintained, the suit or proceeding shall be determined in such adjoining District, and if the recusation be disputed, it shall be tried summarily by the Judge of such adjoining District, and if set aside, the record shall be sent to the District in which the suit or proceeding was or ought to have been brought, and it shall be determined there. 15 20

XLI. If in any civil case tried by a jury, any portion of the Judge's charge be objected to by either party, the Judge shall, at the request of such party, put such portion of his charge in writing, either at the time of the trial or as soon after as conveniently may be, mentioning that it was so objected to, and then such portion of the charge so put in writing, being signed by the Judge, shall become part of the record in the case. 25 30

XLII. It shall not be necessary that the Writ of Appeal from any Judgment of the Superior Court, be allowed by any Judge of the Court last mentioned; and the Prothonotary of the Superior Court at the place where the Judgment appealed from shall have been rendered, shall have power to receive the Appeal Bond or Security in Appeal, and to administer the requisite oaths and put the necessary questions to persons offered as sureties, and such powers shall be exercised by any such Prothonotary concurrently with the Judges of the said Court, any one of whom may, if he think proper, exercise the same as heretofore. 35 40

XLIII. A majority of the Judges of the Superior Court residing in Quebec or in Montreal respectively, may in term exercise the power given by the fifth section of the Act of 1853, chapter 194, to the Judges in any District touching *enquête* days, or the days on which evidence may be adduced in the said Court in such District, and any rule of practice to be made in 45

the exercise of such power may be validly promulgated by any one of such Judges sitting in term: And in any other District any Judge of the said Court may in term time make and promulgate a rule of practice for the like purpose, and with the like power to repeal or alter it; but in the present Districts the rules of practice in force under the said Act, when this section shall take effect, shall remain in force until repealed or altered; and the power aforesaid shall always be subject to the provisions of the said fifth section and of the sixth and seventh sections of the said Act; and, except in the Districts of Quebec and Montreal, the Judges shall not be bound to appoint any particular number of days as *enquête* days.

Present rules to remain till altered.

Further provision.

CIRCUIT COURT.

XLIV. The Circuit Court may be held in and for any County, other than that in which the Superior Court is held for the District in which such County lies (except the Counties hereinafter mentioned), so soon as the Municipality of such County shall have provided proper accommodation for the Court and the Officers thereof, and made permanent provision for the maintenance of such accommodation, and when the Governor, being satisfied thereof, shall, by Proclamation, have directed the Circuit Court to be held in and for such County; Provided always, that the Circuit Court shall not be held under this section in any of the Counties of Hochelaga, Jacques Cartier, Laval, St. Maurice, Quebec, or Wolfe.

Circuit Court may be directed to be held in and for Counties in addition to the Court for the District in which they lie.

Proviso.

XLV. The Governor may, by Proclamation, direct the Circuit Court to be held at two or more places in and for any of the Counties of Richmond, Stanstead, Rimouski, Ottawa, Pontiac, Gaspé, Bonaventure, Beauce, Chicoutimi, Saguenay or Charlevoix, on being satisfied that proper accommodation has been provided for the Court and its Officers at each of such places, and permanent provision made for the maintenance of such accommodation.

It may be so held in more than one place in each of certain Counties.

XLVI. The place or places at which the Circuit Court shall be appointed by Proclamation to be held in any County other than one of those in which the Superior Court shall sit, shall be such as having been selected for the purpose by the Municipal Council of such County and approved by the Governor in Council, shall be fixed by Proclamation of the Governor.

How such places shall be chosen.

XLVII. Provided always, that the Circuit Court shall continue to be held at each and every place where it shall be held when this section shall come into force, until it shall be otherwise directed by the Governor by Proclamation, although such place be not the *chef-lieu* of the District in which it lies, unless such place be in one of the said Counties of Hochelaga, Jacques Cartier, Laval, St. Maurice, Quebec or Wolfe, or in a County in which the *chef-lieu* of the District shall be and which is not

Circuit Court to continue to be held where it is now held, subject to certain conditions.

one of those wherein under the next preceding section the Circuit Court may be held at more than one place : and the Circuit Court held at any place under his section, shall be deemed to be held in and for the County in which the place in which it is held lies, as if such place had been appointed by Proclamation under either of the three next preceding sections. But the Circuit Court shall not, after this section shall come into force, be held at any place other than the *chef-lieu* of a District, except in the cases provided for by this and the three next preceding sections.

Proviso: except under this or the 3 preceding sections. it shall not be held elsewhere than at the *chef lieu*.

Local jurisdiction of the Circuit Court at any place.

XLVIII. So far as regards the local jurisdiction of the Circuit Court in and for any District or County, such District or County shall be deemed to be a Circuit within the meaning of the said Act of 1849, chapter 38, and of the Acts amending it; and when the Circuit Court shall be held at two or more places in one County, then the said Court sitting at each such place shall have concurrent jurisdiction over the whole County; but nothing in this Act shall affect the jurisdiction of the Circuit Court, except only as regards local extent as aforesaid.

How the Court at any place shall be designated.

XLIX. The Circuit Court held in and for any County shall be designated as "The Circuit Court in & for the County of _____," (naming the County): and if there be more than one place where the said Court is held in the County, the words "at _____" (naming the place of sitting) shall be added to such designation.

Governor may change the place at which the Court is held.

L. The Governor may at any time, by Proclamation, change the place or any of the places at which the Circuit Court is held in any County (such place not being the *chef-lieu* of the District), or direct that the said Court shall cease to be held in any County, or at any place in any County, after a day named for the purpose in such Proclamation, whenever he shall deem such change necessary for the convenience of the people of the County, or shall deem it right to discontinue the sitting of the said Court at any place, for want of proper accommodation for holding it there.

Or discontinue it in certain cases.

Terms of the Circuit Court may be fixed and altered by Proclamation.

LI. The Governor may, by Proclamation, from time to time, fix the number of Terms of the Circuit Court to be held in and for all or any Districts or Counties, (and at each place in any County wherein there shall be more than one place for holding it,) the times at which such Terms shall be held, and the number of days to be included in each of them; and may in like manner, from time to time, alter the same; so as not less than *three* Terms shall be appointed to be held in and for each District and County in every year; except in the Counties of Gaspé and Bonaventure which not less than two terms shall be held in such year; but the Terms of the Circuit Court at the places where it is now held, and at which it may continue to be held under this Act, shall be held at the times now fixed by law until they shall be respectively altered by Proclamation.

Present Terms continued unaltered.

LII. Nothing in the next preceding section, or in any proclamation under it, shall prevent the Judge from closing the sittings in any term whenever there shall be no business before the Court, or from continuing any term by adjournment until there is no more business before it, as hereinafter provided; and no term shall be so fixed as that any part of it shall be between the ninth day of July and the first day of September, both days exclusive, except in the Districts of Gaspé and Saguenay.

Not to prevent Judge from closing or continuing the Term in certain cases.

LIII. Any two or more Judges resident in the same District, may, and shall whenever the despatch of business before Court shall require it, sit and hold the Court, at the same place, but in separate apartments, as herein before provided with respect to the Superior Court, and one Judge may continue any proceeding commenced or continued by another as in the Superior Court, and subject to the same provisions.

Two Judges may sit at the same time and place, &c.

LIV. The first section of the Act of 1855, chapter 104, is hereby repealed, and the jurisdiction of the Circuit Court at Quebec and Montreal shall be the same as in other Districts.

Section 1 of 18 V. c. 104, repealed.

LV. If the sole Judge resident in any District, be a party to any suit brought in the Circuit Court in such District, or be liable to be recused in such suit, the same may be brought in the Circuit Court at the *Chef-lieu* of any adjoining District, upon allegation of the fact, the proof of which, if disputed shall lie upon the party alleging it; and if the Judge be recused in the course of any suit or proceeding, it shall be forthwith removed into the Circuit Court at the *Chef-lieu* of that one of the adjoining Districts which the Judge shall appoint, and the Clerk shall forthwith transmit the record to the Circuit Court at such *Chef-lieu*; and if, in either case, the recusation be undisputed or maintained, the suit or proceeding shall be determined at such *Chef-lieu*, and if the recusation be disputed it shall be summarily tried by the Judge holding the Circuit Court there, and if set aside the record shall be sent to the Circuit Court at the place where the suit or proceeding was or ought to have been brought, and it shall be determined there.

Case of recusation of sole Judge in any District provided for.

LVI. In appealable cases in the Circuit Court, the evidence shall be taken in the manner hereinafter provided in such cases and in cases in the Superior Court; and such appealable cases shall be inscribed for the adduction of evidence and for final hearing on the merits at the same time, and shall be heard as soon as the evidence is closed, unless the Court shall, after the witnesses present have been heard and notes of their evidence taken, deem it conducive to justice to adjourn the case on account of the absence of any material witness or other evidence; but nothing in this section shall be construed to prevent the evidence from being taken orally as in non-appealable cases, by consent of all the parties.

Inscription for adduction of evidence and hearing in appealable cases; and hearing, &c., thereof

Issues of law to be argued with the merits.

LVII. In such appealable cases, any issue of law raised upon the pleadings, shall be reserved and argued at the final hearing on the merits, after the evidence in the case has been taken, and shall then be decided.

Certain sections of 12 V. c. 38, as to Appeals, repealed.

LVIII. The fifty-third, fifty-fourth, fifty-fifth and fifty-sixth sections of the said Act of 1849, chapter thirty-eight, are hereby repealed, except as to appealable cases in the Circuit Court in which judgment shall have been rendered before this section shall come into effect, to which cases the said sections shall continue to apply.

Appeal to lie to Appeal side of Q. B. in certain cases.

LIX. From any judgment rendered by the Circuit Court in any suit or action in which the sum of money or value of the thing demanded shall be twenty-five pounds currency or upwards, or shall relate to any titles to lands or tenements, or to any sum of money payable to Her Majesty, fee of office, duty or rent, revenue, annual rent or such like matters and things, where the rights in future may be bound, an appeal shall lie to the Court of Queen's Bench (on its Appeal Side) sitting at the place where under this Act it is to hear and determine Appeals from the Superior Court in the District including the Circuit in which such suit or action shall have been originally instituted; and the said Court of Queen's Bench shall hear and adjudge on such Appeal as to law may appertain, subject to the provisions hereinafter made.

Security in Appeal to be given, and to what amount, &c.

LX. The party appealing from any judgment rendered as aforesaid by the Circuit Court, shall, within fifteen days after the rendering thereof, (but without being bound to give previous notice thereof to the adverse party,) give good and sufficient security by sureties who shall justify their sufficiency to the satisfaction of the person before whom it shall be given, as hereinafter provided, that he will effectually prosecute the said appeal and answer the condemnation, and also pay such costs as shall be awarded by the Court of Queen's Bench if the judgment appealed from should be affirmed.

Before whom security may be given, and where.

LXI. The said security shall be given either before a Judge of the Court of Queen's Bench, at the place where the Appeal is to be heard, or before the Clerk of Appeals at such place, and the bond shall then be deposited and remain of record in the office of the latter; or it shall be given before a Judge of the Superior Court when at the place where the judgment appealed from shall have been rendered, or before the Clerk of the Circuit Court at such place, and the bond shall then be deposited and remain of record in the office of the latter; and any one surety, being a proprietor of real property of the value of fifty pounds currency over and above all incumbrances payable out of or affecting the same, shall suffice to render such security valid; and the said Judges, Clerk of Appeals, or Clerk of the Circuit Court, are hereby respectively authorized to ad-

minister all oaths required by law in such cases from the persons so becoming sureties, and to put to them all necessary inquiries and questions.

LXII. Provided always, that if the party appealing shall, 5 within the same delay of fifteen days after the rendering of the judgment, agree and declare in writing at the office of the Clerk of Appeals, or at the office of the Clerk of the Circuit Court at the place where the judgment appealed from was rendered, that he does not object to the judgment being carried into effect 10 according to law,—or shall pay into the hands either of the said Clerk of Appeals or of the Clerk of the Circuit Court, the amount in principal, interest and costs, of the said judgment (which amount, when so paid, the Respondent shall be entitled to have from such Clerk), and shall at the same time declare in writing 15 his intention to appeal, then and in that case the party so appealing, in lieu of the security above required, shall give security only for such costs and damages as shall be awarded by the Court of Queen's Bench in case the Appeal be dismissed.

Proviso, if appellant agrees to allow the judgment to be executed.

LXIII. Provided also, that when only such security as last 20 mentioned for costs and damages shall have been given, the Respondent shall not, if the judgment appealed from be reversed, be bound to return to the Appellant more than the amount of money so paid into the hands of the Clerk of Appeals or of the Circuit Court, with legal interest thereon from the day of the 25 payment of the same to such Clerk,—or more than the sum levied under the execution sued out upon such judgment,—or more than the restitution of the real property whereof the Respondent shall have been put into possession by virtue of such judgment, and the net value of the revenues and produce 30 thereof, to be computed from the day when he shall have been so put in possession thereof until perfect restitution is made,—with the costs of such Appellant as well in the Court of Queen's Bench as in the Circuit Court, but without damages against the Respondent in any of the said cases, by reason of the judgment 35 appealed from or of the execution thereof; any law, usage or custom to the contrary notwithstanding.

Further proviso, limiting the liability of the Respondent in the case last mentioned, if the judgment be reversed.

LXIV. And, in order to avoid delay and expense in the prosecution of Appeals from judgments rendered by the Circuit Court, such Appeals shall be prosecuted and proceedings thereon 40 had, in a summary manner, by Petition of the Appellant to the Court of Queen's Bench, setting forth succinctly the grounds of Appeal, and that the security required by law has been duly given, and praying for the reversal of the judgment appealed from, and the rendering of such judgment as the Court below 45 ought to have rendered; a copy of which Petition, with Notice of the time or day on or after which it may be proceeded upon by the Court of Queen's Bench, and a copy of the Appeal Bond certified by the Clerk in whose office it is filed, shall be served on the adverse party personally or at domicile, or on his

Appeals to be prosecuted in a summary way, by petition and Notice.

attorney *ad litem* in the Circuit Court, within twenty-five days from the rendering of the judgment appealed from.

Petition and Notice, &c., to be filed in Circuit Court.

LXV. Within the same delay of twenty-five days after the rendering of the judgment appealed from, the party appealing shall file the original of the said Petition and Notice with a certificate of service thereof annexed, in the office of the Clerk of the Circuit Court in whose custody the record in the suit in which the Appeal is instituted shall be, (with a Certificate of the Clerk of Appeals that security in appeal has been given if the Appeal Bond is not deposited in the office of the said Clerk of the Circuit Court; and thereupon the said Clerk of the Circuit Court shall forthwith certify under his hand and the seal of the Circuit Court, and cause to be transmitted to the Court of Queen's Bench at the proper place, to be filed among the records thereof, the said petition, with the judgment, record, evidence and proceedings to which the Appeal shall relate.

Clerk to transmit the record to the Court of Q. B.

Parties to appeal to file appearances in Q. B.

LXVI. Each party, appellant or respondent shall, before the first day on which the case can be heard in appeal under the next following section, file an appearance in person or by Attorney, in the office of the Clerk of Appeals, and the Clerk shall enter each case in which the record has been transmitted to him from the Circuit Court, mentioning whether the parties respectively have so appeared or not; if the respondent does not appear as herein required he shall be held to make default, and if the appellant fail so to appear, he shall be held to have deserted his appeal, and the record shall be remitted to the circuit court.

Penalty for default.

At what time the appeal may be heard and what judgment shall be given.

LXVII. At the first sitting of the Court of Queen's Bench, on the Appeal Side at the place where the Appeal is to be heard, after the expiration of the forty days next after the rendering of the Judgment appealed from, or at any subsequent sitting of the said Court, the appeal shall, without any further formality, be summarily heard and such Judgment rendered thereon by the said Court, as ought to have been given by the Circuit Court; and the record in the case, with such Judgment (and the Appeal Bond if filed with the Clerk of Appeals) shall be remitted to the Circuit Court at the place where the Judgment appealed from was given, in order that the Judgment of the Court of Queen's Bench may be executed by the Circuit Court, and further proceedings had therein as to law may appertain.

Appellant neglecting certain proceedings to be deemed to have abandoned his appeal.

LXVIII. Provided always, That any appellant who shall neglect to cause a copy of such petition and notice in Appeal to be served and filed as aforesaid, or who having caused the same to be so served and filed, shall neglect to prosecute such Appeal effectually in the manner hereinbefore prescribed, and within such delay as the Court of Queen's Bench shall deem reasonable, shall be considered to have abandoned such Appeal,

and upon the application of the respondent the Court of Queen's Bench shall declare all right and claim founded on such appeal to be forfeited, even if such Appeal have been heard by the Court, and shall grant costs to the respondent and order the 5 record (if transmitted) to be remitted to the Court below.

LXIX. The said Court of Queen's Bench may, if it shall deem it expedient for the purposes of justice, order a *factum* or case to be prepared and filed in any such Appeal as aforesaid, and may grant such delay and make such rules of practice 10 touching such Appeals, or any class or classes of them, or such rules and orders in each particular case, as the said Court may deem just and right; and the said Court may also make Tariffs of Fees in such cases for the attornies and others employed therein not being officers paid by salaries whose fees shall 15 be fixed by Tariff to be made by the Governor in Council, in like manner as those of other officers so paid by salaries, and shall be paid to the Receiver General as part of the Fee Fund.

Court of Q. B. may order a *factum*, make Rules of practice and a Tariff, &c.

LXX. Whenever under any provision of this Act the Circuit Court shall cease to be held at any place, the records, 20 registers, muniments, and judicial and other proceedings in the said Court at such place, shall be transmitted to and make part of the records, registers, muniments, and judicial and other proceedings in the Circuit Court at that place where the Superior 25 Court shall be held for the District including the place where the Circuit Court shall so cease to be held; and no judgment, order, rule or act of the Circuit Court at such place, legally pronounced, given, had or done, shall be avoided by the Court ceasing to be held at such place or by such transmission, but shall remain in 30 full force and virtue; nor shall any action, information, suit, cause or proceeding be thereby abated, discontinued or annulled, but the same shall be transferred, in their then present condition, respectively, to and shall subsist and depend in the Circuit Court at the place to which the records therein are so to be 35 transmitted, and as if they had there been respectively brought or recorded, and other and further proceedings shall be therein had to judgment and execution, or subsequent thereto, as they might have been at the place where the Circuit Court shall so cease to be held; and any person who shall have been therein 40 ordered to appear or do any other thing at any time at such place, shall appear or do such thing at the same time at the place to which such records are to be transmitted, and under the like penalties in case of default, unless the Judge shall in any case substitute another time, as he is hereby empowered to 45 do.

Provision when the Circuit Court shall cease to be held at any place.

Actions, &c., not to abate.

As to appearances, &c., previously ordered.

PROCEDURE IN CIVIL CASES, IN SUPERIOR AND CIRCUIT COURT.

LXXI. Whenever the Defendant in any case shall file any *exception à la forme*, *exception déclinatoire* or *exception dilatoire*, 5 When any preliminary plea is filed by or other preliminary plea, the Plaintiff may, before answering

Defendant.
Plaintiff may
demand a plea
to the merits.

the same, demand of such Defendant his plea or pleas to the action or merits; and if such last mentioned plea or pleas be not filed on or before the eighth juridical day after such demand, the Plaintiff may foreclose such Defendant from thereafter filing any plea or pleas to the action or merits, in the manner prescribed by the twenty-fifth section of the said Act of 1849, chapter 38, and there shall then be no issue raised between the Plaintiff and Defendant, except on such preliminary plea or pleas; saving to the Defendant nevertheless the benefit of the proviso to the said twenty-fifth section as to notice of the inscription of the cause for *enquête* or hearing: and the provisions of the said twenty-fifth section, and those of the twenty-first section of the Act of 1853, chapter 194, shall apply to the cases mentioned in this section in so far only as they may be consistent herewith.

Penalty on
Defendant
failing to file
such plea
when demand-
ed.

Defendant suc-
ceeding on the
preliminary
plea to have
the costs of
plea to the
merits.

LXXII. Provided always, that when the Defendant shall, on the demand of the Plaintiff under the next preceding section, file any plea or pleas to the action or merits, he shall be allowed the costs thereon if he shall afterwards succeed on the preliminary plea or pleas; and that, if proof is ordered on any such preliminary plea, the *enquête* shall be taken at the same time on the issue raised by the plea or pleas to the action or merits, unless the Court shall order otherwise, and if the Defendant succeed on such preliminary plea or pleas, he shall be allowed his costs on such *enquête*.

Statement of
facts to be filed
by each party
after issue
joined: and
proceedings
thereon.

LXXIII. Within two days after any issue shall be joined upon which evidence is to be adduced, each party shall file a statement (*articulation*) of facts pertinent to such issue and not admitted by the pleadings, which he proposes to prove, and shall serve a copy thereof upon the opposite party, and within three days after such service, the party on whom it is made shall file and serve his answer admitting or denying all or any of such facts or denying all or any of them to be within his knowledge; and in default of such answer being filed and served within the delay aforesaid, the facts in the statement of the opposite party shall be taken as admitted by the party who ought to have filed and served such answer, as shall also any fact alleged in the statement and not expressly denied by the answer, or not denied to be within the knowledge of the party answering.

As to costs of
facts not men-
tioned in such
statement or
denied, and
afterwards
proved.

LXXIV. If any fact not mentioned in such statement be afterwards proved by the party filing it, the costs of proving such fact shall be taxed against him, whatever be the event of the case; and if any fact denied in such answer shall be afterwards proved in the case, or any fact denied to be within the knowledge of the party answering shall be so proved and the Judge shall be of opinion that it must have been within the knowledge of such party, the costs of proving such fact shall be taxed against him, whatever be the event of the case.

LXXV. Any document or writing which either party intends to use at the *enquête* shall be fyled by such party with his statement of facts, if not previously fyled in the cause ; and if any document or writing not fyled with or previously to such statement be afterwards used at the *enquête* by the party who ought to have so fyled it, the costs thereby occasioned shall be taxed against him, whatever be the event of the case.

Documents intended to be used, must be filed with statement.

LXXVI. After the expiration of the three days allowed for filing such answer, but not before, the case may be inscribed for *enquête* or proceedings may be had for bringing the same to trial ; but notwithstanding the expiration of the said period, any party may file an admission of facts at or before the *enquête* or trial, or admit them orally at the same ; but the costs previously incurred in or about the proof of such facts shall be taxed against the party admitting them, whatever be the event of the case.

Inscription for *enquête* or proceedings for trial by Jury.

LXXVII. If any party who might file and serve such statement of facts as aforesaid shall neglect so to do at the time above mentioned, or shall state that he has no evidence to adduce at the *enquête* or trial, and shall afterwards adduce evidence, the costs thereat occasioned by such evidence shall be taxed against him, as shall also the costs occasioned by the adduction of evidence to prove any fact not mentioned in such statement, whatever be the event of the case : And if the other party be in the opinion of the Judge taken by surprise by the adduction of such evidence, the Judge may postpone the *enquête* or trial, or make such other order and impose such terms upon the party in fault, as he may deem just.

As to costs of proving facts not mentioned in statement.

Provision against surprise.

LXXVIII. Whenever under the five next preceding sections or the eighty-fifth section of the Act of one thousand eight hundred and forty-nine, chapter thirty-eight, any portion of the costs in any case are to be taxed against a party who would not otherwise be chargeable therewith, the judgment shall mention the facts or the document or writing by reason whereof such costs are taxable against such party, and they shall be taxed against him accordingly ; and the amount thereof may be recovered in the usual manner by the opposite party or deducted by him from the amount of any judgment or of any costs recovered against or chargeable to him in the case.

Facts, &c., on which costs are to be specially taxed to either party to be mentioned in judgment, &c.

LXXIX. The six next preceding sections shall be construed as being enacted in furtherance of the provisions contained in the eighty-fifth section of the said Act of 1849, chapter thirty-eight, which shall always be enforced in the Superior and Circuit Court, the rules of practice for which may contain any provision which may be deemed necessary for giving effect to the provisions of the said eighty-fifth section.

Foregoing provisions to be in furtherance of section 85 of 12 V. c. 38.

No trial by jury in cases under £50.

LXXX. The thirty-fifth and eighty-eighth sections of the said Act of 1849, chapter 38, are hereby repealed, and no trial by jury shall be allowed in any civil suit or action wherein the sum of money or value of the thing demanded or in dispute shall not exceed fifty pounds currency, unless the same shall have been instituted before the time when this section shall come into effect, and one of the parties thereto shall, before the said time, have declared his choice or option to have a trial by jury therein, in which case the said eighty-eighth section shall apply. 5

Exception as to trials already demanded.

How witnesses shall be examined in contested cases in Superior Court, and in contested appealable cases in Circuit Court.

LXXXI. Every witness in any contested case in the Superior Court, and in every contested appealable case in the Circuit Court, shall be examined in the presence of a Judge of such Court, who may put any question to the witness which he shall deem pertinent to the issue, and who shall take down in writing, or cause to be so taken down by the Prothonotary or Clerk of the Court or a writer employed by him, but under the immediate direction of the Judge, notes of the material parts of the evidence given by such witness, and of any objections insisted upon on either side and the adjudication thereon; and such notes shall be read over, and if necessary explained to the witness, who may have such additions or corrections made thereto or therein, as shall be necessary to make them truly state the material parts of his evidence, and shall then sign them if he can write, they shall then be signed by the Judge, and shall stand as the evidence given by such witness. 10 15 20 25

Next preceding section not to apply to jury trials.

LXXXII. The next preceding section shall not apply to the taking of evidence at trials by Jury in civil cases, to which the provisions of the fourth section of the Jury Act of 1851, chapter 89, in that behalf, shall continue to apply.

Notes to be taken of oral admissions: their effect.

LXXXIII. The Judge presiding at the *Enquête* in any such case as last mentioned, or at a Trial by Jury in any civil case, shall take, or cause to be taken, by the Prothonotary or Clerk of the Court, or a writer employed by him, notes of any oral admissions made by any party, and such notes being signed by the Judge shall make part of the evidence in the case, and shall avail as if made in writing in due form by such party. 30 35

In *ex parte* cases evidence may be taken by the Prothonotary or Clerk.

LXXXIV. In any case in the Superior Court, or appealable case in the Circuit Court, where the Defendant shall make default or the Plaintiff shall become entitled to proceed *ex parte*, the evidence may be received by the Prothonotary or Clerk of the Court at the place where the action is brought, and notes thereof made and signed by him, at any time in term or out of term, and he may swear the witnesses and do all other things with regard to the *enquête* in such case which a Judge of the Court might do. 40 45

Parties summoned to answer

LXXXV. Any party summoned to answer interrogatories on *faits et articles* in any case in the Superior or Circuit Court, may

by such summons be required to answer the same *viva voce* in open Court, or at any *enquête* in the case, or at the trial thereof by a Jury; and the Judge presiding in such Court, or at such *enquête* or trial, may put to such party *viva voce* any further 5 questions pertinent to the interrogatories, and which he may think necessary to their being fairly and fully answered or to the facts intended to be proved by them being admitted by refusal to answer them, and the answer or refusal to answer any question so put by the Judge, shall have the same effect as if such ques- 10 tion were one of the interrogatories served on such party, and which he was summoned to answer; and any question so put by the Judge, which the party under examination shall refuse to answer, shall, under the direction of the Judge, be put into writing by the Prothonotary or Clerk, or a writer employed by 15 him, and shall then remain of record and have effect as aforesaid.

Answer on facts et articles may be required to do so *viva voce*.

Further questions may be put by the Judge.

LXXXVI. If in any action on a bill of exchange or promissory note, *cédule*, check, note or promise, or other act or private agreement in writing, the Defendant shall make default, or for any 20 other reason the Plaintiff shall become entitled to proceed *ex parte*, then such bill or note, check, promise, act or agreement, and every signature and writing to or upon the same, shall be presumed to be genuine without proof thereof, and judgment 25 may be rendered accordingly; and if in any such action any Defendant shall deny his signature, or any other signature or writing to or upon such bill, note, *cédule*, check, promise, act or agreement, or the genuineness of such instrument or of any part thereof, or that the protest, notice and service thereof (if any 30 be alleged by the Plaintiff) were regularly made, whether such denial be made by pleading the general issue or other plea, such instrument and signatures shall nevertheless be presumed to be genuine, and such protest, notice and service to have been regularly made, unless with such plea there be filed an affidavit of 35 such Defendant, or of some person acting as his Agent or Clerk and cognizant of the facts in such capacity, that such instrument or some material part thereof is not genuine, or that his signature or some other to or upon such instrument is forged, or that such protest, notice and service were not regularly made, and in 40 what the alleged irregularity consists; but nothing in this section shall take away any *recours en faux*, or any remedy by *requête civile* after judgment if any such signature be forged.

Certain facts to be presumed in *ex parte* cases on notes, &c.

Unless special affidavit denying the same, be made and filed.

LXXXVII. The rules of practice and tariffs of fees in force in the Superior Court or Circuit Court when this section shall take 45 effect, shall remain in force until it shall be otherwise ordered by competent authority, and shall apply to the Superior and Circuit Court in all the Districts and places, except in so far as they may have been made applicable to particular Districts or places only.

Present rules of practice to continue in force until altered.

Power of the Judges to make rules of practice to be exercised by any ten or more of them:

LXXXVIII. The power vested in the Judges of the Superior Court, or any six or more of them, by the one hundredth section of the said Act of 1849, chapter 38, to make, amend or repeal rules of practice for the said Court and for the Circuit Court, shall remain vested in the Judges of the Superior Court, and may be exercised by any ten or more of them, in like manner; subject always, as regards the tariffs of fees, to the limitations contained in this Act or other Acts subsequent to the said Act of 1849. 5

Prothonotaries and Clerks may tax costs, subject to revision by a Judge.

LXXXIX. The Prothonotary of the Superior Court, and the Clerk of the Circuit Court at any place, shall have full power to tax costs in causes and proceedings in their respective Courts at such place; and such taxation shall be made under and in the same manner and subject to the same rules, and shall have the same effect, as if made by a Judge of the Court, except that it shall be subject to revision by any Judge of the Superior Court in the same District and at the same place in any term of the Circuit in which the judgment was rendered at any time within six months after such taxation by the Prothonotary or Clerk, and after sufficient notice (of which sufficiency the Judge shall decide) to the opposite party or his Attorney; but neither the non-expiration of the time allowed for such revision, nor any correction made by the Judge in the course of such revision, shall operate to stay execution or be a ground of any opposition, but any sum deducted by the Judge shall be deducted from the amount to be paid or levied, and if levied shall be returned to the proper party by the Sheriff or Bailiff levying it, or if paid shall be repaid by the party who shall have received it to the party who shall have paid it, and the said Judge's order for deducting such sum shall have the effect of a judgment for the same and may be enforced by execution accordingly. 10 15 20 25 30

Right of revision not to stay execution, &c.

Section 74 of 12 V. c. 38 repealed, and other provisions made as to matters requiring despatch.

XC. The seventy-fourth section of the said Act of 1849, chapter thirty-eight, is hereby repealed:

And any Judge of the Superior Court, at any place where the said Court or the Circuit Court might then be held, shall in Court or out of Court, in term or out of term, or in vacation, and any Prothonotary of the Superior Court at the place where his office is therein held, shall out of Court but in term or out of term, have and may exercise within and for the District in which such place as aforesaid shall lie, the same power and authority as shall then be vested in the Superior Court and the Judges thereof, in what respects the probate of Wills, the Election and appointment of Tutors and Curators as well under the general law as under the Insolvent Debtors Act of 1849, (chapter 42,) or any other Act, the taking of the counsel and opinion of relations and friends in cases where the same are by law required to be taken, the closing of inventories, attestation of accounts, *insinuations*, affixing and taking off seals of safe custody, the emancipation of minors, the homologation or 35 40 45

refusal to homologate proceedings had at any *avis de parent* called or held by or before any Notary, and other acts of the same nature requiring despatch ; and the proceedings in all such cases shall form part of the records of the Superior Court at the place where they shall be had, or of the Circuit Court at such place if the Superior Court be not held there : but the appointments and orders by any Prothonotary under this section or made under the same by any Judge out of Court, shall be liable to be set aside by any Judge of the said Court, sitting in the same District in Court and in term, in like manner and under the provisions of law in and under which appointments and orders made by one or more Judges out of Court in matters requiring despatch might have been set aside by the Superior Court immediately before the time when the said Act of 1849, chapter 35, came fully into effect.

Of what Court the proceedings under this section shall be records.

Appointments made out of Court may be set aside in Court.

PROVISIONS RELATIVE TO THE NEW DISTRICTS.

XCI. There shall be the same Officers connected with the administration of Justice in each of the New Districts and in the County Circuits as in those subsisting immediately before the time when this section shall take effect, and proper persons may in like manner be appointed to fill such offices ; and where there shall be more than one place where the Circuit Court shall be held in any County, a Clerk may be appointed at each ; and all the provisions of law touching such offices respectively, as well with regard to the security to be given by the persons holding the same, or the appointment of deputies, as with regard to other matters, shall extend to the like Officers in the New Districts and in the County Circuits, subject always to the provisions of this Act.

Same officers in the New Districts as elsewhere.

Certain enactments to apply to them.

XCII. Provided always, that the security to be given by any such officers as aforesaid, appointed in any of the New Districts, shall not be higher than that given under the Act of 1849, by persons holding like offices in the Districts of Kamouraska and Ottawa.

Amount of security limited.

XCIII. The fees and emoluments of office of the several officers of the Superior Court or Circuit Court, at *Chef-lieu*, Sheriffs, Coroners, Clerks of the Crown and of Peace, in the New Districts, shall be collected by such officers respectively, and accounted for and paid over to the Receiver General, after deducting any contingencies authorized by the Governor in Council, in like manner and subject to the like provisions as the fees and emoluments of similar officers in other Districts ; but the said fees and emoluments collected in each such District shall form a fund apart, to be called *The District Officers of Justice Fee Fund*, and shall be distributed among the said Officers of Justice in the District in the form of yearly salaries, or otherwise, in such proportions as the Governor in Council shall from time to time direct.

Fee Fund constituted for each New District.

To be distributed by the Governor in Council.

In what cases
Courts of
Quarter Ses-
sions may be
held in the
New Districts:
and where.

XCIV. After the day fixed as above mentioned in the Proclamation last aforesaid, Courts of Quarter Sessions may by Proclamation be directed to be held in the New Districts, at the places where the Superior Court is held therein, and shall be so held accordingly and have the same powers in and with respect to the Districts in which they are respectively held as similar Courts shall then have in and with respect to the present Districts in which they are respectively held; but no such Court, or any Term of the Court of Queen's Bench, shall be held at any place where no Term of the Superior Court is held.

What provi-
sions shall
apply to the
summoning of
Jurors at Cri-
minal Courts
in the New
Districts.

XCIV. The provisions of law regulating the making of Jury lists and the summoning of jurors in the Districts of Kamouraska and Ottawa, (including those provisions which apply to those Districts in common with other Districts) shall apply to and regulate the making of jury lists and the summoning of jurors in the New Districts constituted by this Act; except that there shall be only one list of grand jurors which shall include those persons qualified to serve as such either at the Court of Queen's Bench or of Oyer and Terminer, or at the Court of Quarter Sessions, and the persons on such list shall and may serve as grand jurors at any of the said Courts; and except that there shall be only one list of Petit Jurors for the Courts of criminal jurisdiction which shall include those persons qualified to serve as such, either at the Courts of superior criminal jurisdiction or at the Quarter Sessions, and the persons on such lists shall and may serve as Petit Jurors at any Criminal Court in the district.

Allowance to
Petit Jurors at
Criminal
Courts in
New Districts

XCVI. The allowance to be paid to each person serving as a Petit Juror before any Court of Criminal Jurisdiction in any of the New Districts, shall be fixed from time to time by the Judge holding such Court, but shall not be less than *two shillings and six pence* nor more than *five shillings* for each day such Juror shall be necessarily absent from his usual place of residence; but he shall have no further allowance for travelling expenses, nor shall any such allowance be paid to any Petit Juror whose usual residence is within the limits of the city or town, or of the parish or township, in which such Court is held.

COURT HOUSES AND GAOLS IN NEW DISTRICTS.

And inasmuch as it is expedient to establish a Fund, out of which, without the burden and cost of heavy local taxation, Court Houses and Gaols may be built in the New Districts, and Court Houses in the several Counties in which the District Court Houses are not situate; therefore—

Lower Canada
Municipalities

XCVII. The amount of the Lower Canada Municipalities Fund, created by the Clergy Reserves Act of 1854, chapter 2,

remaining after paying the charges upon it under the said Act, shall not be apportioned among or paid to the Municipalities of Lower Canada in the manner provided by the said Act, but shall be appropriated for the purposes of this Act. Fund appropriated to the purposes of this Act.

5 XCVIII. The Governor in Council may authorize the Receiver General to raise from time to time such sum or sums of money, not exceeding in the whole seventy-five thousand pounds, as may be required for the purposes of this Act, by the issue of Provincial Debentures, to re-pay and make good the principal and interest whereof all the moneys arising from the said Lower Canada Municipalities Fund, after the payment of the charges aforesaid, shall be and are hereby appropriated. £75,000 may be raised by Debentures on the credit of the said Fund.

15 XCIX. The Debentures to be issued under this Act shall be in such form, for such separate sums either in sterling or currency, and the principal and interest thereof shall be made payable at such periods and places, as the Governor in Council shall deem most expedient, and shall from time to time direct; and any moneys forming part of the said Fund and applicable to the re-payment of the said principal and interest, and not immediately required for the purposes of this Act, shall be invested in Provincial securities by the Receiver General, under the direction of the Governor in Council. Form of Debentures. Investment of any portion of the Fund not immediately required.

25 C. Out of the said Lower Canada Municipalities Fund, a sum not exceeding *five thousand* pounds, to be fixed by the Governor in Council, taking into consideration the extent, population and business of the District, and other local circumstances thereof, may be expended in each of the New Districts in building a Court House and Gaol in and for the same; and such sum may from time to time be advanced and paid to the Commissioners of Public Works by the Receiver General on the Warrant of the Governor. Appropriation for building Court House and Gaol in each New District.

35 CI. Provided always, that if the County Municipalities in any New District shall think proper to raise a further sum to be added to that allowed to the District under the next preceding section, and to be expended with it for the purpose of building a better Court House and Gaol, they shall have full power so to do, and the County Delegates may agree upon such sum and the proportion thereof to be raised by each County, and the Council of each County shall have full power to raise the sum apportioned to it; and if any County or Local Municipality shall think proper to raise a further sum independently of the other Counties in the District, or of the other Local Municipalities in the County, it shall have full power so to do; and any such additional sum shall be applied and expended by the Commissioners of Public Works with that allowed to the District under the next preceding section. Proviso: Municipalities may raise an additional sum to be added to that above limited.

County Municipality to furnish site.

CII. The Municipality of the County in which the Gaol and Court House for any New District shall be built, shall furnish a proper site for the same, to be approved by the Commissioners of Public Works, and free of all incumbrances; and if the Council shall fail to furnish such site when called upon so to do by the said Commissioners, they may accept any proper site which shall be given to the Crown for the same at or near the *Chef lieu*; or the Governor may, by Proclamation, appoint some other place at which a proper site shall be so given to be the *Chef lieu*, which such place shall then be, as if named as such in the Schedule A to this Act.

Proceedings if it fails so to do

Allowance to Counties in which the *chef-lieu* shall not be for a County Court House.

CIII. Out of the said Lower Canada Municipalities Fund there shall be allowed to each County Municipality in which there shall be no District Court, the sum of *three hundred* pounds, towards building or procuring a County Court House at a place to be approved by the Governor as that at which the Circuit Court ought to be held in such County, and on a site to be furnished by the Local Municipality in which it is situate, free of all incumbrances and approved by the Commissioners of Public Works; and until the said sum shall be required for such purpose, the interest thereof shall be paid yearly to the County for Municipal purposes, or, at the option of such County, added to such sum in order to be applied in building or procuring a better Court House; and if there be more than one Court House to be built in the County, the second and all but the first shall be built at the expense of the County, on a site to be furnished as aforesaid by the Local Municipality in which it shall be built.

If the Circuit Court is held at more than one place in the County.

Allowance to Counties in which the Circuit Court is not to be held.

CIV. Out of the said Lower Canada Municipalities Fund there shall be allowed to each County Municipality in which there is no District Court, and in which no place can, under this Act, be appointed or continued as that at which the Circuit Court shall be held, the sum of *one hundred and fifty* pounds, for municipal purposes.

Court Houses and Gaols to be built by Commissioners of Public Works, whose powers shall apply to them.

CV. The District Court Houses and Gaols above mentioned shall be built by the Commissioners of Public Works, under the control of the Governor in Council; and all the powers vested in the said Commissioners with regard to the taking of lands required for Public Works, and all other powers vested in them, or in parties who are empowered to contract with them for the conveyance of such lands, and all the provisions of the Acts relating to the said Commissioners and to Public Works constructed under their superintendence, shall, in so far as they may not be inconsistent with this Act, apply and extend to the said District Court Houses and Gaols, the sites therefor, and the construction thereof, and to the said Commissioners in regard to them; but no plan shall be adopted by the said Commissioners for the construction of such Court Houses and Gaols, or any of them, until it shall have been ap-

Plans must be approved by Governor in Council.

proved by the Governor in Council ; but nothing herein shall prevent the exercise by any Municipality of the power of taking real property for municipal purposes, which the building of a Court House or Gaol shall always be held to be.

Proviso.

5 CVI. All Courts to be held at the place where any Court House is built under this Act, shall be held in such Court House, unless the Governor shall, in case of the destruction of or great damage to the building, direct them to be held in some other building: and the Gaol built under this Act in any District shall be the Common Gaol thereof, and also the House of Correction for such District until some other House of Correction shall be established for the same: and all general provisions applicable to Court Houses and Gaols in Lower Canada, shall apply to those built under this Act so far as they shall not be inconsistent herewith.

Court Houses built under this Act to be the places for holding all Courts; and Gaols so built to be Common Gaols, &c.

CVII. The title to the District Court House and Gaol in and for each of the New Districts respectively, shall be vested in the Sheriff of such District for the time being, and his successors in office for ever, and he and each of his successors in office shall be a Corporation sole for the purpose of holding the same for the purposes of this Act, but without power to alienate, charge or incumber the same; and the title to any County Court House, and of the site thereof, shall be vested in the Municipality of the County, for such estate or term of years as it shall have acquired therein.

Title to Court House and Gaol to be in the Sheriff.

CVIII. It shall be the duty of the Sheriff of each New District to keep the Court House and Gaol therein insured against loss by fire, for an amount and by an Insurance Company to be approved by the Commissioners of Public Works, and in case of loss by fire he may recover under the policy; and the amount recovered shall be applied to repair or re-construct the building destroyed or damaged.

Sheriff to insure.

He may recover on the policy.

CIX. For keeping in good repair the District Court Houses and Gaols to be erected under this Act in the New Districts, and for paying the Petit Jurors in criminal cases in the same, there shall be, in and for each such District, a Fund, to be called "The Building and Jury Fund for the District of _____" (as the case may be), which shall consist of:

Fund established for repairing Court Houses and Gaols and paying Petit Jurors in criminal cases.

1. All fines, forfeitures and pecuniary penalties collected in the District under the Police Ordinances, as extended by the twenty-fifth section of the Municipal Act of 1854, chapter 100

2. The Crown's share of all fines, forfeitures or pecuniary penalties collected in the District on summary convictions under the Acts of 1841, amending the Criminal Law, chapters 26 and 27;

3. The Crown's share of all fines, forfeitures and pecuniary penalties collected within the District under the Public Worship Act of Lower Canada, passed in 1827, chapter 3 ;

4. One per centum upon all moneys levied by the Sheriff of the District, or by any Bailiff therein, under execution in any civil case, such per centage to be retained by the Sheriff or Bailiff out of the sum payable to the party taking out such execution ;

5. All fines levied in the District for contempt of Court, or for non-attendance of Jurors or Witnesses, or disobedience to 10 any order of the Court.

6. A yearly contribution from each Local Municipality in the District, which contribution shall be : twelve pounds yearly from the Local Municipality in which such Court House and Gaol shall be,—six pounds yearly from each other Local Municipality in the County in which such Gaol and Court House shall be,—and three pounds yearly from each other Local Municipality in the District ; which contributions shall be paid to the Sheriff by such Municipalities, respectively, in the month next after that in which this Act shall come into force as 20 regards criminal matters, and in the same month in each year thereafter, and if not so paid, may be recovered by the Sheriff for the time being as a debt due to him, or, in his option, may be levied by him from the rate-payers in the Municipality in default by an equal rate on their taxable property 25 according to the valuation-roll then in force ; and for collecting and enforcing such rate, and the costs of levying the same, the Sheriff shall have the powers vested in the Secretary-Treasurer of such Municipality for the collection of rates duly imposed and to be collected by him in such Municipality. 30

Fund to be received and disbursed by the Sheriff.

Under what supervision, &c.

CX. The Fund last mentioned shall be received and disbursed by the Sheriff, who shall render an account thereof to the Inspector General, at such time, and in such manner and form as that officer shall appoint, and such account shall be audited by the Board of Audit ; and the Sheriff shall be deemed an Officer employed 35 in the collection of the Revenue within the meaning of the Revenue Management Act of 1845, chapter 4, and the Act amending it, and of the Audit Act of 1855, chapter 78 ; and any surplus monies forming part of such Fund may be invested by the Sheriff in Government securities, with the approval of the 40 Inspector General and subject to such conditions as he shall think proper.

Provision for rebuilding or enlarging any District Court House or Gaol.

CXI. If at any time it shall become necessary to re-build or enlarge any District Court House or Gaol, the same shall be re-built or enlarged by the Commissioners of Public Works, but 45 at the expense of the Municipalities in the District, and if the Fund established by the next preceding sections added to the

sum (if any) recovered by the Sheriff for the insurance thereon, shall not be sufficient to defray the expense of re-building or enlarging then the sum required to make good the deficiency, shall be furnished by the said Municipalities, in the proportions mentioned in the sixth paragraph of the next preceding section, and shall be paid over to the Sheriff, within after such re-building or enlarging shall have been commenced, and and if not so paid may be recovered by the Sheriff in the same manner and with the same powers as they are provided and given for the recovery of the contributions mentioned in the said sixth paragraph;—and the monies in the hands of the Sheriff applicable to such re-building or enlarging shall be disbursed by the Sheriff under the direction of the Commissioners of Public Works.

Sheriff to disburse the money.

15 CXII. If at any time the said Fund be found in any District to be too large for the purposes to which it is made applicable, the contributions payable thereto by Local Municipalities in such Districts may be diminished by order of the Governor in Council to such extent as he may deem advisable; and if at any time 20 the said Fund be found insufficient in any District for such purposes, the said contributions may be increased by a like order to the extent which the Governor in Council may deem expedient, but observing the same proportion as to the amount payable by the several Municipalities.

Contributions to Fund may be diminished if it prove too large, and vice versa.

DISTRICT OF GASPÉ.

25 CXIII. The third section of the Gaspé Judicature Act of 1843, chapter 17, is hereby repealed, and the Judges of the Superior Court to reside in the District of Gaspé shall be appointed in like manner and from among persons qualified in like manner, as the other Judges of the said Court, and shall 30 have the same privileges and be subject to the same disabilities and the same provisions as to residence, as the other Judges of the said Court.

Section 3 of 7 V, c. 17, repealed, Judges in Gaspé to be appointed, &c., as in other districts.

CXIV. The Circuit Court in the District of Gaspé shall be ordinarily held by one of the Judges of the Superior Court 35 resident therein; and the provisions of the Act last above cited relative to the District Judges shall apply to the said Judges of the Superior Court; except that if the Judge ordinarily holding the Circuit Court at any place, be a party or recused in any case pending thereat, then it shall be removed into the Circuit Court 40 at the *Chef-lieu* in the County, or if such cause be lawfully evoked to the Superior Court, then it shall be removed in to the Superior Court in the same County, there to be heard, tried and determined by any other Judge holding the Court in the County, into which it shall have been removed, unless the parties agree 45 that it be removed into the Superior Court or Circuit Court, (as the case may be), in the other County, in which case it shall be so removed, but subject, in either case, to the same provisions

Judges resident in Gaspé to hold the Circuit Court.

Case of the recusation of one of such Judges, provided for.

in other respects as cases removed on like grounds from the Circuit Court to the Superior Court in other Districts.

Section 6 of 7 V. c. 17, repealed.

CXV. The sixth section of the Act last cited is hereby repealed.

Section 2 of 12 V. c. 40, repealed. S. Court to be held by one Judge.

CXVI. The second section of the Gaspé Judicature Act of 1849, chapter 40, is hereby repealed; and the Terms and Sittings of the Superior Court in the said District may be held by any one Judge of the said Court in like manner as in other Districts.

Section 7 of 7 V. c. 17, repealed.

CXVII. The seventh section of the said Gaspé Judicature Act of 1843, chapter 17, is hereby repealed; there shall be no Appeal from the Circuit Court to the Superior Court in the said District; but, in appealable cases, an Appeal shall lie to the Appeal Side of the Court of Queen's Bench at Quebec, subject to the same provisions as in Appeals to the said Court from the Circuit Court in other Districts, except in the case of appeals from the Circuit Court in the Magdalen Island which shall be governed by the provisions hereinafter made respecting them.

Appeals from Circuit Court to lie to Q. B. as in other districts.

Terms of Circuit and Superior Court to remain as at present until altered.

CXVIII. The Terms of the Circuit Court in the District of Gaspé shall continue to be held at the places and times mentioned in the eleventh section of the Act last cited, until it shall be otherwise ordered by Proclamation of the Governor; and the Terms of the Superior Court in the said District shall continue to be held at the times and places now fixed by or under the authority of the said Act, and of the Act of 1851, chapter 19, until it shall be otherwise ordered by Proclamation as aforesaid.

General Provisions of this Act to apply to Gaspé.

CXIX. All the General provisions of this Act, not inconsistent with those specially applicable to the District of Gaspé, in this Act or any other, shall apply in and to the said District.

MAGDALEN ISLANDS.

And inasmuch as the peculiar situation of the Magdalen Islands, in the Gulf of St. Lawrence, demands special provision touching the administration of justice therein; therefore—

Jurisdiction of the Circuit Court sitting at the Magdalen Islands.

CXX. The said Islands shall continue to form a Circuit by themselves, and the Circuit Court sitting there shall not have concurrent jurisdiction with the said Court sitting in any other place in the District of Gaspé, nor shall the Circuit Court at any other place in the said District have concurrent jurisdiction with the Court sitting in and for the said Circuit of the Magdalen Islands, and the Circuit Court shall, with regard to the said Circuit of the Magdalen Islands, have the same jurisdiction in all civil cases as the Superior Court in any other place; and the Clerk of the said Court shall have the same powers as the Prothonotary of the Superior Court at any other place; and no civil case in the said Circuit Court shall be

evocable from the same by reason of the nature, value or amount of the property or sum of money demanded therein.

CXXI. The proceedings in the said Circuit Court shall be summary, as in non-appealable cases, except that in appealable cases notes of the evidence and oral admissions, and the substance of the pleadings, shall be taken by or under the direction of the Judge, signed by him and filed in the record, in the manner provided by this Act in cases of like amount in other Circuits or in the Superior Court; the pleadings in every case shall be *instanter*, as in non-appealable cases, and shall be oral, unless the Judge, on the application of the parties, having written pleadings ready when they make the application, shall otherwise order.

Procedure in the said Court at the Magdalen Islands.

Pleadings oral and *instanter*.

CXXII. There shall be two Terms of the said Court yearly in the said Circuit, one of which shall be call and known as the Spring Term, and the other the Autumn Term, and the day on which each Term shall commence and end shall be fixed by the Governor, by Proclamation, and may be altered in like manner; but such Terms may be continued by the Judge until he shall declare that there is no business before the Court, and shall close the Term; and every day in Term and no day out of Term shall be a return day for writs and process of the said Court.

Two Terms to be held in each year.

Return day.

CXXIII. An Appeal shall lie from the Judgment of the Circuit Court in the said Magdalen Islands to the Court of Queen's Bench sitting in Appeal and Error at Quebec, in every case in which an Appeal would lie to the said Court if such Judgment had been rendered in the Superior Court or in the Circuit Court at any other place; but, whatever be the sum of money or value of the thing demanded in such case, the proceedings in Appeal shall be the same as in Appeals from the Circuit Court, except that the first day on which the case may be heard in the said Court of Queen's Bench, shall be the juridical day in Term next after the expiration of ninety days from the rendering of the Judgment appealed from if it be rendered in the Spring Term at the Magdalen Islands, and the first juridical day in Term after the first day of June next after the rendering of the Judgment if it be rendered in the Autumn Term at the said Islands; but the security in such Appeal must be given within fifteen days after the rendering of the Judgment, as in other places.

Appeal from the Circuit Court to Q. B. at Quebec.

After what time such Appeal may be heard at Quebec.

Security must be given within 15 days.

CXXIV. The Court House or place of which the Circuit Court shall be held shall be provided by and at the cost of the Local Municipality of the said Islands, in like manner as elsewhere, and under the same provisions.

Site of Court Hon-e and Gaol.

CXXV. Out of the said Lower Canada Municipalities Fund, the sum of *four hundred* pounds shall be applied to build a Court House and Gaol in the said Magdalen Islands, on

£400 allowed for building a Court House

and Gaol in the said Islands.

a site to be furnished by the Municipality of the said Islands, and approved by the Commissioners of Public Works, in the manner and subject to the provisions hereinbefore made relative to the building of Court Houses and Gaols in the New Districts; 5
and such Gaol shall be used as a common Gaol and House of Correction, for the detention of offenders legally sentenced to imprisonment by any Justice of the Peace or competent authority in the said Islands, and also for the detention of prisoners committed for trial for any indictable offence, until they 10
can be conveyed to the common Gaol for the District.

Sheriff of Gaspé to appoint a Deputy for the Magdalen Islands.

CXXVI. The Sheriff of the District of Gaspé shall appoint a Deputy who shall reside in the Magdalen Islands, and shall have the charge of the Court House and of the said Gaol and of all persons committed for custody therein, and shall have all the powers of the Sheriff in civil and in criminal cases in and with respect to the said Magdalen Islands, and also in the remainder of the District of Gaspé with respect to the conveyance of prisoners from the said Islands to any common Gaol in the said District, and other matters necessarily connected with the administration of justice in the said Islands, and such further 20
powers as the Sheriff may see fit to depute to him: Provided always, that the said Sheriff shall have another Deputy for all purposes in that one of the Counties in his District in which he does not reside. 25

Proviso.

MISCELLANEOUS PROVISIONS.

Provision if the Sheriff of any district be also the Coroner.

CXXVII. If the Sheriff in any District be also the Coroner for the same, as he may be by virtue of this Act, then if such Sheriff be interested or otherwise disqualified from acting officially in any matter, either as Sheriff or as Coroner, the Prothonotary of the Superior Court for the District, or his Deputy, shall act 30
such matter in the place and stead of such Sheriff, and as if the process or order (if any) had been addressed to him or he had been directed by the proper authority so to act.

Sheriffs, Prothonotaries, &c, may have more than one Deputy.

CXXVIII. Every Sheriff, Coroner, Prothonotary, or Clerk of Courts, or other ministerial Officer of Justice, may and shall, 35
whenever necessary for the despatch of the business of his office, appoint one or more Deputies.

Provision for removal of prisoners when a Gaol shall become unsafe or be overcrowded.

CXXIX. If the Sheriff of any District shall deem any Gaol therein unsafe for the custody of prisoners, or shall deem such Gaol overcrowded, he shall report the fact to the Governor, who 40
may authorize the removal of the prisoners in such Gaol, or any of them, to any other Gaol in Lower Canada, there to be kept until discharged in due course of law, or until they shall be again brought back to the Gaol from which they were so removed, either for trial at the proper Court, or to be again kept 45
in such Gaol when it shall have been made safe or shall not be overcrowded; and a letter from the Provincial Secretary, au-

thorizing the removal or the bringing back of any such prisoners, shall be sufficient, and, by virtue thereof and of this Act, the Sheriff shall have full power to remove or to bring back such prisoners, as the case may be, and he or his Deputies shall, while so doing, have the same powers with regard to them in the District to which they shall be conveyed and in any District through which he shall pass with them, as he would have in his own District; and the Sheriff and Gaoler of the District to the Gaol in which they shall be conveyed, and their Deputies, shall have the same powers with respect to them, from the time of their delivery to such Sheriff or Gaoler, as they would have if such prisoners had been originally committed to the Gaol in such last mentioned District.

Such removal must be authorized.

CXXX. Each of the Judges of the Superior Court shall have power to preside as Chairman at any Court of Quarter Sessions, and it shall be his duty so to preside at any such Court holden in the District in which he shall reside, or which shall be assigned to him—the Judges resident in Quebec and Montreal arranging among themselves which of them shall preside at any such Court held there; Provided always, that in the absence from such Court of a Judge of the Superior Court, the Recorder, or the Inspector and Superintendent of Police, at either of the Cities of Quebec or Montreal, may preside as Chairman at any Court of Quarter Sessions in the City in which he is such Recorder or Inspector and Superintendent of Police.

Judges of Superior Court may preside at Quarter Sessions.

Proviso.

CXXXI. The Governor may by proclamation from time to time fix the periods at and during which the Courts of Quarter Sessions shall be holden, in all or any of the Districts, and may alter the same in the like manner; but the said Courts shall be holden in the present Districts at the periods now fixed by law, until they shall be so altered, and no such Court shall be holden in any of the New Districts until the periods for holding it shall be so fixed by proclamation.

Governor to fix times of holding Courts of Quarter Sessions.

CXXXII. Within three months after this section shall take effect, all the Notarial Minutes, Repertories and Indexes and other Notarial Documents and papers of any Notary in the custody of any Board of Notaries, shall be transmitted to the Prothonotary of the Superior Court in the District including the place where such Notary died or resided when he ceased to practise, or practised next before he left the Province or became incapable of acting as a Notary, or was interdicted or removed from office; and the same being so transmitted shall remain as part of the Records of the Office of such Prothonotary: and the expenses of such transmission shall be defrayed by the Prothonotary of the District for which such Board of Notaries shall have been established, out of the monies coming into his hands and belonging to the Fee Fund.

Minutes, &c., of deceased Notaries to be transferred from custody of the Board of Notaries to that of the Prothonotary of the S. C. for the District.

Expenses of such transmission how paid.

Minutes, &c.,
of Notaries dy-
ing, &c., to be
transmitted to
the Prothono-
tary of the
District and
not to the
Board of No-
taries.

CXXXIII. Notwithstanding any thing to the contrary in the third, or in the ninth section of the Notarial Profession Act of 1850, chapter 39, the minutes, repertory and index of any Notary practising in any District in Lower Canada, who shall die or become incapable of acting as such, or shall refuse to practise and to deliver copies of his notarial deeds, or shall have been interdicted or removed from office, or shall have been interdicted or removed from office, or shall have left his domicile in Lower Canada, or who shall wish to withdraw from practice, shall be deposited by him, or by the party in whose custody he shall have deposited them, or by his heirs or legal representatives, in the office of the Prothonotary of the Superior Court for the District in which such Notary shall have resided, instead of being deposited with the Secretary of any Board of Notaries.

Rights and
powers of the
Prothonotary
in whose cus-
tody such mi-
nutes shall be.

CXXXIV. The Prothonotary in whose Office and custody any such Notarial Minutes and Documents shall be or ought to be deposited under the two next preceding sections shall have the action for compelling such deposit which is given to the Secretary of the Board of Notaries by the said ninth section of the said Act of 1850, chapter 39, and such action may be heard, tried and determined in the manner therein provided, and under the like penalties for enforcing any judgment therein; and generally, the said ninth section shall, as regards Notaries who shall have died or ceased to practise while resident in any District, be construed and carried into effect by substituting the Prothonotary of such District for the Board of Notaries, or Secretary to such Board, as the case may be; and such Prothonotary shall have the like powers, and shall be entitled to receive the like fees and emoluments for searches and copies, as the said Secretary would have had, and shall pay out of them, in like manner, the like proportion to the widow or the representatives of the deceased Notary.

Governor in
Council em-
powered to
make a tariff
of fees for cer-
tain Officers,
as well in the
New as in the
Old Districts.

CXXXV. The power vested in the Governor in Council by the eighth section of the Act of 1855, chapter 98, to make, alter or repeal any tariff of fees for certain Officers of the Superior Court and Circuit Court, is hereby extended to the making, and to the altering or repealing of any tariff of fees (whether established by Act of Parliament or otherwise) for the Clerk of Appeals, Sheriffs, Clerks of the Crown and of the Peace, and all other Officers of Justice whose fees under the said Act or the Act of 1850, chapter 37, are to form part of the Special Fund created by the Act last mentioned, and any such tariff may extend to the like Officers in the New as well as in the present Districts, and so much of the said Acts of 1849, chapters thirty-seven and thirty-eight, or of any other Act as vests in the Judges of the Court of Queen's Bench or Superior Court, the power of making, amending or repealing any tariff of such fees, is hereby repealed; but any such tariff in force when this section shall come into effect, shall continue in force until repealed or altered by the Governor in Council, and shall apply

to the like Officers as well in the New as in the present Districts.

CXXXVI. In every case where any record or document is by law required to be transmitted by any Court or by an Officer of any Court from one place to another, such transmission may be made through the Post Office, and the party requiring such transmission shall pay the amount of the postage to the transmitting officer before he shall be bound to make such transmission, and any delay caused by such party's failing to pay the same, shall be reckoned against him as occasioned by his default.

Transmission of Records, &c., may be by Post.

CXXXVII. Whenever under the provisions of this Act, or any other, the time or place for holding any Term of any Court shall be altered, and any person shall have been ordered to appear or to do any other thing in such Court which must be done in Term, on a day which by reason of such alteration shall no longer be a day in Term, or at a place where the Court shall no longer be held, then such thing shall be done by such person on the first juridical day in the Term, ordinary or extraordinary, next after that on which but for such alteration it ought to have been done (unless the Court shall appoint another day, as it may do), and at the place where the Court shall be then held, and to which the records and muniments of the Court shall be removed, and at which all matters commenced at the former place of holding the Court shall be continued and completed.

Proceedings when the place or time of holding any Court shall be altered.

CXXXVIII. No alteration in the limits of any District or Circuit, or in the local jurisdiction of any Court, Judge or Justice of the Peace, shall affect any suit or proceeding pending when such alteration shall take place, but such suit or proceeding may be continued to judgment and proceedings after judgment may be had, in the Court at the place to which such case commenced or to which it shall be transmitted, or before the Judge or Justice before whom it commenced, in like manner as if no such alteration had taken place.

Local changes not to affect suits, &c., then pending.

CXXXIX. Notwithstanding any provision fixing the duration of any Term of any Court, in this or any other Act or in any Proclamation under this or any other Act, the Judge or Judges holding such Court may declare the sittings thereof at such Term closed, whenever he or they shall be of opinion that there remains no trial, matter or proceeding to be had or done by or before the Court which cannot more conveniently remain over until the then next Term; and if at the end of any Term, as fixed by Act or Proclamation, there shall still remain any trial, matter or proceeding to be had or done by or before the Court, which cannot, in the opinion of the Judge or Judges holding the same, remain over until the then next Term with equal convenience to all parties, the Judge or Judges shall have full power to continue the Term by adjournment from day to day or to any day before the then next Term; and every sitting of the Court pursuant to such adjournment shall be held to be in Term.

The sittings at any Term may be closed when there is no business before the Court, or continued when there is business still to be done.

Boards of Notaries and Sections of the Bar not to be affected by this Act.

But new Sections or Boards may be constituted and how.

Interpretation of this Act, and how it shall be construed.

Construction of certain expressions.

Court of Quarter Sessions.

Commencement of the several parts of this Act.

CXL. Notwithstanding any alteration in the limits of any District under this Act, the several Sections of the Bar and Boards of Notaries in Lower Canada shall not be affected by such alteration, but shall continue with their present local limits and jurisdiction until altered by Proclamation; but the Governor shall have power, by Proclamation, whenever circumstances shall in his opinion render it expedient, to constitute a Section or Sections of the Bar, or a Board or Boards of Notaries, in and for any District or Districts which he shall think proper to assign as the local limits of any such Section or Board, and the local limits of any previously existing Sections or Boards may be reduced accordingly by such Proclamation, but its organization and powers shall not be affected except so far as they depend on such local limits; and any such Proclamation shall take effect, as regards each Section or Board, from the day to be appointed therein for that purpose.

CXLI. The provisions of this Act, and those of the several Acts therein referred to upon similar subjects, shall be construed with reference to each other, and as parts of the same law; and the two hundred and twelfth section of the Judicature Act of 1849, chapter 38, and all other provisions for the interpretation of that Act, shall extend to the interpretation of this Act; and the express repeal of particular provisions of former Acts shall not be construed as continuing in force any other provision of the same or of any other Act inconsistent with this Act, but any such provision shall be held to be repealed.

CXLII. The several expressions "Court of Queen's Bench at (any place)"—"Superior Court at (any place)"—or "Circuit Court at (any place)"—in this or any other Act, or in any document or proceeding, shall be understood to mean any Judge or Judges lawfully holding such Court or exercising the power thereof at such place,—and shall not be construed to mean all the Judges of such Court or any majority or other number of them, unless it be so expressed or the context shall clearly require such construction.

CXLIII. The expression "Court of Quarter Sessions" in this Act, shall mean any Court of General Sessions of the Peace, whether the same be held every three months or at any other intervals of time.

CXLIV. Sections of this Act be in force immediately on the passing thereof; Sections shall come in force on the day to be appointed for that purpose by the Governor in a Proclamation to be issued when he shall be satisfied that there is at the *Chef-lieu* in every District in Lower Canada sufficient accommodation, permanent or temporary for holding the Superior and Circuit Court therein; and the remaining sections shall come into force on the day to be appointed for that purpose by the Governor in a Proclamation to be issued when he shall be satisfied that there is at the *Chef-lieu* in every District in Lower Canada a proper Court House and Gaol for all purposes of the administration of Justice.

SCHEDULE A.

NAME OF DISTRICT.	PLACES COMPRISED.	CHEFS LIEUX.
Ottawa	Counties of Ottawa, and Pontiac.	Village of Aylmer.
Montreal	Counties of Hochelaga, Jacques Cartier, Laval, Vaudreuil, Soulanges, Laprairie, Chambly, and Verchères; and the City of Montreal.	City of Montreal.
Terrebonne.....	Counties of Argenteuil, Two Mountains, and Terrebonne.	Parish of St. Scholastique.
Joliette	Counties of L'Assomption, Montcalm, and Joliette.	Village of Industrie.
Richelieu.....	Counties of Richelieu, Yamaska, and Berthier.	Borough of Sorel.
Three Rivers.....	Counties of Maskinongé, St. Maurice, (including the Town of Three Rivers,) Champlain, and Nicolet.	Town of Three Rivers.
Quebec.....	Counties of Portneuf, Quebec, Montmorency, Levi, Lotbinière; and the City of Quebec.	City of Quebec.
Saguenay	Counties of Charlevoix, Saguenay, and Chicoutimi.	Parish of St. Etienne de la Malbaie.
Gaspé	Counties of Gaspé, and Bonaventure.	New Carlisle, in the Coun- ty of Bonaventure. Percé, in the County of Gaspé.
Rimouski.....	County of Rimouski.	Parish of St. Germain de Rimouski.

SCHEDULE A.—Continued.

NAME OF DISTRICT.	PLACES COMPRISED.	CHEFS LIEUX.
Kamouraska.....	Counties of Kamouraska, and Temiscouata.	Parish of St. Louis de Kamouraska.
Montmagny.....	Counties of L'Islet, Montmagny, and Bellechasse.	Village of Montmagny.
Beauce.....	Counties of Beauce, and Dorchester.	Parish of St. Joseph de la Beauce.
Arthabaska.....	Counties of Megantic, Arthabaska, and Drummond.	Parish of St. Christophe d'Arthabaska.
St. Francis.....	Counties of Richmond, (including the Town of Sherbrooke,) Wolfe, Compton, and Stanstead.	Town of Sherbrooke.
Bedford.....	Counties of Shefford, Missisquoi, and Brome.	Nelsonville, in the Township of Dunham.
St. Hyacinth.....	Counties of St Hyacinth, Bagot, and Rouville.	Town of St. Hyacinth.
Iberville.....	Counties of St. John's, Napierville, and Iberville.	Town of St. John.
Beauharnois.....	Counties of Huntingdon, Beauharnois, and Chateauguay.	Village of Beauharnois.

Provided that if the name of the place which is the *Chef Lieu* of any District shall be changed, the place shall nevertheless continue to be the *Chef Lieu* by its new name.

